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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1993

ENROLLED

Committee Substitute for
SENATE BILL NO. 487

(By Senator *Minnard, et al.*)

PASSED *April 10,* 1993
In Effect *90 days from* Passage

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 487

(SENATORS MINARD, WAGNER, WIEDEBUSCH, CHERNENKO,
BAILEY, DITTMAR AND MACNAUGHTAN, *original sponsors*)

[Passed April 10, 1993; in effect ninety days from passage.]

AN ACT to amend and reenact sections four and seven, article eighteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article eighteen-a, all relating to increasing the per diem for board members and tenants' rights to cable television; procedure for notifying landlord of request to cable operator to provide cable services; compensation for any physical damage to premises of landlord; availability of proceeding before cable board in the event of disagreement between landlord and cable operator; and protection of existing cable television services.

Be it enacted by the Legislature of West Virginia:

That sections four and seven, article eighteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding

thereto a new article, designated article eighteen-a, all to read as follows:

ARTICLE 18. WEST VIRGINIA CABLE TELEVISION SYSTEMS ACT.

§5-18-4. Cable franchise required; franchising authority.

1 (a) No person may construct, operate or acquire a
2 cable system, or extend an existing cable system
3 outside its designated service area, without first
4 obtaining a cable franchise from a franchising author-
5 ity as provided in this article.

6 (b) Any person operating a cable system on the
7 effective date of this article without a franchise shall,
8 within sixty days of the effective date of this article,
9 notify the board in writing setting forth: (1) The name,
10 business address and telephone number of the cable
11 operator; (2) the principals and ultimate beneficial
12 owners of the cable system or systems; (3) the geo-
13 graphic location and service area of any cable system
14 operated by such person; and (4) the number of
15 subscribers within the cable system or systems. If the
16 board shall not have been appointed and organized
17 within sixty days of the effective date of this article,
18 then such filing shall be made with the public service
19 commission where such documents shall be retained
20 for delivery to the board following the appointment
21 and organization of its members.

22 (c) The board shall, upon receipt of such informa-
23 tion, determine the appropriate franchising authority
24 or authorities for the purposes of the consideration of
25 the issuance of a franchise to such cable operator or
26 operators and shall notify the appropriate franchising
27 authority or authorities and any such cable system
28 operator of the franchise application procedures to be
29 followed by the respective parties. Any such cable
30 operator shall, within sixty days of receipt of such
31 notice from the board, make formal application to the
32 appropriate franchising authority or authorities for a
33 franchise in accordance with the provisions of this
34 article.

35 (d) The franchising authority shall be the municipal-

36 ity in which a cable system is to be constructed,
37 operated, acquired or extended, or if there be no such
38 municipality or if the municipality so elects not to act
39 as a franchising authority, then the franchising
40 authority shall be the county commission of the
41 county in which such cable system is to be construct-
42 ed, operated, acquired or extended: *Provided*, That
43 nothing herein shall prohibit any county commission
44 of a county in which a municipality acting as a
45 franchising authority is located from also acting as a
46 franchising authority for any cable system to be
47 constructed, operated, acquired or extended within the
48 jurisdiction of such county commission, nor prohibit
49 any county commission of a county acquiring the
50 franchise authority from a municipality from electing
51 to transfer such authority to the board.

52 (e) If a county commission elects not to act as the
53 franchise authority, the board shall become the
54 franchise authority. A county commission acting as a
55 franchise authority for unincorporated areas of the
56 county may elect separately to transfer to the board
57 any franchise authority acquired from a municipality.
58 If any municipality or county commission so elects not
59 to be the franchise authority, the mayor or president
60 of the county commission shall certify such delegation
61 in writing to the presiding officer of the board. Such
62 election shall be promptly made upon written request
63 of the board or the cable operator.

§5-18-7. Compensation and expenses of board members.

1 Each member of the board not otherwise employed
2 by the state shall receive a per diem in the amount of
3 fifty dollars while actually engaged in the performance
4 of the duties of the board, which shall be paid out of
5 the cable advisory board fund created under the
6 provisions of this article. Each member shall be
7 reimbursed for all reasonable and necessary expenses
8 actually incurred during the performance of his or her
9 duties. Each member shall receive meals, lodging and
10 mileage expense reimbursements at the rates estab-
11 lished by rule of the secretary of the department of
12 administration for in-state travel of public employees.

13 The reimbursement shall be paid out of the state
14 treasury upon a requisition upon the state auditor,
15 properly certified by the chairman of the board.

ARTICLE 18A. TENANTS' RIGHTS TO CABLE SERVICES.

§5-18A-1. Short title.

1 This article shall be known and may be cited as the
2 "Tenants' Rights to Cable Services Act".

§5-18A-2. Legislative findings.

1 The Legislature finds and declares as follows:

2 (a) Cable television has become an important medi-
3 um of public communication and entertainment.

4 (b) It is in the public interest to assure apartment
5 residents and other tenants of leased residential
6 dwellings access to cable television service of a quality
7 and cost comparable to service available to residents
8 living in personally owned dwellings.

9 (c) It is in the public interest to afford apartment
10 residents and other tenants of leased residential
11 dwellings the opportunity to obtain cable television
12 service of their choice and to prevent landlords from
13 treating such residents and tenants as a captive
14 market for the sale of television reception services
15 selected or provided by the landlord.

§5-18A-3. Definitions.

1 As used in this article:

2 (a) "Board" means the West Virginia cable television
3 advisory board created under the provisions of article
4 eighteen of this chapter.

5 (b) "Cable operator" means any person or group of
6 persons: (1) Who provides cable service over a cable
7 system and directly or through one or more affiliates
8 owns a significant interest in the cable system; or (2)
9 who otherwise controls or is responsible for, through
10 any arrangement, the management and operation of a
11 cable system.

12 (c) "Cable service" or "cable television service"

13 means: (1) The one-way transmission to subscribers of
14 video programming or other programming service;
15 and (2) subscriber interaction, if any, which is
16 required for the selection of video programming or
17 other programming service.

18 (d) "Cable system" means any facility within this
19 state consisting of a set of closed transmission paths
20 and associated signal generation, reception and control
21 equipment that is designed to provide cable service
22 which includes video programming and which is
23 provided to multiple subscribers within a community,
24 but does not include: (1) A facility that serves only to
25 retransmit the television signals of one or more
26 television broadcast stations; (2) a facility that serves
27 only subscribers in one or more multiple unit dwell-
28 ings under common ownership, control or manage-
29 ment, unless that facility or facilities uses any public
30 right-of-way; or (3) a facility of a public utility subject,
31 in whole or in part, to the provisions of chapter
32 twenty-four of this code, except to the extent that
33 those facilities provide video programming directly to
34 subscribers.

35 (e) "Cable television facilities" includes all antennas,
36 poles, supporting structures, wires, cables, conduits,
37 amplifiers, instruments, appliances, fixtures and other
38 personal property used by a cable operator in provid-
39 ing service to its subscribers.

40 (f) "Landlord" means a person owning, controlling,
41 leasing, operating or managing the multiple dwelling
42 premises.

43 (g) "Multiple dwelling premises" means any area
44 occupied by dwelling units, appurtenances thereto,
45 grounds and facilities, which dwelling units are
46 intended or designed to be occupied or leased for
47 occupation, or actually occupied, as individual homes
48 or residences for three or more households. The term
49 includes mobile home parks.

50 (h) "Person" means an individual, partnership,
51 associate, joint stock company, trust, corporation or
52 governmental agency.

53 (i) "Tenant" means a person occupying single or
54 multiple dwelling premises owned or controlled by a
55 landlord but does not include an inmate or any person
56 incarcerated or housed within any state institution.

§5-18A-4. Landlord-tenant relationship.

1 (a) A landlord may not:

2 (1) Interfere with the installation, maintenance,
3 operation or removal of cable television facilities upon
4 his property or multiple dwelling premises, except
5 that a landlord may require:

6 (A) That the installation of cable television facilities
7 conform to such reasonable conditions as are necessary
8 to protect the safety, functioning and appearance of
9 the multiple dwelling premises and the convenience
10 and well-being of other tenants;

11 (B) That the cable operator or the tenant or a
12 combination thereof bear the entire cost of the instal-
13 lation or removal of such facilities; and

14 (C) That the cable operator agrees to indemnify the
15 landlord for any damage caused by the installation,
16 operation or removal of such facilities;

17 (2) Demand or accept any payment from any tenant,
18 in any form, in exchange for permitting cable televi-
19 sion service on or within his property or multiple
20 dwelling premises, or from any cable operator in
21 exchange therefor except as may be determined to be
22 just compensation in accordance with this article;

23 (3) Discriminate in rental charges, or otherwise,
24 between tenants who receive cable television service
25 and those who do not.

26 (b) Provisions relating to cable television service or
27 satellite master antenna systems contained in rental
28 agreements and leases executed prior to the effective
29 date of this article may be enforced notwithstanding
30 this section.

31 (c) A cable operator may not enter into any agree-
32 ment with the owners, lessees or persons controlling

33 or managing the multiple dwelling premises served by
34 a cable television, or do or permit any act, that would
35 have the effect, directly or indirectly of diminishing or
36 interfering with existing rights of any tenant or other
37 occupant of such building to use or avail himself of
38 master or individual antenna equipment.

39 (d) The cable operator shall retain ownership of all
40 wiring and equipment used in any installation or
41 upgrade of a cable system within any multiple dwell-
42 ing premises.

§5-18A-5. Prohibition.

1 Except as provided in this article, no landlord may
2 demand or accept any payment from any cable oper-
3 ator in exchange for permitting cable television
4 service or facilities on or within the landlord's proper-
5 ty or multiple dwelling premises.

§5-18A-6. Just compensation.

1 Every landlord is entitled to a single payment of just
2 compensation for property taken by a cable operator
3 for the installation of cable television service or
4 facilities. The amount of just compensation, if not
5 agreed between the landlord and cable operator, shall
6 be determined by the board in accordance with this
7 article upon application by the landlord pursuant to
8 section nine of this article. A landlord is not entitled
9 to just compensation in the event of a rebuild, upgrade
10 or rewiring of cable television service or facilities by
11 a cable operator.

§5-18A-7. Right of entry.

1 A cable operator, upon receiving a request for
2 service by a tenant or landlord, has the right to enter
3 property of the landlord for the purpose of making
4 surveys or other investigations preparatory to the
5 installation. Before such entry, the cable operator shall
6 serve notice upon the landlord and tenants, which
7 notice shall contain the date of the entry and all other
8 information described in subsection (b), section eight
9 of this article. The cable operator is liable to the
10 landlord for any damages caused by such entry but

11 such damages shall not duplicate damages paid by the
12 cable operator pursuant to section nine of this article.

§5-18A-8. Notice of installation.

1 (a) Every cable operator proposing to install cable
2 television service or facilities upon the property of a
3 landlord shall serve upon said landlord and tenants, or
4 an authorized agent, written notice of intent thereof at
5 least fifteen days prior to the commencement of such
6 installation. Verbal notice to the tenant shall be legally
7 sufficient if the date and time of entry is communica-
8 ted to the tenant by either the landlord or cable
9 operator at least twenty-four hours prior to entry.

10 (b) The board shall prescribe the procedure for
11 service of such notice, and the form and content of
12 such notice, which shall include, but need not be
13 limited to:

- 14 (1) The name and address of the cable operator;
- 15 (2) The name and address of the landlord;
- 16 (3) The approximate date of the installation; and
- 17 (4) A citation to this act.

18 (c) Where the installation of cable television service
19 or facilities is not effected pursuant to a notice served
20 in accordance with this section, for whatever reason
21 including denial of entry by the landlord, the cable
22 operator may file with the board a petition, verified by
23 an authorized person from the cable operator, setting
24 forth:

- 25 (1) Proof of service of a notice of intent to install
26 cable television service upon the landlord;
- 27 (2) The specific location of the real property;
- 28 (3) The resident address of the landlord, if known;
- 29 (4) A description of the facilities and equipment to
30 be installed upon the property, including the type and
31 method of installation and the anticipated costs thereof;
- 32 (5) The name of the individual or officer responsible
33 for the actual installation;

34 (6) A statement that the cable operator shall indem-
35 nify the landlord for any damage caused in connection
36 with the installation, including proof of insurance or
37 other evidence of ability to indemnify the landlord;

38 (7) A statement that the installation shall be con-
39 ducted without prejudice to the rights of the landlord
40 to just compensation in accordance with section nine
41 of this article;

42 (8) A summary of efforts by the cable operator to
43 effect entry of the property for the installation; and

44 (9) A statement that the landlord is afforded the
45 opportunity to answer the petition within twenty days
46 from the receipt thereof, which answer must be
47 responsive to the petition and may set forth any
48 additional matter not contained in the petition.

49 If no appearance by the landlord is made in the
50 proceeding or no answer filed within the time permit-
51 ted, the board shall grant to the petitioning cable
52 operator an order of entry, which order constitutes a
53 ruling that the petitioning cable operator has complied
54 with the requirements of this article. If the landlord
55 files a written answer to the petition, the cable
56 operator shall have ten days within which to reply to
57 the answer. The board may grant or deny the petition,
58 schedule an administrative hearing on any factual
59 issues presented thereby or direct such other proce-
60 dures as may be consistent with the installation of
61 cable television service or facilities in accordance with
62 this article. The only basis upon which the board may
63 deny a petition by the cable operator is that the cable
64 operator has not complied with the requirements of
65 this article.

66 Within thirty days of the date of grant or denial of
67 the petition, or issuance of any other order by the
68 board following a hearing or other procedure, the
69 cable operator or landlord may appeal such grant or
70 denial or order of the board to the circuit court of
71 Kanawha county. Any order issued by the board
72 pursuant to this section may be enforced by an action
73 seeking injunctive or mandamus relief in circuit court

74 where the property is located.

§5-18A-9. Application for just compensation.

1 (a) If the landlord and cable operator have not
2 reached agreement on the amount of just compensa-
3 tion, a landlord may file with the board an application
4 for just compensation within four months following
5 the service by the cable operator of the notice de-
6 scribed in section eight of this article, or within four
7 months following the completion of the installation of
8 the cable television facilities, whichever is later.

9 (b) An application for just compensation shall set
10 forth specific facts relevant to the determination of
11 just compensation. Such facts should include, but need
12 not be limited to, a showing of:

13 (1) The location and amount of space occupied by the
14 installation;

15 (2) The previous use of such space;

16 (3) The value of the applicant's property before the
17 installation of cable television facilities and the value
18 of the applicant's property subsequent to the installa-
19 tion of cable television facilities; and

20 (4) The method or methods used to determine such
21 values. The board may, upon good cause shown,
22 permit the filing of supplemental information at any
23 time prior to final determination by the board.

24 (c) A copy of the application filed by the landlord for
25 just compensation shall be served upon the cable
26 operator making the installation and upon either the
27 mayor or county commission of the municipality or
28 county, respectively, in which the real property is
29 located when the municipality or county is the fran-
30 chise authority.

31 (d) Responses to the application, if any, shall be
32 served on all parties and on the board within twenty
33 days from the service of the application.

34 (e) (1) The board shall within sixty days of the
35 receipt of the application, make a preliminary finding

36 of the amount of just compensation for the installation
37 of cable television facilities.

38 (2) Either party may, within twenty days from the
39 release date of the preliminary finding by the board
40 setting the amount of just compensation file a written
41 request for a hearing. Upon timely receipt of such
42 request, the board shall conduct a hearing on the issue
43 of compensation.

44 (3) In determining just compensation, the board may
45 consider evidence introduced including, but not limit-
46 ed to, the following:

47 (A) Evidence that a landlord has a specific alterna-
48 tive use for the space occupied or to be occupied by
49 cable television facilities, the loss of which will result
50 in a monetary loss to the owner;

51 (B) Evidence that installation of cable facilities upon
52 such multiple dwelling premises will otherwise sub-
53 stantially interfere with the use and occupancy of such
54 premises to the extent which causes a decrease in the
55 resale or rental value; or

56 (C) Evidence of increase in the value of the property
57 occurring by reason of the installation of the cable
58 television facilities.

59 (4) For purposes of this article, the board shall
60 presume that a landlord has received just compensa-
61 tion from a cable operator for the installation within
62 a multiple dwelling premises if the landlord receives
63 compensation in the amount of one dollar for each
64 dwelling unit within the multiple dwelling premises or
65 one hundred dollars for the entire multiple dwelling
66 premises, whichever amount is more.

67 (5) If, after the filing of an application, the cable
68 operator and the applicant agree upon the amount of
69 just compensation, a hearing shall not be held on the
70 issue.

71 (6) Within thirty days of the date of the notice of the
72 decision of the board, either party may appeal the
73 decision of the board in the circuit court of Kanawha

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74 county regarding the amount awarded as
75 compensation.

§5-18A-10. Existing cable services protected.

1 Cable services being provided to tenants on the
2 effective date of this article may not be prohibited or
3 otherwise prevented so long as the tenant continues to
4 request such services.

§5-18A-11. Exception.

1 Notwithstanding any provision in this article to the
2 contrary, a landlord and cable operator may by mutual
3 agreement establish the terms and conditions upon
4 which cable television facilities are to be installed
5 within a multiple dwelling premises without having to
6 comply with the provisions of this article.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Ernest C. Moore
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within is approved..... this the 15th.....
day of May....., 1993.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/23/93

Time 9:10 AM