

SECOND REGULAR SESSION

SENATE BILL NO. 946

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EMERY.

Read 1st time January 21, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6063S.02I

AN ACT

To amend chapter 71, RSMo, by adding thereto one new section relating to the authority of municipalities to offer certain services.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 71, RSMo, is amended by adding thereto one new section, to be known as section 71.284, to read as follows:

71.284. 1. For purposes of this section, the following terms shall mean:

(1) "Communication service", a service that transports information electronically including, but not limited to, internet protocol enabled services;

(2) "Competitive service" or "service", a wholesale or retail offering of a specific communication service that is provided by one or more service providers within the boundaries of the city, town, or village. "Competitive service" shall not mean:

(a) Any service that a city, town, or village is prohibited from offering by law;

(b) The provision of free wireless communication services to the public; or

(c) Any communication service that a city, town, or village uses for its own internal purposes;

(3) "Fiscal impact", the total estimated cost of providing the proposed service, including the annual operating cost; the fair market value of all resources provided by the city, town, or village; interest; the cost of physical facilities; and compensation of staff;

(4) "Service provider", a wireless service provider, broadband or other internet protocol enabled service provider, video service

22 provider, telecommunications company, or other communications-
23 related service provider;

24 (5) "Wireless service provider", a provider of commercial mobile
25 service under Section 332(d) of the Federal Telecommunications Act of
26 1996 (47 U.S.C. Section 151, et seq.).

27 2. On or after August 28, 2016, no city, town, or village may offer
28 to provide a competitive service unless:

29 (1) The city, town, or village offered such competitive service for
30 purchase before August 28, 2016. Such a city, town, or village may
31 continue to provide such competitive service and may continue to use
32 necessary infrastructure to provide such service. It may upgrade,
33 improve, or enhance such infrastructure to continue to provide such
34 service to its customers and prospective customers, including any
35 modification or expansion to provide additional features or quality
36 through products or technology not previously utilized. However, such
37 city, town, or village shall not use such infrastructure to offer a
38 different communication service without otherwise complying with the
39 requirements of this section;

40 (2) The competitive service is not being offered to fifty percent
41 of the addresses by any combination of service providers within the
42 boundaries of such city, town, or village;

43 (3) The fiscal impact to the city, town, or village of providing
44 such competitive service is less than five hundred thousand dollars
45 over the initial five-year period such service will be offered, with such
46 figure adjusted annually according to the applicable consumer price
47 index utilized by the department of economic development;

48 (4) A single actual or potential business, or a city, town, or
49 village, on behalf of such business, makes a request for a
50 communications service of a specific speed in excess of one gigabit per
51 second download speed at a specific location that all service providers
52 are unable or unwilling to provide. If such is the case, such city, town,
53 or village may offer such service to such single business at a cost not
54 below market price; or

55 (5) Such competitive service offering is approved by a majority
56 of the voters of the city, town, or village voting thereon, as provided in
57 this section.

58 3. To place the question of providing a competitive service on the

59 ballot, the city, town, or village shall complete a study concerning the
60 feasibility of offering the service including, but not limited to, the
61 financial implications to the city, town, or village, including for the
62 initial five-year period such service will be offered; the access to the
63 service being provided by private business; and other relevant factors;
64 and shall release the results of the study to the public at least ninety
65 days prior to the question being placed before the voters.

66 4. The question shall be submitted in substantially the following
67 form:

68 "Shall (name of city, town, or village) offer (name
69 and description of competitive service) in competition with current
70 private business at an estimated cost of (estimated cost of the
71 project determined under subsection 3 of this section) over the initial
72 five-year period of operation?"

73 5. In the event that the question proposed under this section
74 fails to receive a majority vote, the question shall not be resubmitted
75 to the voters for a period of at least two years.

76 6. If a city, town, or village offers a competitive service where a
77 private business also offers such service:

78 (1) No financial subsidization to support the service shall be
79 allowed from revenue collected from other services offered by the city,
80 town, or village, unless such usage of funds for the competitive service
81 is specifically approved by voters. The provisions of this subdivision
82 shall become void if such practice is determined by a court of
83 competent jurisdiction to be unlawful. The use of assets owned by the
84 city, town, or village, which are provided under an agreement requiring
85 the payment of fair market value for use of such assets, shall not be
86 considered financial subsidization under this subdivision. The issuance
87 of a loan by the city, town, or village, which is provided under an
88 agreement requiring the payment of principal and interest, shall not be
89 considered financial subsidization under this subdivision;

90 (2) Except as provided under subdivisions (3) and (4) of this
91 subsection, no assets or funds of the city, town, or village shall support
92 such service, unless the voters of the city, town, or village approve a
93 specific usage or revenue stream for the service;

94 (3) The city, town, or village may provide infrastructure owned
95 by the city, town, village, or any subdivision thereof, for the purpose of

96 providing a competitive service under this section, if the subdivision
97 of the city, town, or village offering such competitive service enters
98 into an agreement to pay the city, town, village, or subdivision thereof,
99 the fair market value of such infrastructure or portion thereof used in
100 the competitive service, unless the voters of the city, town, or village
101 approve the use of such infrastructure without such payment. Further,
102 notwithstanding subsection 2 of this section to the contrary, if the city,
103 town, or village provides bandwidth to its subdivision, it shall also
104 offer such bandwidth to any service provider under the same terms and
105 conditions; and

106 (4) A city, town, or village may issue a loan to the subdivision of
107 the city, town, or village wishing to provide competitive service,
108 provided that:

109 (a) Such loan is of a duration of no more than five years;

110 (b) The total of all loans issued to such subdivisions by the city,
111 town, or village does not exceed five hundred thousand dollars; and

112 (c) The interest rate on such loan shall be no more than one
113 percent above the prime interest rate as determined by the federal
114 reserve system on the date the loan is approved, and the payback on
115 such loan shall include evenly divided principal payments over the
116 term of the payback period.

117 7. If any resident or representative of a private business
118 providing a competitive service, within the boundaries of such city,
119 town, or village, has belief or knowledge that such city, town, or village
120 has violated the provisions of this section, he or she may file suit in the
121 circuit court of the county against the city, town, or village, or any such
122 person may file an affidavit with the attorney general stating such
123 belief or knowledge. Upon receiving such affidavit or on his or her own
124 motion, the attorney general shall investigate the subdivision of the
125 city, town, or village offering or seeking to offer the competitive service
126 and, if the attorney general believes that the city, town, or village has
127 violated this section, shall file suit against the city, town, or village on
128 behalf of the state.

129 8. If the court finds that the city, town, or village has violated
130 subsection 2 of this section, the circuit court of the county shall order
131 the city, town, or village to cease providing the competitive service
132 until such time that the city, town, or village obtains voter approval

133 under subsections 3 and 4 of this section. If the court finds that the
134 city, town, or village has violated subsection 6 of this section, the
135 circuit court of the county shall order the city, town, or village to:

136 (1) Cease any action resulting in a violation of this section; and

137 (2) Refund the account or accounts, which originally had the
138 funds that were improperly used under this section from revenues of
139 the municipal service in question, in an amount equal to the amount
140 that was improperly used under this section.

141 9. If the court finds that the city, town, or village has violated
142 this section multiple times, the court may order:

143 (1) An audit performed by a third party of the municipal service
144 in question. The court may order the city, town, or village to refund
145 and remedy any audit findings; and

146 (2) Any other remedy the court deems appropriate.

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