

1 SB192  
2 181868-1  
3 By Senators Whatley and Dial (Constitutional Amendment)  
4 RFD: Transportation and Energy  
5 First Read: 14-FEB-17

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: Existing law places certain restrictions on  
9 a public provider of municipal telecommunications  
10 services or other services that is a municipality  
11 or a municipal instrumentality.

12 This bill would propose an amendment to the  
13 Constitution of Alabama of 1901, relating to Lee  
14 County, to remove restrictions on the service area  
15 of a public provider of municipal  
16 telecommunications services or other services that  
17 is a municipality or a municipal instrumentality in  
18 the county.

19 This bill would further allow the public  
20 provider to provide cable systems,  
21 telecommunications equipment and systems, furnish  
22 cable service, interactive computer service,  
23 Internet access, other Internet services, advanced  
24 telecommunications service, and other services, or  
25 any combination thereof without the restrictions as  
26 to coverage area.

1                   This bill would provide that a public  
2                   provider intending to serve an area outside of its  
3                   jurisdiction would give notice to the private  
4                   provider or providers that serve the area.

5                   This bill would provide that a public  
6                   provider would only be allowed to serve the area or  
7                   areas in the county in which the public provider is  
8                   headquartered or in a contiguous county and would  
9                   limit service to Internet, cable, and phone.

10                  This bill would provide the sources of  
11                  funding that could be used by a public provider to  
12                  provide service outside of its municipal boundaries  
13                  and would provide that the public provider would be  
14                  responsible for all taxes and fees due in that area  
15                  under certain conditions.

16  
17                                   A BILL  
18                                   TO BE ENTITLED  
19                                   AN ACT

20  
21                  To propose an amendment to the Constitution of  
22                  Alabama of 1901, relating to Lee County; to remove certain  
23                  restrictions on public providers of municipal  
24                  telecommunications services and other services and further  
25                  provide for the delivery of services; to require notice be  
26                  given to private providers by public providers intending to  
27                  expand coverage; to restrict the coverage area of public

1 providers; to limit the sources of funding; and to subject the  
2 public provider to all taxes and fees due in the area where it  
3 provides service outside of its municipal boundaries under  
4 certain conditions.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. The following amendment to the  
7 Constitution of Alabama of 1901, is proposed and shall become  
8 valid as a part of the Constitution when all requirements of  
9 this act are fulfilled:

10 PROPOSED AMENDMENT

11 Section I. This amendment shall apply only to a  
12 public provider located in Lee County.

13 Section II. For the purposes of this amendment, the  
14 following terms have the following meanings:

15 (1) ADVANCED TELECOMMUNICATIONS CAPABILITY. Without  
16 regard to any transmission media or technology, high-speed,  
17 switched, broadband telecommunications capability that enables  
18 users to originate and receive high-quality voice, data,  
19 graphics, and video telecommunications using any technology.

20 (2) ADVANCED TELECOMMUNICATIONS SERVICE. Without  
21 regard to any transmission media or technology, the provision  
22 of high-speed, switched, broadband telecommunications  
23 capability that enables users to originate and receive  
24 high-quality voice, data, graphics, and video  
25 telecommunications using any technology.

1           (3) ALARM MONITORING SERVICE. A service that uses a  
2 device located at a residence, place of business, or other  
3 fixed premises for both of the following purposes:

4           a. To receive signals from other devices located at  
5 or about the premises regarding a possible threat at the  
6 premises to life, safety, or property, from burglary, fire,  
7 vandalism, bodily injury, or other emergency.

8           b. To transmit a signal regarding any threat by  
9 means of transmission facilities of a public provider, local  
10 exchange carrier, or one of its affiliates to a remote  
11 monitoring center to alert a person at the center of the need  
12 to inform the customer or another person or police, fire,  
13 rescue, security, or public safety personnel of the threat,  
14 but does not include a service that uses a medical monitoring  
15 device attached to an individual for the automatic  
16 surveillance of an ongoing medical condition.

17           (4) BROADBAND. Having the capability of supporting,  
18 in both the provider-to-consumer (downstream) and the  
19 consumer-to-provider (upstream) directions, a speed (in  
20 technical terms, bandwidth) in excess of 200 kilobits per  
21 second (kbps) in the last mile.

22           (5) CABLE SERVICE. A service that provides both of  
23 the following:

24           a. The one-way or bi-directional transmission to  
25 subscribers of video programming or other programming service.

26           b. Subscriber interaction, if any, which is required  
27 for the selection or use of such video programming or other

1 programming service, including, without limitation, digital  
2 services, utilization of fiber optics, broadband services, use  
3 of data packets, and use of wireless methods to provide cable  
4 service.

5 (6) CABLE SYSTEM. A facility, consisting of a set of  
6 closed transmission paths and associated signal generation,  
7 reception, and control equipment that is designed to provide  
8 cable service which includes video programming and which is  
9 provided to multiple subscribers within a community. The term  
10 does not include any of the following:

11 a. A facility that serves only to retransmit the  
12 television signals of one or more television broadcast  
13 stations.

14 b. A facility of a common carrier which is subject,  
15 in whole or in part, to the provisions of subchapter II of  
16 Chapter 5 of Title 47, U.S.C., as the provisions thereof read  
17 on August 1, 2000, except that such facility shall be  
18 considered a cable system to the extent the facility is used  
19 in the transmission of video programming directly to  
20 subscribers, unless the extent of the use is solely to provide  
21 interactive on-demand services.

22 c. An open video system that complies with the  
23 provisions of 47 U.S.C. §573, as the provisions thereof read  
24 on August 1, 2000.

25 d. Any facilities of any electric utility used for  
26 operating its electric utility system.

1           (7) CAPITAL COSTS. All costs of providing a service  
2 which are capitalized in accordance with generally accepted  
3 governmental accounting principles.

4           (8) CUSTOMER PREMISES EQUIPMENT. Equipment employed  
5 on the premises of a person, other than a telecommunications  
6 service provider, to originate, route, or terminate  
7 telecommunications.

8           (9) DIRECT COSTS. Those expenses of a public  
9 provider which are directly attributable to the provision of a  
10 service that would be eliminated if the provision of the  
11 service were discontinued.

12           (10) FRANCHISING AUTHORITY. Any municipality or  
13 municipal instrumentality empowered by law to grant a  
14 franchise.

15           (11) GENERALLY ACCEPTED GOVERNMENTAL ACCOUNTING  
16 PRINCIPLES. The accounting standards promulgated from time to  
17 time by the Governmental Accounting Standards Board.

18           (12) INDIRECT COSTS. Any costs identified with two  
19 or more services or other public provider functions and which  
20 are not directly identified with a single service. Indirect  
21 costs may include, but are not limited to, administration,  
22 accounting, personnel, purchasing, electric power supply,  
23 legal, and other staff or departmental support. Indirect costs  
24 shall be allocated to two or more services in proportion to  
25 the relative burden each respective service places upon the  
26 cost category.

1           (13) INTERACTIVE COMPUTER SERVICE. Any information  
2 service, system, or access software provider that provides or  
3 enables computer access by multiple users to a computer  
4 server, including specifically a service or system that  
5 provides access to the Internet and the systems operated or  
6 services offered by libraries or educational institutions.

7           (14) INTERNET. The international computer network of  
8 both federal and nonfederal interoperable packet switched data  
9 networks.

10           (15) MUNICIPAL INSTRUMENTALITY. Any one or more  
11 public corporations located in Lee County incorporated  
12 pursuant to the provisions of any of the following:

13           a. Article 9, Chapter 50, Title 11, Code of Alabama  
14 1975.

15           b. Article 15, Chapter 50, Title 11, Code of Alabama  
16 1975.

17           c. Chapter 7, Title 39, Code of Alabama 1975.

18           d. A local act providing that the governing body of  
19 the public corporation is to be appointed by the governing  
20 body of a municipality located in Lee County and that the  
21 public corporation is authorized to furnish electric service  
22 to consumers for ultimate consumption.

23           e. Chapter 50A, Title 11, Code of Alabama 1975.

24           (16) MUNICIPALITY. Any incorporated city or town  
25 located in Lee County.

1 (17) PRIVATE PROVIDER. Any person, firm,  
2 partnership, corporation, or association offering service,  
3 other than a municipality or municipal instrumentality.

4 (18) PUBLIC PROVIDER. Any municipality or municipal  
5 instrumentality located in Lee County.

6 (19) SUBSCRIBER. Any person or entity lawfully  
7 receiving cable service provided by a private provider or  
8 public provider by means of or in connection with a cable  
9 system.

10 (20) TELECOMMUNICATIONS. The transmission, between  
11 or among points specified by the user, of information of the  
12 user's choosing, without change in the form or content of the  
13 information as sent and received.

14 (21) TELECOMMUNICATIONS CARRIER. Any provider of  
15 telecommunications services, except that such term does not  
16 include aggregators of telecommunications services as defined  
17 in 47 U.S.C. §226 as the provisions thereof read on August 1,  
18 2000.

19 (22) TELECOMMUNICATIONS EQUIPMENT. Equipment, other  
20 than customer premises equipment, used by a provider of  
21 telecommunications to provide telecommunications services, and  
22 includes software integral to such equipment, including  
23 upgrades.

24 (23) TELECOMMUNICATIONS SERVICE. The offering of  
25 telecommunications, including servicing and repairing related  
26 equipment, for a fee regardless of the facilities used,

1 including, but not limited to, voice, data, imaging, and video  
2 transmissions.

3 Section III. (a) (1) In addition to all other powers,  
4 rights, and authority heretofore granted by law, public  
5 providers may acquire, establish, purchase, construct,  
6 maintain, enlarge, extend, lease, improve, and operate cable  
7 systems, telecommunications equipment and telecommunications  
8 systems, and furnish cable service, interactive computer  
9 service, Internet access, other Internet services, and  
10 advanced telecommunications service, or any combination  
11 thereof.

12 (2) Public providers may furnish to the public  
13 directly Internet access, other Internet services, meter  
14 reading services, appliance, equipment, or facilities  
15 monitoring, alarm monitoring service and other security  
16 monitoring, surveillance or monitoring services, and billing  
17 and financial services.

18 (3) Any public provider which engages in the  
19 installation of alarm systems and any individuals who are  
20 employed by the public provider and who engage in the  
21 installation of alarm systems for customers of the public  
22 provider must comply with the rules and regulations of the  
23 Alabama Electronic Security Board of Licensure created  
24 pursuant to Section 34-1A-2, Code of Alabama 1975, to the same  
25 extent as a private installer of alarm systems for so long as  
26 the same may apply to private installers of alarm systems.

1           (4) a. The governing body of any municipality, by  
2 ordinance to be entered on its minutes, and any other public  
3 provider, by appropriate action of its governing body to be  
4 entered on its minutes, may lease to others any of its cable  
5 system and telecommunications equipment not needed for public  
6 or municipal purposes and may couple the lease with the  
7 provision of cable service, interactive computer service,  
8 Internet access, other Internet services, and  
9 telecommunications service, or any combination thereof.

10           b. A lease made, in the case of a municipality, by  
11 the mayor in accordance with the ordinance, or in the case of  
12 a municipal instrumentality, by the duly authorized officer,  
13 officers, or agents of the municipal instrumentality, shall be  
14 binding for the term specified in the lease, not to exceed a  
15 period of 25 years.

16           (5) a. Any public provider that acquires a cable  
17 system, telecommunications equipment, or telecommunications  
18 system for purposes of furnishing to others cable service,  
19 interactive computer service, Internet access, other Internet  
20 services, and telecommunications service, or any combination  
21 thereof, shall provide, to any requesting telecommunications  
22 carrier or any electric cooperative exercising any power  
23 enumerated in Article 2, Chapter 6, Title 37, Code of Alabama  
24 1975, or an affiliate of an electric cooperative, for the  
25 provision of telecommunications service, nondiscriminatory  
26 access to any of the public provider's telecommunications  
27 equipment not needed for public or municipal purposes or used

1 by the public provider in the provision of telecommunications  
2 service to others on an unbundled basis at any technically  
3 feasible point on rates, terms, and conditions that are just,  
4 reasonable, and nondiscriminatory.

5 b. A public provider shall make available any of its  
6 telecommunications equipment not needed for public or  
7 municipal purposes or used by the public provider in the  
8 provision of telecommunications service to others on an  
9 unbundled basis to requesting telecommunications carriers and  
10 electric cooperatives exercising any power enumerated in  
11 Article 2, Chapter 6, Title 37, Code of Alabama 1975, or an  
12 affiliate of an electric cooperative, upon terms and  
13 conditions that are just, reasonable, and nondiscriminatory,  
14 provided the electric cooperative or affiliate of an electric  
15 cooperative makes available any of its telecommunications  
16 equipment not needed for its purposes to the public provider  
17 upon terms and conditions that are just, reasonable, and  
18 nondiscriminatory.

19 (6) Every public provider may acquire, establish,  
20 purchase, construct, maintain, enlarge, extend, lease,  
21 improve, and operate cable systems, telecommunications  
22 equipment, and telecommunications systems, and may furnish  
23 cable service, interactive computer service, Internet access,  
24 other Internet services, and telecommunications service, or  
25 any combination thereof, for the use of the public provider,  
26 and in the case of a public provider that is a municipality,  
27 any department or agency of the municipality, any public

1 corporation, board, or authority that is an agency,  
2 department, or municipal instrumentality, and any public  
3 school located within the corporate limits or police  
4 jurisdiction of the municipality; and in the case of a public  
5 provider that is a municipal instrumentality, any department  
6 or agency of the municipality in which the municipal  
7 instrumentality was organized, and any public school located  
8 within the corporate limits or police jurisdiction of the  
9 municipality in which the municipal instrumentality was  
10 organized.

11 (7) Nothing contained in this amendment shall affect  
12 the authority of state or local governmental agencies to  
13 manage the public rights-of-way or to require fair and  
14 reasonable compensation from telecommunications providers, on  
15 a competitively neutral and nondiscriminatory basis, for use  
16 of public rights-of-way.

17 (b) If a public provider intends to serve an area  
18 outside of its jurisdiction or municipal boundaries, the  
19 public provider shall give a 12-month notice of the intent of  
20 the public provider to serve an area so that any private  
21 provider currently serving the area may determine if it will  
22 serve the area with the same level or capacity of service to  
23 be provided by the public provider.

24 (c) (1) A public provider may serve an area or areas  
25 in the county in which the public provider is headquartered  
26 and in an area or areas within any contiguous county of the  
27 county in which the public provider is headquartered.

1           (2) A public provider authorized by this amendment  
2 to provide service may only provide service for Internet,  
3 cable, or phone, or any combination thereof, and may not  
4 provide service for the purposes of this amendment for power,  
5 water, or any other service the public provider offers.

6           (d)(1) Nothing in this amendment shall be  
7 interpreted to prohibit the use of public funds or alter the  
8 full faith and credit of a municipality under Section  
9 11-50B-9, Code of Alabama 1975.

10           (2) Nothing in this amendment shall be interpreted  
11 to restrict a municipality from accessing federal or state  
12 funding provided on a formula or competitive basis, including  
13 funds derived from the Universal Service Fund, USDA Rural  
14 Development, or the National Telecommunications and  
15 Information Administration.

16           (e) No public funds shall be used to finance the  
17 expansion of a public provider, only revenue bonds, cash,  
18 grants, loans, or matching dollars may be used as a source of  
19 financing.

20           (f) A municipality that provides service outside of  
21 its municipal boundaries as of January 31, 2016, shall pay all  
22 taxes and fees that would be due if it were any other entity.

23           Section 2. An election upon the proposed amendment  
24 shall be held in accordance with Amendment 555 to the  
25 Constitution of Alabama of 1901, now appearing as Section  
26 284.01 of the Official Recompilation of the Constitution of

1 Alabama of 1901, as amended, and the election laws of this  
2 state.

3 Section 3. The appropriate election official shall  
4 assign a ballot number for the proposed constitutional  
5 amendment on the election ballot and shall set forth the  
6 following description of the substance or subject matter of  
7 the proposed constitutional amendment:

8 "Relating to Lee County, proposing an amendment to  
9 the Constitution of Alabama of 1901, to remove certain  
10 restrictions on public providers of municipal  
11 telecommunications services and other services and further  
12 provide for the delivery of services; to require notice be  
13 given to private providers by public providers intending to  
14 expand coverage; to restrict the coverage area of public  
15 providers; to limit the sources of funding; and to subject the  
16 public provider to all taxes and fees due in the area where it  
17 provides service outside of its municipal boundaries under  
18 certain conditions.

19 "Proposed by Act \_\_\_\_\_"

20 This description shall be followed by the following  
21 language:

22 "Yes ( ) No ( )."