

**HOUSE . . . . . No. 4045**

**The Commonwealth of Massachusetts**

PRESENTED BY:

***Paul McMurtry***

*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>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>
<i>Viriato M. deMacedo</i>	<i>Plymouth and Barnstable</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>
<i>Kathleen R. LaNatra</i>	<i>12th Plymouth</i>
<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>David Allen Robertson</i>	<i>19th Middlesex</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Donald H. Wong</i>	<i>9th Essex</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>
<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>

<i>David K. Muradian, Jr.</i>	<i>9th Worcester</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>Shawn Dooley</i>	<i>9th Norfolk</i>
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>
<i>Natalie M. Blais</i>	<i>1st Franklin</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>
<i>Michael J. Soter</i>	<i>8th Worcester</i>
<i>Dylan A. Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Barry R. Finegold</i>	<i>Second Essex and Middlesex</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>
<i>Norman J. Orrall</i>	<i>12th Bristol</i>
<i>Christina A. Minicucci</i>	<i>14th Essex</i>
<i>Thomas P. Walsh</i>	<i>12th Essex</i>
<i>Maria Duaiame Robinson</i>	<i>6th Middlesex</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>
<i>Shaunna L. O'Connell</i>	<i>3rd Bristol</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>
<i>Claire D. Cronin</i>	<i>11th Plymouth</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>

<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>
<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>David F. DeCoste</i>	<i>5th Plymouth</i>
<i>Paul F. Tucker</i>	<i>7th Essex</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>
<i>Richard M. Haggerty</i>	<i>30th Middlesex</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Susan Williams Gifford</i>	<i>2nd Plymouth</i>
<i>Alyson M. Sullivan</i>	<i>7th Plymouth</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Angelo M. Scaccia</i>	<i>14th Suffolk</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Patrick Joseph Kearney</i>	<i>4th Plymouth</i>
<i>Joan Meschino</i>	<i>3rd Plymouth</i>
<i>Jon Santiago</i>	<i>9th Suffolk</i>
<i>Dean A. Tran</i>	<i>Worcester and Middlesex</i>
<i>Peter Capano</i>	<i>11th Essex</i>
<i>Paul K. Frost</i>	<i>7th Worcester</i>
<i>David T. Vieira</i>	<i>3rd Barnstable</i>
<i>Christopher M. Markey</i>	<i>9th Bristol</i>
<i>William M. Straus</i>	<i>10th Bristol</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>
<i>James M. Kelcourse</i>	<i>1st Essex</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Bradford Hill</i>	<i>4th Essex</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>
<i>Lenny Mirra</i>	<i>2nd Essex</i>

**HOUSE . . . . . No. 4045**

By Mr. McMurtry of Dedham, a petition (subject to Joint Rule 12) of Paul McMurtry and others 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.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-First General Court  
(2019-2020)**

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 purposes of this chapter are to --
- 2 (1) establish a comprehensive statewide policy concerning the recovery of municipal
- 3 costs for the management and maintenance of digital infrastructure in the public rights of way;
- 4 (2) establish legislative findings that digital infrastructure in the public rights of way
- 5 is of invaluable economic and democratic interest;
- 6 (3) establish standards which encourage an equally competitive environment for
- 7 growth and development of streaming entertainment services and which assure that streaming
- 8 entertainment services are responsive to the needs and interests of the local community;
- 9 (4) establish guidelines for the exercise of Commonwealth and local authority with
- 10 respect to the regulation of the commercial use of the public rights-of-way by streaming
- 11 entertainment services;

12 (5) assure that streaming entertainment services are encouraged to provide the widest  
13 possible diversity of information sources and services to the public;

14 (6) establish an orderly process for the Department of Revenue to assess and recover  
15 municipal costs from streaming entertainment services;

16 (7) establish an orderly process to collect unpaid cost recovery assessments and  
17 monetary fines and prohibit non-compliant streaming entertainment providers from operating in  
18 the Commonwealth;

19 (8) protect the substantial interest of the Commonwealth in preventing false and  
20 deceptive business practices; and

21 (9) promote competition in streaming entertainment services and minimize  
22 unnecessary regulation that would impose an undue economic burden on streaming  
23 entertainment services.

## 24 SECTION 2. DEFINITIONS

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

26 (1) “Commonwealth”, the Commonwealth of Massachusetts;

27 (2) “cable operator”, any entity that is providing cable services under contract with a  
28 local governmental authority and remitting a franchise fee to such authority in accordance with  
29 the Cable Communications Policy Act of 1984, 47 U.S.C. § 522, et seq.;

30 (3) “gross revenues”, all revenue received directly or indirectly by a streaming  
31 entertainment operator arising from, attributable to, or in any way derived from the sale of

32 streaming entertainment in the Commonwealth. The term “gross revenues” shall not mean bad  
33 debts, investment income, refunded deposits, or any taxes on services furnished by streaming  
34 entertainment providers and imposed directly upon any user by the local, state, federal or other  
35 governmental unit;

36 (4) “person”, an individual, partnership, association, joint stock company, trust,  
37 corporation, or governmental entity;

38 (5) “public, educational, or governmental access facilities”,

39 (A) channel capacity designated for public, educational, or governmental use; and

40 (B) facilities and equipment for the use of such channel capacity;

41 (6) “streaming entertainment services”, any paid service with more than two-hundred  
42 and fifty thousand dollars (USD \$250,000.00) in gross revenues from users in the  
43 Commonwealth that sells access to audio, video, or computer-generated or computer-augmented  
44 entertainment and delivers such entertainment via digital infrastructure;

45 (7) “streaming entertainment operator”, any company, entity, or organization that  
46 provides streaming entertainment services and delivers such entertainment via digital  
47 infrastructure;

48 (8) “video programming”, programming provided by, or generally considered  
49 comparable to programming provided by, a television broadcast station.

50 SECTION 3. AUTHORITY OF THE COMMONWEALTH TO REGULATE  
51 STREAMING ENTERTAINMENT SERVICES AND RECOVER MUNICIPAL COSTS

52 (A) pursuant to the authority of the Commonwealth to regulate trade under Section 1  
53 of Chapter 93 and to promote economic competition under Section 4 of Chapter 93, and to  
54 regulate business practices for consumer protection under Section 1 of Chapter 93A, the  
55 Commonwealth shall regulate the commercial sale of streaming entertainment services to  
56 individuals and businesses in the Commonwealth;

57 (B) pursuant to the authority of the Commonwealth to recover costs from commercial  
58 operators doing business with individuals and businesses physically located in the  
59 Commonwealth and to levy assessments under Section 1 of Chapter 58, the Commonwealth shall  
60 recover municipal costs derived from the private sector use of the public rights-of-way by  
61 imposing an assessment upon on streaming entertainment providers;

62 (C) nothing in this Act shall limit or affect the authority of the Commonwealth or  
63 local government or instrumentality thereof regarding ownership and control of public property  
64 and public rights-of-way;

65 (D) no agency of the Commonwealth or local government shall have any authority to  
66 regulate the rates charged by any streaming entertainment service.

67 SECTION 4. IMPOSITION AND COLLECTION OF AN ASSESSMENT TO  
68 RECOVER MUNICIPAL COSTS

69 (A) A streaming entertainment service shall pay a cost recovery assessment equal to  
70 five percent (5%) of such streaming entertainment operator's gross revenues derived in such  
71 period from the sale, lease, or monetization of streaming entertainment to individuals and  
72 businesses in the Commonwealth.

73 (B) The cost recovery authorized in this section shall be for each year, or part of each  
74 year, that such streaming entertainment operator is engaged in the sale of streaming  
75 entertainment to individuals and businesses in the Commonwealth.

76 (C) A streaming entertainment operator shall file bi-annual financial statements of its  
77 gross revenues derived in such period from the sale of streaming entertainment to individuals and  
78 businesses in the Commonwealth.

79 (i) Financial statements shall be filed with the Department of Revenue and shall not  
80 be classified as a public record pursuant to Section 1 of Chapter 66;

81 (ii) financial statements shall contain a complete accounting and itemization of gross  
82 revenues derived from, or pertaining to, the sale, lease, or monetization of streaming  
83 entertainment to individuals and businesses in the Commonwealth;

84 (iii) financial statements shall conform to the Generally-Accepted Accounting  
85 Principles (GAAP) and shall be submitted in writing;

86 (iv) for the period inclusive of January 1 through June 30, a streaming operator shall  
87 submit a financial statement on or before a deadline of August 15. For the period inclusive of  
88 July 1 through December 31, a streaming operator shall submit a financial statement on or before  
89 a deadline of February 15;

90 (v) streaming entertainment operators that fail to submit financial statements within  
91 thirty (30) days of the aforesaid deadline shall be assessed a monetary penalty amount equal to  
92 one percent (1%) of the gross revenues derived from, or pertaining to, the sale, lease, or



93 monetization of streaming entertainment to individuals and businesses residing in the  
94 Commonwealth during the applicable time period;

95 (vi) streaming entertainment operators that fail to submit financial statements within  
96 sixty (60) days of the aforesated deadline shall be assessed a monetary penalty amount equal to  
97 two percent (2%) of the gross revenues derived from, or pertaining to, the sale, lease, or  
98 monetization of streaming entertainment to individuals and businesses residing in the  
99 Commonwealth during the applicable time period;

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

103 (D) The Department of Revenue shall utilize the financial statement of a streaming  
104 entertainment operator to assess a cost recovery assessment equal to five percent (5%) of such  
105 streaming entertainment operator's gross revenues derived in such period from the sale, lease, or  
106 monetization of streaming entertainment to individuals and businesses in the Commonwealth.

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

109 (i) Streaming entertainment operators that fail to submit remuneration of the cost  
110 recovery assessment within thirty (30) days of the aforesated deadline shall be assessed a  
111 monetary penalty amount equal to two percent (2%) of the gross revenues derived from, or  
112 pertaining to, the sale, lease, or monetization of streaming entertainment to individuals and  
113 businesses in the Commonwealth during the applicable time period;

114 (ii) streaming entertainment operators that fail to submit remuneration of the cost  
115 recovery assessment within sixty (60) days of the aforesated deadline shall be assessed a penalty  
116 amount equal to three percent (3%) of the gross revenues derived from, or pertaining to, the sale,  
117 lease, or monetization of streaming entertainment to individuals and businesses in the  
118 Commonwealth during the applicable time period;

119 (iii) any monetary penalty assessed upon a streaming entertainment operator for  
120 failure to submit payment before the deadline shall be cumulative to the assessment of five  
121 percent (5%) of gross revenues.

122 (F) In accordance with Section 7 of this act, the Commonwealth, local governments,  
123 or instrumentalities thereof, may levy additional monetary and legal penalties upon any  
124 streaming entertainment operator that fails to timely provide written financial statements or  
125 remuneration of cost recovery assessments.

126 SECTION 5. RIGHT TO AUDIT FINANCIAL RECORDS PERTAINING TO  
127 ASSESSABLE GROSS REVENUES

128 (A) The Commonwealth shall have the right to conduct an audit or review of the  
129 records reasonably related to the sources, amounts and computation of assessable gross revenues  
130 derived from, or pertaining to, the sale, lease, or monetization of streaming entertainment to  
131 individuals and businesses residing in the Commonwealth within the previous three (3) years.

132 (B) Within thirty (30) days of a written request, a streaming entertainment provider  
133 shall provide the Department of Revenue with copies of financial records related to the review or  
134 audit of assessable gross revenues derived from, or pertaining to, the sale, lease, or monetization  
135 of streaming entertainment to individuals and businesses residing in the Commonwealth.

136 (C) In the event of an alleged underpayment, the Department of Revenue shall  
137 provide the streaming entertainment operator with a written statement indicating the basis for the  
138 alleged underpayment. The streaming entertainment operator shall have thirty (30) days from the  
139 receipt of a statement regarding an alleged underpayment to provide the Department of Revenue  
140 with any written objection to the results of any assessable gross revenue review or audit,  
141 including any substantiating documentation. Based on this exchange of information, the  
142 Department of Revenue shall make a final determination of the underpayment(s), if any, within  
143 thirty (30) days of the streaming entertainment operator's objection and shall provide the  
144 operator with written notice of the determination.

145 (D) Any additional cost recovery payment due to the Commonwealth as a result of the  
146 assessable gross revenue review or audit shall be paid to the Department of Revenue by the  
147 streaming entertainment operator within forty-five (45) days from the date of written notification  
148 of the final decision. If the assessable gross revenue review or audit shows that amounts have  
149 been underpaid, then the streaming entertainment operator shall pay the underpaid amount plus  
150 monetary fines of ten percent (10%) of the underpayment.

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

156 SECTION 6. STREAMING ENTERTAINMENT FUND

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

161 (B) The fund shall consist of: (i) revenues collected from the cost recovery assessment  
162 imposed by section 401 of this act; (ii) revenue from appropriations or other money authorized  
163 by the general court and specifically designated to be credited to the fund; (iii) interest earned on  
164 money in the fund; and (iv) funds from private sources including, but not limited to, gifts, grants  
165 and donations received by the commonwealth that are specifically designated to be credited to  
166 the fund. Amounts credited to the fund shall not be subject to further appropriation and any  
167 money remaining in the fund at the end of a fiscal year shall not revert to the General Fund. The  
168 secretary shall annually, not later than December 31, report on the activity of the fund to the  
169 clerks of the Senate and House of Representatives and the Senate and House Committees on  
170 Ways and Means.

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

174 (i) One-fifth (1/5) of the monies in the Fund shall be distributed to the  
175 Commonwealth General Fund;

176 (ii) Two-fifths (2/5) of the monies in the Fund shall be distributed to municipalities  
177 and local governments in the Commonwealth and further allocated proportionally based upon  
178 population;

179 (iii) Two-fifths (2/5) of the monies in the Fund shall be distributed to community  
180 media centers in the Commonwealth and further allocated proportionally based upon population.

181 (D) The Department of Revenue shall use the most recent city and town population  
182 estimates of the United States Bureau of the Census in calculating distributions pursuant to  
183 (C)(ii) and (C)(iii) of this section.

184 (E) Distributions pursuant to (C)(ii) of this section shall be listed upon each  
185 municipality's cherry sheet, so-called, for the upcoming fiscal year.

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

189 (G) All sums distributed under (C)(i) of this section shall be deposited in the  
190 Commonwealth General Fund. All sums distributed under (C)(ii) of this section shall be  
191 deposited in the general fund of the respective municipality. All sums distributed under (C)(iii)  
192 of this section shall be deposited in accordance with Section 53F<sup>3</sup>/<sub>4</sub> of Chapter 44, as amended by  
193 Section 8 of this act.

194 (H) No expenditures from the fund shall be made except to provide funding for: (i) the  
195 operating expenses of the fund; (ii) legal and administrative expenses incurred in enforcing the  
196 provisions of this act; and (iii) legal and administrative expenses incurred in collecting any cost  
197 recovery assessment due under this act.

198 (I) All sums appropriated under this act shall be expended in a manner reflecting and  
199 encouraging a policy of nondiscrimination and equal opportunity.

200 (J) All officials and employees of an agency, board, department, commission or  
201 division receiving monies under this act shall take affirmative steps to ensure equality of  
202 opportunity and nondiscrimination in the internal affairs of state government, as well as in their  
203 relations with the public, including those persons and organizations doing business with the  
204 Commonwealth. Each agency, board, department, commission or division, in spending  
205 appropriated sums and discharging its statutory responsibilities, shall adopt measures to ensure  
206 equal opportunity and nondiscrimination in the areas of hiring, promotion, demotion or transfer,  
207 recruitment, layoff or termination, rates of compensation, in-service or apprenticeship training  
208 programs and all terms and conditions of employment.

209 SECTION 7. JUDICIAL REMEDY

210 (A) In accordance with Section 1 of Chapter 12, the Attorney General is so authorized  
211 to enforce this act. The Attorney General may, within seven (7) years, bring an action to recover  
212 any unpaid cost recovery assessments and monetary penalties, or enjoin the operations of any  
213 non-compliant entity, in any court of competent jurisdiction.

214 (B) Any local government, or class thereof, adversely impacted by the action, or  
215 failure to act, of any streaming entertainment operator under this act, may, within seven (7)  
216 years, bring an action to recover any unpaid cost recovery assessments and monetary penalties,  
217 or enjoin the operations of any non-compliant entity, in any court of competent jurisdiction.

218 SECTION 8. MUNICIPAL STREAMING FUND

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

221           “Notwithstanding section 53 or any other general or special law to the contrary, a  
222 municipality that accepts this section may establish in the treasury a separate revenue account to  
223 be known as the PEG Access and Streaming Entertainment Funds, into which may be deposited  
224 funds received in connection with cost recovery assessments derived from streaming  
225 entertainment providers. Monies in the fund shall only be appropriated to support public,  
226 educational or governmental access media centers.”

227           SECTION 9. EFFECTIVE DATE

228           (A)    This act shall take effect on January 1, 2020.