

HOUSE OF REPRESENTATIVES

AMENDMENT TO: H.B. No. 984, H.D. 1

OFFERED BY: REPRESENTATIVE ANGUS MCKELVEY

DATE: February 13, 2009

SECTION 1. House Bill No. 984, H.D. 1 (RELATING TO TECHNOLOGY), is amended by amending Part III of the new chapter created in section 2 as follows:

1. By inserting three new sections to read:

"§ -68 PEG access organization designation, generally.

(a) The commission shall designate for each county one PEG access organization to oversee the development, operation, supervision, management, production, or broadcasting of programs for any channels obtained under section -67.

(b) No PEG access organization shall be initially designated except upon written application to the commission, and following public hearing upon notice as provided in section -14(d).

(c) An application for designation as a PEG access organization shall be accepted for filing only when made in response to the written request of the commission for the submission of proposals. An application for designation shall be made in a form prescribed by the commission by rule adopted

under chapter 91 and shall set forth the information required by the commission and determined in accordance with this chapter, as to whether a PEG access organization should be designated, including:

- (1) The management and technical experience of the organization and its existing or proposed staff;
- (2) The public media, community media, or PEG access experience, or any combination thereof of the organization and its existing or proposed staff;
- (3) Whether the applicant's missions or purposes as evidenced by its articles of incorporation, bylaws, or similar corporate documents, include providing training, education, and outreach to give individuals and organizations the ability to use communication tools to effectively convey their messages;
- (4) The ability of the organization and its existing or proposed staff to provide PEG access services requested by the commission;
- (5) The organization's short- and long-term plans for PEG access services for a designated county;
- (6) The financial capacity of the organization;
- (7) Whether the organization agrees to expand the marketplace of ideas and is committed to allowing

members of the public to express their first amendment rights of free speech;

(8) The ability of the organization, through the use of electronic media tools, to foster and engage in civic and cultural development and engagement in communities it has served; and

(9) Any other matters deemed appropriate and necessary by the commission.

(d) The commission shall designate PEG access organizations in accordance with the public interest. In designating a PEG access organization, the commission shall take into consideration, among other things:

- (1) The content of the application;
- (2) The public need for the services;
- (3) The applicant's ability to provide PEG access services;
- (4) The applicant's suitability;
- (5) The financial responsibility of the applicant;
- (6) The technical and operational ability of the applicant to efficiently perform the services for which designation is requested;
- (7) Any objections arising from the public hearing;
- (8) The local needs of each community within each county;

(9) The advice of the communications advisory committee;
and

(10) Any other matters as the commission deems appropriate
in the circumstances.

(e) The period of an initial designation shall be for the
period of the franchise or franchises granted under section -67
and any renewal periods granted unless the designation is
revoked for cause. In cases of mid-term revocation of
designation, the subsequent designation shall be for a period of
the remaining term of the franchise or franchises revoked.

(f) The commission shall adopt rules pursuant to chapter
91 consistent with this chapter for the designation and
regulation of PEG access organizations.

**§ -69 PEG access organization services, terms of
designation.** (a) Every PEG access organization shall provide
safe, adequate, and reliable service in accordance with
applicable laws, rules and designation requirements.

(b) The commission shall include in each PEG access
organization designation a statement of services to be provided,
performance standards and fees for the services, and all terms
and conditions of service, in the form and with the notice that
the commission may prescribe. Prior to finalizing the terms of
a designation, the commission shall seek advice from the

communications advisory committee regarding the appropriate terms.

(c) The commission shall ensure that the terms and conditions upon which PEG access organization services are provided are fair both to the public and to the PEG access organization, and shall take into account the appropriate service area, information received during the designation process, and the resources available to compensate the access provider.

(d) If a designation period has ended, the designation shall be extended upon mutual agreement of the PEG access organization and the commission; provided:

- (1) The period of each extension shall be coextensive with any extension of the relevant franchise or franchises;
- (2) The commission shall make a written determination that it is not practical to designate another PEG access organization; and
- (3) The terms and conditions of the designation shall remain the same as the original designation, as may be amended by the designation; provided further that if the terms and conditions are not the same or are amended, the terms and conditions shall be fair and reasonable.

(e) No PEG access organization designation or franchise, including the rights, privileges, and obligations, may be assigned, sold, leased, encumbered, or otherwise transferred, voluntarily or involuntarily, directly, or indirectly, including by transfer of control of any PEG access organization, whether by change in ownership or otherwise, except upon written application to and approval by the director. A transfer of an PEG access organization designation shall authorize the new PEG access organization to provide services for the remainder of the term of the existing franchise.


§ -70 **Access fees.** The commission shall assess the maximum access fees permitted under federal law based upon the gross revenue of each operator. The PEG access organizations shall receive not less than seventy-five per cent of the access fees assessed; provided that the commission may cap access fees distributed to PEG access organizations serving counties with more than five hundred thousand residents, as provided by rule adopted pursuant to chapter 91. Whatever fees are not distributed to PEG access organizations and not used by the commission for administering the designation of PEG access organizations shall be distributed to institutions of higher learning, schools, the state legislature, and the counties, as provided by rule, for development and production of residential cable access for television purposes."

2. By renumbering sections -68 to -74 to conform to the insertion of the three new sections;

3. By renumbering references to section -68 in the new chapter, to section -71; and

4. By inserting a new subsection (d) in section -14 of the new chapter to read:

"(d) Any public hearing held pursuant to section -68(b), shall be a noticed public hearing or hearings in the county to be served by the applicant for designation as an access organization. Notice of the hearing, with the purpose thereof and the date, time, and place at which it will open, shall be given not less than once in each of three weeks statewide, the first notice being not less than twenty-one days before the public hearing and the last notice being not more than two days before the scheduled hearing."

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CHIEF CLERK, HOUSE OF REPRESENTATIVES		