

# Legislative Analysis

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## CABLE AND VIDEO COMPETITION ACT

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### House Bill 5895

**Sponsor: Rep. Jacob Hoogendyk, Jr.**

**Committee: Energy and Technology**

**Complete to 5-23-06**

### A SUMMARY OF HOUSE BILL 5895 AS INTRODUCED 3-21-06

The bill would create a new act, the Cable and Video Competition Act. The new act begins with a listing of findings (detailed at the end of the summary) aimed at justifying a system whereby the state provides the authorization for competitive cable service providers and competitive video service providers to deploy their systems and provide service to state residents. An entity seeking to provide cable service or video service after the bill's effective date would apply to the Department of State for authorization. (This does not apply to an entity with an existing franchise.)

Under the bill, state authorization would constitute a franchise for federal purposes, and the state would be considered the exclusive franchising authority for competitive cable service providers and competitive video service providers. No franchising entity (local unit of government) could require a competitive provider to obtain a separate franchise or otherwise impose any fee or franchise requirement (including rate regulation to satisfy build-out requirements or deploy facilities or equipment).

The following entities would possess a cable service or video service authorization:

\*\* Any entity certificated by the Department of State to provide local exchange service and that seeks to operate or operates as a competitive cable service provider or competitive video service provider in its local exchange area.

\*\* Any other entity that seeks to operate as a competitive cable service provider or competitive video service provider.

\*\* Any incumbent cable operator, after the expiration of its franchise, that wants to provide cable or video service in a local unit where it once had the franchise. An incumbent operator could not use or rely on a state authorization to provide cable or video service where it has an existing franchise agreement.

An entity seeking to provide cable service or video service after the bill's effective date would apply to the Department of State for authorization. (This does not apply to an entity with an existing franchise.) The department would have 30 days to issue an authorization if the application and a required affidavit were complete.

The authorization would contain: 1) a grant of authority to provide cable service or video service in the service area footprint as requested in the application; 2) a grant of authority to use and occupy the public rights-of-way in the delivery of that service, subject to state law, including the police powers of the municipalities where the service is delivered; and 3) a statement that the grant of authority is subject to lawful operation of the service by the applicant or its successor.

The authorization would be fully transferable; notice would have to be filed with the department and the relevant local unit of government with 15 days of the completion of the transfer. Service could be terminated or the area footprint modified by the provider by submitting notice to the department and relevant local unit of government.

Where technically feasible, the holder of a service authorization and an incumbent cable operator would have to interconnect their cable and video systems for the purpose of providing applicable programming for the respective service areas. Interconnection could be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. Authorized operators and incumbent operators would be required to negotiate in good faith and incumbent operators could not withhold interconnection.

A competitive provider would have to give notice to each franchising entity (local unit) with jurisdiction in a locality where the provider begins to offer service. At the request of the franchising entity, the competitive provider would have to pay a service provider fee equal to five percent of gross revenues or the lowest percentage of gross revenues paid by an incumbent cable operator. No other fees or method of calculating fees would be permitted. A fee would not be due until the franchising entity certified, with supporting documentation, the percentages of gross revenues paid by incumbent cable operators. A competitive provider would be entitled to a credit applied to the fee for all funds allocated to the local unit of government from annual maintenance fees paid for use of public rights-of-way under the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act. A fee could be collected as a separate line item on a subscriber's bill.

A franchising entity could perform reasonable audits of the competitive provider's calculation of fees for the previous 12 months. Claims that a competitive provider had not paid fees as required, and claims for refunds by the competitive provider, would have to be made within three years and 45 days of the end of the quarter when compensation was paid.

A local unit of government would have to allow the holder of a state authorization to provide cable service or video service to install, construct, and maintain a communications network within a public right-of-way and provide them with open, comparable, nondiscriminatory, and competitively neutral access to the public right-of-way. A local unit could not discriminate against the holder of a state authorization for the authorization or placement of a communications network in public rights-of-way; access to a building; or a municipal utility pole attachment.

A local unit could impose a permit fee on a competitive cable or video provider only to the extent it imposed such a fee on incumbent cable operators, and any fee could not exceed the actual, direct costs incurred by the franchising entity for issuing the relevant permit. A fee could not be levied if 1) if the competitive provider had already paid a permit fee of any kind in connection with the same activity; 2) if the competitive provider was authorized by law or contract to place its facilities in the public rights-of-way; or 3) for general revenue purposes.

A competitive provider with state authorization could not deny access to service to any group of potential residential subscribers because of the income levels in the residential area. It would not be a violation if a provider scheduled construction of its network and deployment of its services based on good faith projections of anticipated revenues and rates of subscription. The holder of a state authorization could use direct-to-home satellite service or another alternative technology providing comparable content, service, and functionality to satisfy this requirement.

A holder of a state authorization could not be required to comply with (and a local unit could not impose or enforce) any mandatory build-out or deployment provisions, schedules, or requirements.

The Department of State would be required to file a report with the governor and legislature by February 1 of each year on the status of competition for cable and video services; recommendations for legislation, if any; actions taken to implement the act; and information regarding all state authorization grants.

The act could only be enforced by a court of competent jurisdiction.

The bill contains the following statement of findings.

*The legislature finds and declares all of the following:*

*(a) The state's economy would be enhanced by investment in new communications and video programming infrastructure, including broadband facilities, fiber optic, and internet protocol technologies.*

*(b) Cable services and video services bring important daily benefits to this state by providing news, education, and entertainment.*

*(c) Competitive cable service providers and competitive video service providers are capable of providing new video programming services and competition to consumers in this state.*

*(d) There has been only minimal competitive entry into the facilities-based video programming market since current franchising requirements in this state were enacted.*

*(e) The cable franchise requirements and associated build-out requirements have acted as a barrier to entry to many new facilities-based entrants, because time to market and reasonable cost of entry are critical for new entrants seeking to compete with the cable incumbents.*

*(f) Under both federal and state law, there is considerable uncertainty concerning whether and to what degree the cable franchise requirements apply to various competitive cable service providers and competitive video service providers, especially to the extent those new entrants are already subject to public right-of-way management under other state regulatory schemes.*

*(g) To remove legal uncertainty with respect to the authority of competitive cable service providers and competitive video service providers to use the public rights-of-way to the extent the cable franchise requirements do not apply, and to promote competitive entry by all competitive cable service providers and competitive video service providers, this state should provide a state-issued authorization for competitive cable service providers and competitive video service providers to deploy their systems and provide cable service and video service to residents of this state. This state-issued grant will allow all competitive cable service providers and video service providers to move forward in making the significant investments required to provide new services and competition for video programming.*

**FISCAL IMPACT:**

A fiscal analysis is in process.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.