Legislative Analysis

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EXTEND VIDEO SERVICE PROVIDER ASSESSMENT

House Bill 5574 (reported from committee without amendment)
Sponsor: Rep. Douglas Geiss
Committee: Energy and Technology

First Analysis (11-13-09)

BRIEF SUMMARY: The bill would extend an existing assessment on video service providers set to expire on December 31, 2009, that provides funding for the Public Service Commission to carry out its duties under the Uniform Local Video Services Local Franchise Act.

FISCAL IMPACT: Currently, Section 6 of the act, as well as HB 5574, limits the total assessment against all cable providers to not more than $1.0 million. For FY 2010, the MPSC budget - 2009 PA 130 (SB 243) - authorizes up to $400,000. For further information, see Fiscal Information.

THE APPARENT PROBLEM:

Section 6(13) of the Uniform Video Services Local Franchise Act (Public Act 480 of 2006) provides for the Public Service Commission (PSC) to recover the actual costs of its duties under the act, up to an annual total of $1 million, through an assessment on video service providers doing business in Michigan. Actual annual assessments to date have been significantly below this $1 million cap. Generally speaking, providers subject to the assessment are cable and telephone companies providing television services. The existing assessment is set to expire on December 31, 2009.

One of the commission's principal duties under the act is resolving disputes that arise under it. As amended by Public Act 4 of 2009, the act requires the PSC to resolve three types of disputes: (1) customer complaints against providers; (2) disputes between providers and franchising entities (local units of government); and (3) disputes between providers. Although the PSC had handled hundreds of disputes informally before the enactment of Public Act 4, Public Act 4 now allows formal cases to proceed as well.

It has been suggested that the existing provider assessment be extended without delay so that the commission has adequate funding to carry out its responsibilities under the act, including informal and formal dispute resolution.

THE CONTENT OF THE BILL:

The bill would extend the existing assessment on video services provider, currently found in Section 6(13) and set to expire on December 31, 2009, but move the assessment to a new Section 15, taking effect on January, 1, 2010. Section 15 would have no sunset date.

The assessment would otherwise stay the same as in current law: Within 10 days of an appropriation to it, the PSC would have to determine the amount of the appropriation attributable to the actual costs of its duties under the Video Act. Each video service provider would have pay a share of the total assessment in the same proportion that the number of its subscribers bore to the total number of video service subscribers in Michigan in the preceding calendar year. For example, if a provider's video service customers amounted to half of all video service customers in Michigan in the preceding calendar year, that provider would have to pay half of the total assessment.

MCL 484.3315

BACKGROUND INFORMATION:

PSC report. As required by law, the Public Service Commission provided information about its activities under the act and made recommendations for legislative changes in a January 2009 report, *Status of Competition for Video Services in Michigan*. The PSC recommended in this report (p.23) that the Legislature take prompt action to extend the assessment on video service providers.

http://www.michigan.gov/documents/mpsc/Status_of_Competition_for_Video_Services_Report_2008_265417_7.pdf

Other legislation. In contrast, House Bill 5459 would extend the current provider assessment by extending the sunset date found in Section 6 by five years, from December 31, 2009 to December 31, 2014.

FISCAL INFORMATION:

The bill would extend the video franchise assessment, which is imposed by the Public Service Commission (MPSC) to support its costs of administering the Uniform Video Services Local Franchise Act. Currently, Section 6 of the act, MCL 484.3306(13), and HB 5574 limit the total assessment against all cable providers to not more than $1.0 million. For FY 2010, the MPSC budget - 2009 PA 130 (SB 243) - authorizes up to $400,000.

Actual expenditures from the assessment for FY 2007-08 and FY 2008-09 have been a little less than $250,000 in each year. The actual amount of the assessment in a given year is based on the estimated expenditures for that year and the available fund balance carried forward from the prior fiscal year. Although the books have not closed on FY 2008-09, the year-end fund balance is estimated to be $153,274. Given that current law sunsets at the end of the 2009 calendar year, the department has not sent out assessment notices for FY 2009-10. Should the sunset be extended, as provided under the bill, the FY 2009-10 assessments would be based on the anticipated costs incurred by the MPSC during the fiscal year, less the available fund balance carried forward. Based on prior year expenditures, it would appear that the 2010 assessment would at least be approximately $100,000. However, the Legislature recently enacted a formal dispute resolution process, 2009 PA 4 (SB 190), which would tend to increase the MPSC's costs to the extent that disputes are settled through the formal administrative law process, rather than the MPSC's internal informal process predominantly used for the last two years. Any increased costs incurred by the MPSC would be reflected in a higher assessment imposed against cable providers. As noted previously, the FY 2009-10 spending authorization for the video franchise assessments is $400,000. To the extent the MPSC's costs approach the appropriated level, the FY 2010 assessment would be approximately $247,000. Any assessment revenue remaining at the end of the year would be carried forward into FY 2011 and would offset the FY 2011 assessment.

The annual DELEG appropriations act creates the Video Franchise Assessment Fund, credits assessment revenue under the Uniform Video Services Local Franchise Act to the fund, and permits the fund to retain any interest and earnings. Additionally, the appropriations act provides that any money in the fund at the close of the fiscal year may be carried forward into the next fiscal year and may "be used as the first source of funds in the subsequent fiscal year." [See Section 360 of 2009 PA 132.]

ARGUMENTS:

For:

The bill will extend the existing assessment on video service providers in Michigan thereby allowing the Public Service Commission to continue to carry out its duties under the act.

Against:

The assessment provision should be extended with a sunset provision, rather than indefinitely, to provide for periodic review of the assessment cap. Although recent annual assessments have been well under the $1 million cap, this cap may need to be adjusted upward or downward in the future. For instance, the enactment of Public Act 4 of 2009, allowing formal disputes to proceed, may increase the cost of the PSC's duties under the act.

Response:

Given that the Video Act itself and the PSC's duties under the act have no sunset, the assessment provision providing funding for the PSC's duties should have no sunset.

POSITIONS:

The Public Service Commission testified in support of the bill. (11-11-09)

AT&T indicated support of the bill. (11-11-09)

The Telecommunications Association of Michigan (TAM) indicated support of the bill. (11-11-09)

Comcast indicated neutrality on the bill. (11-11-09)

The Michigan Cable Telecommunications Association indicated neutrality on the bill. (11-11-09)

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