

SENATE BILL No. 428

By Committee on Assessment and Taxation

3-6

1 AN ACT concerning municipalities; relating to franchises; amending
2 K.S.A. 12-2010 and K.S.A. 2013 Supp. 12-2001 and repealing the
3 existing sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2013 Supp. 12-2001 is hereby amended to read as
7 follows: 12-2001. (a) The governing body of any city may permit any
8 person, firm or corporation to:

9 (1) Manufacture, sell and furnish artificial or natural gas light and
10 heat; electric light, water, power or heat; or steam heat to the inhabitants;

11 (2) build street railways; to be operated over and along or under the
12 streets and public grounds of such city;

13 (3) lay pipes, conduits, cables and all appliances necessary for the
14 construction, operation of gas and electric-light or steam-heat plants;

15 (4) lay pipes, conduits, cables and all appliances necessary for the
16 construction and operation of electric railways or bus companies;

17 (5) lay pipes for the operation of a water plant for the distribution or
18 furnishing of water over, under and along the streets and alleys of such
19 city; or

20 (6) use the streets in the carrying on of any business which is not
21 prohibited by law.

22 (b) If the governing body of a city permits any activity specified in
23 subsection (a), the granting of permission to engage in the activity shall be
24 subject to the following:

25 (1) All contracts granting or giving any such original franchise, right
26 or privilege, or extending or renewing or amending any existing grant,
27 right, privilege or franchise, to engage in such an activity shall be made by
28 ordinance, and not otherwise.

29 (2) No contract, grant, right, privilege or franchise to engage in such
30 an activity, now existing or hereafter granted, shall be extended for any
31 longer period of time than 20 years from the date of such grant or
32 extension.

33 (3) No person, firm or corporation shall be granted any exclusive
34 franchise, right or privilege whatever.

35 (4) The governing body of any city, at all times during the existence
36 of any contract, grant, privilege or franchise to engage in such an activity,

1 shall have the right by ordinance to fix a reasonable schedule of maximum
2 rates to be charged such city and the inhabitants thereof for gas, light and
3 heat, electric light, power or heat, steam heat or water; the rates of fare on
4 any street railway or bus company; or the rates charged any such city, or
5 the inhabitants thereof, by any person, firm or corporation operating under
6 any other franchise under this act. The governing body at no time shall fix
7 a rate which prohibits such person, firm or corporation from earning a
8 reasonable rate upon the fair value of the property used and useful in such
9 public service. In fixing and establishing such fair value, the value of such
10 franchise, contract and privilege given and granted by the city to such
11 person, firm or corporation shall not be taken into consideration in
12 ascertaining the reasonableness of the rates to be charged to the inhabitants
13 of such city.

14 (5) No such grant, right, privilege or franchise shall be made to any
15 person, firm, corporation or association unless it provides for adequate
16 compensation or consideration therefor to be paid to such city, and
17 regardless of whether or not other or additional compensation is provided
18 for such grantee shall pay such fixed charge as may be prescribed in the
19 franchise ordinance. Such fixed charge may consist of a percentage, *not to*
20 *exceed 5%*, of the gross receipts derived from the service permitted by the
21 grant, right, privilege or franchise from consumers or recipients of such
22 service located within the corporate boundaries of such city, and, in case of
23 public utilities or common carriers situated and operated wholly or
24 principally within such city; or principally operated for the benefit of such
25 city or its people, from consumers or recipients located in territory
26 immediately adjoining such city and not within the boundaries of any other
27 incorporated city; and in such case, such city shall make and report to the
28 governing body all such gross receipts once each month, or at such other
29 intervals as stipulated in the franchise ordinance and pay into the treasury
30 the amount due such city at the time the report is made. The governing
31 body shall also have access to and the right to examine, at all reasonable
32 times, all books, receipts, files, records and documents of any such grantee
33 necessary to verify the correctness of such statement and to correct the
34 same, if found to be erroneous. If such statement of gross receipts is
35 incorrect, then such payment shall be made upon such corrected statement.

36 On and after the effective date of the act, any provision for
37 compensation or consideration, included in a franchise granted pursuant to
38 this section which is established on the basis of compensation or
39 consideration paid by the utility under another franchise, is hereby
40 declared to be contrary to the public policy of this state and shall be void
41 and unenforceable. Any such provision, included in a franchise granted
42 pursuant to this section and in force on the effective date of this act which
43 requires payments to the city by a utility to increase by virtue of the

1 compensation or consideration required to be paid under a franchise
2 granted by another city to the utility's predecessor in interest, is hereby
3 declared to be contrary to the public policy of this state and shall be void
4 and unenforceable.

5 (6) No such right, privilege or franchise shall be effective until the
6 ordinance granting the same has been adopted as provided by law.

7 All expense of publishing any ordinance adopted pursuant to this
8 section shall be paid by the proposed grantee.

9 (7) All contracts, grants, rights, privileges or franchises for the use of
10 the streets and alleys of such city, not herein mentioned, shall be governed
11 by all the provisions of this act, and all amendments, extensions or
12 enlargements of any contract, right, privilege or franchise previously
13 granted to any person, firm or corporation for the use of the streets and
14 alleys of such city shall be subject to all the conditions provided for in this
15 act for the making of original grants and franchises. The provisions of this
16 section shall not apply to railway companies for the purpose of reaching
17 and affording railway connections and switch privileges to the owners or
18 users of any industrial plants, or for the purpose of reaching and affording
19 railway connections and switch privileges to any agency or institution of
20 the state of Kansas.

21 (c) As used in this act:

22 (1) "Access line" shall mean and be limited to retail billed and
23 collected residential lines; business lines; ISDN lines; PBX trunks and
24 simulated exchange access lines provided by a central office based
25 switching arrangement where all stations served by such simulated
26 exchange access lines are used by a single customer of the provider of
27 such arrangement. Access line may not be construed to include interoffice
28 transport or other transmission media that do not terminate at an end user
29 customer's premises, or to permit duplicate or multiple assessment of
30 access line rates on the provision of a single service or on the multiple
31 communications paths derived from a billed and collected access line.
32 Access line shall not include the following: Wireless telecommunications
33 services, the sale or lease of unbundled loop facilities, special access
34 services, lines providing only data services without voice services
35 processed by a telecommunications local exchange service provider or
36 private line service arrangements.

37 (2) "Access line count" means the number of access lines serving
38 consumers within the corporate boundaries of the city on the last day of
39 each month.

40 (3) "Access line fee" means a fee determined by a city, up to a
41 maximum as set out in this act, and amendments thereto, to be used by a
42 telecommunications local exchange service provider in calculating the
43 amount of access line remittance.

1 (4) "Access line remittance" means the amount to be paid by a
2 telecommunications local exchange service provider to a city, the total of
3 which is calculated by multiplying the access line fee, as determined in the
4 city, by the number of access lines served by that telecommunications local
5 exchange service provider within that city for each month in that calendar
6 quarter.

7 (5) "Commission" means the state corporation commission.

8 (6) "Gross receipts" means only those receipts collected from within
9 the corporate boundaries of the city enacting the franchise and which are
10 derived from the following: (A) Recurring local exchange service for
11 business and residence which includes basic exchange service, touch tone,
12 optional calling features and measured local calls; (B) recurring local
13 exchange access line services for pay phone lines provided by a
14 telecommunications local exchange service provider to all pay phone
15 service providers; (C) local directory assistance revenue; (D) line status
16 verification/busy interrupt revenue; (E) local operator assistance revenue;
17 and (F) nonrecurring local exchange service revenue which shall include
18 customer service for installation of lines, reconnection of service and
19 charge for duplicate bills. All other revenues, including, but not limited to,
20 revenues from extended area service, the sale or lease of unbundled
21 network elements, nonregulated services, carrier and end user access, long
22 distance, wireless telecommunications services, lines providing only data
23 service without voice services processed by a telecommunications local
24 exchange service provider, private line service arrangements, internet,
25 broadband and all other services not wholly local in nature are excluded
26 from gross receipts. Gross receipts shall be reduced by bad debt expenses.
27 Uncollectible and late charges shall not be included within gross receipts.
28 If a telecommunications local exchange service provider offers additional
29 services of a wholly local nature which if in existence on or before July 1,
30 2002, would have been included with the definition of gross receipts, such
31 services shall be included from the date of the offering of such services in
32 the city.

33 (7) "Local exchange service" means local switched
34 telecommunications service within any local exchange service area
35 approved by the state corporation commission, regardless of the medium
36 by which the local telecommunications service is provided. The term local
37 exchange service shall not include wireless communication services.

38 (8) "Telecommunications local exchange service provider" means a
39 local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187, and
40 amendments thereto, and a telecommunications carrier as defined in
41 subsection (m) of K.S.A. 66-1,187, and amendments thereto, which does,
42 or in good faith intends to, provide local exchange service. The term
43 telecommunications local exchange service provider does not include an

1 interexchange carrier that does not provide local exchange service,
2 competitive access provider that does not provide local exchange service
3 or any wireless telecommunications local exchange service provider.

4 (9) "Telecommunications services" means providing the means of
5 transmission, between or among points specified by the user, of
6 information of the user's choosing, without change in the form or content
7 of the information as sent and received.

8 (d) A city may require a telecommunications local exchange service
9 provider which intends to provide local exchange service in that city, to
10 enter into a valid contract franchise ordinance enacted pursuant to this act.
11 Compensation for the contract franchise ordinance shall be established
12 pursuant to subsection (j). A contract franchise complying with the
13 provisions of this act shall be deemed reasonable and shall be adopted by
14 the governing body of a city absent a compelling public interest
15 necessitated by public health, safety and welfare. A contract franchise must
16 be competitively neutral and may not be unreasonable or discriminatory.
17 No telecommunications contract franchise ordinance shall be denied or
18 revoked without reasonable notice and an opportunity for a public hearing
19 before the city governing body. A city governing body's denial or
20 revocation of a contract franchise ordinance may be appealed to a district
21 court.

22 (e) If the governing body of a city requires a contract franchise as
23 specified in subsection (d), the contract franchise shall be subject to the
24 following:

25 (1) All contracts granting or giving any such original contract
26 franchise, right or privilege or extending, renewing or amending any
27 existing grant, right, privilege or franchise, to engage in such an activity
28 shall be made by ordinance and not otherwise;

29 (2) no contract, grant, right, privilege or contract franchise to engage
30 in such an activity, now existing or hereafter granted, shall be extended for
31 any longer period of time than 20 years from the date of such grant or
32 extension;

33 (3) no telecommunications local exchange service provider shall be
34 granted any exclusive contract franchise, right or privilege whatever;

35 (4) no such right, privilege or contract franchise shall be effective
36 until the ordinance granting the same has been adopted as provided by law.
37 All expense of publishing any ordinance adopted pursuant to this section
38 shall be paid by the proposed grantee; and

39 (5) no city shall have the authority or jurisdiction to regulate
40 telecommunications local exchange service providers based upon the
41 content, nature or type of telecommunications service or signal to be
42 provided or the quality of service provided to customers.

43 (f) A franchisee shall make and report to the governing body once

1 each quarter, or at such other intervals as stipulated in the contract
2 franchise ordinance, the compensation collected and pay into the treasury
3 the amount due such city at the time the report is made.

4 (g) A city may assess a one-time application fee to recover its costs
5 associated with the review and approval of a contract franchise provided
6 that such application fee reimburses the city for its reasonable, actual and
7 verifiable costs of reviewing and approving the contract franchise. An
8 application fee must be competitively neutral and may not be unreasonable
9 or discriminatory.

10 (h) Within 90 days of the receipt of a completed application for a
11 telecommunications contract franchise, a city shall process and submit the
12 application and contract franchise to the city's governing body, and the
13 governing body shall take a final vote concerning such contract franchise
14 unless the telecommunications local exchange service provider and city
15 agree otherwise.

16 (i) In considering the adoption and passage of a telecommunications
17 contract franchise ordinance, no city shall have the authority or jurisdiction
18 to regulate telecommunications local exchange service providers based
19 upon the content, nature or type of telecommunications service or signal to
20 be provided, or the quality of service provided to customers.

21 (j) The governing body of a city may require telecommunications
22 local exchange service providers to collect and remit to each such city an
23 access line fee of up to a maximum of \$2.00 per month per access line or a
24 fee on gross receipts as described in subsection (j)(2). The access line fee
25 shall be a maximum of \$2.25 per month per access line in 2006; a
26 maximum of \$2.50 in 2009; a maximum of \$2.75 in 2012 and thereafter.

27 (1) To determine an access line remittance fee, the
28 telecommunications local exchange service provider shall calculate and
29 remit an amount equal to the access line fee established by a city
30 multiplied by the access line count. Such amount shall be due not later
31 than 45 days after the end of the remittal period. The city shall have the
32 right to examine, upon written notice to the telecommunications local
33 exchange service provider, no more than once per calendar year, those
34 access line count records necessary to verify the correctness of the access
35 line count. If the access line count is determined to be erroneous, then the
36 telecommunications local exchange service provider shall revise the access
37 line fees accordingly and payment shall be made upon such corrected
38 access line count. If the city and the telecommunications local exchange
39 service provider cannot agree on the access line count, or are in dispute
40 concerning the amounts due under this section for the payment of access
41 line fees, either party may seek appropriate relief in a court of competent
42 jurisdiction, and that court may impose all appropriate remedies, including
43 monetary and injunctive relief and reasonable costs and attorney fees. All

1 claims authorized in this section must be brought within three years of the
2 date on which the disputed payment was due. The access line fee imposed
3 under this section must be assessed in a competitively neutral manner, may
4 not unduly impair competition, must be nondiscriminatory and must
5 comply with state and federal law.

6 (2) As an alternative to the access line fee specified in subsection (j)
7 (1), the governing body of a city may require telecommunications local
8 exchange service providers to collect and remit to each such city a fee of
9 up to a maximum of 5% of gross receipts as defined in this act. The
10 telecommunications local exchange service provider shall calculate the
11 gross receipts and multiply such receipts by the fee, up to a maximum of
12 5%, established by the city. The telecommunications local exchange
13 service provider shall remit such fee to the city no more frequently than
14 each quarter unless the telecommunications local exchange service
15 provider agrees otherwise, and not later than 45 days after the end of the
16 remittal period. The city shall have the right to examine, upon written
17 notice to the telecommunications local exchange service provider, no more
18 than once per calendar year, those records necessary to verify the
19 correctness of the gross receipts fee. If the gross receipts fee is determined
20 to be erroneous, then the telecommunications local exchange service
21 provider shall revise the gross receipts fee accordingly and payment shall
22 be made upon such corrected gross receipts fee. If the city and the
23 telecommunications local exchange service provider cannot agree on the
24 gross receipts fee, or are in dispute concerning the amounts due under this
25 section for the payment of gross receipts fees, either party may seek
26 appropriate relief in a court of competent jurisdiction, and that court may
27 impose all appropriate remedies, including monetary and injunctive relief,
28 reasonable costs and attorney fees. All claims authorized in this section
29 must be brought within three years of the date on which the disputed
30 payment was due. The gross receipts fee imposed under this section must
31 be assessed in a competitively neutral manner, may not unduly impair
32 competition, must be nondiscriminatory and must comply with state and
33 federal law.

34 (k) Notwithstanding any other provision of this act, payment by a
35 telecommunications local exchange service provider that complies with
36 the terms of an unexpired franchise ordinance that applies to the provider
37 satisfies the payment attributable to the provider required by this act.

38 (l) Beginning January 1, 2004, and every 36 months thereafter, a city,
39 subject to the public notification procedures set forth in subsection (m),
40 may elect to adopt an increased access line fee or gross receipts fee subject
41 to the provisions and maximum fee limitations contained in this act or may
42 choose to decline all or any portion of any increase in the access line fee.

43 (m) Adoption of an increased access line fee or gross receipts fee by a

1 city shall not become effective until the following public notification
2 procedures occur: (1) Notice of the new fee has been provided at a regular
3 meeting of the governing body; (2) immediately thereafter, notification of
4 the new fee shall be published in the official city paper once a week for
5 two consecutive weeks; and (3) sixty days have passed from the date of the
6 regular meeting of the governing body at which the new fee was proposed.
7 If, during the period of public notification of the new fee or prior to the
8 expiration of 60 days from the date of the regular meeting of the governing
9 body at which the new fee was proposed, 20% of the qualified voters of
10 such city voting for mayor, or in case no mayor is elected, then the
11 commissioner or council member receiving the highest number of votes at
12 the last preceding city election, present a petition to the governing body
13 asking that the new fee be submitted to popular vote, the mayor of the city
14 shall issue a proclamation calling for an election for that purpose. Such
15 election shall be held in conjunction with the next available general
16 election. The proclamation calling such election shall specifically state that
17 such election is called for the adoption of the new fee, and the new fee
18 shall be set out in full in the proclamation. The proclamation shall be
19 published once each week for two consecutive weeks in the official city
20 newspaper, and the last publication shall not be less than 30 days before
21 the day upon which the election is held. If, at the election the majority of
22 votes cast shall be for the new fee, the new fee shall thereupon become
23 effective. If a majority of the votes cast at the election are against the new
24 fee, the new fee shall not become effective and shall be void.

25 (n) A city may require a telecommunications local exchange service
26 provider to collect or remit an access line fee or a gross receipts fee to such
27 city on those access lines that have been resold to another
28 telecommunications local exchange service provider, but in such case, the
29 city shall not collect an access line fee or gross receipts fee from the
30 reseller telecommunications local exchange service provider and shall not
31 require the reseller to enter into a contract franchise ordinance pursuant to
32 subsection (d).

33 (o) A city may not impose the following regulations on
34 telecommunications local exchange service providers:

35 (1) Requirement that particular business offices or other
36 telecommunications facilities be located in the city;

37 (2) requirement for filing reports and documents that are not
38 reasonably related to the collection of compensation pursuant to this act;

39 (3) requirement for inspection of the business records of a
40 telecommunications local exchange service provider except to the extent
41 necessary to conduct the review of the records related to the access line
42 count or gross receipts fee as provided for in this act;

43 (4) requirement for city approval of transfers of ownership or control

1 of the business or assets of a telecommunications local exchange service
2 provider, except that a city may require that such provider maintain current
3 point of contact information and provide notice of a transfer within a
4 reasonable time; and

5 (5) requirement concerning the provisioning or quality of services,
6 facilities, equipment or goods in-kind for use by the city, political
7 subdivision or any other telecommunications local exchange service
8 provider or public utility.

9 (p) Information provided to municipalities and political subdivisions
10 under this act shall be governed by confidentiality procedures in
11 compliance with K.S.A. 45-215 and 66-1220a et seq., and amendments
12 thereto.

13 (q) Except as otherwise provided, this act does not affect the validity
14 of a franchise agreement or contract ordinance with a telecommunications
15 local exchange service provider so long as the franchise agreement or
16 contract ordinance does not include a linear foot charge and/or a minimum
17 fee, was enacted prior to the effective date of this act, and was agreed to by
18 the telecommunications local exchange service provider. Under such
19 circumstances, a city may continue to enforce a previously enacted
20 franchise agreement or contract ordinance and to collect franchise fees and
21 other charges under that franchise agreement or contract ordinance until
22 the date on which the agreement or ordinance expires by its own terms or
23 is terminated in accordance with the terms of this act. Notwithstanding any
24 other provision hereof, where such a franchise agreement or contract
25 ordinance exists between a city and a telecommunications local exchange
26 service provider prior to the effective date of this act, during the term of
27 such existing franchise agreement or contract ordinance the city must offer
28 to new applicants franchise agreements or contract franchises whose terms
29 and conditions are as a whole competitively neutral and nondiscriminatory,
30 as compared to such existing agreement.

31 (r) Without prejudice to a telecommunications local exchange service
32 provider's other rights and authorities, a telecommunications local
33 exchange service provider which is assessed, collects and remits an
34 application fee, access line fee or gross receipts fee assessed by a city shall
35 add to its end-user customer's bill, statement or invoice a surcharge equal
36 to the pro rata share of any such fees.

37 (s) Subsections (c) through (r) apply only to telecommunications
38 local exchange service providers.

39 Sec. 2. K.S.A. 12-2010 is hereby amended to read as follows: 12-
40 2010. Cities; may, by ordinance, levy a franchise fee or tax, including
41 annual fixed charges as may be prescribed in the franchise ordinance. Such
42 fixed charge may consist of a percentage, *not to exceed 5%*, of the gross
43 receipts derived from the service permitted by the franchise from

1 consumers or recipients of such service located within the corporate
2 boundaries of such city. Such levies, taxes or fees, including all forms of
3 consideration to such city and including initial lump sum payments, must
4 be reasonable and shall be generally in conformance with standards, if any,
5 established by federal communications commission regulations or other
6 applicable laws.

7 Sec. 3. K.S.A. 12-2010 and K.S.A. 2013 Supp. 12-2001 are hereby
8 repealed.

9 Sec. 4. This act shall take effect and be in force from and after
10 January 1, 2015 and its publication in the statute book.