

HCS HB 2078 -- COMPETITIVE MUNICIPAL SERVICES

SPONSOR: Fraker

COMMITTEE ACTION: Voted "Do Pass with Amendments" by the Standing Committee on Utility Infrastructure by a vote of 16 to 2. Voted "Do Pass" by the Select Committee on Utilities by a vote of 9 to 1.

This bill prohibits a political subdivision from offering to provide competitive services, as defined in the bill, unless the municipality offered the services prior to August 28, 2016, the services are not being offered to 50% of the addresses by any combination of service providers within the municipality, the fiscal impact to the municipality of offering the services is less than \$1,000,000 over the initial five-year period the service will be offered, single actual or potential business or a city, town, or village, on behalf of such business, makes a request for a communications 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, or the offering of the services is approved by the voters.

The substitute allows local governments to contract for the use of dark fiber with outside providers without any vote and to provide specified fast Internet speeds to at least 50% of the locations within the political subdivision without a vote. Internet broadband services with speeds less than the minimum under FCC 14-190 are exempt.

Before a political subdivision may put the issue of offering competitive services on the ballot, the political subdivision must complete a feasibility study concerning the offering of the services, release the results of the study to the public at least 90 days prior to the vote, and determine the total estimated cost of the project for the municipality over the following five-year period. The substitute specifies that only one vote is necessary to require both authorization and fiscal authorization for financing. Ballot language for different types of financing arrangements is specified in the substitute.

If the political subdivision offers a competitive service and a private business also offers the service:

(1) The political subdivision cannot use revenue generated from other services offered by the municipality to provide a financial subsidy to support the service unless the voters approve a specific revenue stream for the service. Assets used for fair market value are not considered financial subsidies and loans from a political subdivision requiring principal and interest repayments are allowed

subject to conditions specified in the substitute;

(2) The municipality cannot use assets or funds of the municipality to support the service unless the voters approve a specific revenue stream for the service;

(3) The political subdivision may provide infrastructure owned by the municipality for the purpose of providing a competitive service if the municipal subdivision offering the service enters into an agreement with the municipality to pay the fair market value of the infrastructure, unless the voters approve the use of the infrastructure without payment; and

(4) The substitute requires cities to offer services equally to different providers and prohibits local governments from receiving preferential treatment in the public right of way or in zoning laws. Local governments are prohibited from offering exclusive service arrangements that prohibit other service providers from competing.

If a municipality violates any of these requirements, a suit may be filed against the municipality, and if a court of competent jurisdiction finds that the political subdivision has committed a violation, certain court orders are authorized. If a court finds that multiple violations have occurred, then additional court orders are authorized.

This bill is similar to HB 437 (2015).

**PROPOSERS:** Supporters say that the bill will ensure that competition within local government boundaries is uniform and fair. A voter should be required to provide subsidies to a particular service provider, however, municipalities will be allowed to retain existing services and provide free service without any vote requirement. Several local governments have incurred debt and lost taxpayer money by investing in infrastructure that ultimately was not competitive and went bankrupt.

Testifying for the bill were Representative Fraker; Centurylink; Missouri Telecommunications Industry Association; and Southwestern Bell Telephone Company D/B/A At&T Missouri And Its Affiliates.

**OPPOSERS:** Those who oppose the bill say that broadband infrastructure is important for many local governments and that voting requirements could severely impede economic development. Most local governments do not use tax dollars to subsidize particular providers and, instead, use bond funding. There is great demand to expand high speed Internet services in some cases, and local governments should have the authority to meet that demand

or contract with providers to meet the needs of modern businesses.

Testifying against the bill were Missouri Association Of Municipal Utilities; Google, Inc.; Josh Cotter; David Thomas; Steve Lawver, City Of Carl Junction; Sikeston Board Of Municipal Utilities; Darrell Dunlap, City Of Fulton; Kyle Gibbs, Marshall Municipal Utilities; Sandy Hisle, Tower Realty; Rodney Bourne, Rolla Municipal Utilities; City Utilities Of Springfield, Missouri; John "Chuck" Bryant; Missouri Municipal League; and Ron Grennan.