

SECOND REGULAR SESSION

SENATE BILL NO. 526

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EMERY.

Pre-filed December 1, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

3472S.011

AN ACT

To repeal sections 67.1846, 67.2677, 67.2689, and 67.5122, RSMo, and to enact in lieu thereof three new sections relating to video service providers.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 67.1846, 67.2677, 67.2689, and 67.5122, RSMo, are
2 repealed and three new sections enacted in lieu thereof, to be known as sections
3 67.1846, 67.2677, and 67.2689, to read as follows:

67.1846. 1. Nothing in sections 67.1830 to 67.1846 relieves the political
2 subdivision of any obligations under an existing franchise agreement in effect on
3 May 1, 2001. Nothing in sections 67.1830 to 67.1846 will apply to that portion
4 of any ordinance passed prior to May 1, 2001, which establishes a street
5 degradation fee. Nothing in sections 67.1830 to 67.1846 shall be construed as
6 limiting the authority of county highway engineers or relieving public utility
7 right-of-way users from any obligations set forth in chapters 229 to 231. Nothing
8 in sections 67.1830 to 67.1846 shall be deemed to relieve a public utility
9 right-of-way user of the provisions of an existing franchise, franchise fees, license
10 or other agreement or permit in effect on May 1, 2001. Nothing in sections
11 67.1830 to 67.1846 shall prohibit a political subdivision or public utility
12 right-of-way user from renewing or entering into a new or existing franchise, as
13 long as all other public utility right-of-way users have use of the public
14 right-of-way on a nondiscriminatory basis. Nothing in sections 67.1830 to 67.1846
15 shall prevent a grandfathered political subdivision from enacting new ordinances,
16 including amendments of existing ordinances, charging a public utility
17 right-of-way user a fair and reasonable linear foot fee or antenna fee or from
18 enforcing or renewing existing linear foot ordinances for use of the right-of-way,

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 provided that the public utility right-of-way user either:

20 (1) Is entitled under the ordinance to a credit for any amounts paid as
21 business license taxes or gross receipts taxes; or

22 (2) Is not required by the political subdivision to pay the linear foot fee
23 or antenna fee if the public utility right-of-way user is paying gross receipts
24 taxes, business license fees, or business license taxes that are not nominal and
25 that are imposed specifically on communications-related revenue, services, or
26 equipment.

27 For purposes of this section, a "grandfathered political subdivision" is any
28 political subdivision which has, prior to May 1, 2001, enacted one or more
29 ordinances reflecting a policy of imposing any linear foot fees on any public utility
30 right-of-way user, including ordinances which were specific to particular public
31 right-of-way users. Any existing ordinance or new ordinance passed by a
32 grandfathered political subdivision providing for payment of the greater of a
33 linear foot fee or a gross receipts tax shall be enforceable only with respect to the
34 linear foot fee.

35 2. Nothing in sections 67.1830 to 67.1846 shall prohibit a political
36 subdivision from enacting, renewing or enforcing provisions of an ordinance to
37 require a business license tax, sales tax, occupation tax, franchise tax or franchise
38 fee, property tax or other similar tax, to the extent consistent with federal
39 law. Nothing in sections 67.1830 to 67.1846 shall prohibit a political subdivision
40 from enacting, enforcing or renewing provisions of an ordinance to require a gross
41 receipts tax pursuant to chapter 66, chapter 92, or chapter 94. For purposes of
42 this subsection, the term "franchise fee" shall mean "franchise tax".

43 **3. No political subdivision, including grandfathered political**
44 **subdivisions, shall adopt a linear foot fee to be charged to any entity**
45 **that holds a franchise or video service authorization as defined by**
46 **section 67.2677.**

67.2677. For purposes of sections 67.2675 to 67.2714, the following terms
2 mean:

3 (1) "Cable operator", as defined in 47 U.S.C. Section 522(5);

4 (2) "Cable system", as defined in 47 U.S.C. Section 522(7);

5 (3) "Franchise", an initial authorization, or renewal of an authorization,
6 issued by a franchising entity, regardless of whether the authorization is
7 designated as a franchise, permit, license, resolution, contract, certificate,
8 agreement, or otherwise, that authorizes the provision of video service and any

9 affiliated or subsidiary agreements related to such authorization;

10 (4) "Franchise area", the total geographic area authorized to be served by
11 an incumbent cable operator in a political subdivision as of August 28, 2007, or,
12 in the case of an incumbent local exchange carrier, as such term is defined in 47
13 U.S.C. Section 251(h), or affiliate thereof, the area within such political
14 subdivision in which such carrier provides telephone exchange service;

15 (5) "Franchise entity", a political subdivision that was entitled to require
16 franchises and impose fees on cable operators on the day before the effective date
17 of sections 67.2675 to 67.2714, provided that only one political subdivision may
18 be a franchise entity with regard to a geographic area;

19 (6) (a) "Gross revenues", limited to amounts billed to video service
20 subscribers [or received from advertisers] for the following:

21 a. Recurring charges for video service; **and**

22 b. Event-based charges for video service, including but not limited to
23 pay-per-view and video-on-demand charges;

24 [c. Rental of set top boxes and other video service equipment;

25 d. Service charges related to the provision of video service, including but
26 not limited to activation, installation, repair, and maintenance charges;

27 e. Administrative charges related to the provision of video service,
28 including but not limited to service order and service termination charges; and

29 f. A pro rata portion of all revenue derived, less refunds, rebates, or
30 discounts, by a video service provider for advertising over the video service
31 network to subscribers within the franchise area where the numerator is the
32 number of subscribers within the franchise area, and the denominator is the total
33 number of subscribers reached by such advertising;]

34 (b) "Gross revenues" do not include:

35 a. Discounts, refunds, and other price adjustments that reduce the
36 amount of compensation received by an entity holding a video service
37 authorization;

38 b. Uncollectibles;

39 c. Late payment fees;

40 d. Amounts billed to video service subscribers to recover taxes, fees, or
41 surcharges imposed on video service subscribers or video service providers in
42 connection with the provision of video services, including the video service
43 provider fee authorized by this section;

44 e. Fees or other contributions for PEG or I-Net support; [or]

45 f. Charges for services other than video service that are aggregated or
46 bundled with amounts billed to video service subscribers, if the entity holding a
47 video service authorization reasonably can identify such charges on books and
48 records kept in the regular course of business or by other reasonable means;

49 **g. Rental of set top boxes, modems, or other equipment used to**
50 **provide or facilitate the provision of video service;**

51 **h. Service charges related to the provision of video service,**
52 **including but not limited to activation, installation, repair, and**
53 **maintenance charges;**

54 **i. Administrative charges related to the provision of video**
55 **service, including but not limited to service order and service**
56 **termination charges; or**

57 **j. A pro rata portion of all revenue derived from advertising, less**
58 **refunds, rebates, or discounts;**

59 (c) Except with respect to the exclusion of the video service provider fee,
60 gross revenues shall be computed in accordance with generally accepted
61 accounting principles;

62 (7) "Household", an apartment, a house, a mobile home, or any other
63 structure or part of a structure intended for residential occupancy as separate
64 living quarters;

65 (8) "Incumbent cable operator", the cable service provider serving cable
66 subscribers in a particular franchise area on September 1, 2007;

67 (9) "Low-income household", a household with an average annual
68 household income of less than thirty-five thousand dollars;

69 (10) "Person", an individual, partnership, association, organization,
70 corporation, trust, or government entity;

71 (11) "Political subdivision", a city, town, village, county;

72 (12) "Public right-of-way", the area of real property in which a political
73 subdivision has a dedicated or acquired right-of-way interest in the real property,
74 including the area on, below, or above the present and future streets, alleys,
75 avenues, roads, highways, parkways, or boulevards dedicated or acquired as
76 right-of-way and utility easements dedicated for compatible uses. The term does
77 not include the airwaves above a right-of-way with regard to wireless
78 telecommunications or other nonwire telecommunications or broadcast service;

79 (13) "Video programming", programming provided by, or generally
80 considered comparable to programming provided by, a television broadcast

81 station, as set forth in 47 U.S.C. Section 522(20);

82 (14) "Video service", the provision of video programming provided through
83 wireline facilities located at least in part in the public right-of-way without
84 regard to delivery technology, including internet protocol technology whether
85 provided as part of a tier, on demand, or a per-channel basis. This definition
86 includes cable service as defined by 47 U.S.C. Section 522(6), but does not include
87 any video programming provided by a commercial mobile service provider defined
88 in 47 U.S.C. Section 332(d), or any video programming provided solely as part of
89 and via a service that enables users to access content, information, electronic
90 mail, or other services offered over the public internet;

91 (15) "Video service authorization", the right of a video service provider or
92 an incumbent cable operator that secures permission from the public service
93 commission pursuant to sections 67.2675 to 67.2714, to offer video service to
94 subscribers in a political subdivision;

95 (16) "Video service network", wireline facilities, or any component thereof,
96 located at least in part in the public right-of-way that deliver video service,
97 without regard to delivery technology, including internet protocol technology or
98 any successor technology. The term video service network shall include cable
99 systems;

100 (17) "Video service provider", any person that distributes video service
101 through a video service network pursuant to a video service authorization;

102 (18) "Video service provider fee", the fee imposed under section 67.2689.
67.2689. 1. A franchise entity may collect a video service provider fee

2 equal to not more than five percent of the **first twenty dollars of the** gross
3 revenues [from each] **charged to each customer of a** video service provider
4 **that is** providing video service in the geographic area of such franchise
5 entity. The video service provider fee shall apply equally to all video service
6 providers within the geographic area of a franchise entity.

7 2. Except as otherwise expressly provided in sections 67.2675 to 67.2714
8 **and subsection 1 of this section**, neither a franchise entity nor any other
9 political subdivision shall demand any additional fees, licenses, gross receipt
10 taxes, or charges on [the provision of video services], **and shall not demand**
11 **the use of any other calculation method** by, a video service provider [and
12 shall not demand the use of any other calculation method] **that holds a video**
13 **service authorization, or an affiliate of such video service provider,**
14 **with respect to:**

15 **(1) The placement, construction, or modification of facilities**
16 **integrated with or attached to a video service network within the**
17 **geographic area of the franchise entity or other political subdivision;**
18 **or**

19 **(2) The provision by such video service provider or affiliate of**
20 **any service over a video service network within the geographic area of**
21 **the franchise entity or other political subdivision.**

22 3. [All video service providers providing service in the geographic area of
23 a franchise entity shall pay the video service provider fee at the same percent of
24 gross revenues as had been assessed on the incumbent cable operator by the
25 franchise entity immediately prior to the date of enactment of sections 67.2675
26 to 67.2714, and such percentage shall continue to apply until the date that the
27 incumbent cable operator's franchise existing at that time expires or would have
28 expired if it had not been terminated pursuant to sections 67.2675 to
29 67.2714. The franchise entity shall notify the applicant for a video service
30 authorization of the applicable gross revenue fee percentage within thirty days
31 of the date notice of the applicant is provided.

32 4.] Not more than once per calendar year after the date that the
33 incumbent cable operator's franchise existing on August 28, 2007, expires or
34 would have expired if it had not been terminated pursuant to sections 67.2675 to
35 67.2714, or in any political subdivision where no franchise applied on the date of
36 enactment of sections 67.2675 to 67.2714, no more than once per calendar year
37 after the video service provider fee was initially imposed, a franchise entity, may,
38 upon ninety days notice to all video service providers, elect to adjust the amount
39 of the video service provider fee subject to state and federal law, but in no event
40 shall such fee exceed [five percent of a video service provider's gross revenue] **the**
41 **calculation defined in subsection 1 of this section.**

42 [5.] 4. The video service provider fee shall be paid to each franchise
43 entity requiring such fee on or before the last day of the month following the end
44 of each calendar quarter [and shall be calculated as a percentage of gross
45 revenues, as defined under section 67.2677]. Any payment made pursuant to
46 subsection 8 of section 67.2703 shall be made at the same time as the payment
47 of the video service provider fee.

48 [6.] 5. Any video service provider may identify and collect the amount of
49 the video service provider fee and collect any support under subsection 8 of
50 section 67.2703 as separate line items on subscriber bills.

2 [67.5122. Sections 67.5110 to 67.5122 shall expire on
3 January 1, 2021, except that for small wireless facilities already
4 permitted or collocated on authority poles prior to such date, the
5 rate set forth in section 67.5116 for collocation of small wireless
6 facilities on authority poles shall remain effective for the duration
of the permit authorizing the collocation.]

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