

FIRST REGULAR SESSION

SENATE BILL NO. 186

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EMERY.

Pre-filed December 6, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0611S.011

AN ACT

To amend chapter 71, RSMo, by adding thereto one new section relating to the authority of local governments 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 mean:

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

(2) "Competitive 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 local government. "Competitive service" shall not mean:

(a) Any service that a local government is prohibited from offering by law;

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

(c) Any communication service that a local government uses for its own internal purposes;

(d) Any dark fiber that a local government may provide without including transmission of information in its offering if such dark fiber is made available to all service providers under the same terms and conditions;

(e) Any communication service to be provided by a local government if the proposed communication service meets the following requirements on the date of initial offering to the public:

22 a. The service is substantially similar to a service being offered
23 by one or more service providers within such local government;

24 b. The service is offered to at least fifty percent of the addresses
25 within the boundaries of such local government; and

26 c. The service is offered at speeds that are fifty percent greater
27 than any maximum retail service speeds offered by a service provider
28 within such local government; or

29 (f) Any internet broadband service that does not meet the
30 minimum speed of broadband as defined in FCC 14-190;

31 (3) "Dark fiber", unlit fiber optic cable that does not include the
32 electronics necessary to transmit or receive information;

33 (4) "Fiscal impact", the total estimated cost of providing the
34 proposed service, including the annual operating cost, the fair market
35 value of all resources provided by the local government, interest, the
36 cost of physical facilities, and compensation of staff;

37 (5) "Local government", any city, town, village, or entity under
38 the ownership or control of any city, town, or village;

39 (6) "Service provider", a wireless service provider, broadband or
40 other internet protocol enabled service provider, video service
41 provider, telecommunications company, or other communications-
42 related service provider;

43 (7) "Wireless service provider", a provider of commercial mobile
44 service under Section 332(d) of the Federal Telecommunications Act of
45 1996 (47 U.S.C. Section 151, et seq).

46 2. On or after August 28, 2017, no local government may offer to
47 provide a competitive service unless:

48 (1) The local government offered such competitive service for
49 purchase before August 28, 2017. Such local government may continue
50 to provide such competitive service and may continue to use necessary
51 infrastructure to provide such service. It may upgrade, improve, or
52 enhance such infrastructure to continue to provide such service to its
53 customers and prospective customers, including any modification or
54 expansion to provide additional features or quality through products
55 or technology not previously utilized;

56 (2) The competitive service is not being offered to fifty percent
57 of the addresses by any combination of service providers within the
58 boundaries of such local government;

59 **(3) The fiscal impact to the local government of providing such**
60 **competitive service is less than one million dollars over the initial five-**
61 **year period such service will be offered, with such figure adjusted**
62 **annually according to the applicable consumer price index utilized by**
63 **the department of economic development;**

64 **(4) A single actual or potential business or a local government,**
65 **on behalf of such business, makes a request for a communication**
66 **service of a specific speed in excess of one gigabit per second download**
67 **speed at a specific location that all service providers are unable or**
68 **unwilling to provide. If such is the case, such local government may**
69 **offer such service to such single business at a cost not below market**
70 **price; or**

71 **(5) Such competitive service offering is approved by a majority**
72 **of the voters of the local government voting thereon, as provided in this**
73 **section. Once a local government receives approval by a majority of**
74 **voters, it may upgrade, improve, or enhance such infrastructure to**
75 **continue to provide such service to its customers and prospective**
76 **customers, including any modification or expansion to provide**
77 **additional features or quality through products or technology not**
78 **previously utilized.**

79 **3. To place the question of providing a competitive service on the**
80 **ballot, the local government shall complete a study concerning the**
81 **feasibility of offering the service including, but not limited to, the**
82 **financial implications to the local government, including for the initial**
83 **five-year period such service will be offered; the access to the service**
84 **being provided by private business; and other relevant factors; and**
85 **shall release the results of the study to the public at least ninety days**
86 **prior to the question being placed before the voters.**

87 **4. Nothing in this section shall be construed to require multiple**
88 **votes to obtain authorization to provide a competitive service and**
89 **authorization regarding fiscal issues. A local government may name**
90 **the individual service providers necessary to meet the definition of a**
91 **competitive service under this section. Depending on the question to**
92 **be asked, the question shall be submitted in substantially one of the**
93 **following forms:**

94 **(1) "Shall (name of local government) offer (name**
95 **and description of competitive service) in competition with current**

96 private business at an estimated cost of (estimated cost of the
97 project determined under subsection 3 of this section) over the initial
98 five-year period of operation?";

99 (2) "Shall (name of local government) offer (name
100 and description of competitive service) in competition with current
101 private business at an estimated cost of (estimated cost of the
102 project determined under subsection 3 of this section) over the initial
103 five-year period of operation, and shall such competitive service be
104 financed from (description of where and by what means
105 revenue shall be obtained)?"; or

106 (3) "After previously approving the question of whether
107 (name of local government) offer (name and description of
108 competitive service) in competition with current private business, shall
109 such competitive service be financed from (description of where
110 and by what means revenue shall be obtained)?".

111 5. If a local government offers a communications service where
112 a private business also offers such service:

113 (1) No financial subsidization to support the service shall be
114 allowed from revenue collected from other services offered by the local
115 government, unless such usage of funds for the competitive service is
116 specifically approved by voters. The provisions of this subdivision
117 shall become void if such practice is determined by a court of
118 competent jurisdiction to be unlawful. The use of assets owned by the
119 local government, which are provided under an agreement requiring
120 the payment of fair market value for use of such assets, shall not be
121 considered financial subsidization under this subdivision. The issuance
122 of a loan by the local government, which is provided under an
123 agreement requiring the payment of principal and interest, shall not be
124 considered financial subsidization under this subdivision;

125 (2) Except as provided under subdivisions (3) and (6) of this
126 subsection, no assets or funds of the local government shall support
127 such service, unless the voters of the local government approve a
128 specific usage or revenue stream for the service;

129 (3) The local government may provide infrastructure owned by
130 the local government, or any subdivision thereof, for the purpose of
131 providing a competitive service under this section, if the subdivision
132 of the local government offering such competitive service enters into

133 an agreement to pay the local government, or subdivision thereof, the
134 fair market value of such infrastructure or portion thereof used in the
135 competitive service, unless the voters of the local government approve
136 the use of such infrastructure without such payment. Further,
137 notwithstanding subsection 2 of this section to the contrary, if the local
138 government provides wholesale communication services to other
139 political subdivisions for retail offerings or other communication
140 service providers, it shall offer those wholesale communication services
141 to any service provider under the same terms and conditions;

142 (4) The competitive service offered by a local government shall
143 not receive any preferential access to public right-of-way and shall be
144 subject to the same zoning and land use requirements as competitive
145 services offered by other service providers;

146 (5) The competitive service offered by a local government shall
147 not be provided under exclusive service arrangements that prohibit
148 other service providers from offering competitive services; and

149 (6) A local government may issue a loan to the subdivision of the
150 local government wishing to provide competitive service; provided that:

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

152 (b) The total of all loans issued to such subdivision by the local
153 government does not exceed one million dollars; and

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

159 This subsection shall not apply to any local government that provides
160 competitive service under subdivision (1) of subsection 2 of this section.

161 6. If any resident or representative of a private business
162 providing a competitive service, within the boundaries of such local
163 government, has belief or knowledge that such local government has
164 violated this section, he or she may file suit in a court of competent
165 jurisdiction against the local government, or any such person may file
166 an affidavit with the attorney general stating such belief or
167 knowledge. Upon receiving such affidavit or on his or her own motion,
168 the attorney general shall investigate the subdivision of the local
169 government offering or seeking to offer the competitive service and, if

170 the attorney general believes that the local government has violated
171 this section, shall file suit against the local government on behalf of the
172 state.

173 7. If the court finds that the local government has violated
174 subsection 2 of this section, the court shall order the local government
175 to cease providing the competitive service until such time that the local
176 government obtains voter approval under subsections 3 and 4 of this
177 section. If the court finds that the local government has violated
178 subsection 5 of this section, the court shall order the local government
179 to:

180 (1) Cease any action resulting in a violation of this section; and
181 (2) Refund the account or accounts, which originally had the
182 funds that were improperly used under this section from revenues of
183 the municipal service in question, in an amount equal to the amount
184 that was improperly used under this section.

185 8. If the court finds that the local government has violated this
186 section multiple times, the court may order:

187 (1) An audit performed by a third party of the municipal service
188 in question. The court may order the local government to refund and
189 remedy any audit findings; and

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

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