

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 17-0324.02 Gregg Fraser x4325

SENATE BILL 17-042

SENATE SPONSORSHIP

Guzman and Donovan,

HOUSE SPONSORSHIP

(None),

Senate Committees

Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

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

Bill Summary

(Note: 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.

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

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

4 **29-27-101. Legislative declaration.** ~~(1) The general assembly~~
5 ~~hereby finds and declares that it is the policy of this state to ensure that~~
6 ~~cable television service, telecommunications service, and high speed~~
7 ~~internet access, otherwise known as advanced service, are each provided~~
8 ~~within a consistent, comprehensive, and nondiscriminatory federal, state,~~
9 ~~and local government framework.~~

10 ~~(2) The general assembly further finds and declares that:~~

11 ~~(a) There is a need for statewide uniformity in the regulation of all~~
12 ~~public and private entities that provide cable television service,~~
13 ~~telecommunications service, and advanced service.~~

14 ~~(b) Municipal ordinances, rules, and other regulations governing~~
15 ~~the provision of cable television service, telecommunications service, and~~
16 ~~advanced service by a local government impact persons living outside the~~
17 ~~municipality.~~

18 ~~(c) Regulating the provision of cable television service,~~
19 ~~telecommunications service, and advanced service by a local government~~
20 ~~is a matter of statewide concern.~~

21 **29-27-102. Definitions.** As used in this article, unless the context
22 otherwise requires:

1 ~~(1) "Advanced service" means high-speed internet access~~
2 ~~capability in excess of two hundred fifty-six kilobits per second both~~
3 ~~upstream and downstream.~~

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

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

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

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

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

21 **29-27-103. Limitations on providing cable television,**
22 **telecommunications, and advanced services.** ~~(1) Except as provided in~~
23 ~~this article, a local government shall not:~~

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

26 ~~(b) Purchase, lease, construct, maintain, or operate any facility for~~
27 ~~the purpose of providing cable television service, telecommunications~~

1 service, or advanced service to one or more subscribers.

2 (2) For purposes of this article, a local government provides cable
3 television service, telecommunications service, or advanced service if the
4 local government provides the cable television service,
5 telecommunications service, or advanced service to one or more
6 subscribers:

7 (a) Directly;

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

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

12 (II) Through a partnership or joint venture;

13 (III) Through a sale and leaseback arrangement;

14 (c) By contract, including a contract whereby the local
15 government leases, sells capacity in, or grants other similar rights to a
16 private provider to use local governmental facilities designed or
17 constructed to provide cable television service, telecommunications
18 service, or advanced service for internal local government purposes in
19 connection with a private provider's offering of cable television service,
20 telecommunications service, or advanced service; or

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

25 (3) Nothing in this article shall be construed to limit the authority
26 of a local government to lease to a private provider physical space in or
27 on its property for the placement of equipment or facilities the private

1 ~~provider uses to provide cable television, telecommunications, or~~
2 ~~advanced services.~~

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

5 **29-27-201. Vote - referendum.** ~~(1) Before a local government~~
6 ~~may engage or offer to engage in providing cable television service,~~
7 ~~telecommunications service, or advanced service, an election shall be~~
8 ~~called on whether or not the local government shall provide the proposed~~
9 ~~cable television service, telecommunications service, or advanced service.~~

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

16 **29-27-202. Exemption for unserved areas.** ~~(1) A local~~
17 ~~government shall be exempt from the requirements of this part 2 and may~~
18 ~~engage or offer to engage in providing cable television service,~~
19 ~~telecommunications service, or advanced service if:~~

20 ~~(a) No private provider of cable television service,~~
21 ~~telecommunications service, or advanced service provides the service~~
22 ~~anywhere within the boundaries of the local government;~~

23 ~~(b) The governing body of the local government has submitted a~~
24 ~~written request to provide the service to any incumbent provider of cable~~
25 ~~television service, telecommunications service, or advanced service~~
26 ~~within the boundaries of the local government; and~~

27 ~~(c) The incumbent provider has not agreed within sixty days of the~~

1 receipt of a request submitted pursuant to paragraph (b) of this subsection
2 ~~(1) to provide the service or, if the provider has agreed, it has not~~
3 ~~commenced providing the service within fourteen months of the receipt~~
4 ~~of the request.~~

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

7 **29-27-301. General operating limitations.** ~~(1) A local~~
8 ~~government that provides cable television service, telecommunications~~
9 ~~service, or advanced service under this article shall comply with all state~~
10 ~~and federal laws, rules, and regulations governing provision of such~~
11 ~~service by a private provider; except that nothing herein shall be~~
12 ~~construed to affect the jurisdiction of the public utilities commission with~~
13 ~~respect to municipal utilities.~~

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

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

- 21 ~~(I) Obligation to serve;~~
- 22 ~~(II) Access to public rights-of-way;~~
- 23 ~~(III) Permitting;~~
- 24 ~~(IV) Performance bonding where an entity other than the local~~
25 ~~government is performing the work;~~
- 26 ~~(V) Reporting; and~~
- 27 ~~(VI) Quality of service.~~

1 **29-27-302. Scope of article.** ~~(1) Nothing in this article shall be~~
2 ~~construed to authorize any local government to:~~

3 ~~(a) Provide, directly or indirectly, cable television service,~~
4 ~~telecommunications service, or advanced service; or~~

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

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

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

15 ~~(a) Such excess capacity is insubstantial in relation to the capacity~~
16 ~~utilized by the local government for its own purposes; and~~

17 ~~(b) The opportunity to purchase and the opportunity to use such~~
18 ~~excess capacity is made available to any private provider in a~~
19 ~~nondiscriminatory, nonexclusive, and competitively neutral manner.~~

20 ~~(4) Nothing in this article shall be construed to limit either the~~
21 ~~authority of the statewide internet portal authority created in section~~
22 ~~24-37.7-102, C.R.S., to carry out its mission or to integrate the electronic~~
23 ~~information delivery systems of local governments into the statewide~~
24 ~~internet portal as defined in article 37.7 of title 24, C.R.S.~~

25 **29-27-303. Enforcement and appeal.** ~~(1) Before an individual~~
26 ~~subscriber or a private provider that competes with a local government in~~
27 ~~the geographic boundaries of the local government may file an action in~~

1 ~~district court for violation of this article, that person shall file a written~~
2 ~~complaint with the local government. The failure by the local government~~
3 ~~to issue a final decision regarding the complaint within forty-five days~~
4 ~~shall be treated as an adverse decision for purposes of appeal.~~

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

7 **29-27-304. Applicability.** ~~This article shall apply to cable~~
8 ~~television service, telecommunications service, and advanced service and~~
9 ~~to the purchase, lease, construction, maintenance, or operation of any~~
10 ~~facility for the purpose of providing such service, for which a local~~
11 ~~government has not entered into an agreement or otherwise taken any~~
12 ~~substantial action prior to March 1, 2005, to provide such service or~~
13 ~~purchase, lease, construct, maintain, or operate such facilities.~~

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

16 **30-20-603. Improvements and funding authorized - how**
17 **instituted - conditions.** (1) (a) A district may be formed in accordance
18 with the requirements of this part 6 for the purpose of constructing,
19 installing, acquiring, or funding, in whole or in part, any public
20 improvement, so long as the county that forms the district is authorized
21 to provide such improvement or provide for such funding under the
22 county's home rule charter, if any, or the laws of this state. Public
23 improvements or the funding thereof shall not include any facility
24 identified in section 30-20-101 (8) or (9). No such district shall provide
25 the same improvement as an existing special district within the territory
26 of such existing special district unless the existing special district
27 consents. The improvements authorized by this part 6 may consist,

1 without limitation, of constructing, grading, paving, pouring, curbing,
2 guttering, lining, or otherwise improving the whole or any part of any
3 street or providing street lighting, drainage facilities, or service
4 improvements, in the unincorporated area of a county or wholly or partly
5 within the boundaries of any municipality within the county if such
6 municipality consents by ordinance to such improvements. If
7 improvements within a municipality are so included in a county
8 improvement district by municipal consent, the county shall have full
9 authority to construct or acquire such improvements, to assess property
10 within such municipality benefited by such improvements, and to enforce
11 and collect such assessments, in the manner provided in this part 6. The
12 improvements authorized by this part 6 may include, without limitation,
13 the construction of sidewalks adjacent to any such streets or maintenance
14 roads adjacent to any such drainage facilities. Prior to the establishment
15 of any improvement district for the purpose of providing street lighting,
16 arrangements, by contract or otherwise, must be established under which
17 the owners of property included within such district shall be responsible
18 for the maintenance and operation of such street lighting improvement.
19 The costs of maintenance and operation of such street lighting
20 improvements shall not be paid from the county general fund. Drainage
21 facilities shall not be provided in any area which is within an existing
22 drainage district organized or created pursuant to law without the
23 approval of such district. The term "service" as used in this paragraph (a)
24 SUBSECTION (1)(a) includes the services provided by a public utility as
25 defined in section 40-1-103, C.R.S., ~~as well as advanced service as~~
26 ~~defined in section 29-27-102 (1), C.R.S., cable television service as~~
27 ~~defined in section 29-27-102 (2), C.R.S., telecommunications service as~~

1 defined in section 40-15-102 (29), ~~C.R.S.~~, geothermal heat suppliers as
2 defined in section 40-40-103, ~~C.R.S.~~, and information service as defined
3 in 47 U.S.C. sec. 153 (20), or any successor section.

4 **SECTION 5. Act subject to petition - effective date.** This act
5 takes effect at 12:01 a.m. on the day following the expiration of the
6 ninety-day period after final adjournment of the general assembly (August
7 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
8 referendum petition is filed pursuant to section 1 (3) of article V of the
9 state constitution against this act or an item, section, or part of this act
10 within such period, then the act, item, section, or part will not take effect
11 unless approved by the people at the general election to be held in
12 November 2018 and, in such case, will take effect on the date of the
13 official declaration of the vote thereon by the governor.