

HOUSE BILL NO. 2078

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FRAKER.

5554H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 71, RSMo, by adding thereto one new section relating to the authority of municipalities 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,
2 to be known as section 71.284, to read as follows:

71.284. 1. For purposes of this section, the following terms mean:

- 2 **(1) "Communication service", a service that transports information electronically**
3 **including, but not limited to, internet protocol enabled services;**
4 **(2) "Competitive service" or "service", a wholesale or retail offering of a specific**
5 **communication service that is provided by one or more service providers within the**
6 **boundaries of the city, town, or village. "Competitive service" shall not mean:**
7 **(a) Any service that a city, town, or village is prohibited from offering by law;**
8 **(b) The provision of free wireless communication services to the public; or**
9 **(c) Any communication service that a city, town, or village uses for its own internal**
10 **purposes;**
11 **(3) "Fiscal impact", the total estimated cost of providing the proposed service,**
12 **including the annual operating cost; the fair market value of all resources provided by the**
13 **city, town, or village; interest; the cost of physical facilities; and compensation of staff;**
14 **(4) "Service provider", a wireless service provider, broadband or other internet**
15 **protocol enabled service provider, video service provider, telecommunications company,**
16 **or other communications-related service provider;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 **(5) "Wireless service provider", a provider of commercial mobile service under**
18 **Section 332(d) of the Federal Telecommunications Act of 1996 (47 U.S.C. Section 151, et**
19 **seq).**

20 **2. On or after August 28, 2016, no city, town, or village may offer to provide a**
21 **competitive service unless:**

22 **(1) The city, town, or village offered such competitive service for purchase before**
23 **August 28, 2016. Such a city, town, or village may continue to provide such competitive**
24 **service and may continue to use necessary infrastructure to provide such service. It may**
25 **upgrade, improve, or enhance such infrastructure to continue to provide such service to**
26 **its customers and prospective customers, including any modification or expansion to**
27 **provide additional features or quality through products or technology not previously**
28 **utilized. However, such city, town, or village shall not use such infrastructure to offer a**
29 **different communication service without otherwise complying with the requirements of this**
30 **section;**

31 **(2) The competitive service is not being offered to fifty percent of the addresses by**
32 **any combination of service providers within the boundaries of such city, town, or village;**

33 **(3) The fiscal impact to the city, town, or village of providing such competitive**
34 **service is less than five hundred thousand dollars over the initial five-year period such**
35 **service will be offered, with such figure adjusted annually according to the applicable**
36 **consumer price index utilized by the department of economic development;**

37 **(4) A single actual or potential business or a city, town, or village, on behalf of such**
38 **business, makes a request for a communications service of a specific speed in excess of one**
39 **gigabit per second download speed at a specific location that all service providers are**
40 **unable or unwilling to provide. If such is the case, such city, town, or village may offer**
41 **such service to such single business at a cost not below market price; or**

42 **(5) Such competitive service offering is approved by a majority of the voters of the**
43 **city, town, or village voting thereon, as provided in this section.**

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

51 **4. The question shall be submitted in substantially the following form:**

52 **"Shall (name of city, town, or village) offer (name and description**
53 **of competitive service) in competition with current private business at an estimated cost**
54 **of (estimated cost of the project determined under subsection 3 of this section) over**
55 **the initial five-year period of operation?"**

56 **5. In the event that the question proposed under this section fails to receive a**
57 **majority vote, the question shall not be resubmitted to the voters for a period of at least two**
58 **years.**

59 **6. If a city, town, or village offers a competitive service where a private business**
60 **also offers such service:**

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

71 **(2) Except as provided under subdivisions (3) and (4) of this subsection, no assets**
72 **or funds of the city, town, or village shall support such service, unless the voters of the city,**
73 **town, or village approve a specific usage or revenue stream for the service;**

74 **(3) If a city, town, or village wishes to provide infrastructure owned by the city,**
75 **town, village, or any subdivision thereof, for the purpose of providing a competitive service**
76 **under this section, the subdivision of the city, town, or village offering such competitive**
77 **service shall enter into an agreement to pay the city, town, village, or subdivision thereof,**
78 **the fair market value of such infrastructure or portion thereof used in the competitive**
79 **service, unless the voters of the city, town, or village approve the use of such infrastructure**
80 **without such payment. Further, notwithstanding subsection 2 of this section to the**
81 **contrary, if the city, town, or village provides bandwidth to its subdivision, it shall also**
82 **offer such bandwidth to any service provider under the same terms and conditions; and**

83 **(4) A city, town, or village may issue a loan to the subdivision of the city, town, or**
84 **village wishing to provide competitive service, provided that:**

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

86 **(b) The total of all loans does not exceed five hundred thousand dollars; and**

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

91 7. If any resident or representative of a private business providing a competitive
92 service, within the boundaries of such city, town, or village, has belief or knowledge that
93 such city, town, or village has violated this section, he or she may file suit in the circuit
94 court of the county against the city, town, or village, or any such person may file an
95 affidavit with the attorney general stating such belief or knowledge. Upon receiving such
96 affidavit or on his or her own motion, the attorney general shall investigate the subdivision
97 of the city, town, or village offering or seeking to offer the competitive service and, if the
98 attorney general believes that the city, town, or village has violated this section, shall file
99 suit against the city, town, or village on behalf of the state.

100 8. If the court finds that the city, town, or village has violated subsection 2 of this
101 section, the circuit court of the county shall order the city, town, or village to cease
102 providing the competitive service until such time that the city, town, or village obtains voter
103 approval under subsections 3 and 4 of this section. If the court finds that the city, town,
104 or village has violated subsection 6 of this section, the circuit court of the county shall order
105 the city, town, or village to:

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

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

110 9. If the court finds that the city, town, or village has violated this section multiple
111 times, the court may order:

112 (1) An audit performed by a third party of the municipal service in question. The
113 court may order the city, town, or village to refund and remedy any audit findings; and

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

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