

As Amended by Senate Committee

Session of 2019

SENATE BILL No. 68

By Committee on Utilities

1-31

1 AN ACT concerning cities; relating to a valid contract franchise ordinance
2 and wireless service providers; prohibitions; amending K.S.A. 2018
3 Supp. 12-2001 and repealing the existing section.
4

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

6 Section 1. K.S.A. 2018 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.

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

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

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

1 pursuant to this section and in force on the effective date of this act which
2 requires payments to the city by a utility to increase by virtue of the
3 compensation or consideration required to be paid under a franchise
4 granted by another city to the utility's predecessor in interest, is hereby
5 declared to be contrary to the public policy of this state and shall be void
6 and unenforceable.

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

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

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

23 (c) As used in this act:

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

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

42 (3) "Access line fee" means a fee determined by a city, up to a
43 maximum as set out in this act and amendments thereto, to be used by a

1 telecommunications local exchange service provider in calculating the
2 amount of access line remittance.

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

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

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

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

40 (8) "Telecommunications local exchange service provider" means a
41 local exchange carrier ~~as defined in subsection (h) of K.S.A. 66-1,187, and~~
42 ~~amendments thereto,~~ and a telecommunications carrier *as those terms are*
43 ~~defined in subsection (m) of K.S.A. 66-1,187, and amendments thereto,~~

1 which does, or in good faith intends to, provide local exchange service.
2 The term telecommunications local exchange service provider does not
3 include an interexchange carrier that does not provide local exchange
4 service, competitive access provider that does not provide local exchange
5 service or any wireless telecommunications local exchange service
6 provider.

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

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

25 ~~(2) A city shall not require a wireless services provider or wireless-~~
26 ~~infrastructure provider, as those terms are defined in K.S.A. 66-2019, and~~
27 ~~amendments thereto, that intends to provide, or build or install-~~
28 ~~infrastructure to provide, wireless service, as defined in K.S.A. 66-2019,~~
29 ~~and amendments thereto, to enter into a valid contract franchise-~~
30 ~~ordinance.~~

31 (e) If the governing body of a city requires a contract franchise as
32 specified in subsection (d)~~(f)~~, the contract franchise shall be subject to the
33 following:

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

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

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

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

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

9 (f) A franchisee shall make and report to the governing body once
10 each quarter, or at such other intervals as stipulated in the contract
11 franchise ordinance, the compensation collected and pay into the treasury
12 the amount due such city at the time the report is made.

13 (g) A city may assess a one-time application fee to recover its costs
14 associated with the review and approval of a contract franchise provided
15 that such application fee reimburses the city for its reasonable, actual and
16 verifiable costs of reviewing and approving the contract franchise. An
17 application fee must be competitively neutral and may not be unreasonable
18 or discriminatory.

19 (h) Within 90 days of the receipt of a completed application for a
20 telecommunications contract franchise, a city shall process and submit the
21 application and contract franchise to the city's governing body, and the
22 governing body shall take a final vote concerning such contract franchise
23 unless the telecommunications local exchange service provider and city
24 agree otherwise.

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

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

36 (1) To determine an access line remittance fee, the
37 telecommunications local exchange service provider shall calculate and
38 remit an amount equal to the access line fee established by a city
39 multiplied by the access line count. Such amount shall be due not later
40 than 45 days after the end of the remittal period. The city shall have the
41 right to examine, upon written notice to the telecommunications local
42 exchange service provider, no more than once per calendar year, those
43 access line count records necessary to verify the correctness of the access

1 line count. If the access line count is determined to be erroneous, then the
2 telecommunications local exchange service provider shall revise the access
3 line fees accordingly and payment shall be made upon such corrected
4 access line count. If the city and the telecommunications local exchange
5 service provider cannot agree on the access line count, or are in dispute
6 concerning the amounts due under this section for the payment of access
7 line fees, either party may seek appropriate relief in a court of competent
8 jurisdiction, and that court may impose all appropriate remedies, including
9 monetary and injunctive relief and reasonable costs and attorney fees. All
10 claims authorized in this section must be brought within three years of the
11 date on which the disputed payment was due. The access line fee imposed
12 under this section must be assessed in a competitively neutral manner, may
13 not unduly impair competition, must be nondiscriminatory and must
14 comply with state and federal law.

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

43 (k) Notwithstanding any other provision of this act, payment by a

1 telecommunications local exchange service provider that complies with
2 the terms of an unexpired franchise ordinance that applies to the provider
3 satisfies the payment attributable to the provider required by this act.

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

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

34 (n) A city may require a telecommunications local exchange service
35 provider to collect or remit an access line fee or a gross receipts fee to such
36 city on those access lines that have been resold to another
37 telecommunications local exchange service provider, but in such case the
38 city shall not collect an access line fee or gross receipts fee from the
39 reseller telecommunications local exchange service provider and shall not
40 require the reseller to enter into a contract franchise ordinance pursuant to
41 subsection (d).

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

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

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

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

9 (4) requirement for city approval of transfers of ownership or control
10 of the business or assets of a telecommunications local exchange service
11 provider except that a city may require that such provider maintain current
12 point of contact information and provide notice of a transfer within a
13 reasonable time; and

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

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

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

40 (r) Without prejudice to a telecommunications local exchange service
41 provider's other rights and authorities, a telecommunications local
42 exchange service provider which is assessed, collects and remits an
43 application fee, access line fee or gross receipts fee assessed by a city shall

1 add to its end-user customer's bill, statement or invoice a surcharge equal
2 to the pro rata share of any such fees.

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

5 (t) (1) *Except as further provided in paragraph (2), a city:*

6 (A) *Shall not require a wireless services provider or a wireless
7 infrastructure provider to enter into a franchise, franchise agreement,
8 franchise ordinance, contract franchise or contract franchise ordinance;
9 or otherwise impose any franchise-related obligation on such providers
10 for the provision of wireless services;*

11 (B) *may, ~~consistent with federal and state law,~~ govern the use of the
12 public right-of-way by a wireless services provider or a wireless
13 infrastructure provider ~~through~~ {by requiring a small cell facility
14 deployment agreement or} a master license agreement, {through}
15 permitting requirements ~~and~~ {or} municipal ordinances or codes, or any
16 combination thereof, in a manner consistent with federal and state
17 law}; and*

18 (C) *may assess a wireless services provider or a wireless
19 infrastructure provider a fixed right-of-way access fee for each small
20 cell facility that the provider deploys that requires use of the city's public
21 right-of-way, but such fee shall not be based on such provider's gross
22 receipts derived from services provided within the city's corporate limits.*

23 (2) *The provisions of paragraph (1) shall only apply to a wireless
24 infrastructure provider to the extent of such provider's operations and
25 services as a provider for the deployment of small cell facilities in the
26 city's public right-of-way that are used for the provision of wireless
27 services. Nothing in this subsection shall be construed to apply to such
28 provider's other operations and services as a utility or otherwise or have
29 any effect on any franchise that is related to such other operations and
30 services.*

31 (3) *Nothing in this subsection shall be construed as prohibiting a
32 city from requiring a telecommunications local exchange service
33 provider to enter into a valid contract franchise ordinance pursuant to
34 this section.*

35 (4) *For the purposes of this subsection, {:*

36 (A) *{The terms {"authority,"} "public right-of-way," "small cell
37 facility," {"utility pole,"} "wireless infrastructure provider," "wireless
38 services" and "wireless services provider" shall have the same meaning
39 as provided in K.S.A. 66-2019, and amendments thereto-; and*

40 (B) *"small cell facility deployment agreement" means an
41 agreement between a wireless services provider or wireless
42 infrastructure provider and an authority for the deployment of small cell
43 facilities on or adjacent to existing, modified, replacement or new utility*

1 *poles within the public right-of-way pursuant to K.S.A. 66-2019, and*
2 *amendments thereto, and federal law. A "small cell facility deployment*
3 *agreement" is not a franchise, franchise agreement, franchise*
4 *ordinance, contract franchise or contract franchise ordinance.}*

5 Sec. 2. K.S.A. 2018 Supp. 12-2001 is hereby repealed.

6 Sec. 3. This act shall take effect and be in force from and after its
7 publication in the statute book.