

MAINE STATE LEGISLATURE

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L.D. 920

Date: 6-9-21

(Filing No. H528)

MAJORITY

ENERGY, UTILITIES AND TECHNOLOGY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 676, L.D. 920, "An Act To Promote Oversight of and Competitive Parity among Video Service Providers"

Amend the bill in section 5 in subsection 1-A in paragraph D in the 2nd line (page 1, line 32 in L.D.) by inserting after the following: "governmental" the following: 'transmission'

Amend the bill in section 5 in subsection 1-A in paragraph E in the first line (page 1, line 39 in L.D.) by inserting after the following: "governmental" the following: 'transmission'

Amend the bill in section 5 in subsection 1-A in paragraph E in the 6th line (page 2, line 3 in L.D.) by inserting after the following: "governmental" the following: 'transmission'

Amend the bill in section 5 in subsection 1-A by striking out all of paragraph H (page 2, lines 17 to 27 in L.D.) and inserting the following:

'H. "Video service provider" means any person that sells in the State access to video, audio or computer-generated or computer-augmented entertainment services and, directly or through one or more affiliates, owns or operates facilities located in whole or in part in public rights-of-way that are used to provide such services, irrespective of the technology used to deliver such services. "Video service provider" includes, but is not limited to, a cable system operator and a common carrier that operates a cable television system.

"Video service provider" does not include:

(1) A commercial mobile service provider, as defined in 47 United States Code, Section 332(d); or

(2) A provider of an Internet access service, as defined in 47 United States Code, Section 231(e)(4), with respect to the provision of the Internet access service by the provider.'

Amend the bill by striking out all of section 9 and inserting the following:

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'Sec. 9. 30-A MRSA §3008, sub-§3, ¶G is enacted to read:

G. Notwithstanding any provision in a franchise, a video service provider is responsible for all costs associated with public, educational and governmental transmission facility equipment used for the management of public, educational and governmental access channels within the franchising municipality, including, but not limited to, technology upgrade costs for signal quality improvement or for other reasons. A video service provider may not offset any such costs through the payment of any franchise fees in accordance with subsection 5-A.'

Amend the bill in section 11 in subsection 5 by striking out all of paragraph C-1 (page 4, lines 15 and 16 in L.D.) and inserting the following:

'C-1. Provisions regarding the payment or remittance of any franchise fees by the video service provider as may be required under the agreement or contract between the municipality and the video service provider and in accordance with subsection 5-A.'

Amend the bill by striking out all of section 12 and inserting the following:

'Sec. 12. 30-A MRSA §3008, sub-§5-A is enacted to read:

5-A. Franchise fees. Beginning January 1, 2022, any new or renewed franchise agreement or contract between a municipality and a video service provider that includes provisions requiring payment of any franchise fees by the video service provider to the municipality must include the following provisions.

A. The municipality must be authorized to use the fees for costs associated with the regulation of the operation of the video service provider within the municipality; to support the provision of public, educational and governmental programming within the municipality; to offset municipal property taxes; or for any other purpose identified by the municipality.

B. The fees must be paid by the video service provider to the municipality or its designee on a quarterly basis and must be received by the municipality or designee no later than 45 days after the end of the calendar quarter for which the payment is made. The repeated failure to timely pay such fees is a material breach of the terms of the franchise agreement or contract. If the video service provider fails to timely pay the fees to the municipality or its designee:

(1) Interest must accrue on the required, unpaid fees at the rate of 12% simple interest per annum; and

(2) The municipality may at its discretion terminate the agreement or contract for the repeated failure of the video service provider to timely pay such fees.

C. Each payment under paragraph B must include a statement prepared by a financial representative or agent of the video service provider, testified and verified as correct, identifying the total amount of gross annual revenue generated by all activities of the provider within the municipality for that payment period and describing the calculations used to determine the amount of the payment. The video service provider shall prepare and maintain the financial information and records necessary to provide the information required under this paragraph in accordance with accounting principles and auditing standards generally accepted within the video service industry.

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1 D. The municipality may request that the information provided by the video service
2 provider pursuant to paragraph C be subject to audit by a qualified 3rd party to be
3 selected by the municipality. The costs of the audit are to be paid by the municipality
4 except when the results of the audit demonstrate that the video service provider
5 underpaid by more than 4% any franchise fees required under the franchise agreement
6 or contract, in which case the video service provider must reimburse the municipality
7 for the costs of the audit.

8 E. A municipality's or its designee's acceptance of franchise fees paid by the video
9 service provider does not constitute an agreement by the municipality that the amount
10 of the fee is correct unless the municipality has not initiated a process to challenge or
11 audit the amount of the fee paid within 36 months of receipt or, in the case of a fee not
12 accompanied by a statement under paragraph C that is verified as correct, 48 months
13 of receipt. Prior to the expiration of such time period, the municipality may inspect
14 relevant financial information and records of the video service provider and initiate a
15 process to seek compensation for any underpayment.'

16 Amend the bill by striking out all of section 13.

17 Amend the bill in section 14 in subsection 7 in the blocked paragraph in the first line
18 (page 6, line 41 in L.D.) by striking out the following: "cable television" and inserting the
19 following: '~~eable television~~ video'

20 Amend the bill in section 14 in subsection 7 in the blocked paragraph in the last line
21 (page 6, line 42 in L.D.) by striking out the following: "cable television" and inserting the
22 following: '~~eable television~~ video'

23 Amend the bill in section 16 in subsection 9 in the 4th line (page 7, line 11 in L.D.) by
24 striking out the following: "fees required by this section" and inserting the following:
25 'franchise fees'

26 Amend the bill in section 16 in subsection 9 in the first blocked paragraph in the last
27 line (page 7, line 15 in L.D.) by striking out the following: "fees required by this section"
28 and inserting the following: 'franchise fees'

29 Amend the bill in section 20 in subsection 2 in paragraph A in subparagraph (1) in the
30 3rd line (page 8, line 15 in L.D.) by striking out the following: ", the Public Utilities
31 Commission"

32 Amend the bill in section 20 in subsection 2 in paragraph A in subparagraph (2) in the
33 first line (page 8, line 17 in L.D.) by striking out the following: "Public Utilities
34 Commission and the"

35 Amend the bill in section 20 in subsection 2 in paragraph B in the 3rd line (page 8, line
36 27 in L.D.) by striking out the following: "Public Utilities Commission and the"

37 Amend the bill by inserting after section 28 the following:

38 '**Sec. 29. 35-A MRSA §102, sub-§13**, as amended by PL 2019, c. 298, §1, is further
39 amended to read:

40 **13. Public utility.** "Public utility" includes every gas utility, natural gas pipeline
41 utility, transmission and distribution utility, telephone utility, water utility, video service
42 provider and ferry, as those terms are defined in this section, and each of those utilities is
43 declared to be a public utility. "Public utility" does not include the operation of a radio

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1 paging service, as that term is defined in this section, or mobile telecommunications
2 services unless only one entity or an affiliated interest of that entity, as defined in section
3 707, subsection 1, paragraph A, exclusively controls the use of the radio frequency
4 spectrum assigned by the Federal Communications Commission to provide mobile service
5 to the service area.

6 Nothing in this subsection precludes:

- 7 A. The jurisdiction, control and regulation by the commission pursuant to private and
8 special act of the Legislature;
- 9 B. The commission's jurisdiction and control over and regulation of a public utility
10 that provides, in addition to other services, radio paging service or mobile
11 telecommunications services;
- 12 C. The commission's jurisdiction and control over and regulation of basic exchange
13 telephone service offered by a provider of mobile telecommunications services if, after
14 investigation and hearing, the commission determines that the provider is engaged in
15 the provision of basic exchange telephone service; and
- 16 D. Negotiations for, or negates agreements or arrangements existing on the effective
17 date of this paragraph relating to, rates, terms and conditions for interconnection
18 provided by a telephone utility to a company providing radio paging or mobile
19 telecommunications services.

20 **Sec. 30. 35-A MRSA §102, sub-§21-B** is enacted to read:

21 **21-B. Video service provider.** "Video service provider" has the same meaning as in
22 Title 30-A, section 3008, subsection 1-A, paragraph H.'

23 Amend the bill by inserting after section 29 the following:

24 **'Sec. 30. 35-A MRSA §116, sub-§1,** as amended by PL 2013, c. 600, §1, is further
25 amended to read:

26 **1. Entities subject to assessments.** Every transmission and distribution, gas,
27 telephone and water utility, video service provider and ferry subject to regulation by the
28 commission and every qualified telecommunications provider is subject to an assessment
29 on its intrastate gross operating revenues to produce sufficient revenue for expenditures
30 allocated by the Legislature for the Public Utilities Commission Regulatory Fund
31 established pursuant to this section. The budget for the Public Utilities Commission
32 Regulatory Fund is subject to legislative review and approval in accordance with
33 subsection 2. The portion of the total assessment applicable to each category of public
34 utility or qualified telecommunications provider is based on an accounting by the
35 commission of the portion of the commission's resources devoted to matters related to each
36 category. The commission shall develop a reasonable and practicable method of
37 accounting for resources devoted by the commission to matters related to each category of
38 public utility or qualified telecommunications provider. Assessments on each public utility
39 or qualified telecommunications provider within each category must be based on the
40 utility's or qualified telecommunications provider's gross intrastate operating revenues.
41 The commission shall determine the assessments annually prior to May 1st and assess each
42 utility or qualified telecommunications provider for its pro rata share for expenditure during
43 the fiscal year beginning July 1st. Each utility or qualified telecommunications provider

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1 shall pay the assessment charged to the utility or qualified telecommunications provider on
2 or before July 1st of each year. Any increase in the assessment that becomes effective
3 subsequent to May 1st may be billed on the effective date of the act authorizing the
4 increase.

5 A. The assessments charged to utilities and qualified telecommunications providers
6 under this section are just and reasonable operating costs for rate-making purposes.

7 B. For the purposes of this section, "intrastate gross operating revenues" means:

8 (1) In the case of all utilities except telephone utilities, revenues derived from filed
9 rates except revenues derived from sales for resale;

10 (2) In the case of a telephone utility, all intrastate revenues, except revenues
11 derived from sales for resale, whether or not the rates from which those revenues
12 are derived are required to be filed pursuant to this Title; and

13 (3) In the case of a qualified telecommunications provider, all intrastate revenues
14 except revenues derived from sales for resale.

15 C. Gas utilities subject to the jurisdiction of the commission solely with respect to
16 safety are not subject to any assessment.

17 D. The commission may correct any errors in the assessments by means of a credit or
18 debit to the following year's assessment rather than reassessing all utilities or qualified
19 telecommunications providers in the current year.

20 E. The commission may exempt utilities or qualified telecommunications providers
21 with annual intrastate gross operating revenues under \$50,000 from assessments under
22 this section.

23 For purposes of this section, "qualified telecommunications provider" means a provider of
24 interconnected voice over Internet protocol service that paid any assessment under this
25 subsection, whether voluntarily, by agreement with the commission or otherwise, prior to
26 March 1, 2012.'

27 Amend the bill by inserting after section 31 the following:

28 '**Sec. 32. Appropriations and allocations.** The following appropriations and
29 allocations are made.

30 **PUBLIC UTILITIES COMMISSION**

31 **Public Utilities - Administrative Division 0184**

32 Initiative: Provides allocations for 2 Staff Attorney and 2 Utility Analyst positions and
33 related All Other costs.

34	OTHER SPECIAL REVENUE FUNDS	2021-22	2022-23
35	POSITIONS - LEGISLATIVE COUNT	4,000	4,000
36	Personal Services	\$371,770	\$581,248
37	All Other	\$23,384	\$35,520
38			
39	OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$395,154</u>	<u>\$616,768</u>

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Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment, which is the majority report of the committee, makes the following changes to the bill.

1. It removes from the bill the provisions requiring a video service provider to collect from its subscribers a video service regulatory surcharge, with such amounts collected to be used by the Public Utilities Commission in its oversight and enforcement of provisions relating to the municipal franchising of video service providers. The amendment instead defines "video service provider" to be a public utility under Title 35-A of the Maine Revised Statutes and authorizes the Public Utilities Commission to offset its oversight and enforcement costs related to video service providers through an assessment on the intrastate gross operating revenues of video service providers in the same manner as the commission requires the payment of such assessments by other public utilities.

2. It amends the definition of "public, educational and governmental facility equipment" to instead define "public, educational and governmental transmission facility equipment." It also amends the definition of "video service provider."

3. It removes from the bill the requirement that any franchise agreement or contract between a video service provider and a municipality require payment by the video service provider of a franchise fee equal to 5% of the provider's gross annual revenue from its operations within the municipality.

4. It removes from the bill provisions requiring the Public Utilities Commission to receive, investigate and resolve consumer complaints regarding services provided by a video service provider.

5. It makes a number of related technical changes or clarifications to the bill.

6. It also adds an appropriations and allocations section.

FISCAL NOTE REQUIRED

(See attached)



130th MAINE LEGISLATURE

LD 920

LR 463(02)

An Act To Promote Oversight of and Competitive Parity among Video Service Providers

Fiscal Note for Bill as Amended by Committee Amendment *A (H 528)*

Committee: Energy, Utilities and Technology

Fiscal Note Required: Yes

Fiscal Note

	FY 2021-22	FY 2022-23	Projections FY 2023-24	Projections FY 2024-25
Appropriations/Allocations				
Other Special Revenue Funds	\$395,154	\$616,768	\$645,830	\$676,346
Revenue				
Other Special Revenue Funds	\$395,155	\$616,768	\$645,830	\$676,346

Fiscal Detail and Notes

This bill defines video service providers as public utilities and subjects them to oversight by the Public Utilities Commission (PUC). The PUC has indicated that the additional regulatory activity of this oversight will require additional staffing. The bill includes ongoing allocations to the PUC of \$395,154 starting in fiscal year 2021-22 for two Staff Attorney positions, two Utility Analyst positions and associated All Other costs. Since the PUC is funded by an assessment set to produce sufficient revenue for the expenditures allocated by the Legislature for operating the PUC, the increased allocations in this bill require a corresponding increase in revenue from the assessment on the intrastate gross operating revenues of video service providers. The bill allows the PUC to collect this assessment in the same manner as it does with other public utilities.