

**First Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 05-0176.01 Gregg Fraser

SENATE BILL 05-152

SENATE SPONSORSHIP

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HOUSE SPONSORSHIP

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Senate Committees
Local Government

House Committees

A BILL FOR AN ACT

101 **CONCERNING LOCAL GOVERNMENT COMPETITION IN THE PROVISION**
102 **OF SPECIFIED COMMUNICATIONS SERVICES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Prohibits a local government from providing cable television service, telecommunications service, and high speed internet access (advanced) service to subscribers, as well as taking specified actions related to providing such services, except in specified circumstances. Allows such services to be provided if a local government:

Holds a preliminary public hearing before providing a service with notice to the public and any private provider of the service within the boundaries of the local

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
February 28, 2005

government;

Conducts at least 2 public hearings in accordance with specified notice and other requirements for the purpose of informing the public of the local government's intent to provide the service; and

Holds an election in accordance with specified requirements on whether the local government shall provide the proposed service.

Prohibits a local government from cross subsidizing its cable television, telecommunications, or advanced services with tax revenues, below-market rate loans, or other sources. Specifies requirements to account for operations of the services and provides that the books and records for the services shall be subject to audit by the state auditor.

Authorizes the governing body of a local government to issue bonds to finance the capital costs for facilities necessary to provide cable television, telecommunications, or advanced service. Specifies requirements for the payment of the bonds and costs associated with the bonds.

Requires a local government that provides cable television, telecommunications, or advance service to comply with all state and federal laws applicable to providing the service. Prohibits a local government from providing a service outside the boundaries of the local government, from receiving distributions from the high cost fund, and from exercising the power of eminent domain to provide a service. Specifies enforcement and appeal provisions.

Specifies that local governments shall not be afforded immunity from antitrust liability with respect to cable television, telecommunications, or advanced services provided by the local government.

Defines terms. Makes legislative findings and declarations.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** Title 29, Colorado Revised Statutes, is amended

3 BY THE ADDITION OF A NEW ARTICLE to read:

4 **ARTICLE 27**

5 **Competition in Utility and Entertainment Services**

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PART 1

COMPETITION IN UTILITY

AND ENTERTAINMENT SERVICES

29-27-101. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT IT IS THE POLICY OF THIS STATE TO ENSURE THAT CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, AND HIGH SPEED INTERNET ACCESS, OTHERWISE KNOWN AS ADVANCED SERVICE, ARE EACH PROVIDED WITHIN A CONSISTENT, COMPREHENSIVE, AND NONDISCRIMINATORY FEDERAL, STATE, AND LOCAL GOVERNMENT FRAMEWORK.

(2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT:

(a) THERE IS A NEED FOR STATEWIDE UNIFORMITY IN THE REGULATION OF ALL PUBLIC AND PRIVATE ENTITIES THAT PROVIDE CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, AND ADVANCED SERVICE.

(b) MUNICIPAL ORDINANCES, RULES, AND OTHER REGULATIONS GOVERNING THE PROVISION OF CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, AND ADVANCED SERVICE BY A LOCAL GOVERNMENT IMPACT PERSONS LIVING OUTSIDE THE MUNICIPALITY.

(c) REGULATING THE PROVISION OF CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, AND ADVANCED SERVICE BY A LOCAL GOVERNMENT IS A MATTER OF STATEWIDE CONCERN.

29-27-102. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ADVANCED SERVICE" MEANS HIGH-SPEED INTERNET ACCESS CAPABILITY IN EXCESS OF ONE HUNDRED FORTY-FOUR KILOBITS PER

1 SECOND BOTH UPSTREAM AND DOWNSTREAM.

2 (2) "CABLE TELEVISION SERVICE" MEANS THE ONE-WAY
3 TRANSMISSION TO SUBSCRIBERS OF VIDEO PROGRAMMING OR OTHER
4 PROGRAMMING SERVICE, AS WELL AS SUBSCRIBER INTERACTION, IF ANY,
5 THAT IS REQUIRED FOR THE SELECTION OR USE OF THE VIDEO
6 PROGRAMMING OR OTHER PROGRAMMING SERVICE.

7

8 (3) "LOCAL GOVERNMENT" MEANS ANY CITY, COUNTY, CITY AND
9 COUNTY, SPECIAL DISTRICT, OR OTHER POLITICAL SUBDIVISION OF THIS
10 STATE.

11 (4) "PRIVATE PROVIDER" MEANS A PRIVATE ENTITY THAT PROVIDES
12 CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR
13 ADVANCED SERVICE.

14 (5) "SUBSCRIBER" MEANS A PERSON THAT LAWFULLY RECEIVES
15 CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR
16 ADVANCED SERVICE.

17 (6) "TELECOMMUNICATIONS SERVICE" HAS THE SAME MEANING AS
18 SET FORTH IN SECTION 40-15-102 (29), C.R.S.

19 **29-27-103. Limitations on providing cable television,**
20 **telecommunications, and advanced services.** (1) EXCEPT AS PROVIDED
21 IN PART 2 OF THIS ARTICLE, A LOCAL GOVERNMENT SHALL NOT:

22 (a) PROVIDE TO ONE OR MORE SUBSCRIBERS CABLE TELEVISION
23 SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE; OR

24 (b) PURCHASE, LEASE, CONSTRUCT, MAINTAIN, OR OPERATE ANY
25 FACILITY FOR THE PURPOSE OF PROVIDING CABLE TELEVISION SERVICE,
26 TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE TO ONE OR MORE
27 SUBSCRIBERS.

(2) FOR PURPOSES OF THIS ARTICLE, A LOCAL GOVERNMENT PROVIDES CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE IF THE LOCAL GOVERNMENT PROVIDES THE CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE:

(a) DIRECTLY OR INDIRECTLY;

(b) THROUGH AN AUTHORITY OR INSTRUMENTALITY ACTING ON BEHALF OF THE LOCAL GOVERNMENT OR FOR THE BENEFIT OF THE LOCAL GOVERNMENT BY ITSELF;

(c) THROUGH A PARTNERSHIP OR JOINT VENTURE;

(d) BY CONTRACT, INCLUDING A CONTRACT WHEREBY THE LOCAL GOVERNMENT LEASES, SELLS CAPACITY IN, OR GRANTS OTHER SIMILAR RIGHTS TO A PRIVATE PROVIDER TO USE LOCAL GOVERNMENTAL FACILITIES IN CONNECTION WITH A PRIVATE PROVIDER'S OFFERING OF CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE;

(e) THROUGH THE SALE OR PURCHASE OF RESALE CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE; OR

(f) THROUGH THE SALE OR PURCHASE OF WHOLESALE CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE.

PART 2

CONDITIONS FOR PROVIDING SERVICES

29-27-201. **Vote - referendum.** (1) **BEFORE A LOCAL**
GOVERNMENT MAY ENGAGE OR OFFER TO ENGAGE IN PROVIDING CABLE

1 TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED
2 SERVICE, AN ELECTION SHALL BE CALLED _____ ON WHETHER OR NOT
3 THE LOCAL GOVERNMENT SHALL PROVIDE THE PROPOSED CABLE
4 TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED
5 SERVICE.

6 (2) THE ELECTION SHALL BE HELD AT THE NEXT GENERAL
7 ELECTION OR AT A LOCAL SPECIAL ELECTION, THE PURPOSE OF WHICH IS
8 AUTHORIZED BY THIS SECTION IN ACCORDANCE WITH THE PROVISIONS OF
9 ARTICLES 1 TO 13 OF TITLE 1, C.R.S., EXCEPT AS PROVIDED IN THIS
10 SECTION.

11 (3) THE NOTICE OF THE ELECTION SHALL INCLUDE, WITH ANY
12 OTHER INFORMATION REQUIRED BY LAW, A SUMMARY OF THE CABLE
13 TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED
14 SERVICE THAT THE GOVERNING BODY OF THE LOCAL GOVERNMENT
15 PROPOSES TO PROVIDE TO SUBSCRIBERS RESIDING WITHIN THE BOUNDARIES
16 OF THE LOCAL GOVERNMENT.

17 (4) THE BALLOT AT AN ELECTION CONDUCTED PURSUANT TO THIS
18 SECTION SHALL POSE THE QUESTION SUBSTANTIALLY AS FOLLOWS: "SHALL
19 THE [NAME OF THE LOCAL GOVERNMENT] PROVIDE [CABLE TELEVISION
20 SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE] TO THE
21 INHABITANTS OF THE [LOCAL GOVERNMENT]?" THE BALLOT PROPOSITION
22 SHALL NOT TAKE EFFECT UNTIL SUBMITTED TO THE ELECTORS AND
23 APPROVED BY THE MAJORITY OF THOSE VOTING ON THE BALLOT.

24 **29-27-204. Exemption for unserved areas.** (1) A LOCAL
25 GOVERNMENT SHALL BE EXEMPT FROM THE REQUIREMENTS OF THIS PART
26 2 AND MAY ENGAGE OR OFFER TO ENGAGE IN PROVIDING CABLE
27 TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCE

1 SERVICE IF:
2 (a) THE AREA TO BE SERVED IS CURRENTLY UNSERVED BY A
3 PRIVATE PROVIDER OF THE SERVICE;
4 (b) THE GOVERNING BODY OF THE LOCAL GOVERNMENT HAS
5 SUBMITTED A WRITTEN REQUEST TO PROVIDE THE SERVICE TO ANY
6 INCUMBENT PROVIDER OF CABLE TELEVISION SERVICE,
7 TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE WITHIN THE
8 BOUNDARIES OF THE LOCAL GOVERNMENT; AND
9 (c) THE INCUMBENT PROVIDER HAS NOT AGREED WITHIN SIXTY
10 DAYS OF THE RECEIPT OF A REQUEST SUBMITTED PURSUANT TO PARAGRAPH
11 (b) of this subsection (1) the to provide the service or, if the provider has
12 agreed, it has not commenced providing the service within fourteen
13 months of the receipt of the request.

14 =====

15 PART 3
16 COMPLIANCE WITH LOCAL, STATE,
17 AND FEDERAL REGULATIONS

18 29-27-301. General operating limitations. (1) A LOCAL
19 GOVERNMENT THAT PROVIDES CABLE TELEVISION SERVICE,
20 TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE UNDER THIS
21 ARTICLE SHALL COMPLY WITH ALL STATE AND FEDERAL LAWS, RULES, AND
22 REGULATIONS APPLICABLE TO A PRIVATE PROVIDER OF CABLE TELEVISION
23 SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE.

24 (2) (a) A LOCAL GOVERNMENT SHALL NOT MAKE OR GRANT ANY
25 UNDUE OR UNREASONABLE PREFERENCE OR ADVANTAGE TO ITSELF OR TO
26 ANY PRIVATE PROVIDER OF CABLE TELEVISION SERVICES,
27 TELECOMMUNICATIONS SERVICES, OR ADVANCED SERVICES.

1 (b) A LOCAL GOVERNMENT SHALL APPLY WITHOUT
2 DISCRIMINATION AS TO ITSELF AND TO ANY PRIVATE PROVIDER THE LOCAL
3 GOVERNMENT'S ORDINANCES, RULES, AND POLICIES, INCLUDING THOSE
4 RELATING TO:

- 5 (I) OBLIGATION TO SERVE;
6 (II) ACCESS TO PUBLIC RIGHTS-OF-WAY;
7 (III) PERMITTING;
8 (IV) PERFORMANCE BONDING;
9 (V) REPORTING; AND
10 (VI) QUALITY OF SERVICE.

11 _____
12 _____

13 **29-27-302. Scope of article.** (1) NOTHING IN THIS ARTICLE SHALL
14 BE CONSTRUED TO AUTHORIZE ANY LOCAL GOVERNMENT TO:

15 (a) PROVIDE, DIRECTLY OR INDIRECTLY, CABLE TELEVISION
16 SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE; OR

17 (b) PURCHASE, LEASE, CONSTRUCT, MAINTAIN, OR OPERATE A
18 FACILITY FOR THE PURPOSE OF PROVIDING, DIRECTLY OR INDIRECTLY,
19 CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR
20 ADVANCED SERVICE.

21 (2) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO APPLY TO
22 A LOCAL GOVERNMENT PURCHASING, LEASING, CONSTRUCTING, OR
23 EQUIPPING FACILITIES THAT ARE DESIGNED TO PROVIDE CABLE TELEVISION
24 SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE WITHIN
25 THE LOCAL GOVERNMENT THAT THE LOCAL GOVERNMENT USES FOR
26 INTERNAL GOVERNMENTAL PURPOSES.

27 **(3) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO LIMIT THE**

1 AUTHORITY OF A LOCAL GOVERNMENT TO LEASE PHYSICAL PROPERTY OR
2 STRUCTURES TO A PRIVATE COMPANY FOR THE PURPOSE OF PLACING A
3 CELLULAR TELEPHONE ANTENNA.

4 **29-27-303.** **Enforcement and appeal.** (1) BEFORE AN
5 INDIVIDUAL SUBSCRIBER OR A PRIVATE PROVIDER THAT COMPETES WITH
6 A LOCAL GOVERNMENT IN THE GEOGRAPHIC BOUNDARIES OF THE LOCAL
7 GOVERNMENT MAY FILE AN ACTION IN DISTRICT COURT FOR VIOLATION OF
8 THIS ARTICLE, THAT PERSON SHALL FILE A WRITTEN COMPLAINT WITH THE
9 LOCAL GOVERNMENT. THE FAILURE BY THE LOCAL GOVERNMENT TO ISSUE
10 A FINAL DECISION REGARDING THE COMPLAINT WITHIN FORTY-FIVE DAYS
11 SHALL BE TREATED AS AN ADVERSE DECISION FOR PURPOSES OF APPEAL.

12 (2) AN APPEAL OF AN ADVERSE DECISION FROM THE LOCAL
13 GOVERNMENT MAY BE TAKEN TO THE DISTRICT COURT FOR A DE NOVO
14 PROCEEDING.

15 **SECTION 2. Applicability.** This act shall apply to cable
16 television service, telecommunications service, and advanced service, and
17 to the purchase, lease, construction, maintenance, or operation of any
18 facility for the purpose of providing such service, for which a local
19 government has not entered into an agreement or otherwise taken any
20 substantial action prior to the effective date of this act to provide.

21 _____

22 **SECTION 3. Safety clause.** The general assembly hereby finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, and safety.