

MINUTES OF THE HOUSE UTILITIES COMMITTEE

The meeting was called to order by Chairman Carl Holmes at 9:00 A.M. on March 17, 2006 in Room 231-N of the Capitol.

All members were present.

Committee staff present:

Mary Galligan, Kansas Legislative Research
Mary Torrence, Revisor's Office
Heather Klaasen, Research Intern
Rena Hansen, Committee Secretary

Conferees appearing before the committee: None

Others attending:

See attached list.

A neutral written testimony on **Sub SB 449**, Joe Allen Long, City of Wichita, (Attachment 1), was handed out to the committee.

Chairman Carl Holmes asked for a count of the number of amendments that might be offered to **Sub SB 449** and a brief explanation from each member offering the amendment. There were a total of 13 amendments to be offered with amendment(s) being offered by Representatives: Jason Watkins, Tom Sloan, Melody Miller, Joshua Svaty, Carl Krehbiel, Annie Kuether, and Margaret Long.

Action on:

Sub SB 449 Sub for SB 449 by Committee on Commerce - Video competition act.

Representative Jason Watkins offered an amendment to **Sub SB 449**, (Attachment 2) that would help protect the cable providers.

Representative Jason Watkins moved to accept the amendment to Sub SB 449 presented to the committee. Seconded by Representative Peggy Mast. Motion passed unanimously.

Representative Tom Sloan (Attachment 3), offered several amendments to **Sub SB 449**.

Representative Tom Sloan moved to amend Sub SB 449, page one. Seconded by Representative Jason Watkins. Motion passed unanimously.

Representative Tom Sloan moved to amend Sub SB 449, page seven, 5e, and re-lettering the remaining subsections which define the percentage of bundled package video services. Seconded by Representative Josh Svaty.

Discussion was offered by Representatives: Carl Holmes, Carl Krehbiel, and Josh Svaty.

Representative Tom Sloan closed on the motion.

Motion carried unanimously.

Representative Tom Sloan moved to amend Sub SB 449, page seven, lines 7, 8, 15, 16, and 18 changing the words "video service provider" to language suggested in attachment. . Seconded by Representative Annie Kuether.

Discussion followed with comments made by Representative Carl Krehbiel and Tom Sloan about the nature of the change being substantive and not just cosmetic in nature.

Representative Tom Sloan withdrew his motion.

CONTINUATION SHEET

MINUTES OF THE House Utilities Committee at 9:00 A.M. on March 17, 2006 in Room 231-N of the Capitol.

Representative Tom Sloan Moved to amend **Sub SB 449**, page 8, line 3 with added language suggested in the balloon. Seconded by Representative Carl Krehbiel.

Discussion followed by Representatives: Jason Watkins, Tom Sloan, Carl Holmes and Carl Krehbiel.

Representative Tom Sloan closed on the motion.

Motion passed favorably.

Representative Josh Svaty offered several (Attachment 4) amendments to **Sub SB 449**.

Representative Josh Svaty moved to amend **Sub SB 449** with the amendments presented on **Sub SB 449**. Seconded by Representative Jim Morrison.

Discussion followed by Representative Carl Krehbiel.

Representative Tom Sloan moved to divide the questions. Chairman Carl Holmes allowed the division.

The first question, page 8, deletion of language in lines 13 and 14:

Motion passed favorably.

The second question, page 5: whereby the bill would be changed to hold to the standards of the Federal Regulations.

Questions were asked and comments made by Representatives: Carl Krehbiel, and Annie Kuether. Clarification was offered by Revisor Mary Torrence.

Representative Joshua Svaty closed on the second question of the motion.

Motion failed with a called question 6-14.

Representative Melody Miller, (Attachment 5), moved to amend **Sub SB 449**, page 4, lines 2, 3, and 4. Seconded by Representative Annie Kuether.

Questions and comments were offered by Representatives: Melody Miller, and Tom Hawk. Representative Tom Sloan suggested that this amendment was similar to the amendment to be offered by Representative Carl Krehbiel.

Representative Carl Krehbiel offered his balloon amendments (Attachment 6) for committee members to review.

Debate ensued over the minimum number of Public Educational and Governmental (PEG) lines to be offered with comments and ideas offered by Representatives: Jason Watkins, Tom Sloan, Peggy Mast, Melody Miller, Carl Krehbiel, Lynne Oharah, Forrest Knox, Tom Hawk, and Josh Svaty. With interpretations of the intent of the language change by Revisor Mary Torrence.

Representative Melody Miller closed on her motion.

Motion to amend passes.

Representative Carl Krehbiel moved to change the language in **Sub SB 449** from three PEG channels to two. Seconded by Representative Rob Olson.

Discussion followed by Representatives: Don Myers and Carl Krehbiel.

CONTINUATION SHEET

MINUTES OF THE House Utilities Committee at 9:00 A.M. on March 17, 2006 in Room 231-N of the Capitol.

Representative Carl Krehbiel closed on the motion.

Motion passed 13-7.

Representative Carl Krehbiel moved to amend **Sub SB449**, page 7, line 22, striking the language to the end of (c) and inserting 5%. Seconded by Representative Jason Watkins. Motion passed unanimously.

Representative Annie Kuether (Attachment 7) moved to amend **Sub SB 449**, page 8, inserting a new section 6, renumber remaining sections. Seconded by Representative Tom Hawk.

Representative Tom Sloan preceded to explain why this amendment as worded did not do what Representative Annie Kuether wanted it to do.

Representative Kuether withdrew her motion.

Representative Annie Kuether (Attachment 8), moved to amend **Sub SB 449**, page 8, New Section 6 and pages 2 and 3 with the words Kansas Corporation Commission inserted where before were the words Secretary of State. Seconded by Representative Carl Krehbiel.

Comments were offered by Representatives: Carl Krehbiel and Tom Sloan.

Representative Annie Kuether closed on the amendments.

Motion passed unanimously.

Representative Margaret Long moved to amend **Sub SB 449**, page 8, line 20, changing the second “may” to “shall”. Seconded by Representative Melody Miller.

Comments were made and questions asked by Representatives: Melody Miller and Carl Krehbiel. Revisor Mary Torrence offered some explanation of intent and language.

Representative Margaret Long withdrew her motion to amend.

Representative Tom Sloan moved (Attachment 3), to amend **Sub SB 449**, page 5, lines 14 and 15 striking “and after a public hearing”. Seconded by Representative Peggy Mast. Motion passed unanimously.

Representative Carl Krehbiel moved to pass out of committee to the full house **Sub SB 449** favorable as amended. Seconded by Representative Peggy Mast.

Discussion to kill the bill and start over was suggested by Representative Tom Sloan.

Motion passed unanimously.

Representative Lynne Oharah will carry **Sub SB 449** on the House floor.

Action on **Sub SB 449** was finished.

Chairman Carl Holmes explained to the committee the plan to use previously heard exempt bills, to move out to the full body of the House some of the recently heard legislation. Additionally, it was briefly explained how this would then work with the Senate chamber.

Representative Tom Sloan moved to take **SB 70** off the table. Seconded by Representative Rob Olson. Motion passed unanimously.

CONTINUATION SHEET

MINUTES OF THE House Utilities Committee at 9:00 A.M. on March 17, 2006 in Room 231-N of the Capitol.

Representative Carl Krehbiel moved to take **SB 93** off the table. Seconded by Representative Josh Svaty. Motion passed.

Representative Rob Olson offered some clean up language amendments (Attachment 9) **for SB 70.**

Representative Rob Olson moved to pass the balloon language presented for **SB 70.** Seconded by Representative Josh Svaty.

Questions were asked and comments made by Representatives: Jason Watkins, Tom Sloan, Peggy Mast, Melody Miller, Rob Olson, and Carl Krehbiel.

Chairman Holmes called the question

Representative Rob Olson closed on his amendment to **SB 70.**

Motion carried.

Debate will continue on **SB 70** on March 20, 2006.

The next meeting is scheduled for March 20, 2006.

Meeting adjourned.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: March 17, 2006

| NAME | REPRESENTING |
|-----------------------|----------------------------|
| Whitney Jamron | City of Topeka / KGS |
| Tom Day | KCC |
| David Kerr | AT+T |
| Wouneta Browne | AT+T |
| Tim Pickering | AT+T |
| SCOTT SCHNEIDER | Cox Communications |
| Coleen Jensen | Cox Communications |
| Mike Santos | Overland Park |
| GINA BOWMAN - MORRILL | Coffeyville Resources, LLC |
| J Chubb | SOS |
| Christy Harvey | SOS |
| Jim Gorkaver | outs of state |
| Sean Tomb | DOB |
| Nelson Krueger | EVEREST |
| Wade Haggood | Sprint |
| Shirley Allen | KRITC |
| Nick Rees | Atmos |
| Dick Canten | RTG |
| Julie Hehn | Hein Law Firm |
| STEVE JOHNSON | Kansas Gas Service / ONEOK |

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: March 17, 2006

| NAME | REPRESENTING |
|----------------|-----------------------|
| Erik Santorius | City of Overland Park |
| Paul Snider | AT&T |
| Hon STANTON | NORTHERN NATURAL GAS |
| Georgia Conrad | KBIA |
| Ed Cross | KIOGA |
| Anne Spiess | KTIA |
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DEPARTMENT OF LAW
FACSIMILE TRANSMITTAL

TO: League of Kansas Municipalities ATTN: Kim Winn
FAX #: 785-354-4186

RE: City of Wichita position of SB 449

DATE: March 16, 2006

The City of Wichita supports the efforts of the League and other cities to seek amendment to and mitigation of the potential impacts of SB 449 on Video Franchising. While the City has serious concerns about the proposed legislation, the City is not taking a public position on the bill itself.

The City of Wichita's Broadband Telecommunication Network (BTN) franchise for Cox Communications is unique, and the impact in Wichita may be different than that in other cities. The City of Wichita and Multimedia (now Cox) have a long-standing relationship and have extensively negotiated and refined the provisions of the franchise over the years on the use of right of way and customer service requirements. Cox's current 15-year franchise runs to April 2009. The City has communicated its concerns about the bill to Cox but has not received a very sympathetic ear.

The City of Wichita may lose significant franchise revenue when Cox is able to invoke the provisions of the legislation for modification of its franchise. The City has not done a detailed financial analysis of the bill's impact. While differences in definition and service categories create some uncertainty, Wichita could lose the current 5% franchise fee on the following services: leased channel fees or other charges for third-party use of the system, personnel fees, studio rental and production equipment fees, interest income and extraordinary revenue, late payment fees, forfeited discounts, and advertising revenues. This may amount to several hundred thousand dollars a year. The amended definition of "gross receipts" proposed by the League will certainly help mitigate this revenue loss, but will not make up for all categories.

Other concerns that City staff has about the proposed legislation are more indirect. A lot will depend upon the cable company's willingness to continue to maintain current customer service levels in the City. There is also the threat to maintaining revenues and local control in the future as the State and other utilities assess this procedure. In sum, although the bill will provide some benefits in dealing with future video service franchises, we continue to have general concerns about the future because of restrictions we have seen develop on cities' franchising of telecommunication services and now this potential cable restriction.

The City of Wichita will provide any information that you think would be helpful and will continue to support the efforts to amend this current bill.

From the desk of ...
Joe Allen Lang
First Assistant City Attorney
Telephone: (316) 268-4681
Fax: (316) 268-4335
jlang@wichita.gov

cc Jeanne Goodvin
George Kolb

HOUSE UTILITIES

DATE: 3/17/06

ATTACHMENT 1

Rep. Watkins

HOUSE UTILITIES

DATE: 3/17/04

ATTACHMENT 2

1 entering into the agreement, neither the city nor [Video Service Provider]
2 waive any rights, but instead expressly reserve any and all rights, remedies
3 and arguments the city or [Video Service Provider] may have at law or
4 equity, without limitation, to argue, assert and/or take any position as to
5 the legality or appropriateness of any present or future laws, ordinances
6 and/or rulings.”

7 (b) In any locality in which a video service provider offers video serv-
8 ice, the video service provider shall calculate and pay the video service
9 provider fee to the city with jurisdiction in that locality upon the city’s
10 written request. If the city makes such a request, the video service pro-
11 vider fee shall be due on a quarterly basis and shall be calculated as a
12 percentage of gross revenues, as defined herein. Notwithstanding the date
13 the city makes such a request, no video service provider fee shall be
14 applicable until the first day of a calendar month that is at least 30 days
15 after written notice of the levy is submitted by the city to a video service
16 provider. The city may not demand the use of any other calculation
17 method. Any video service provider fee shall be remitted to the city by
18 the video service provider not later than 45 days after the end of the
19 quarter.

20 (c) The percentage to be applied against gross revenues pursuant to
21 subsection (b) shall be set by the city and identified in its written request,
22 but may in no event exceed the lesser of either 5% or the percentage
23 levied as a gross receipts franchise fee on any cable operator providing
24 video service within the city’s jurisdiction.

25 (d) Gross revenues are limited to amounts billed to and collected
26 from video service subscribers for the following:

- 27 (1) Recurring charges for video service;
- 28 (2) event-based charges for video service, including but not limited
29 to pay-per-view and video-on-demand charges;
- 30 (3) rental of set top boxes and other video service equipment;
- 31 (4) service charges related to the provision of video service, including,
32 but not limited to, activation, installation, repair and maintenance
33 charges; and
- 34 (5) administrative charges related to the provision of video service,
35 including, but not limited to, service order and service termination
36 charges.

37 (e) Gross revenues do not include:

38 ~~(1) Discounts, refunds and other price adjustments that reduce the~~
39 ~~amount of compensation received by a video service provider, provided~~
40 ~~however, that for the sole purpose of calculating the level of the video~~
41 ~~service provider fee, any such discounts, refunds and other price adjust-~~
42 ~~ments shall not be disproportionately allocated to the video segment of~~
43 ~~the any package of the provider’s products that is offered to subscribers~~

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1 with the purpose of such allocation being to evade or decrease the amount
 2 of the video service provider fee to be paid to the city under this section;
 3 ~~(2) uncollectible~~ fees;
 4 ~~(3)~~ late payment fees;
 5 ~~(4)~~ amounts billed to video service subscribers to recover taxes, fees
 6 or surcharges imposed upon video service subscribers in connection with
 7 the provision of video service, including the video service provider fee
 8 authorized by this section; or

(1) Uncollectible

(2)

(3)

(4)

9 ~~(5)~~ charges, other than those described in subsection (d), that are
 10 aggregated or bundled with amounts billed to video service subscribers.

11 (f) At the request of a city, no more than once per year, the city may
 12 perform a reasonable audit of the video service provider's calculation of
 13 the video service provider fee. The video service provider shall pay one-
 14 half of the cost of such audit, up to a maximum of \$2,500.

15 (g) Any video service provider may identify and collect the amount
 16 of the video service provider fee as a separate line item on the regular
 17 bill of each subscriber. To the extent a video service provider incurs any
 18 costs in providing capacity for retransmitting community programming as
 19 may be required in subsection (h) of section 3, and amendments thereto,
 20 the provider may also recover these costs from customers, but may not
 21 deduct such costs from the video service provider fee due to a city under
 22 this section.

23 New Sec. 5. (a) The provisions of this act are intended to be consis-
 24 tent with the federal cable act, 47 U.S.C. §521 et seq.

25 (b) Nothing in this act shall be interpreted to prevent a video service
 26 provider, a cable operator or a city from seeking clarification of its rights
 27 and obligations under federal law or to exercise any right or authority
 28 under federal or state law.

29 Sec. 6. K.S.A. 2005 Supp. 17-1902 is hereby amended to read as
 30 follows: 17-1902. (a) (1) "Public right-of-way" means only the area of real
 31 property in which the city has a dedicated or acquired right-of-way in-
 32 terest in the real property. It shall include the area on, below or above
 33 the present and future streets, alleys, avenues, roads, highways, parkways
 34 or boulevards dedicated or acquired as right-of-way. The term does not
 35 include the airwaves above a right-of-way with regard to wireless tele-
 36 communications or other nonwire telecommunications or broadcast serv-
 37 ice, easements obtained by utilities or private easements in platted sub-
 38 divisions or tracts.

39 (2) "Provider" ~~shall mean~~ means a local exchange carrier as defined
 40 in subsection (h) of K.S.A. 66-1,187, and amendments thereto, or a tel-
 41 ecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187,
 42 and amendments thereto, or a video service provider as defined in section
 43 2, and amendments thereto.

Substitute for SENATE BILL No. 449

By Committee on Commerce

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9 AN ACT concerning commerce; enacting the video competition act;
10 amending K.S.A. 2005 Supp. 17-1902 and repealing the existing
11 section.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. This act shall be known and may be cited as the video
15 competition act.

16 New Sec. 2. For purposes of this act: (a) "Cable service" is defined
17 as set forth in 47 U.S.C. § 522(6).

18 (b) "Cable operator" is defined as set forth in 47 U.S.C. § 522(5).

19 (c) "Cable system" is defined as set forth in 47 U.S.C. § 522(7).

20 (d) "Competitive video service provider" means an entity providing
21 video service that is not franchised as a cable operator in the state of
22 Kansas as of the effective date of this act and is not an affiliate, successor
23 or assign of such cable operator.

24 (e) "Franchise" means an initial authorization, or renewal of an au-
25 thorization, issued by a franchising entity, regardless of whether the au-
26 thorization is designed as a franchise, permit, license, resolution, contract,
27 certificate, agreement or otherwise, that authorizes the construction and
28 operation of a cable system.

29 (f) "Franchising entity" or "~~city~~" means a city entitled to require fran-
30 chises and impose fees under K.S.A. 12-2006 et seq., and amendments
31 thereto, on cable operators.

32 (g) "Video programming" means programming provided by, or gen-
33 erally considered comparable to programming provided by, a television
34 broadcast station, as set forth in 47 U.S.C. § 522(20).

35 (h) "Video service" means video programming services provided
36 through wireline facilities located at least in part in the public rights-of-
37 way without regard to delivery technology, including internet protocol
38 technology. This definition does not include any video programming pro-
39 vided by a commercial mobile service provider defined in 47 U.S.C. §
40 332(d).

41 (i) "Video service authorization" means the right of a video service
42 provider to offer video programming to any subscribers anywhere in the
43 state of Kansas.

"municipality" means a city or county entitled by law to require franchises and impose fees on cable operators
[and by replacing "city" to "municipality wherever it appears in the bill]

service

HOUSE UTILITIES
DATE: 3/17/04
ATTACHMENT 3

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1 (j) "Video service provider" means a cable operator or a competitive
2 video service provider.

3 (k) "Video service provider fee" means the fee imposed upon video
4 service providers pursuant to section 4 of this act.

5 New Sec. 3. (a) An entity or person seeking to provide cable service
6 or video service in this state on or after July 1, 2006, shall file an appli-
7 cation for a state-issued video service authorization with the secretary of
8 state as required by this section. The secretary of state shall promulgate
9 regulations to govern the state-issued video service authorization appli-
10 cation process. The state, through the secretary of state, shall issue a video
11 service authorization permitting a video service provider to provide video
12 service in the state, or amend a video service authorization previously
13 issued, within 30 calendar days after receipt of a completed affidavit sub-
14 mitted by the video service applicant and signed by an officer or general
15 partner of the applicant affirming:

16 (1) The location of the applicant's principal place of business and the
17 names of the applicant's principal executive officers;

18 (2) that the applicant has filed or will timely file with the federal
19 communications commission all forms required by that agency in advance
20 of offering video service in this state;

21 (3) that the applicant agrees to comply with all applicable federal and
22 state statutes and regulations;

23 (4) that the applicant agrees to comply with all lawful and applicable
24 municipal regulations regarding the use and occupation of public rights-
25 of-way in the delivery of the video service, including the police powers
26 of the municipalities in which the service is delivered;

27 (5) the description of the service area footprint to be served within
28 the state of Kansas, including any municipalities or parts thereof, and
29 which may include certain designations of unincorporated areas, which
30 description shall be updated by the applicant prior to the expansion of
31 video service to a previously undesignated service area and, upon such
32 expansion, notice to the secretary of state of the service area to be served
33 by the applicant; including:

34 (A) The period of time it shall take applicant to become capable of
35 providing video programming to all households in the applicant's service
36 area footprint, which may not exceed five years from the date the au-
37 thorization, or amended authorization, is issued; and

38 (B) a general description of the type or types of technologies the
39 applicant will use to provide video programming to all households in its service
40 service area footprint, which may include wireline, wireless, satellite or
41 any other alternative technology.

42 (b) The certificate of video service authorization issued by the sec-
43 retary of state shall contain:

1 (1) A grant of authority to provide video service as requested in the
2 application;

3 (2) a statement that the grant of authority is subject to lawful oper-
4 ation of the video service by the applicant or its successor in interest.

5 (c) The certificate of video service authorization issued by the sec-
6 retary of state is fully transferable to any successor in interest to the
7 applicant to which it is initially granted. A notice of transfer shall be filed
8 with the secretary of state and any relevant municipalities within 30 busi-
9 ness days of the completion of such transfer.

10 (d) The certificate of video service authorization issued by the sec-
11 retary of state may be terminated by the video service provider by sub-
12 mitting notice to the secretary of state.

13 (e) To the extent required by applicable law, any video service au-
14 thorization granted by the state through the secretary of state shall con-
15 stitute a "franchise" for purposes of 47 U.S.C. § 541(b)(1). To the extent
16 required for purposes of 47 U.S.C. §§ 521-561, only the state of Kansas
17 shall constitute the exclusive "franchising authority" for video service pro-
18 viders in the state of Kansas.

19 (f) The holder of a state-issued video service authorization shall not
20 be required to comply with any mandatory facility build-out provisions
21 nor provide video service to any customer using any specific technology.
22 Additionally, no city or other political subdivision of the state of Kansas
23 may require a video service provider to: (1) Obtain a separate franchise
24 to provide video service;

25 (2) impose any fee, license or gross receipts tax, other than the fee
26 specified in subsections (b) through (e) of section 4, and amendments
27 thereto;

28 (3) impose any provision regulating rates charged by video service
29 providers; or

30 (4) impose any other franchise or service requirements or conditions,
31 except that a video service provider must submit the agreement specified
32 in subsection (a) of section 4, and amendments thereto.

33 (g) K.S.A. 12-2006 through 12-2011, and amendments thereto, shall
34 not apply to video service providers.

35 (h) Not later than 120 days after a request by a city, the holder of a
36 state-issued video service authorization shall provide the city with capacity
37 over its video service to allow public, educational and governmental
38 (PEG) access channels for noncommercial programming, according to the
39 following:

40 (1) A video service provider shall not be required to provide more
41 than the number of PEG access channels a municipality has activated and
42 is utilizing under the incumbent cable service provider's franchise agree-
43 ment as of January 1, 2006, or in the event no such channels are active,

h-c
34

1 or after the expiration of the incumbent cable service provider's franchise
2 expires, a maximum of three PEG channels for a municipality with a
3 population of at least 50,000, and a maximum of two PEG channels for
4 a municipality with a population of less than 50,000;

5 (2) the operation of any PEG access channel provided pursuant to
6 this section shall be the responsibility of the municipality receiving the
7 benefit of such channel, and the holder of a state-issued video service
8 authorization bears only the responsibility for the transmission of such
9 channel; and

10 (3) the municipality must ensure that all transmissions, content, or
11 programming to be transmitted over a channel or facility by a holder of
12 a state-issued video service authorization are provided or submitted to
13 such video service provider in a manner or form that is capable of being
14 accepted and transmitted by a provider, without requirement for addi-
15 tional alteration or change in the content by the provider, over the par-
16 ticular network of the video service provider, which is compatible with
17 the technology or protocol utilized by the video service provider to deliver
18 video services;

19 (i) in order to alert customers to any public safety emergencies, a
20 video service provider shall offer the concurrent rebroadcast of local tel-
21 evision broadcast channels, or utilize another economically and techni-
22 cally feasible process for providing an appropriate message through the
23 provider's video service in the event of a public safety emergency issued
24 over the emergency broadcast system.

25 (j) (1) Valid cable franchises in effect prior to July 1, 2006, shall re-
26 main in effect subject to this section. Nothing in this act is intended to
27 abrogate, nullify or adversely affect in any way any franchise or other
28 contractual rights, duties and obligations existing and incurred by a cable
29 provider or a video service provider before the enactment of this act. A
30 cable operator providing video service over a cable system pursuant to a
31 franchise issued by a city in effect on July 1, 2006, shall comply with the
32 terms and conditions of such franchise until such franchise expires, is
33 terminated pursuant to its terms or until the franchise is modified as
34 provided in this section.

or

, at which time the cable operator shall be eligible to obtain a state-issued video service authorization pursuant to section 3, and amendments thereto,

video service authorization

35 (2) Whenever two or more video service providers are providing serv-
36 ice within the jurisdiction of a city, a cable provider with an existing city-
37 issued franchise agreement may request that the city modify the terms
38 of the existing franchise agreement to conform to the terms and condi-
39 tions of a state-issued franchise. The cable operator requesting a modi-
40 fication shall identify in writing the terms and conditions of its existing
41 franchise that are materially different from the state-issued franchise,
42 whether such differences impose greater or lesser burdens on the cable
43 operator. Upon receipt of such request from a cable operator, the cable

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1 operator and the city shall negotiate the franchise modification terms in
2 good faith for a period of 60 days. If within 60 days, the city and the
3 franchised cable provider cannot reach agreeable terms, the cable oper-
4 ator may file a modification request pursuant to paragraph (3).

5 (3) Whenever two or more video service providers are providing serv-
6 ice within the jurisdiction of a city, a cable operator may seek a modifi-
7 cation of its existing franchise terms and conditions to conform to the
8 terms and conditions of a state-issued franchise pursuant to 47 U.S.C. §
9 545; provided, however, that a city's review of such request shall conform
10 to this section. In its application for modification, a franchised cable op-
11 erator shall identify the terms and conditions of its city-issued franchise
12 that are materially different from the terms and conditions of the state-
13 issued franchise, whether such differences impose greater or lesser bur-
14 dens on the cable operator. The city shall grant the modification request
15 within 120 days, ~~and after a public hearing,~~ for any provisions where there
16 are material differences between the existing franchise and the state-
17 issued franchise. No provisions shall be exempt. A cable operator that is
18 denied a modification request pursuant to this paragraph may appeal the
19 denial to a court of competent jurisdiction which shall perform a de novo
20 review of the city's denial consistent with this section.

← strike as marked

21 (4) Nothing in this act shall preclude a cable operator with a valid
22 city-issued franchise from seeking enforcement of franchise provisions
23 that require the equal treatment of video or cable service providers within
24 a city, but only to the extent such cable franchise provisions may be en-
25 forced to reform or modify such existing cable franchise. For purposes of
26 interpreting such cable franchise provisions, a state-issued video service
27 authorization shall be considered equivalent to a city-issued franchise;
28 provided, however, that the enforcement of such cable franchise provi-
29 sions shall not affect the state-issued video service authorization in any
30 way.

31 (k) Upon 90 days notice, a city may require a ~~video service provider~~
32 ~~to adopt~~ customer service requirements consistent with 47 C.F.R. §
33 76.309(c) for its video service with such requirements to be applicable to
34 all video services and providers on a competitively neutral basis.

holder of a state-issued video service authorization to comply with

35 (l) A video service provider may not deny access to service to any
36 group of potential residential subscribers because of the income of the
37 residents in the local area in which such group resides.

38 (m) Within 180 days of providing video service in a city, the ~~video~~
39 ~~service provider~~ shall implement a process for receiving requests for the
40 extension of video service to customers that reside in such city, but for
41 which video service is not yet available from the ~~provider~~ to the residences
42 of the requesting customers. ~~The video service provider~~ shall provide
43 information regarding this request process to the city, who may forward

holder of a state-issued video service authorization to comply with

holder of such authorization

Such holder of such authorization

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1 such requests to the video service provider on behalf of potential custom-
2 ers. Within 30 days of receipt, a video service provider shall respond to
3 such requests as it deems appropriate and may provide information to
4 the requesting customer about its video products and services and any
5 potential timelines for the extension of video service to the customers
6 area.

such holder of such authorization

7 (n) A video service provider shall implement an informal process for
8 handling city or customer inquiries, billing issues, service issues and other
9 complaints. In the event an issue is not resolved through this informal
10 process, a city may request a confidential, non-binding mediation with
11 the video service provider, with the costs of such mediation to be shared
12 equally between the city and provider. Should a video service provider
13 be found by a court of competent jurisdiction to be in noncompliance
14 with the requirements of this act, the court shall order the video service
15 provider, within a specified reasonable period of time, to cure such non-
16 compliance. Failure to comply shall subject the holder of the state-issued
17 franchise of franchise authority to penalties as the court shall reasonably
18 impose, up to and including revocation of the state-issued video service
19 authorization. A municipality within which the video service provider of-
20 fers video service may be an appropriate party in any such litigation.

holder of a state-issued video service authorization

such holder of such authorization

the holder of such authorization

such holder of such authorization

video service authorization

21 New Sec. 4. (a) A video service provider shall provide notice to each
22 city with jurisdiction in any locality at least 30 calendar days before pro-
23 viding video service in the city's jurisdiction. Within 30 days of the time
24 notice is delivered to the city, the video service provider shall execute an
25 agreement substantially similar to the following, which shall be filed with
26 the city clerk and shall be effective immediately:

holder of a state-issued video service authorization

such holder of such authorization shall execute and file with the municipality
the following affidavit executed by an officer of such holder of such

27 "[Video Service Provider] was granted authorization by the state of
28 Kansas to provide video service in [City] on[date] and hereby executes
29 this agreement with [City]. [Video Service Provider] will begin providing
30 video service in [City] on or after [date]. [Video Service Provider] may
31 be contacted by the[City] at the following telephone number _____.
32 [Video Service Provider] may be contacted by customers at the following
33 telephone number _____. [Video Service Provider] agrees to update
34 this contact information with [City] within 15 calendar days in the event
35 that such contact information changes. [Video Service Provider] acknowl-
36 edges and agrees to comply with [City's] local right of way ordinance to
37 the extent the ordinance is applicable to [Video Service Provider] and not
38 contrary to state and federal laws and regulations.[Video Service Provider]
39 hereby reserves the right to challenge the lawfulness or applicability of
40 such ordinance to[Video Service Provider]. By entering into this agree-
41 ment, neither the city's nor [Video Service Provider's] present or future
42 legal rights, positions, claims, assertions or arguments before any admin-
43 istrative agency or court of law are in any way prejudiced or waived. By

2-8

1 entering into the agreement, neither the city nor [Video Service Provider]
2 waive any rights, but instead expressly reserve any and all rights, remedies
3 and arguments the city or [Video Service Provider] may have at law or
4 equity, without limitation, to argue, assert and/or take any position as to
5 the legality or appropriateness of any present or future laws, ordinances
6 and/or rulings.”

7 (b) In any locality in which a video service provider offers video service,
8 the video service provider shall calculate and pay the video service
9 provider fee to the city with jurisdiction in that locality upon the city's
10 written request. If the city makes such a request, the video service pro-
11 vider fee shall be due on a quarterly basis and shall be calculated as a
12 percentage of gross revenues, as defined herein. Notwithstanding the date
13 the city makes such a request, no video service provider fee shall be
14 applicable until the first day of a calendar month that is at least 30 days
15 after written notice of the levy is submitted by the city to a video service
16 provider. The city may not demand the use of any other calculation
17 method. Any video service provider fee shall be remitted to the city by
18 the video service provider not later than 45 days after the end of the
19 quarter.

holder of a state-issued video service authorization

such holder of such authorization

20 (c) The percentage to be applied against gross revenues pursuant to
21 subsection (b) shall be set by the city and identified in its written request,
22 but may in no event exceed the lesser of either 5% or the percentage
23 levied as a gross receipts franchise fee on any cable operator providing
24 video service within the city's jurisdiction.

holder of a state-issued video service authorization

holder of a state-issued video service authorization

25 (d) Gross revenues are limited to amounts billed to and collected
26 from video service subscribers for the following:

- 27 (1) Recurring charges for video service;
- 28 (2) event-based charges for video service, including but not limited
- 29 to pay-per-view and video-on-demand charges;
- 30 (3) rental of set top boxes and other video service equipment;
- 31 (4) service charges related to the provision of video service, including,
- 32 but not limited to, activation, installation, repair and maintenance
- 33 charges; and
- 34 (5) administrative charges related to the provision of video service,
- 35 including, but not limited to, service order and service termination
- 36 charges.

(e) For the purpose of calculating franchise fees, price of each individual product marketed as part of a bundled service shall be an amount equal to the same proportion of the price of the bundled services as the price of the individual product bears to the aggregate price of all individual services which are part of the bundled services.

[reletter remaining subsections]

37 (e) Gross revenues do not include:

- 38 (1) ~~Discounts, refunds and other price adjustments that reduce the~~
- 39 ~~amount of compensation received by a video service provider, provided~~
- 40 ~~however, that for the sole purpose of calculating the level of the video~~
- 41 ~~service provider fee, any such discounts, refunds and other price adjust-~~
- 42 ~~ments shall not be disproportionately allocated to the video segment of~~
- 43 ~~the any package of the provider's products that is offered to subscribers~~

← strike and renumber remaining subsections

3-8

1 with the purpose of such allocation being to evade or decrease the amount
2 of the video service provider fee to be paid to the city under this section;

3 (2) uncollectible fees;

4 (3) late payment fees;

5 (4) amounts billed to video service subscribers to recover taxes, fees
6 or surcharges imposed upon video service subscribers in connection with
7 the provision of video service, including the video service provider fee
8 authorized by this section; or

9 (5) charges, other than those described in subsection (d), that are
10 aggregated or bundled with amounts billed to video service subscribers.

11 (f) At the request of a city, no more than once per year, the city may
12 perform a reasonable audit of the video service provider's calculation of
13 the video service provider fee. The video service provider shall pay one-
14 half of the cost of such audit, up to a maximum of \$2,500.

15 (g) Any video service provider may identify and collect the amount
16 of the video service provider fee as a separate line item on the regular
17 bill of each subscriber. To the extent a video service provider incurs any
18 costs in providing capacity for retransmitting community programming as
19 may be required in subsection (h) of section 3, and amendments thereto,
20 the provider may also recover these costs from customers, but may not
21 deduct such costs from the video service provider fee due to a city under
22 this section.

23 New Sec. 5. (a) The provisions of this act are intended to be consis-
24 tent with the federal cable act, 47 U.S.C. §521 et seq.

25 (b) Nothing in this act shall be interpreted to prevent a video service
26 provider, a cable operator or a city from seeking clarification of its rights
27 and obligations under federal law or to exercise any right or authority
28 under federal or state law.

29 Sec. 6. K.S.A. 2005 Supp. 17-1902 is hereby amended to read as
30 follows: 17-1902. (a) (1) "Public right-of-way" means only the area of real
31 property in which the city has a dedicated or acquired right-of-way in-
32 terest in the real property. It shall include the area on, below or above
33 the present and future streets, alleys, avenues, roads, highways, parkways
34 or boulevards dedicated or acquired as right-of-way. The term does not
35 include the airwaves above a right-of-way with regard to wireless tele-
36 communications or other nonwire telecommunications or broadcast serv-
37 ice, easements obtained by utilities or private easements in platted sub-
38 divisions or tracts.

39 (2) "Provider" ~~shall mean~~ means a local exchange carrier as defined
40 in subsection (h) of K.S.A. 66-1,187, and amendments thereto, or a tel-
41 ecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187,
42 and amendments thereto, or a video service provider as defined in section
43 2, and amendments thereto.

, provided that all or part of uncollectible fees which is written off as bad
debt but subsequently collected shall be included in gross revenues in the
period collected

1 operator and the city shall negotiate the franchise modification terms in
2 good faith for a period of 60 days. If within 60 days, the city and the
3 franchised cable provider cannot reach agreeable terms, the cable oper-
4 ator may file a modification request pursuant to paragraph (3).

5 (3) Whenever two or more video service providers are providing serv-
6 ice within the jurisdiction of a city, a cable operator may seek a modifi-
7 cation of its existing franchise terms and conditions to conform to the
8 terms and conditions of a state-issued franchise pursuant to 47 U.S.C. §
9 545; provided, however, that a city's review of such request shall conform
10 to this section. In its application for modification, a franchised cable op-
11 erator shall identify the terms and conditions of its city-issued franchise
12 that are materially different from the terms and conditions of the state-
13 issued franchise, whether such differences impose greater or lesser bur-
14 dens on the cable operator. The city shall grant the modification request
15 within 120 days, and after a public hearing, for any provisions where there
16 are material differences between the existing franchise and the state-
17 issued franchise. No provisions shall be exempt. A cable operator that is
18 denied a modification request pursuant to this paragraph may appeal the
19 denial to a court of competent jurisdiction which shall perform a de novo
20 review of the city's denial consistent with this section.

21 (4) Nothing in this act shall preclude a cable operator with a valid
22 city-issued franchise from seeking enforcement of franchise provisions
23 that require the equal treatment of video or cable service providers within
24 a city, but only to the extent such cable franchise provisions may be en-
25 forced to reform or modify such existing cable franchise. For purposes of
26 interpreting such cable franchise provisions, a state-issued video service
27 authorization shall be considered equivalent to a city-issued franchise;
28 provided, however, that the enforcement of such cable franchise provi-
29 sions shall not affect the state-issued video service authorization in any
30 way.

31 (k) Upon 90 days notice, a city may require a video service provider
32 to ~~adopt~~ customer service requirements ~~consistent with~~ 47 C.F.R. §
33 76.309(c) for its video service with such requirements to be applicable to
34 all video services and providers on a competitively neutral basis.

35 (l) A video service provider may not deny access to service to any
36 group of potential residential subscribers because of the income of the
37 residents in the local area in which such group resides.

38 (m) Within 180 days of providing video service in a city, the video
39 service provider shall implement a process for receiving requests for the
40 extension of video service to customers that reside in such city, but for
41 which video service is not yet available from the provider to the residences
42 of the requesting customers. The video service provider shall provide
43 information regarding this request process to the city, who may forward

**Kansas Cable Telecommunicati
Association**
Amendments
Sen Sub449
March 16, 2006

HOUSE UTILITIES

DATE: 3/17/06
ATTACHMENT 4

a holder of a state issued video
service authorization

comply with

set forth in

1 with the purpose of such allocation being to evade or decrease the amount
2 of the video service provider fee to be paid to the city under this section;

3 (2) uncollectible fees;

4 (3) late payment fees;

5 (4) amounts billed to video service subscribers to recover taxes, fees
6 or surcharges imposed upon video service subscribers in connection with
7 the provision of video service, including the video service provider fee
8 authorized by this section; or

9 (5) charges, other than those described in subsection (d), that are
10 aggregated or bundled with amounts billed to video service subscribers.

11 (f) At the request of a city, no more than once per year, the city may
12 perform a reasonable audit of the video service provider's calculation of
13 the video service provider fee. ~~The video service provider shall pay one~~ (delete)

14 ~~half of the cost of such audit, up to a maximum of \$2,500.~~

15 (g) Any video service provider may identify and collect the amount
16 of the video service provider fee as a separate line item on the regular
17 bill of each subscriber. To the extent a video service provider incurs any
18 costs in providing capacity for retransmitting community programming as
19 may be required in subsection (h) of section 3, and amendments thereto,
20 the provider may also recover these costs from customers, but may not
21 deduct such costs from the video service provider fee due to a city under
22 this section.

23 New Sec. 5. (a) The provisions of this act are intended to be consis-
24 tent with the federal cable act, 47 U.S.C. §521 et seq.

25 (b) Nothing in this act shall be interpreted to prevent a video service
26 provider, a cable operator or a city from seeking clarification of its rights
27 and obligations under federal law or to exercise any right or authority
28 under federal or state law.

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32 terest in the real property. It shall include the area on, below or above
33 the present and future streets, alleys, avenues, roads, highways, parkways
34 or boulevards dedicated or acquired as right-of-way. The term does not
35 include the airwaves above a right-of-way with regard to wireless tele-
36 communications or other nonwire telecommunications or broadcast serv-
37 ice, easements obtained by utilities or private easements in platted sub-
38 divisions or tracts.

39 (2) "Provider" ~~shall mean~~ means a local exchange carrier as defined
40 in subsection (h) of K.S.A. 66-1,187, and amendments thereto, or a tel-
41 ecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187,
42 and amendments thereto, or a video service provider as defined in section
43 2, and amendments thereto.

Rep. Miller

HOUSE UTILITIES
DATE: 3/17/06
ATTACHMENT 5

- 1 (1) A grant of authority to provide video service as requested in the
- 2 application;
- 3 (2) a statement that the grant of authority is subject to lawful oper-
- 4 ation of the video service by the applicant or its successor in interest.
- 5 (c) The certificate of video service authorization issued by the sec-
- 6 retary of state is fully transferable to any successor in interest to the
- 7 applicant to which it is initially granted. A notice of transfer shall be filed
- 8 with the secretary of state and any relevant municipalities within 30 busi-
- 9 ness days of the completion of such transfer.
- 10 (d) The certificate of video service authorization issued by the sec-
- 11 retary of state may be terminated by the video service provider by sub-
- 12 mitting notice to the secretary of state.
- 13 (e) To the extent required by applicable law, any video service au-
- 14 thorization granted by the state through the secretary of state shall con-
- 15 stitute a "franchise" for purposes of 47 U.S.C. § 541(b)(1). To the extent
- 16 required for purposes of 47 U.S.C. §§ 521-561, only the state of Kansas
- 17 shall constitute the exclusive "franchising authority" for video service pro-
- 18 viders in the state of Kansas.
- 19 (f) The holder of a state-issued video service authorization shall not
- 20 be required to comply with any mandatory facility build-out provisions
- 21 nor provide video service to any customer using any specific technology.
- 22 Additionally, no city or other political subdivision of the state of Kansas
- 23 may require a video service provider to: (1) Obtain a separate franchise
- 24 to provide video service;
- 25 (2) impose any fee, license or gross receipts tax, other than the fee
- 26 specified in subsections (b) through (e) of section 4, and amendments
- 27 thereto;
- 28 (3) impose any provision regulating rates charged by video service
- 29 providers; or
- 30 (4) impose any other franchise or service requirements or conditions,
- 31 except that a video service provider must submit the agreement specified
- 32 in subsection (a) of section 4, and amendments thereto.
- 33 (g) K.S.A. 12-2006 through 12-2011, and amendments thereto, shall
- 34 not apply to video service providers.
- 35 (h) Not later than 120 days after a request by a city, the holder of a
- 36 state-issued video service authorization shall provide the city with capacity
- 37 over its video service to allow public, educational and governmental
- 38 (PEG) access channels for noncommercial programming, according to the
- 39 following:
- 40 (1) A video service provider shall not be required to provide more
- 41 than the number of PEG access channels a municipality has activated and
- 42 is utilizing under the incumbent cable service provider's franchise agree-
- 43 ment as of January 1, 2006, or in the event no such channels are active,

5-2

1 or after the expiration of the incumbent cable service provider's franchise
 2 expires, a maximum of three PEG channels ~~for a municipality with a~~ access
 3 ~~population of at least 50,000, and a maximum of two PEG channels for~~
 4 ~~a municipality with a population of less than 50,000;~~

5 (2) the operation of any PEG access channel provided pursuant to
 6 this section shall be the responsibility of the municipality receiving the
 7 benefit of such channel, and the holder of a state-issued video service
 8 authorization bears only the responsibility for the transmission of such
 9 channel; and

10 (3) the municipality must ensure that all transmissions, content, or
 11 programming to be transmitted over a channel or facility by a holder of
 12 a state-issued video service authorization are provided or submitted to
 13 such video service provider in a manner or form that is capable of being
 14 accepted and transmitted by a provider, without requirement for addi-
 15 tional alteration or change in the content by the provider, over the par-
 16 ticular network of the video service provider, which is compatible with
 17 the technology or protocol utilized by the video service provider to deliver
 18 video services;

19 (i) in order to alert customers to any public safety emergencies, a
 20 video service provider shall offer the concurrent rebroadcast of local tel-
 21 evision broadcast channels, or utilize another economically and techni-
 22 cally feasible process for providing an appropriate message through the
 23 provider's video service in the event of a public safety emergency issued
 24 over the emergency broadcast system.

25 (j) (1) Valid cable franchises in effect prior to July 1, 2006, shall re-
 26 main in effect subject to this section. Nothing in this act is intended to
 27 abrogate, nullify or adversely affect in any way any franchise or other
 28 contractual rights, duties and obligations existing and incurred by a cable
 29 provider or a video service provider before the enactment of this act. A
 30 cable operator providing video service over a cable system pursuant to a
 31 franchise issued by a city in effect on July 1, 2006, shall comply with the
 32 terms and conditions of such franchise until such franchise expires, is
 33 terminated pursuant to its terms or until the franchise is modified as
 34 provided in this section.

35 (2) Whenever two or more video service providers are providing serv-
 36 ice within the jurisdiction of a city, a cable provider with an existing city-
 37 issued franchise agreement may request that the city modify the terms
 38 of the existing franchise agreement to conform to the terms and condi-
 39 tions of a state-issued franchise. The cable operator requesting a modi-
 40 fication shall identify in writing the terms and conditions of its existing
 41 franchise that are materially different from the state-issued franchise,
 42 whether such differences impose greater or lesser burdens on the cable
 43 operator. Upon receipt of such request from a cable operator, the cable

Rep. Krehbiel

HOUSE UTILITIES

DATE: 3/17/06

ATTACHMENT 6

1 (1) A grant of authority to provide video service as requested in the
2 application;
3 (2) a statement that the grant of authority is subject to lawful oper-
4 ation of the video service by the applicant or its successor in interest.
5 (c) The certificate of video service authorization issued by the sec-
6 retary of state is fully transferable to any successor in interest to the
7 applicant to which it is initially granted. A notice of transfer shall be filed
8 with the secretary of state and any relevant municipalities within 30 busi-
9 ness days of the completion of such transfer.
10 (d) The certificate of video service authorization issued by the sec-
11 retary of state may be terminated by the video service provider by sub-
12 mitting notice to the secretary of state.
13 (e) To the extent required by applicable law, any video service au-
14 thorization granted by the state through the secretary of state shall con-
15 stitute a "franchise" for purposes of 47 U.S.C. § 541(b)(1). To the extent
16 required for purposes of 47 U.S.C. §§ 521-561, only the state of Kansas
17 shall constitute the exclusive "franchising authority" for video service pro-
18 viders in the state of Kansas.
19 (f) The holder of a state-issued video service authorization shall not
20 be required to comply with any mandatory facility build-out provisions
21 nor provide video service to any customer using any specific technology.
22 Additionally, no city or other political subdivision of the state of Kansas
23 may require a video service provider to: (1) Obtain a separate franchise
24 to provide video service;
25 (2) impose any fee, license or gross receipts tax, other than the fee
26 specified in subsections (b) through (e) of section 4, and amendments
27 thereto;
28 (3) impose any provision regulating rates charged by video service
29 providers; or
30 (4) impose any other franchise or service requirements or conditions,
31 except that a video service provider must submit the agreement specified
32 in subsection (a) of section 4, and amendments thereto.
33 (g) K.S.A. 12-2006 through 12-2011, and amendments thereto, shall
34 not apply to video service providers.
35 (h) Not later than 120 days after a request by a city, the holder of a
36 state-issued video service authorization shall provide the city with capacity
37 over its video service to allow public, educational and governmental
38 (PEG) access channels for noncommercial programming, according to the
39 following:
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41 than the number of PEG access channels a municipality has activated and
42 is utilizing under the incumbent cable service provider's franchise agree-
43 ment as of January 1, 2006, or in the event no such channels are active,

1 or after the expiration of the incumbent cable service provider's franchise
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access

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 14 accepted and transmitted by a provider, without requirement for addi-
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 16 ticular network of the video service provider, which is compatible with
 17 the technology or protocol utilized by the video service provider to deliver
 18 video services;

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 20 video service provider shall offer the concurrent rebroadcast of local tel-
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 23 provider's video service in the event of a public safety emergency issued
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 31 franchise issued by a city in effect on July 1, 2006, shall comply with the
 32 terms and conditions of such franchise until such franchise expires, is
 33 terminated pursuant to its terms or until the franchise is modified as
 34 provided in this section.

35 (2) Whenever two or more video service providers are providing serv-
 36 ice within the jurisdiction of a city, a cable provider with an existing city-
 37 issued franchise agreement may request that the city modify the terms
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1 entering into the agreement, neither the city nor [Video Service Provider]
2 waive any rights, but instead expressly reserve any and all rights, remedies
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5 the legality or appropriateness of any present or future laws, ordinances
6 and/or rulings.”

7 (b) In any locality in which a video service provider offers video serv-
8 ice, the video service provider shall calculate and pay the video service
9 provider fee to the city with jurisdiction in that locality upon the city’s
10 written request. If the city makes such a request, the video service pro-
11 vider fee shall be due on a quarterly basis and shall be calculated as a
12 percentage of gross revenues, as defined herein. Notwithstanding the date
13 the city makes such a request, no video service provider fee shall be
14 applicable until the first day of a calendar month that is at least 30 days
15 after written notice of the levy is submitted by the city to a video service
16 provider. The city may not demand the use of any other calculation
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18 the video service provider not later than 45 days after the end of the
19 quarter.

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21 subsection (b) shall be set by the city and identified in its written request,
22 but may in no event exceed the lesser of either 5% or the percentage
23 levied as a gross receipts franchise fee on any cable operator providing
24 video service within the city’s jurisdiction.

5%

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26 from video service subscribers for the following:

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39 amount of compensation received by a video service provider, provided
40 however, that for the sole purpose of calculating the level of the video
41 service provider fee, any such discounts, refunds and other price adjust-
42 ments shall not be disproportionately allocated to the video segment of
43 the any package of the provider’s products that is offered to subscribers

Rep. Kuether

HOUSE UTILITIES

DATE: 3/17/06

ATTACHMENT 7

1 with the purpose of such allocation being to evade or decrease the amount
2 of the video service provider fee to be paid to the city under this section;

3 (2) uncollectible fees;

4 (3) late payment fees;

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6 or surcharges imposed upon video service subscribers in connection with
7 the provision of video service, including the video service provider fee
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34 or boulevards dedicated or acquired as right-of-way. The term does not
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42 and amendments thereto, or a video service provider as defined in section
43 2, and amendments thereto.

New Sec. 6. The business offices and video service facilities of each video service provider offering video service in this state shall be required to be staffed by employees of such provider.
[renumber remaining sections]

Substitute for SENATE BILL No. 449

By Committee on Commerce

2-22

9 AN ACT concerning commerce; enacting the video competition act;
10 amending K.S.A. 2005 Supp. 17-1902 and repealing the existing
11 section.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. This act shall be known and may be cited as the video
15 competition act.

16 New Sec. 2. For purposes of this act: (a) "Cable service" is defined
17 as set forth in 47 U.S.C. § 522(6).

18 (b) "Cable operator" is defined as set forth in 47 U.S.C. § 522(5).

19 (c) "Cable system" is defined as set forth in 47 U.S.C. § 522(7).

20 (d) "Competitive video service provider" means an entity providing
21 video service that is not franchised as a cable operator in the state of
22 Kansas as of the effective date of this act and is not an affiliate, successor
23 or assign of such cable operator.

24 (e) "Franchise" means an initial authorization, or renewal of an au-
25 thorization, issued by a franchising entity, regardless of whether the au-
26 thorization is designed as a franchise, permit, license, resolution, contract,
27 certificate, agreement or otherwise, that authorizes the construction and
28 operation of a cable system.

29 (f) "Franchising entity" or "city" means a city entitled to require fran-
30 chises and impose fees under K.S.A. 12-2006 et seq., and amendments
31 thereto, on cable operators.

32 (g) "Video programming" means programming provided by, or gen-
33 erally considered comparable to programming provided by, a television
34 broadcast station, as set forth in 47 U.S.C. § 522(20).

35 (h) "Video service" means video programming services provided
36 through wireline facilities located at least in part in the public rights-of-
37 way without regard to delivery technology, including internet protocol
38 technology. This definition does not include any video programming pro-
39 vided by a commercial mobile service provider defined in 47 U.S.C. §
40 332(d).

41 (i) "Video service authorization" means the right of a video service
42 provider to offer video programming to any subscribers anywhere in the
43 state of Kansas.

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1 (j) "Video service provider" means a cable operator or a competitive
2 video service provider.

3 (k) "Video service provider fee" means the fee imposed upon video
4 service providers pursuant to section 4 of this act.

5 New Sec. 3. (a) An entity or person seeking to provide cable service
6 or video service in this state on or after July 1, 2006, shall file an appli-
7 cation for a state-issued video service authorization with the ~~secretary of~~
8 ~~state~~ as required by this section. The ~~secretary of state~~ shall promulgate
9 regulations to govern the state-issued video service authorization appli-
10 cation process. The state, through the ~~secretary of state~~, shall issue a video
11 service authorization permitting a video service provider to provide video
12 service in the state, or amend a video service authorization previously
13 issued, within 30 calendar days after receipt of a completed affidavit sub-
14 mitted by the video service applicant and signed by an officer or general
15 partner of the applicant affirming:

16 (1) The location of the applicant's principal place of business and the
17 names of the applicant's principal executive officers;

18 (2) that the applicant has filed or will timely file with the federal
19 communications commission all forms required by that agency in advance
20 of offering video service in this state;

21 (3) that the applicant agrees to comply with all applicable federal and
22 state statutes and regulations;

23 (4) that the applicant agrees to comply with all lawful and applicable
24 municipal regulations regarding the use and occupation of public rights-
25 of-way in the delivery of the video service, including the police powers
26 of the municipalities in which the service is delivered;

27 (5) the description of the service area footprint to be served within
28 the state of Kansas, including any municipalities or parts thereof, and
29 which may include certain designations of unincorporated areas, which
30 description shall be updated by the applicant prior to the expansion of
31 video service to a previously undesignated service area and, upon such
32 expansion, notice to the ~~secretary of state~~ of the service area to be served
33 by the applicant; including:

34 (A) The period of time it shall take applicant to become capable of
35 providing video programming to all households in the applicant's service
36 area footprint, which may not exceed five years from the date the au-
37 thorization, or amended authorization, is issued; and

38 (B) a general description of the type or types of technologies the
39 applicant will use to provide video programming to all households in its
40 service area footprint, which may include wireline, wireless, satellite or
41 any other alternative technology.

42 (b) The certificate of video service authorization issued by the ~~see-~~
43 ~~retary of state~~ shall contain:

state corporation commission

1 (1) A grant of authority to provide video service as requested in the
2 application;

3 (2) a statement that the grant of authority is subject to lawful oper-
4 ation of the video service by the applicant or its successor in interest.

5 (c) ~~The certificate of video service authorization issued by the secre-~~
6 ~~tary of state is fully transferable to any successor in interest to the~~
7 ~~applicant to which it is initially granted. A notice of transfer shall be filed~~
8 ~~with the secretary of state and any relevant municipalities within 30 busi-~~
9 ~~ness days of the completion of such transfer.~~

state corporation commission

10 (d) ~~The certificate of video service authorization issued by the secre-~~
11 ~~tary of state may be terminated by the video service provider by sub-~~
12 ~~mitting notice to the secretary of state.~~

13 (e) To the extent required by applicable law, any video service au-
14 thorization granted by the state through the ~~secretary of state~~ shall con-
15 stitute a "franchise" for purposes of 47 U.S.C. § 541(b)(1). To the extent
16 required for purposes of 47 U.S.C. §§ 521-561, only the state of Kansas
17 shall constitute the exclusive "franchising authority" for video service pro-
18 viders in the state of Kansas.

19 (f) The holder of a state-issued video service authorization shall not
20 be required to comply with any mandatory facility build-out provisions
21 nor provide video service to any customer using any specific technology.
22 Additionally, no city or other political subdivision of the state of Kansas
23 may require a video service provider to: (1) Obtain a separate franchise
24 to provide video service;

25 (2) impose any fee, license or gross receipts tax, other than the fee
26 specified in subsections (b) through (e) of section 4, and amendments
27 thereto;

28 (3) impose any provision regulating rates charged by video service
29 providers; or

30 (4) impose any other franchise or service requirements or conditions,
31 except that a video service provider must submit the agreement specified
32 in subsection (a) of section 4, and amendments thereto.

33 (g) K.S.A. 12-2006 through 12-2011, and amendments thereto, shall
34 not apply to video service providers.

35 (h) Not later than 120 days after a request by a city, the holder of a
36 state-issued video service authorization shall provide the city with capacity
37 over its video service to allow public, educational and governmental
38 (PEG) access channels for noncommercial programming, according to the
39 following:

40 (1) A video service provider shall not be required to provide more
41 than the number of PEG access channels a municipality has activated and
42 is utilizing under the incumbent cable service provider's franchise agree-
43 ment as of January 1, 2006, or in the event no such channels are active,

8-4

1 with the purpose of such allocation being to evade or decrease the amount
2 of the video service provider fee to be paid to the city under this section;

3 (2) uncollectible fees;

4 (3) late payment fees;

5 (4) amounts billed to video service subscribers to recover taxes, fees
6 or surcharges imposed upon video service subscribers in connection with
7 the provision of video service, including the video service provider fee
8 authorized by this section; or

9 (5) charges, other than those described in subsection (d), that are
10 aggregated or bundled with amounts billed to video service subscribers.

11 (f) At the request of a city, no more than once per year, the city may
12 perform a reasonable audit of the video service provider's calculation of
13 the video service provider fee. The video service provider shall pay one-
14 half of the cost of such audit, up to a maximum of \$2,500.

15 (g) Any video service provider may identify and collect the amount
16 of the video service provider fee as a separate line item on the regular
17 bill of each subscriber. To the extent a video service provider incurs any
18 costs in providing capacity for retransmitting community programming as
19 may be required in subsection (h) of section 3, and amendments thereto,
20 the provider may also recover these costs from customers, but may not
21 deduct such costs from the video service provider fee due to a city under
22 this section.

23 New Sec. 5. (a) The provisions of this act are intended to be consis-
24 tent with the federal cable act, 47 U.S.C. §521 et seq.

25 (b) Nothing in this act shall be interpreted to prevent a video service
26 provider, a cable operator or a city from seeking clarification of its rights
27 and obligations under federal law or to exercise any right or authority
28 under federal or state law.

29 Sec. 6. K.S.A. 2005 Supp. 17-1902 is hereby amended to read as
30 follows: 17-1902. (a) (1) "Public right-of-way" means only the area of real
31 property in which the city has a dedicated or acquired right-of-way in-
32 terest in the real property. It shall include the area on, below or above
33 the present and future streets, alleys, avenues, roads, highways, parkways
34 or boulevards dedicated or acquired as right-of-way. The term does not
35 include the airwaves above a right-of-way with regard to wireless tele-
36 communications or other nonwire telecommunications or broadcast serv-
37 ice, easements obtained by utilities or private easements in platted sub-
38 divisions or tracts.

39 (2) "Provider" ~~shall mean~~ means a local exchange carrier as defined
40 in subsection (h) of K.S.A. 66-1,187, and amendments thereto, or a tel-
41 ecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187,
42 and amendments thereto, or a video service provider as defined in section
43 2, and amendments thereto.

New Sec. 6. (a) The state corporation commission shall:

(1) Assess the costs of any proceeding before the commission pursuant to this act against the parties to the proceeding; and

(2) establish and collect fees from entities and persons filing applications with the state corporation commission for state-issued video service authorizations, which fees shall be in an amounts sufficient to pay the costs of administration of this act, including costs of personnel.

(b)(1) There is hereby created in the state treasury the video competition act fund. The state corporation commission shall remit all moneys received by the commission pursuant to this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the video competition act fund.

(2) Moneys in the video competition act fund shall be expended only to pay the costs of the state corporation commission in administering the provisions of the video competition act.

(3) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the video competition act fund interest earnings based on:

(A) The average daily balance of moneys in the video competition act fund for the preceding month; and

(B) the net earnings rate for the pooled money investment portfolio for the preceding month.

(4) All expenditures from the video competition act fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the state corporation commission or a person designated by the chairperson for the purposes set forth in this section. preceding month.

(4) All expenditures from the video competition act fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the state corporation commission or a person designated by the chairperson for the purposes set forth in this section.

[renumber remaining sections accordingly]

SENATE BILL No. 70

By Committee on Assessment and Taxation

1-20

10 AN ACT creating the Kansas petroleum education and marketing act.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. The provisions of sections 1 through 11, and amendments
14 thereto, shall be known and may be cited as the Kansas petroleum edu-
15 cation and marketing act.

16 Sec. 2. As used in this act:

17 (a) "Act" means the provisions of sections 1 through 11, and amend-
18 ments thereto;

19 (b) "board" means the Kansas energy *[oil and gas]* resources board
20 as created by this act;

21 (c) "first purchaser" means:

22 (1) With regard to crude oil, the person to whom title first is trans-
23 ferred beyond the gathering tank or tanks, beyond the facility from which
24 the crude oil was first produced, or both; and

25 (2) with regard to natural gas, the person to whom title first is trans-
26 ferred beyond the inlet side of the measurement station from which the
27 natural gas was first produced;

28 (d) "independent producer" means a person who complies with both
29 of the following:

30 (1) Produces oil or natural gas and is not engaged in refining either
31 product; and

32 (2) derives a majority of income from ownership in properties pro-
33 ducing oil or natural gas;

34 (e) "interest owner" means a person who owns or possesses an oil or
35 gas leasehold interest in the gross production of oil or natural gas pro-
36 duced from a well in Kansas. For the purposes of this act, an oil and gas
37 leasehold estate interest shall include the working interest ~~and any over-
38 riding royalty interests or other interest carved out of the working interest~~

and any overriding interest
carved out of the working
interest

39 in any oil and gas lease, **but shall not include royalty interests**;
40 (f) "person" means an individual, group of individuals, partnership,
41 corporation, association, limited liability company, cooperative or any
42 other entity or an employee of the entity; and

43 (g) "qualified producer association" means an entity that is organized

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9

1 under section 501(c)(6) of the federal internal revenue code and in ex-
2 sistence on the effective date of this act, organized and operates within
3 the state of Kansas, and in which a majority of the members of such
4 association's governing body consists of independent producers. In ad-
5 dition to any other entity which constitutes a qualified producer associ-
6 ation as defined in this subsection, the Kansas independent oil and gas
7 association, the Kansas petroleum council and the eastern Kansas oil and
8 gas association shall be qualified producer associations.

9 Sec. 3. (a) ~~Upon meeting the requirements of this act,~~ any group of
10 qualified producer associations may create, fund, administer, operate,
11 manage, be members of and enjoy the benefit of a Kansas energy [*oil*
12 *and gas*] resources board to administer a Kansas petroleum education
13 and marketing program. The purpose of the board created by this act
14 shall be to: (1) Coordinate a program designed to demonstrate to the
15 general public the importance and significance of the oil and natural gas
16 industry in Kansas; (2) encourage the wise and efficient use of energy;
17 (3) promote environmentally sound production methods and technolo-
18 gies; (4) support research and educational activities concerning the oil
19 and natural gas industry; (5) promote oil and natural gas exploration and
20 production safety; (6) support job training and research activities con-
21 cerning oil and natural gas production; and (7) implement and comply
22 with the provisions of this act. The Kansas energy [*oil and gas*] resources
23 board may be formed as a not-for-profit member corporation in which
24 the Kansas independent oil and gas association, the Kansas petroleum
25 council and the eastern Kansas oil and gas association shall be members.
26 The Kansas energy [*oil and gas*] resources board, if formed as a not-for-
27 profit member corporation, shall be formed, operated and dissolved in
28 accordance with the provisions of chapter 17 of the Kansas Statutes An-
29 notated, and amendments thereto, and shall enjoy all of the rights of not-
30 for-profit member corporations under Kansas law, subject of the restric-
31 tions and conditions set forth in this act. The Kansas energy [*oil and gas*]
32 resources board shall be a voluntary private organization and shall not be
33 deemed in any manner to be a governmental or quasi-governmental board
34 or other such organization.

35 (b) The board's governing body shall be composed of 15 members to
36 be appointed by the governing bodies of the following qualified producer
37 associations as follows: (1) ~~Eleven~~ trustees to be appointed by the Kansas
38 independent oil and gas association;

39 (2) three trustees to be appointed by the Kansas petroleum council;
40 and

41 (3) ~~one trustee~~ to be appointed by the eastern Kansas oil and gas
42 association.

43 (c) A trustee of the board shall:

It shall be lawful for

to

provided that the requirements of this act are met

Ten

two trustees

- 1 (1) Be at least 25 years of age;
- 2 (2) be a resident of the state of Kansas; and
- 3 (3) have at least five years of active experience in the oil and natural
- 4 gas industry.

5 (d) A trustee shall serve for a term of three years, except that of the
 6 initial appointments: (1) Five trustees shall serve for one year; (2) five
 7 trustees shall serve for two years; and (3) five trustees shall serve for three
 8 years. Vacancies in the board for any trustee shall be filled by the qualified
 9 producer association which appointed the vacating member and shall be
 10 filled for the remaining term of the vacating trustee.

2006

11 (e) After July 1, 2005, the trustees of the board which are appointed
 12 by the qualified producer associations may by majority vote appoint a
 13 representative to serve as an additional trustee from each of the following
 14 groups:

nonindustry

- 15 (1) ~~A representative of royalty owners; and~~
- 16 (2) ~~a non-industry representative.~~

. The additional trustee

17 ~~Such additional trustees shall have full voting rights and privileges and~~
 18 ~~shall serve three-year terms. Such additional trustees may be removed at~~
 19 ~~any time from the board by majority vote of the trustees appointed by~~
 20 ~~the qualified producer associations.~~

a three-year term.
Such trustee

21 (f) The board shall elect annually a presiding officer of the board.

22 (g) The board may elect other officers as considered necessary by the
 23 board.

24 (h) No trustee of the board shall receive a salary or reimbursement
 25 for duties performed as a member of the board, except that trustees are
 26 eligible to received reimbursement for travel expenses incurred in the
 27 performance of board duties.

28 Sec. 4. The board shall have the following powers and duties, to:

- 29 (a) Administer and enforce the provisions of this act;
- 30 (b) establish an office for the board within the state of Kansas;
- 31 (c) elect a presiding officer and any other officers that may be nec-
- 32 essary to direct the operations of the board;
- 33 (d) employ personnel as shall be deemed necessary to carry out the
- 34 provisions of this act;
- 35 (e) administer the energy [oil and gas] resources fund;
- 36 (f) approve or disapprove the budget of the board;
- 37 (g) adopt rules as the board deems necessary to carry out the provi-
- 38 sions of this act;

39 (h) enter into contracts or agreements for studies, research projects,
 40 experimental work, supplies or other services to carry out the purposes
 41 of this act; and to incur those expenses necessary to carry out such pur-
 42 poses. A contract or agreement entered into under this subsection shall
 43 provide that:

1 (1) The person entering the contract or agreement on behalf of the
2 board shall develop and submit to the board a plan or project together
3 with a budget that shows estimated costs to be incurred for the plan or
4 project; and

5 (2) the person entering the contract or agreement shall keep accurate
6 records of all such person's transactions, account for funds received and
7 expended and make periodic reports to the board of activities conducted
8 and other reports that the board may require;

9 (i) keep accurate records of all financial transactions performed pur-
10 suant to this act. Such records shall be audited annually by an independ-
11 ent auditor and an annual report shall be compiled;

12 (j) accept and deposit into the energy *[oil and gas]* resources fund
13 donations, grants, contributions and gifts from any public or private
14 source; and

15 (k) keep an accurate record of all assessments collected.

16 Sec. 5. (a) There shall be an annual meeting of the board at which
17 the annual report and proposed budget shall be presented. The board, at
18 the call of the presiding officer, shall hold at least three other regular
19 meetings each year. The presiding officer shall establish the time, manner
20 and place for all meetings and shall provide notice of the meetings. A
21 majority of the members of the board shall constitute a quorum for the
22 transaction of any business of the board. In addition, the board shall
23 determine the circumstances under which additional meetings of the
24 board may be held.

25 (b) The board may appoint a director who shall carry out the provi-
26 sions of the act. The director shall not be one of the appointed board
27 members.

28 Sec. 6. The Kansas energy *[oil and gas]* resources board is hereby
29 authorized to levy assessments on the production of oil and natural gas
30 in Kansas for the purposes of a petroleum education and marketing pro-
31 gram. There is hereby created a special fund to be designated as the
32 energy *[oil and gas]* resources fund. The fund shall be a continuing fund,
33 not subject to fiscal year limitations and shall consist of all moneys re-
34 ceived by the Kansas energy *[oil and gas]* resources board from assess-
35 ments received and collected pursuant to section 7, and amendments
36 thereto, and donations, grants, contributions and gifts from any public or
37 private source.

38 Sec. 7. (a) To fund the activities of the Kansas energy *[oil and gas]*
39 resources board, and in the discretion of the board, a voluntary assess-
40 ment not to exceed an amount of 1½ cent per barrel of crude oil produced
41 and ~~¾~~ cent per thousand cubic feet of natural gas produced from each
42 well in the state of Kansas shall be deducted from proceeds paid by the
43 first purchaser to each interest owner. Any interest owner may seek a

0.05% of the gross
revenues from oil or
natural gas produced

1 refund as provided in this act. An annual cap of \$20,000, determined on
 2 a calendar year basis, shall be placed ~~on any one interest owner. The~~
 3 ~~board shall refund annually to any interest owner the amount which such~~
 4 ~~interest owner's assessments exceeded the annual cap, except that vol-~~
 5 ~~untary contributions made by any such interest owner shall not be con-~~
 6 ~~sidered in determining whether such cap has been exceeded. This as-~~
 7 ~~essment is a voluntary checkoff and shall be treated in all respects~~
 8 ~~accordingly. The assessment shall not in any manner be deemed to be a~~
 9 ~~tax or governmental assessment of any kind, and the state of Kansas shall~~
 10 ~~have no duty or responsibility with respect to any such assessment.~~

11 (b) The assessment imposed pursuant to subsection (a) shall be de-
 12 ducted from the proceeds of production and collected by the first pur-
 13 chaser. There shall be a conspicuous line item ~~on the division order and~~
 14 ~~on each run statement showing the amount and pertinent time period of~~
 15 ~~the assessment. The division order and each run statement shall provide~~
 16 the Kansas energy **[oil and gas]** resources board contact information for
 17 obtaining more information or directions for obtaining a refund of the
 18 assessment. The assessments, which are imposed on the interest owner,
 19 shall be remitted to the Kansas energy **[oil and gas]** resources board by
 20 the first purchaser not later than the 15th day of each month following
 21 the end of the month in which the assessment was collected. The moneys
 22 collected pursuant to section 6, and amendments thereto, shall be de-
 23 posited with a bank or savings and loan association and shall be used only
 24 in defraying costs of administration of the petroleum education and mar-
 25 keting program and for carrying out the provisions of sections 3, 4, 9 and
 26 10, and amendments thereto.

27 (c) The board shall be responsible for taking any appropriate legal
 28 action necessary to collect any assessment which is not paid or is not
 29 properly paid.

30 Sec. 8. (a) Any person subject to the assessment levied by section 7,
 31 and amendments thereto, may request a refund as provided in this section
 32 of the assessment paid on production for the preceding calendar year.
 33 Upon compliance with the provisions of this section and rules adopted
 34 by the board to implement this section, the board shall refund to each
 35 person requesting a refund the amount of the assessment paid by or on
 36 behalf of the person during the preceding calendar year. Refunds made
 37 shall include interest earned at the rate equal to the average United States
 38 treasury bill rate of the preceding calendar year as certified by the state
 39 treasurer.

40 (b) The request for a refund of the assessment paid on production
 41 for the preceding calendar year shall be made before the end of the third
 42 calendar month following the calendar year for which the refund is re-
 43 quested. Failure to request a refund during this period shall terminate

assessments against any one interest owner. An interest owner's assessments shall cease immediately for the remainder of the calendar when such interest owner's assessments reach the annual cap, except that additional

strike as marked

1 the right of any person to receive a refund for the assessment paid on
2 production for the preceding calendar year. The board shall give notice
3 of the availability of the refund through press releases or another means
4 the board deems appropriate.

5 (c) Each person requesting a refund shall execute an affidavit show-
6 ing the amount of refund requested and demonstrating that the affiant
7 was the owner of the production and such other matters as the board
8 reasonably requires for which the refund is requested. The board may
9 verify the accuracy of the request for refund prior to issuance of such a
10 refund.

11 (d) No person requesting a refund under this section shall be eligible
12 to serve or have a representative serve as a member of the board.

13 Sec. 9. (a) All interest earned on moneys in the energy *[oil and gas]*
14 resources fund shall remain in the fund.

15 (b) The board shall not use any funds collected under section 7, and
16 amendments thereto, for the purpose of influencing government action
17 or policy, except that the board may recommend amendments to this act.

18 Sec. 10. In the event of the establishment of a national or regional
19 program for an assessment on oil and natural gas production for an ed-
20 ucation and marketing program for oil and natural gas, the board, by
21 majority vote, may elect to designate up to a maximum of 35% of the
22 funds collected under this act to the national or regional program in lieu
23 of an additional assessment as may be required by the national or regional
24 program.

25 Sec. 11. (a) This act is intended as enabling legislation and shall not
26 be construed to limit any lawful activity, including the creation of any
27 checkoff, education and marketing program or other type of association
28 otherwise permitted by law.

29 (b) If any provision of this act is held to be invalid or unconstitutional,
30 it shall be conclusively presumed that the legislature would have enacted
31 the remainder of this act without such invalid or unconstitutional
32 provision.

33 Sec. 12. This act shall take effect and be in force from and after its
34 publication in the statute book.