FIRST REGULAR SESSION

SENATE BILL NO. 186

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EMERY.

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

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

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

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

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

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

(4) "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 local government, interest, the
cost of physical facilities, and compensation of staff;

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

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

(7) "Wireless service provider", a provider of commercial mobile
service under Section 332(d) of the Federal Telecommunications Act of

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

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

(2) The competitive service is not being offered to fifty percent
of the addresses by any combination of service providers within the
boundaries of such local government;
(3) The fiscal impact to the local government of providing such competitive service is less than one million dollars over the initial five-year period such service will be offered, with such figure adjusted annually according to the applicable consumer price index utilized by the department of economic development;

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

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

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

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

(1) "Shall ............ (name of local government) offer ............ (name and description of competitive service) in competition with current
private business at an estimated cost of ........... (estimated cost of the
project determined under subsection 3 of this section) over the initial
five-year period of operation?";

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

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

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

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

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

(3) The local government may provide infrastructure owned by
the local government, or any subdivision thereof, for the purpose of
providing a competitive service under this section, if the subdivision
of the local government offering such competitive service enters into
an agreement to pay the local government, or subdivision thereof, the
fair market value of such infrastructure or portion thereof used in the
competitive service, unless the voters of the local government approve
the use of such infrastructure without such payment. Further,
notwithstanding subsection 2 of this section to the contrary, if the local
government provides wholesale communication services to other
political subdivisions for retail offerings or other communication
service providers, it shall offer those wholesale communication services
to any service provider under the same terms and conditions;

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

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

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

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

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

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

This subsection shall not apply to any local government that provides
competitive service under subdivision (1) of subsection 2 of this section.
the attorney general believes that the local government has violated
this section, shall file suit against the local government on behalf of the
state.

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

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

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

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

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

(2) Any other remedy the court deems appropriate.