

SENATE No. 2200

The Commonwealth of Massachusetts

PRESENTED BY:

Jason M. Lewis

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to digital entertainment on public rights of way.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	<i>2/10/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/16/2021</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>2/16/2021</i>
<i>Carol A. Doherty</i>	<i>3rd Bristol</i>	<i>2/22/2021</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>2/25/2021</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>2/25/2021</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>2/25/2021</i>
<i>Joan Meschino</i>	<i>3rd Plymouth</i>	<i>2/25/2021</i>
<i>Patrick Joseph Kearney</i>	<i>4th Plymouth</i>	<i>3/1/2021</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	<i>3/1/2021</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>3/4/2021</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>3/4/2021</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>3/8/2021</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>	<i>3/15/2021</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>3/25/2021</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>	<i>3/31/2021</i>
<i>Cindy F. Friedman</i>	<i>Fourth Middlesex</i>	<i>4/7/2021</i>

<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>4/13/2021</i>
<i>Diana DiZoglio</i>	<i>First Essex</i>	<i>5/10/2021</i>
<i>John J. Cronin</i>	<i>Worcester and Middlesex</i>	<i>10/29/2021</i>

SENATE No. 2200

By Mr. Lewis, a petition (accompanied by bill, Senate, No. 2200) of Jason M. Lewis, Kenneth I. Gordon, Jack Patrick Lewis, Carmine Lawrence Gentile and other members of the General Court for legislation to establish a comprehensive statewide policy concerning streaming entertainment services and the recovery of municipal costs for the management and maintenance of digital infrastructure. Telecommunications, Utilities and Energy.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 4045 OF 2019-2020.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to digital entertainment on public rights of way.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 156 the
2 following chapter:-

3 Chapter 166B.

4 Section 1. The purposes of this chapter are to:

5 A. establish a comprehensive statewide policy concerning compensation for the use of
6 digital infrastructure in the public rights-of-way;

7 B. establish legislative findings that digital infrastructure in the public rights-of-way is of
8 valuable economic and public interest;

9 C. establish standards which encourage a competitive environment for growth and
10 development of streaming entertainment services and which assure that streaming entertainment
11 services are responsive to the needs and interests of the local community;

12 D. establish guidelines for the exercise of Commonwealth and local authority with
13 respect to the regulation of the commercial use of the public rights-of-way by entities that
14 provide and deliver streaming entertainment services;

15 E. assure that streaming entertainment operators are encouraged to provide the widest
16 possible diversity of information sources and services to the public;

17 F. establish an orderly process for the Department of Revenue to assess and recover
18 payments from streaming entertainment operators;

19 G. establish an orderly process to collect unpaid assessments and monetary fines from
20 non-compliant streaming entertainment operators operating in the Commonwealth;

21 H. protect the substantial interest of the Commonwealth in preventing false and deceptive
22 business practices; and,

23 I. promote competition among streaming entertainment service operators and minimize
24 regulation that would impose an undue economic burden on streaming entertainment operators.

25 Section 2. DEFINITIONS

26 For the purposes of this Act, the following words shall have the following meanings:

27 A. "Commonwealth", the Commonwealth of Massachusetts;

28 B. “cable operator”, any entity that is providing cable services under a franchise
29 agreement with a city, town or district and remitting a franchise fee to such city, town or district
30 as permitted by the Cable Communications Policy Act of 1984, 47 U.S.C. § 522, et seq.;

31 C. “gross revenues”, all revenue received directly or indirectly by a streaming
32 entertainment operator arising from, attributable to, or in any way derived from the sale of
33 streaming entertainment services in the Commonwealth. The term “gross revenues” shall not
34 include bad debts, investment income, refunded deposits, or any taxes on services furnished by
35 streaming entertainment providers and imposed directly upon any user by the local, state, federal
36 or other governmental unit;

37 D. “person”, an individual, partnership, association, joint stock company, trust,
38 corporation, or governmental entity;

39 E. “public, educational, or governmental access facilities”, facilities and equipment for
40 the use of channel capacity designated for public, educational, or governmental use;

41 F. “streaming entertainment services”, any paid service that provides audio, video, or
42 computer-generated or computer-augmented entertainment and delivers such entertainment via
43 digital infrastructure to users and delivers such services through facilities located at least in part
44 in the public rights-of-way without regard to delivery technology, including internet protocol
45 technology or other intelligences. This definition does not include any cable service defined in
46 47 U.S.C. § 522(6) or any video programming provided by a commercial mobile service
47 provider defined in 47 U.S.C § 332(d) or provided solely as part of, and via, a service that
48 enables users to access content, information, electronic mail, or other services offered over the
49 public internet;

50 G. “streaming entertainment operator”, any company, entity, or organization that

51 1. provides streaming entertainment services and delivers such entertainment via digital
52 infrastructure provided through facilities located at least in part in the public rights-of-way with
53 regard to delivery technology, including internet technology or other intelligences, and

54 2. earns more than two-hundred and fifty thousand dollars (USD \$250,000.00) in gross
55 annual revenues from providing such services to users in the Commonwealth;

56 H. “video programming”, programming provided by, or generally considered comparable
57 to programming provided by, a television broadcast station.

58 Section 3. AUTHORITY OF THE COMMONWEALTH TO REGULATE
59 STREAMING ENTERTAINMENT SERVICES AND COLLECT COMPENSATION FOR
60 THE USE OF PUBLIC RIGHTS-OF-WAY

61 A. Pursuant to the authority of the Commonwealth to regulate trade under Section 1 of
62 Chapter 93 and to promote economic competition under Section 4 of Chapter 93, and to regulate
63 business practices for consumer protection under Section 1 of Chapter 93A, the Commonwealth
64 shall regulate the commercial sale of streaming entertainment services to individuals and
65 businesses in the Commonwealth;

66 B. pursuant to the authority of the Commonwealth to collect payments from commercial
67 operators doing business with individuals and businesses physically located in the
68 Commonwealth and to levy assessments under Section 1 of Chapter 58, the Commonwealth shall
69 collect payments from the private sector use of the public rights-of-way by imposing an
70 assessment upon streaming entertainment providers;

71 C. nothing in this Act shall limit or affect the authority of the Commonwealth or local
72 government or instrumentality thereof regarding ownership and control of public property and
73 public rights-of-way;

74 D. no agency of the Commonwealth or local government shall have any authority to
75 regulate the rates charged by any streaming entertainment operator.

76 Section 4. IMPOSITION AND COLLECTION OF AN ASSESSMENT FOR THE USE
77 OF PUBLIC RIGHTS-OF-WAY

78 A. A streaming entertainment operator shall pay an assessment equal to five percent (5%)
79 of such streaming entertainment operator's gross annual revenues derived in from the sale or
80 provision of streaming entertainment services to individuals and businesses in the
81 Commonwealth.

82 B. The assessment authorized in this section shall be for each year, or part of each year,
83 that such streaming entertainment operator is engaged in the sale of streaming entertainment
84 services to individuals and businesses in the Commonwealth.

85 C. A streaming entertainment operator shall file bi-annual financial statements reporting
86 its gross revenues derived in such period from the sale of streaming entertainment services to
87 individuals and businesses in the Commonwealth.

88 1. Financial statements shall be filed with the Department of Revenue and shall not be
89 classified as a public record pursuant to Section 1 of Chapter 66;

90 2. financial statements shall contain a complete accounting and itemization of gross
91 revenues derived from, or pertaining to, the sale or provision of streaming entertainment services
92 to individuals and businesses in the Commonwealth;

93 3. financial statements shall conform to Generally-Accepted Accounting Principles
94 (GAAP) and shall be submitted in writing;

95 4. for the period inclusive of January 1 through June 30, a streaming entertainment
96 operator shall submit a financial statement on or before August 15. For the period inclusive of
97 July 1 through December 31, a streaming entertainment operator shall submit a financial
98 statement on or before February 15 of the following year;

99 5. streaming entertainment operators that fail to submit financial statements within thirty
100 (30) days of the afore stated deadlines shall be assessed a monetary penalty amount equal to one
101 percent (1%) of the gross revenues derived from, or pertaining to, the sale or provision of
102 streaming entertainment services to individuals and businesses residing in the Commonwealth
103 during the applicable time period;

104 6. streaming entertainment operators that fail to submit financial statements within sixty
105 (60) days of the afore stated deadlines shall be assessed a monetary penalty amount equal to two
106 percent (2%) of the gross revenues derived from, or pertaining to, the sale or provision of
107 streaming entertainment services to individuals and businesses residing in the Commonwealth
108 during the applicable time period;

109 7. any monetary penalty assessed upon a streaming entertainment operator for failure to
110 submit financial statements before the deadline shall be cumulative to the assessment of five
111 percent (5%) of gross revenues.

112 D. Subject to audit and revision pursuant to the Department of Revenue's authority in
113 Section 5, the Department of Revenue shall utilize the financial statement of a streaming
114 entertainment operator to assess an amount equal to five percent (5%) of such streaming
115 entertainment operator's gross revenues derived in such period from the sale or provision of
116 streaming entertainment service to individuals and businesses in the Commonwealth.

117 E. Upon assessment by written notice of the Department of Revenue, a streaming
118 entertainment operator must submit payment to the Commonwealth within thirty (30) days of
119 such notice.

120 1. Streaming entertainment operators that fail to submit payment within thirty (30) days
121 of the afore stated deadline shall be assessed a monetary penalty amount equal to two percent
122 (2%) of the gross revenues derived from, or pertaining to, the sale or provision of streaming
123 entertainment services to individuals and businesses in the Commonwealth during the applicable
124 time period;

125 2. streaming entertainment operators that fail to submit remuneration of the assessment
126 within sixty (60) days of the afore stated deadline shall be assessed a penalty equal to three
127 percent (3%) of the gross revenues derived from, or pertaining to, the sale or provision of
128 streaming entertainment service to individuals and businesses in the Commonwealth during the
129 applicable time period;

130 3. any monetary penalty assessed upon a streaming entertainment operator for failure to
131 submit payment before the deadline shall be in addition to the assessment of five percent (5%) of
132 gross revenues.

133 F. In accordance with Section 7 of this Act, the Commonwealth, local governments, or
134 instrumentalities thereof, may levy additional monetary and legal penalties upon any streaming
135 entertainment operator that fails to timely provide written financial statements or remuneration of
136 assessments.

137 Section 5. RIGHT TO AUDIT FINANCIAL RECORDS PERTAINING TO
138 ASSESSABLE GROSS REVENUES

139 A. The Commonwealth shall have the right to conduct an audit or review of the
140 records reasonably related to the sources, amounts and computation of assessable gross revenues
141 derived from, or pertaining to, the sale or provision of streaming entertainment service to
142 individuals and businesses residing in the Commonwealth within the previous three (3) years.

143 B. Within thirty (30) days of a written request, a streaming entertainment operator shall
144 provide the Department of Revenue with copies of financial records related to the review or audit
145 of assessable gross revenues derived from, or pertaining to, the sale or provision of streaming
146 entertainment services to individuals and businesses residing in the Commonwealth.

147 C. In the event of an alleged underpayment, the Department of Revenue shall provide the
148 streaming entertainment operator with a written statement indicating the basis for the alleged
149 underpayment. The streaming entertainment operator shall have thirty (30) days from the receipt
150 of a statement regarding an alleged underpayment to provide the Department of Revenue any
151 written objection to the results of any assessable gross revenue review or audit, including any
152 substantiating documentation. Based on this exchange of information, the Department of
153 Revenue shall make a final determination of the underpayment(s), if any, within thirty (30) days

154 of the streaming entertainment operator’s objection and shall provide the operator with written
155 notice of the determination.

156 D. Any additional assessments due to the Commonwealth as a result of the assessable
157 gross revenue review or audit shall be paid to the Department of Revenue by the streaming
158 entertainment operator within forty-five (45) days from the date of written notification of the
159 final decision. If the assessable gross revenue review or audit shows that amounts have been
160 underpaid, then the streaming entertainment operator shall pay the underpaid amount plus
161 monetary fines equal to ten percent (10%) of the underpayment.

162 E. A streaming entertainment operator adversely affected by any final action, or failure to
163 act, of the Department of Revenue that is inconsistent with this section may, within thirty (30)
164 days after such action or failure to act, commence an action in any court of competent
165 jurisdiction within the Commonwealth. The court shall hear and decide such action on an
166 expedited basis.

167 Section 6. STREAMING ENTERTAINMENT FUND

168 A. There shall be a Streaming Entertainment Fund which shall consist of amounts
169 credited to the fund in accordance with this section. The fund shall be administered by the state
170 treasurer and held in trust exclusively for the purposes of this section. The state treasurer shall be
171 treasurer-custodian of the fund and shall have the custody of its monies and securities.

172 B. The Streaming Entertainment Fund shall consist of: (i) revenues collected from the
173 assessment imposed by this Act; (ii) revenue from appropriations or other money specifically
174 designated to be credited to the fund; (iii) interest earned on money in the fund; and (iv) funds
175 from private sources including, but not limited to, gifts, grants and donations received by the

176 Commonwealth that are specifically designated to be credited to the fund. Amounts credited to
177 the fund shall not be subject to further appropriation and any money remaining in the fund at the
178 end of a fiscal year shall not revert to the General Fund. The secretary of the Commonwealth
179 shall annually, not later than December 31, report on the activity of the fund to the clerks of the
180 Senate and House of Representatives and the Senate and House Committees on Ways and
181 Means.

182 C. The Streaming Entertainment Fund shall make bi-annual distributions on March 1 and
183 September 1 of each year. On those dates, the Streaming Entertainment Fund shall distribute,
184 with no remainder left, all monies then held in the Fund according to the following formula:

185 1. One-fifth ($1/5$) of the monies in the Streaming Entertainment Fund shall be distributed
186 to the Commonwealth General Fund;

187 2. Two-fifths ($2/5$) of the monies in the Streaming Entertainment Fund shall be
188 distributed to municipalities and local governments in the Commonwealth and further allocated
189 proportionally based upon population;

190 3. Two-fifths ($2/5$) of the monies in the Streaming Entertainment Fund shall be
191 distributed to community media centers in the Commonwealth and further allocated
192 proportionally based upon population.

193 D. The Department of Revenue shall use the most recent city and town population
194 estimates of the United States Bureau of the Census in calculating distributions pursuant to (C)(2)
195 and (C)(3) of this section.

196 E. Distributions pursuant to (C)(2) of this section shall be listed upon each municipality's
197 cherry sheet for the upcoming fiscal year.

198 F. The Commissioner of Revenue or any official responsible, shall, without further
199 appropriation and upon certification of the Commissioner, distribute all sums allocated under (C)
200 under this section.

201 G. All sums distributed under (C)(1) of this section shall be deposited in the
202 Commonwealth General Fund. All sums distributed under (C)(2) of this section shall be
203 deposited in the general fund of the respective municipality. All sums distributed under (C)(3) of
204 this section shall be deposited in accordance with Section 53F³/₄ of Chapter 44, as amended by
205 Section 8 of this act.

206 H. No expenditures from the Streaming Entertainment Fund shall be made except to
207 provide funding for: (i) the operating expenses of the fund; (ii) legal and administrative expenses
208 incurred in enforcing the provisions of this Act; and (iii) legal and administrative expenses
209 incurred in collecting any assessment due under this act.

210 I. All sums appropriated under this Act shall be expended in a manner reflecting and
211 encouraging a policy of nondiscrimination and equal opportunity.

212 J. All officials and employees of an agency, board, department, commission or division
213 receiving monies under this Act shall take affirmative steps to ensure equality of opportunity and
214 nondiscrimination in the internal affairs of state government, as well as in their relations with the
215 public, including those persons and organizations doing business with the Commonwealth. Each
216 agency, board, department, commission or division, in spending appropriated sums and
217 discharging its statutory responsibilities, shall adopt measures to ensure equal opportunity and

218 nondiscrimination in the areas of hiring, promotion, demotion or transfer, recruitment, layoff or
219 termination, rates of compensation, in-service or apprenticeship training programs and all terms
220 and conditions of employment.

221 Section 7. JUDICIAL REMEDY

222 A. In accordance with Section 1 of Chapter 12, the Attorney General is authorized to
223 enforce this Act. The Attorney General may, within seven (7) years, bring an action to recover
224 any unpaid assessments and monetary penalties, or enjoin the operations of any non-compliant
225 entity, in any court of competent jurisdiction.

226 B. Any local government, or class thereof, or community media center adversely
227 impacted by the action, or failure to act, of any streaming entertainment operator under this Act,
228 may, within seven (7) years, bring an action to recover any unpaid assessments and monetary
229 penalties, or enjoin the operations of any non-compliant entity, in any court of competent
230 jurisdiction.

231 SECTION 2. Municipal streaming fund.

232 Section 53 F3/4 of Chapter 44 of the General Laws shall be amended by adding at the
233 end thereof the following new section: -

234 “Notwithstanding section 53 or any other general or special law to the contrary, a
235 municipality that accepts this section may establish in the treasury a separate revenue account to
236 be known as the PEG Access and Streaming Entertainment Funds, into which may be deposited
237 funds received in connection with assessments derived from streaming entertainment providers.

238 Monies in the fund shall only be appropriated to support public, educational or governmental
239 access media centers.”

240 SECTION 3. Effective date.

241 This act shall take effect on January 1, 2022..