



2009 ASSEMBLY BILL 721

February 11, 2010 - Introduced by Representatives HEBL, SMITH, MOLEPSKE JR., HUBLER, BERCEAU, KESSLER, POPE-ROBERTS, SCHNEIDER, BLACK, GARTHWAITE, VAN AKKEREN, HILGENBERG, SHERMAN, BIES, ROYS, HINTZ, VRUWINK, A. WILLIAMS and SINICKI, cosponsored by Senators VINEHOUT, ROBSON, MILLER and RISSER. Referred to Committee on Urban and Local Affairs.

1 **AN ACT** *to amend* 66.0420 (3) (e) 2. b., 66.0420 (5) (a) 3., 66.0420 (5) (b) 1. a.,
2 66.0420 (5) (b) 2., 66.0420 (5) (d) 1., 66.0420 (7) (a) 1., 66.0420 (7) (em) (title),
3 66.0420 (7) (em) 1., 66.0420 (7) (em) 2., 66.0420 (7) (em) 3., 66.0420 (7) (em) 4.
4 and 66.0420 (7) (f); *to repeal and recreate* 66.0420 (5) (c) 3. a.; and *to create*
5 66.0420 (5) (d) 3. and 4. and 66.0420 (7) (em) 5. of the statutes; **relating to:**
6 public, educational, and governmental access channel requirements for video
7 service providers and interim cable operators.

Analysis by the Legislative Reference Bureau

Under current law, with certain exceptions, a person may not provide video service unless the Department of Financial Institutions (DFI) has issued a video service franchise to the person. The prohibition was enacted as part of 2007 Wisconsin Act 42, which made substantial changes to the regulation of cable television service. Current law defines “video service,” in general, as cable television service, and other service comparable to programming service provided by a television broadcast station, that is provided through facilities located, at least in part, in public rights-of-way. Current law refers to a person who is granted a video service franchise as a “video service provider.” One of the exceptions to the prohibition applies to a person operating under a cable television franchise granted by a municipality before the enactment of 2007 Wisconsin Act 42. Current law allows

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such a person to elect to continue to provide cable television service until the franchise expires. Upon expiration of the municipally granted franchise, the person must apply to DFI for a video service franchise. Current law refers to a person who elects to operate under a municipally granted cable television franchise until the franchise's expiration as an "interim cable operator."

Current law prohibits municipalities from requiring video service providers and interim cable operators to provide monetary support for access facilities for public, educational, and governmental access channels (PEG channels) after January 1, 2011. The amount of monetary support that a municipality may require before that date is generally based on the amount of support that a municipality required prior to the enactment of 2007 Wisconsin Act 42. This bill changes current law so that it refers to support for PEG channels, rather than to monetary support for access facilities for PEG channels. The bill also allows a municipality to require, beginning on January 1, 2011, video service providers and interim cable operators to pay a fee for the purpose of supporting PEG channels. The fee, which must be set by ordinance, may be equal to no more than 1 percent of a video service provider's or interim cable operator's annual gross receipts. The bill also makes video service providers and interim cable operators responsible for making any changes to PEG channel content or programming that are necessary for compatibility with their service delivery technology or protocol. Under current law, municipalities that provide PEG channel programming are responsible for such changes.

The bill also requires video service providers and interim cable operators to provide channel capacity for PEG channels with accessibility, functionality, and audio and visual quality that is at least equivalent to certain commercial channels. In addition, the bill requires video service providers and interim cable operators to do the following: 1) provide channel capacity for PEG channels so that it is viewable by subscribers without additional service or equipment charges; 2) provide such channel capacity on a service tier that is viewable by 100 percent of customers, rather than by more than 50 percent, which is required under current law; and 3) provide facilities adequate to carry signals for PEG channels without material degradation, alteration, or removal of PEG channel content. Also, the bill imposes requirements on the channel numbers used for PEG channels and clarifies duties under current law regarding the relocation of origination points for PEG channels. Additionally, the bill eliminates the authority of a video service provider or interim cable operator to provide certain restored PEG channel capacity on any service tier.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 66.0420 (3) (e) 2. b. of the statutes is amended to read:

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1 66.0420 (3) (e) 2. b. If a municipality specified in subd. 2. a. has granted any
2 cable franchise that is in effect immediately before January 9, 2008, the municipality
3 shall, no later than 10 business days after receipt of the copy, notify the applicant in
4 writing of the number of PEG channels for which incumbent cable operators are
5 required to provide channel capacity in the municipality, the amount and type of
6 ~~monetary support for access facilities~~ for PEG channels required of incumbent cable
7 operators as described in sub. (7) (em) 1. to 4., and the percentage of revenues that
8 incumbent cable operators are required to pay the municipality as franchise fees.

9 **SECTION 2.** 66.0420 (5) (a) 3. of the statutes is amended to read:

10 66.0420 (5) (a) 3. An interim cable operator or video service provider shall
11 provide any channel capacity for PEG channels required under this paragraph on
12 any a service tier that is viewed by ~~more than 50~~ 100 percent of the interim cable
13 operator's or video service provider's customers.

14 **SECTION 3.** 66.0420 (5) (b) 1. a. of the statutes is amended to read:

15 66.0420 (5) (b) 1. a. Notwithstanding par. (a), an interim cable operator or video
16 service provider may reprogram for any other purpose any channel capacity provided
17 for a PEG channel required by a municipality under par. (a) if the PEG channel is
18 not substantially utilized by the municipality. If the municipality certifies to the
19 interim cable operator or video service provider that reprogrammed channel capacity
20 for a PEG channel will be substantially utilized by the municipality, the interim cable
21 operator or video service provider shall, no later than 120 days after receipt of the
22 certification, restore the channel capacity for the PEG channel. ~~Notwithstanding~~
23 ~~par. (a) 3., an interim cable operator or video service provider may provide restored~~
24 ~~channel capacity for a PEG channel on any service tier.~~

25 **SECTION 4.** 66.0420 (5) (b) 2. of the statutes is amended to read:

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1 66.0420 (5) (b) 2. Notwithstanding par. (a), if a municipality fails to provide the
2 notice specified in sub. (3) (e) 2. before the deadline specified in sub. (3) (e) 2., no
3 interim cable operator or video service provider is required to provide channel
4 capacity for any PEG channel, or ~~monetary support for access facilities~~ for PEG
5 channels pursuant to sub. (7) (em) 1. to 4., until the 90th day after the municipality
6 provides such notice.

7 **SECTION 5.** 66.0420 (5) (c) 3. a. of the statutes is repealed and recreated to read:

8 66.0420 (5) (c) 3. a. If a municipality produces or maintains PEG channel
9 content or programming in a manner or form that is compatible with the interim
10 cable operator's or video service provider's video service network and that permits
11 the interim cable operator or video service provider to comply with the requirements
12 of par. (d) 3., the municipality shall submit the content or programming to the
13 interim cable operator or video service provider in that manner or form. If the
14 municipality does not produce or maintain PEG channel content or programming in
15 such manner or form, the interim cable operator or video service provider shall be
16 responsible at its sole cost for any changes in the manner or form of the transmission
17 that are necessary to make PEG channel content or programming compatible with
18 the technology or protocol used by the interim cable operator or video service
19 provider to deliver services. If an interim cable operator or video service provider is
20 required to make such changes to the manner or form of the transmission, the
21 municipality shall provide reasonable access to the interim cable operator or video
22 service provider that allows the interim cable operator or video service provider to
23 transmit the PEG channel programming in an economical manner subject to the
24 requirements of par. (d) 3.

25 **SECTION 6.** 66.0420 (5) (d) 1. of the statutes is amended to read:

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1 66.0420 (5) (d) 1. If a municipality requires an interim cable operator or video
2 service provider to provide capacity for PEG channels under par. (a), the interim
3 cable operator or video service provider shall be required to provide equipment and
4 transmission capacity sufficient to connect the interim cable operator's or video
5 service provider's headend or, video hub office, or transmission facilities to the
6 municipality's PEG access channel origination points existing as of January 9, 2008.
7 A municipality shall permit the interim cable operator or video service provider to
8 determine the most economically and technologically efficient means of providing
9 such equipment and transmission capacity. If a municipality requests that such a
10 PEG access channel origination point be relocated, the interim cable operator or
11 video service provider shall be required to provide only the first 200 feet of
12 transmission line beginning at the relocated origination point that is necessary to
13 connect the relocated origination point to the interim cable operator or video service
14 provider's headend or, video hub office ~~to such origination point, or transmission~~
15 facilities. A municipality shall be liable for the costs of construction of such a
16 transmission line beyond the first 200 feet from the relocated origination point to the
17 headend, video hub office, or transmission facilities and for any construction costs
18 associated with additional origination points, but not for the costs associated with
19 the transmission of PEG programming over such line. The interim cable operator
20 or video service provider may recover its costs to provide equipment and
21 transmission capacity under this subdivision by identifying and collecting a "PEG
22 Transport Fee" as a separate line item on customer bills.

23 **SECTION 7.** 66.0420 (5) (d) 3. and 4. of the statutes are created to read:

24 66.0420 (5) (d) 3. If a municipality requires an interim cable operator or video
25 service provider to provide channel capacity for PEG channels under par. (a), the

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1 interim cable operator or video service provider shall provide the channel capacity
2 with accessibility, functionality, and audio and visual quality that is at least
3 equivalent to accessibility, functionality, and audio and visual quality for channel
4 capacity that is used for one of the following:

5 a. Local commercial television stations that the interim cable operator or video
6 service provider is required to carry under federal law.

7 b. The primary signal of the network-affiliated commercial television stations
8 carried on the video service network of the interim cable operator or video service
9 provider, if federal law does not require the interim cable operator or video service
10 provider to carry local commercial television stations.

11 4. If a municipality requires an interim cable operator or video service provider
12 to provide channel capacity for PEG channels under par. (a), all of the following
13 apply:

14 a. The interim cable operator or video service provider shall provide the
15 channel capacity on channel numbers that are within 10 numerically of the channel
16 number of any local commercial television station or network-affiliated commercial
17 television station specified in subd. 3. a. or b.

18 b. The interim cable operator or video service provider shall provide the
19 channel capacity so that it is viewable by every subscriber of the interim cable
20 operator or video service provider without additional service or equipment charges.

21 c. The interim cable operator or video service provider shall provide facilities
22 adequate to carry signals for the PEG channels from the origination point of the
23 signals to subscribers without material degradation, alteration, or removal of
24 content.

25 **SECTION 8.** 66.0420 (7) (a) 1. of the statutes is amended to read:

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1 66.0420 (7) (a) 1. Notwithstanding s. 66.0611 and except as provided in subds.
2 2. and 2m., a video service provider shall, on a quarterly calendar basis, calculate and
3 pay to each municipality in which the video service provider provides video service
4 a video service provider fee equal to the percentage of the video service provider's
5 gross receipts that is specified in par. (b) and the ~~monetary~~ support for ~~access~~
6 ~~facilities for PEG channels described in~~ required under par. (em). A video service
7 provider shall remit the fee to the municipality no later than 45 days after the end
8 of each quarter. Except as provided in subd. 2. or par. (b) 1., if the municipality is not
9 required to provide notice under sub. (3) (e) 2., the duty to remit the fee first applies
10 to the quarter in which the video service provider begins to provide service in the
11 municipality, and, if the municipality is required to provide notice under sub. (3) (e)
12 2., the duty to remit the fee first applies to the quarter in which the video service
13 provider begins to provide service in the municipality or to the quarter that includes
14 the 45th day after the video service provider receives the municipality's notice,
15 whichever quarter is later.

16 **SECTION 9.** 66.0420 (7) (em) (title) of the statutes is amended to read:

17 66.0420 (7) (em) (title) *PEG channel ~~monetary~~ support.*

18 **SECTION 10.** 66.0420 (7) (em) 1. of the statutes is amended to read:

19 66.0420 (7) (em) 1. This subdivision applies to an incumbent cable operator
20 whose cable franchise is terminated under sub. (3) (b) 2. b. The obligation that is
21 actually imposed by a municipality prior to April 18, 2007, on such an incumbent
22 cable operator to provide ~~monetary~~ support for ~~access facilities~~ for PEG channels and
23 that is contained in a cable franchise existing on January 9, 2008, shall continue
24 until January 1, 2011.

25 **SECTION 11.** 66.0420 (7) (em) 2. of the statutes is amended to read:

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1 66.0420 (7) (em) 2. The duty of an interim cable operator to provide monetary
2 support for access facilities for PEG channels that is contained in a cable franchise
3 existing on January 9, 2008, shall continue until January 1, 2011.

4 **SECTION 12.** 66.0420 (7) (em) 3. of the statutes is amended to read:

5 66.0420 (7) (em) 3. Each video service provider providing video service in a
6 municipality shall have the same obligation to provide monetary support for access
7 facilities for PEG channels as the incumbent cable operator with the most
8 subscribers in the municipality as of January 9, 2008. To the extent that such
9 incumbent cable operator provides such support in the form of a percentage of gross
10 revenues or a per subscriber fee, any other video service provider shall pay the same
11 percentage of gross revenues or per subscriber fee to the municipality as the
12 incumbent cable operator. To the extent that such incumbent cable operator provides
13 such support in the form of a lump sum payment without an offset to its franchise
14 fee or video service provider fee, any other video service provider that commences
15 service in the municipality shall pay the municipality a sum equal to the pro rata
16 amount of such lump sum payment based on its proportion of video service customers
17 in such municipality. The obligation to provide monetary support required under
18 this subdivision shall continue until January 1, 2011.

19 **SECTION 13.** 66.0420 (7) (em) 4. of the statutes is amended to read:

20 66.0420 (7) (em) 4. For purposes of ~~this paragraph~~ subd. 3., the proportion of
21 video service customers of a video service provider shall be determined based on the
22 relative number of subscribers as of the end of the prior calendar year as reported
23 by all incumbent cable operators and holders of video service authorizations.

24 **SECTION 14.** 66.0420 (7) (em) 5. of the statutes is created to read:

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1 66.0420 (7) (em) 5. A municipality may, by ordinance, for the purpose of
2 supporting PEG channels, require an interim cable operator or video service
3 provider to pay the municipality, beginning on January 1, 2011, a fee equal to no more
4 than 1 percent of the interim cable operator's or video service provider's annual gross
5 receipts. If an interim cable operator pays a franchise fee to a municipality, the
6 interim cable operator shall pay any fee required under this subdivision at the time
7 that the interim cable operator pays the franchise fee to the municipality. A video
8 service provider shall pay a fee required under this subdivision at the time that the
9 video service provider pays a video service provider fee to the municipality.

10 **SECTION 15.** 66.0420 (7) (f) of the statutes is amended to read:

11 66.0420 (7) (f) *Itemization.* A video service provider may identify and collect
12 the amount related to a video service provider fee and any fee imposed for monetary
13 support for ~~access facilities for PEG channels as described in~~ required under par.
14 (em) as a separate line item on customer bills.

15 **SECTION 16. Initial applicability.**

16 (1) The treatment of section 66.0420 (5) (d) 1. of the statutes first applies to
17 relocations requested on the effective date of this subsection.

18 **SECTION 17. Effective dates.** This act takes effect on the day after publication,
19 except as follows:

20 (1) The treatment of section 66.0420 (5) (a) 3. and (b) 1. a. of the statutes takes
21 effect on the first day of the 4th month beginning after publication.

22 **(END)**