A BILL FOR AN ACT

CONCERNING THE REPEAL OF EXISTING RESTRICTIONS ON THE ABILITY OF A LOCAL GOVERNMENT TO PROVIDE CERTAIN ELECTRONIC COMMUNICATIONS SERVICES.

Bill Summary

(City: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov/)

Cities, counties, special districts, and other local governments (local government) are currently prohibited, with certain limited exceptions, from providing cable television, telecommunications service, or high-speed internet access without first seeking voter approval. A local government that does provide any of these services is further required to

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.
comply with all state and federal laws and regulations governing the
service and prohibited from granting certain preferences or discriminating
in connection with providing the service.

The bill repeals these restrictions on the provision of cable
television, telecommunications service, or high-speed internet access by
a local government.

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

SECTION 1. In Colorado Revised Statutes, **repeal** part 1 of
article 27 of title 29 as follows:

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 both upstream and downstream.

(2) "Cable television service" means the one-way transmission to subscribers of video programming or other programming service, as well as subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service.

(3) "Local government" means any city, county, city and county, special district, or other political subdivision of this state.

(4) "Private provider" means a private entity that provides cable television service, telecommunications service, or advanced service.

(5) "Subscriber" means a person that lawfully receives cable television service, telecommunications service, or advanced service. A person that utilizes cable television service, telecommunications service, or advanced service provided by a local government for local governmental or intergovernmental purposes and is used by persons accessing government services is not a subscriber for purposes of this article.

(6) "Telecommunications service" has the same meaning as set forth in section 40-15-102 (29), C.R.S.

29-27-103. Limitations on providing cable television, telecommunications, and advanced services. (1) Except as provided in this article, a local government shall not:

(a) Provide to one or more subscribers cable television service, telecommunications service, or advanced service; or

(b) Purchase, lease, construct, maintain, or operate any facility for the purpose of providing cable television service, telecommunications
service, or advanced service to one or more 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 to one or more subscribers:

(a) Directly;

(b) Indirectly by means that include but are not limited to the following:

   (I) Through an authority or instrumentality acting on behalf of the local government or for the benefit of the local government by itself;

   (II) Through a partnership or joint venture;

   (III) Through a sale and leaseback arrangement;

(c) 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 designed or constructed to provide cable television service, telecommunications service, or advanced service for internal local government purposes in connection with a private provider's offering of cable television service, telecommunications service, or advanced service; or

   (d) Through sale or purchase of resale or wholesale cable television service, telecommunications service, or advanced service for the purpose of providing cable television service, telecommunications service, or advanced service to one or more subscribers.

(3) Nothing in this article shall be construed to limit the authority of a local government to lease to a private provider physical space in or on its property for the placement of equipment or facilities the private
provider uses to provide cable television, telecommunications, or advanced services:

SECTION 2. In Colorado Revised Statutes, repeal part 2 of article 27 of title 29 as follows:

29-27-201. Vote - referendum. (1) Before a local government may engage or offer to engage in providing cable television service, telecommunications service, or advanced service, an election shall be called on whether or not the local government shall provide the proposed cable television service, telecommunications service, or advanced service.

(2) The ballot at an election conducted pursuant to this section shall pose the question as a single subject and shall include a description of the nature of the proposed service, the role that the local government will have in provision of the service, and the intended subscribers of such service. The ballot proposition shall not take effect until submitted to the electors and approved by the majority of those voting on the ballot.

29-27-202. 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 advanced 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 to provide the service or, if the provider has agreed, it has not commenced providing the service within fourteen months of the receipt of the request:

SECTION 3. In Colorado Revised Statutes, repeal part 3 of article 27 of title 29 as follows:

29-27-301. General operating limitations. (1) A local government that provides cable television service, telecommunications service, or advanced service under this article shall comply with all state and federal laws, rules, and regulations governing provision of such service by a private provider; except that nothing herein shall be construed to affect the jurisdiction of the public utilities commission with respect to municipal utilities:

(2)(a) A local government shall not make or grant any undue or unreasonable preference or advantage to itself or to any private provider of cable television services, telecommunications services, or advanced services:

(b) A local government shall apply without discrimination as to itself and to any private provider the local government's ordinances, rules, and policies, including those relating to:

(I) Obligation to serve;
(II) Access to public rights-of-way;
(III) Permitting;
(IV) Performance bonding where an entity other than the local government is performing the work;
(V) Reporting; and
(VI) Quality of service:
29-27-302. Scope of article. (1) Nothing in this article shall be construed to authorize any local government to:

   (a) Provide, directly or indirectly, cable television service, telecommunications service, or advanced service; or
   (b) Purchase, lease, construct, maintain, or operate a facility for the purpose of providing, directly or indirectly, cable television service, telecommunications service, or advanced service.

   (2) Nothing in this article shall be construed to apply to a local government purchasing, leasing, constructing, maintaining, or operating facilities that are designed to provide cable television service, telecommunications service, or advanced service that the local government uses for internal or intergovernmental purposes.

   (3) Nothing in this article shall be construed to apply to the sale or lease by a local government to private providers of excess capacity, if:

   (a) Such excess capacity is insubstantial in relation to the capacity utilized by the local government for its own purposes; and
   (b) The opportunity to purchase and the opportunity to use such excess capacity is made available to any private provider in a nondiscriminatory, nonexclusive, and competitively neutral manner.

   (4) Nothing in this article shall be construed to limit either the authority of the statewide internet portal authority created in section 24-37.7-102, C.R.S., to carry out its mission or to integrate the electronic information delivery systems of local governments into the statewide internet portal as defined in article 37.7 of title 24, C.R.S.

29-27-303. Enforcement and appeal. (1) Before an individual subscriber or a private provider that competes with a local government in the geographic boundaries of the local government may file an action in
district court for violation of this article, that person shall file a written
complaint with the local government. The failure by the local government
to issue a final decision regarding the complaint within forty-five days
shall be treated as an adverse decision for purposes of appeal.

(2) An appeal of an adverse decision from the local government
may be taken to the district court for a de novo proceeding.

29-27-304. Applicability. This article shall apply to cable
television service, telecommunications service, and advanced service and
to the purchase, lease, construction, maintenance, or operation of any
facility for the purpose of providing such service, for which a local
government has not entered into an agreement or otherwise taken any
substantial action prior to March 1, 2005, to provide such service or
purchase, lease, construct, maintain, or operate such facilities.

SECTION 4. In Colorado Revised Statutes, 30-20-603, amend
(1)(a) as follows:

30-20-603. Improvements and funding authorized - how
instituted - conditions. (1) (a) A district may be formed in accordance
with the requirements of this part 6 for the purpose of constructing,
installing, acquiring, or funding, in whole or in part, any public
improvement, so long as the county that forms the district is authorized
to provide such improvement or provide for such funding under the
county's home rule charter, if any, or the laws of this state. Public
improvements or the funding thereof shall not include any facility
identified in section 30-20-101 (8) or (9). No such district shall provide
the same improvement as an existing special district within the territory
of such existing special district unless the existing special district
consents. The improvements authorized by this part 6 may consist,
without limitation, of constructing, grading, paving, pouring, curbing, guttering, lining, or otherwise improving the whole or any part of any street or providing street lighting, drainage facilities, or service improvements, in the unincorporated area of a county or wholly or partly within the boundaries of any municipality within the county if such municipality consents by ordinance to such improvements. If improvements within a municipality are so included in a county improvement district by municipal consent, the county shall have full authority to construct or acquire such improvements, to assess property within such municipality benefited by such improvements, and to enforce and collect such assessments, in the manner provided in this part 6. The improvements authorized by this part 6 may include, without limitation, the construction of sidewalks adjacent to any such streets or maintenance roads adjacent to any such drainage facilities. Prior to the establishment of any improvement district for the purpose of providing street lighting, arrangements, by contract or otherwise, must be established under which the owners of property included within such district shall be responsible for the maintenance and operation of such street lighting improvement. The costs of maintenance and operation of such street lighting improvements shall not be paid from the county general fund. Drainage facilities shall not be provided in any area which is within an existing drainage district organized or created pursuant to law without the approval of such district. The term "service" as used in this paragraph (a) SUBSECTION (1)(a) includes the services provided by a public utility as defined in section 40-1-103, C.R.S., as well as advanced service as defined in section 29-27-102 (1), C.R.S., cable television service as defined in section 29-27-102 (2), C.R.S., telecommunications service as
defined in section 40-15-102 (29), C.R.S., geothermal heat suppliers as
defined in section 40-40-103, C.R.S., and information service as defined
in 47 U.S.C. sec. 153 (20), or any successor section.

SECTION 5. Act subject to petition - effective date. This act
takes effect at 12:01 a.m. on the day following the expiration of the
ninety-day period after final adjournment of the general assembly (August
9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
referendum petition is filed pursuant to section 1 (3) of article V of the
state constitution against this act or an item, section, or part of this act
within such period, then the act, item, section, or part will not take effect
unless approved by the people at the general election to be held in
November 2018 and, in such case, will take effect on the date of the
official declaration of the vote thereon by the governor.