

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

REVISED

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

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
Local Government

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.

HOUSE
Amended 2nd Reading
April 14, 2005

SENATE
3rd Reading Unamended
March 1, 2005

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 TWO HUNDRED FIFTY-SIX KILOBITS PER SECOND

1 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. A PERSON THAT UTILIZES CABLE TELEVISION
17 SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE
18 PROVIDED BY A LOCAL GOVERNMENT FOR LOCAL GOVERNMENTAL OR
19 INTERGOVERNMENTAL PURPOSES AND IS USED BY PERSONS ACCESSING
20 GOVERNMENT SERVICES IS NOT A SUBSCRIBER FOR PURPOSES OF THIS
21 ARTICLE.

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

24 **29-27-103. Limitations on providing cable television,**
25 **telecommunications, and advanced services.** (1) EXCEPT AS PROVIDED
26 IN THIS ARTICLE, A LOCAL GOVERNMENT SHALL NOT:

27 (a) PROVIDE TO ONE OR MORE SUBSCRIBERS CABLE TELEVISION

1 SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE; OR
2 (b) PURCHASE, LEASE, CONSTRUCT, MAINTAIN, OR OPERATE ANY
3 FACILITY FOR THE PURPOSE OF PROVIDING CABLE TELEVISION SERVICE,
4 TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE TO ONE OR MORE
5 SUBSCRIBERS.

6 (2) FOR PURPOSES OF THIS ARTICLE, A LOCAL GOVERNMENT
7 PROVIDES CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE,
8 OR ADVANCED SERVICE IF THE LOCAL GOVERNMENT PROVIDES THE CABLE
9 TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED
10 SERVICE TO ONE OR MORE SUBSCRIBERS:

11 (a) DIRECTLY;

12 (b) INDIRECTLY BY MEANS THAT INCLUDE BUT ARE NOT LIMITED TO
13 THE FOLLOWING:

14 (I) THROUGH AN AUTHORITY OR INSTRUMENTALITY ACTING ON
15 BEHALF OF THE LOCAL GOVERNMENT OR FOR THE BENEFIT OF THE LOCAL
16 GOVERNMENT BY ITSELF;

17 (II) THROUGH A PARTNERSHIP OR JOINT VENTURE;

18 (III) THROUGH A SALE AND LEASE BACK ARRANGEMENT;

19 (c) BY CONTRACT, INCLUDING A CONTRACT WHEREBY THE LOCAL
20 GOVERNMENT LEASES, SELLS CAPACITY IN, OR GRANTS OTHER SIMILAR
21 RIGHTS TO A PRIVATE PROVIDER TO USE LOCAL GOVERNMENTAL FACILITIES
22 DESIGNED OR CONSTRUCTED TO PROVIDE CABLE TELEVISION SERVICE,
23 TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE FOR INTERNAL
24 LOCAL GOVERNMENT PURPOSES IN CONNECTION WITH A PRIVATE
25 PROVIDER'S OFFERING OF CABLE TELEVISION SERVICE,
26 TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE; OR

27 (d) THROUGH SALE OR PURCHASE OF RESALE OR WHOLESALE

1 CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR
2 ADVANCED SERVICE FOR THE PURPOSE OF PROVIDING CABLE TELEVISION
3 SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE TO ONE
4 OR MORE SUBSCRIBERS.

5 (3) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO LIMIT THE
6 AUTHORITY OF A LOCAL GOVERNMENT TO LEASE TO A PRIVATE PROVIDER
7 PHYSICAL SPACE IN OR ON ITS PROPERTY FOR THE PLACEMENT OF
8 EQUIPMENT OR FACILITIES THE PRIVATE PROVIDER USES TO PROVIDE CABLE
9 TELEVISION, TELECOMMUNICATIONS OR ADVANCED SERVICES.

10 PART 2
11 CONDITIONS FOR PROVIDING SERVICES

12 _____
13 **29-27-201.** **Vote - referendum.** (1) BEFORE A LOCAL
14 GOVERNMENT MAY ENGAGE OR OFFER TO ENGAGE IN PROVIDING CABLE
15 TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED
16 SERVICE, AN ELECTION SHALL BE CALLED _____ ON WHETHER OR NOT
17 THE LOCAL GOVERNMENT SHALL PROVIDE THE PROPOSED CABLE
18 TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED
19 SERVICE.

20 _____
21 (2) THE BALLOT AT AN ELECTION CONDUCTED PURSUANT TO THIS
22 SECTION SHALL POSE THE QUESTION AS A SINGLE SUBJECT AND SHALL
23 INCLUDE A DESCRIPTION OF THE NATURE OF THE PROPOSED SERVICE, THE
24 ROLE THAT THE LOCAL GOVERNMENT WILL HAVE IN PROVISION OF THE
25 SERVICE, AND THE INTENDED SUBSCRIBERS OF SUCH SERVICE. THE BALLOT
26 PROPOSITION SHALL NOT TAKE EFFECT UNTIL SUBMITTED TO THE ELECTORS
27 AND APPROVED BY THE MAJORITY OF THOSE VOTING ON THE BALLOT.

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

(a) NO PRIVATE PROVIDER OF CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE PROVIDES THE SERVICE ANYWHERE WITHIN THE BOUNDARIES OF THE LOCAL GOVERNMENT;

(b) THE GOVERNING BODY OF THE LOCAL GOVERNMENT HAS
SUBMITTED A WRITTEN REQUEST TO PROVIDE THE SERVICE TO ANY
INCUMBENT PROVIDER OF CABLE TELEVISION SERVICE,
TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE WITHIN THE
BOUNDARIES OF THE LOCAL GOVERNMENT; AND

(c) THE INCUMBENT PROVIDER HAS NOT AGREED WITHIN SIXTY DAYS OF THE RECEIPT OF A REQUEST SUBMITTED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (1) TO PROVIDE THE SERVICE OR, IF THE PROVIDER HAS AGREED, IT HAS NOT COMMENCED CONSTRUCTION NECESSARY TO PROVIDE THE SERVICE WITHIN SIX MONTHS OF THE RECEIPT OF THE REQUEST.

PART 3

COMPLIANCE WITH LOCAL, STATE, AND FEDERAL REGULATIONS

29-27-301. General operating limitations. (1) A LOCAL GOVERNMENT THAT PROVIDES CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE UNDER THIS

1 ARTICLE SHALL COMPLY WITH ALL STATE AND FEDERAL LAWS, RULES, AND
2 REGULATIONS GOVERNING PROVISION OF SUCH SERVICE BY A PRIVATE
3 PROVIDER; EXCEPT THAT NOTHING HEREIN SHALL BE CONSTRUED TO
4 AFFECT THE JURISDICTION OF THE PUBLIC UTILITIES COMMISSION WITH
5 RESPECT TO MUNICIPAL UTILITIES.

6 (2) (a) A LOCAL GOVERNMENT SHALL NOT MAKE OR GRANT ANY
7 UNDUE OR UNREASONABLE PREFERENCE OR ADVANTAGE TO ITSELF OR TO
8 ANY PRIVATE PROVIDER OF CABLE TELEVISION SERVICES,
9 TELECOMMUNICATIONS SERVICES, OR ADVANCED SERVICES.

10 (b) A LOCAL GOVERNMENT SHALL APPLY WITHOUT
11 DISCRIMINATION AS TO ITSELF AND TO ANY PRIVATE PROVIDER THE LOCAL
12 GOVERNMENT'S ORDINANCES, RULES, AND POLICIES, INCLUDING THOSE
13 RELATING TO:

14 (I) OBLIGATION TO SERVE;

15 (II) ACCESS TO PUBLIC RIGHTS-OF-WAY;

16 (III) PERMITTING;

17 (IV) PERFORMANCE BONDING WHERE AN ENTITY OTHER THAN THE
18 LOCAL GOVERNMENT IS PERFORMING THE WORK;

19 (V) REPORTING; AND

20 (VI) QUALITY OF SERVICE.

21 _____

22 _____

23 **29-27-302. Scope of article.** (1) NOTHING IN THIS ARTICLE SHALL
24 BE CONSTRUED TO AUTHORIZE ANY LOCAL GOVERNMENT TO:

25 (a) PROVIDE, DIRECTLY OR INDIRECTLY, CABLE TELEVISION
26 SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE; OR

27 (b) PURCHASE, LEASE, CONSTRUCT, MAINTAIN, OR OPERATE A

1 FACILITY FOR THE PURPOSE OF PROVIDING, DIRECTLY OR INDIRECTLY,
2 CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR
3 ADVANCED SERVICE.

4 (2) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO APPLY TO
5 A LOCAL GOVERNMENT PURCHASING, LEASING, CONSTRUCTING,
6 MAINTAINING, OR OPERATING FACILITIES THAT ARE DESIGNED TO
7 PROVIDE CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR
8 ADVANCED SERVICE THAT THE LOCAL GOVERNMENT USES FOR
9 INTERNAL OR INTERGOVERNMENTAL PURPOSES.

10 (3) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO APPLY TO
11 THE SALE OR LEASE BY A LOCAL GOVERNMENT TO PRIVATE PROVIDERS OF
12 EXCESS CAPACITY, PROVIDED:

13 (a) SUCH EXCESS CAPACITY IS INSUBSTANTIAL IN RELATION TO THE
14 CAPACITY UTILIZED BY THE LOCAL GOVERNMENT FOR ITS OWN PURPOSES;
15 AND

16 (b) THE OPPORTUNITY TO PURCHASE AND THE OPPORTUNITY TO USE
17 SUCH EXCESS CAPACITY IS MADE AVAILABLE TO ANY PRIVATE PROVIDER
18 IN A NONDISCRIMINATORY, NONEXCLUSIVE, AND COMPETITIVELY NEUTRAL
19 MANNER.

20 (4) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO LIMIT
21 EITHER THE AUTHORITY OF THE STATEWIDE INTERNET PORTAL AUTHORITY
22 CREATED IN SECTION 24-37.7-102, C.R.S., TO CARRY OUT ITS MISSION OR
23 TO INTEGRATE THE ELECTRONIC INFORMATION DELIVERY SYSTEMS OF
24 LOCAL GOVERNMENTS INTO THE STATEWIDE INTERNET PORTAL AS DEFINED
25 IN ARTICLE 37.7 OF TITLE 24, C.R.S.

26 **29-27-303. Enforcement and appeal.** (1) BEFORE AN
27 INDIVIDUAL SUBSCRIBER OR A PRIVATE PROVIDER THAT COMPETES WITH

1 A LOCAL GOVERNMENT IN THE GEOGRAPHIC BOUNDARIES OF THE LOCAL
2 GOVERNMENT MAY FILE AN ACTION IN DISTRICT COURT FOR VIOLATION OF
3 THIS ARTICLE, THAT PERSON SHALL FILE A WRITTEN COMPLAINT WITH THE
4 LOCAL GOVERNMENT. THE FAILURE BY THE LOCAL GOVERNMENT TO ISSUE
5 A FINAL DECISION REGARDING THE COMPLAINT WITHIN FORTY-FIVE DAYS
6 SHALL BE TREATED AS AN ADVERSE DECISION FOR PURPOSES OF APPEAL.

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

10 **29-27-304. Applicability.** THIS ARTICLE SHALL APPLY TO CABLE
11 TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, AND ADVANCED
12 SERVICE AND TO THE PURCHASE, LEASE, CONSTRUCTION, MAINTENANCE,
13 OR OPERATION OF ANY FACILITY FOR THE PURPOSE OF PROVIDING SUCH
14 SERVICE, FOR WHICH A LOCAL GOVERNMENT HAS NOT ENTERED INTO AN
15 AGREEMENT OR OTHERWISE TAKEN ANY SUBSTANTIAL ACTION PRIOR TO
16 MARCH 1, 2005, TO PROVIDE SUCH SERVICE OR PURCHASE, LEASE,
17 CONSTRUCT, MAINTAIN, OR OPERATE SUCH FACILITIES.

18 **SECTION 2. Safety clause.** The general assembly hereby finds,
19 determines, and declares that this act is necessary for the immediate
20 preservation of the public peace, health, and safety.