

Senate Bill 445

By: Senators Balfour of the 9th, Adelman of the 42nd, Tanksley of the 32nd, Zamarripa of the 36th and Tate of the 38th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 90 of Title 36, the "Local Government Cable Fair Competition Act of
2 1999," so as to define certain terms; to provide for the ratification of an authorization for a
3 county or municipal corporation to provide cable service or information services; to provide
4 for a referendum; to provide for the maintenance of certain records; to prohibit the cross-
5 subsidization of the cost of providing such services; to provide for the filing of a report
6 relating to finances in the county probate court; to repeal conflicting laws; and for other
7 purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 style="text-align:center">**SECTION 1.**

10 Chapter 90 of Title 36, the "Local Government Cable Fair Competition Act of 1999," is
11 amended by striking in its entirety Code Section 36-90-2, relating to definitions, and
12 inserting in lieu thereof the following:

13 "36-90-2.

14 As used in this chapter, the term:

15 (1) 'Authorization' means the official act of conferring a franchise to provide cable
16 television services to a public provider.

17 (2) 'Cable service' means:

18 (A) The one-way transmission to subscribers of (i) video programming or (ii) other
19 programming service; and

20 (B) Subscriber interaction, if any, which is required for the selection or use of such
21 video programming or other programming service.

22 ~~(2)~~(3) 'Capital costs' means all costs of providing a service which are capitalized in
23 accordance with generally accepted governmental accounting principles.

24 ~~(3)~~(4) 'Cross-subsidization' or 'cross-subsidize' means the payment of any item of direct
25 or indirect costs of providing a service which is ~~not accounted for in the full cost~~

1 ~~accounting of providing the service~~ is paid from funds that are not recovered by the
 2 public provider in its revenue from cable services.

3 ~~(4)~~(5) 'Direct costs' means those expenses of a public provider which are directly
 4 attributable to the provision of a service that would be eliminated if the provision of said
 5 service were discontinued.

6 ~~(5)~~(6) 'FCC' means the Federal Communications Commission.

7 ~~(6)~~(7) 'Franchising authority' means any governmental entity which is empowered by law
 8 to grant a franchise and which is also a public provider.

9 ~~(7)~~(8) 'Full-cost accounting' means the accounting for all costs incurred by a public
 10 provider in providing a service, including all direct and indirect costs, as required by this
 11 chapter. In preparation of such accounting, a public provider shall utilize cost accounting
 12 standards promulgated by the federal Costs Accounting Standards Board of the federal
 13 Office of Management and Budget so as to assure that all direct and indirect costs are
 14 included.

15 ~~(8)~~(9) 'Generally accepted governmental accounting principles' means the accounting
 16 standards promulgated from time to time by the Governmental Accounting Standards
 17 Board.

18 ~~(9)~~(10) 'Indirect costs' means any costs identified with two or more services or other
 19 public provider functions and which are not directly identified with a single service.
 20 Indirect costs may include, but are not limited to, administration, accounting, personnel,
 21 purchasing, legal, and other staff or departmental support. Indirect costs shall be allocated
 22 to two or more services in proportion to the relative burden each respective service places
 23 upon the cost category.

24 (11) 'Information service' means the offering of a capability for generating, acquiring,
 25 storing, transforming, processing, retrieving, utilizing, or making available information
 26 via telecommunications.

27 ~~(10)~~(12) 'Private provider' means any person, firm, partnership, corporation, or
 28 association offering service, other than a public provider.

29 ~~(11)~~(13) 'Public provider' means any county, municipal corporation, or other political
 30 subdivision of the state which provides service; any authority or instrumentality acting
 31 on behalf of or for the benefit of any county, municipal corporation, or other political
 32 subdivision of the state which provides service; and any authority or instrumentality
 33 created by the state which provides service.

34 ~~(12)~~(14) 'Service' means cable service or information service provided by a private
 35 provider or a public provider.

1 ~~(13)~~(15) 'Subscriber' means any private person lawfully receiving any cable service
 2 provided by a private or public provider by means of or in connection with a cable
 3 system."

4 SECTION 2.

5 Said chapter is further amended by striking in its entirety Code Section 36-90-3, relating to
 6 a requirement that public providers conduct a cost benefit analysis and hold a public hearing
 7 to authorize the delivery of such services, and inserting in lieu thereof the following:

8 "36-90-3.

9 (a) No public provider shall provide cable service or information services without
 10 authorization.

11 (b) Prior to the authorization to deliver service, a public provider must prepare reasonable
 12 projections of at least a three-year cost-benefit analysis which identifies and discloses the
 13 total projected direct costs and indirect costs of and revenues to be derived from providing
 14 the service. Such costs shall be determined by using generally accepted governmental
 15 accounting principles.

16 ~~(b)~~(c) Prior to the authorization to deliver service, a public provider shall conduct at least
 17 one public hearing. A notice of the time, place, and date of the hearing shall be published
 18 in a newspaper of general circulation within the jurisdiction of the public provider once a
 19 week for the two weeks preceding the week in which the hearing is to be held.

20 (d) No authorization granted by a county or municipal corporation shall be valid unless
 21 ratified by a majority of the electors of such county or municipal corporation voting in a
 22 referendum. Notwithstanding the provisions of Code Section 21-2-540 to the contrary, such
 23 referendum shall be held not less than 30 nor more than 60 days after the public hearing
 24 held pursuant to subsection (b) of this Code section and shall otherwise be governed by the
 25 provisions of Chapter 2 of Title 21, the 'Georgia Election Code.' If the authorization is not
 26 ratified, a period of two years must elapse before another authorization may be attempted."

27 SECTION 3.

28 Said chapter is further amended by striking in its entirety Code Section 36-90-4, relating to
 29 accounting methods regarding the cost of providing services and the prohibition against
 30 cross-subsidization, and inserting in lieu thereof the following:

31 "36-90-4.

32 ~~(a) On and after January 1, 2000, each~~ Each public provider shall prepare and maintain
 33 records each year in accordance with generally accepted governmental accounting
 34 principles which record the full cost accounting of providing service. Such records shall
 35 show the amount and source of capital, including working capital, utilized in providing

1 service. Such records shall provide a projected statement of revenues and expenses for the
 2 following year and shall include a written cost study calculating the direct and indirect
 3 costs as required by Code Section 36-90-6.

4 (b) No public provider shall cross-subsidize the costs of providing service with the use of
 5 tax revenues or collections, income from any other public utility or service, or any other
 6 source; provided, however, that nothing Nothing contained in this chapter shall preclude
 7 a public provider utilizing capital from any lawful source, including the public provider's
 8 general funds, provided that the reasonable cost of such capital is accounted for as a cost
 9 of providing the service. ~~No public provider shall cross-subsidize the costs of providing~~
 10 ~~service.~~

11 (c) A public provider shall impute into its indirect costs of providing service an amount
 12 for franchise fees, regulatory fees, occupation taxes, pole attachment fees, and ad valorem
 13 property taxes, calculated in the same manner as such amounts are calculated for any
 14 private provider paying such costs to the public provider in the same service area."

15 SECTION 4.

16 Said chapter is further amended by striking in its entirety Code Section 36-90-5, relating to
 17 franchise agreements, and inserting in lieu thereof the following:

18 "36-90-5.

19 (a) In providing service pursuant to an authorization, a public provider shall not employ
 20 terms more favorable or less burdensome than those imposed by the public provider upon
 21 any private provider providing the same service within its jurisdiction with respect to
 22 franchise terms and conditions, conditions of access to public property, and pole
 23 attachment.

24 (b) A franchising authority shall not impose or enforce any local regulation on any private
 25 provider which is not also made applicable to any competing public provider, nor shall a
 26 franchising authority discriminate between a public provider and private provider.

27 (c) A public provider may not unreasonably withhold a request by a private provider to
 28 transfer, modify, or renew its existing franchise in accordance with the terms of the
 29 franchise and in accordance with the provisions of 47 U.S.C. Section 537, 47 U.S.C.
 30 Section 545, and 47 U.S.C. Section 546.

31 (d) In any action by a franchising authority to enforce any term or condition of a franchise
 32 agreement, a violation of this Code section by the public provider with respect to such
 33 respective term or condition shall be a defense in such action.

34 (e) Nothing contained in this Code section shall be interpreted to limit the authority of the
 35 public provider, as the franchising authority, to collect franchise fees, control and regulate

1 its streets and public ways, or enforce its powers to provide for the public health, safety,
2 and welfare."

3 **SECTION 5.**

4 Said chapter is further amended by inserting at the end thereof the following:

5 "36-90-9.

6 Within 90 days from the close of a public provider's fiscal year, each public provider shall
7 file with the county probate court copies of the documents that have been prepared and
8 maintained pursuant to Code Sections 36-90-4 and 36-90-6, verified for authenticity, and
9 in a form to be prescribed by the probate court."

10 **SECTION 6.**

11 All laws and parts of laws in conflict with this Act are repealed.