

Part 3 Operational Requirements and Limitations

10-18-301 Enterprise funds for cable television or public telecommunications services.

- (1) A municipality that provides a cable television service or a public telecommunications service under this chapter:
 - (a) shall establish an enterprise fund to account for the municipality's operations of a cable television service or public telecommunications service;
 - (b) for accounting purposes only, may account for its cable television services and its public telecommunications services in a single enterprise fund under Chapter 6, Uniform Fiscal Procedures Act for Utah Cities;
 - (c) shall, consistent with the requirements of Section 10-6-135, adopt separate operating and capital budgets for the municipality's:
 - (i) cable television services; and
 - (ii) public telecommunications services;
 - (d) may not transfer any appropriation or other balance in any enterprise fund established by the municipality under this section to another enterprise fund; and
 - (e) may not transfer any appropriation or other balance in any other enterprise fund established by the municipality under Chapter 6, Uniform Fiscal Procedures Act for Utah Cities, to any enterprise fund established by the municipality under this section.
- (2) The restrictions on transfers described in Subsections (1)(d) and (e) do not apply to transfers made by a municipality between other enterprise funds established by the municipality.

Enacted by Chapter 83, 2001 General Session

10-18-302 Bonding authority.

- (1) In accordance with Title 11, Chapter 14, Local Government Bonding Act, the legislative body of a municipality may by resolution determine to issue one or more revenue bonds or general obligation bonds to finance the capital costs for facilities necessary to provide to subscribers:
 - (a) a cable television service; or
 - (b) a public telecommunications service.
- (2) The resolution described in Subsection (1) shall:
 - (a) describe the purpose for which the indebtedness is to be created; and
 - (b) specify the dollar amount of the one or more bonds proposed to be issued.
- (3)
 - (a) A revenue bond issued under this section shall be secured and paid for:
 - (i) from the revenues generated by the municipality from providing:
 - (A) cable television services with respect to revenue bonds issued to finance facilities for the municipality's cable television services; and
 - (B) public telecommunications services with respect to revenue bonds issued to finance facilities for the municipality's public telecommunications services; and
 - (ii) notwithstanding Subsection (3)(b) and Subsection 10-18-303(3)(a), from revenues generated under Title 59, Chapter 12, Sales and Use Tax Act, if:
 - (A) notwithstanding Subsection 11-14-201(3) and except as provided in Subsections (4) and (5), the revenue bond is approved by the registered voters in an election held:
 - (I) except as provided in Subsection (3)(a)(ii)(A)(II), pursuant to the provisions of Title 11, Chapter 14, Local Government Bonding Act, that govern bond elections; and

- (II) notwithstanding Subsection 11-14-203(2), at a regular general election;
 - (B) the revenues described in this Subsection (3)(a)(ii) are pledged as security for the revenue bond; and
 - (C) the municipality or municipalities annually appropriate the revenues described in this Subsection (3)(a)(ii) to secure and pay the revenue bond issued under this section.
- (b) Except as provided in Subsection (3)(a)(ii), a municipality may not pay the origination, financing, or other carrying costs associated with the one or more revenue bonds issued under this section from the town or city, respectively, general funds or other enterprise funds of the municipality.
- (4)
- (a) As used in this Subsection (4), "municipal entity" means an entity created pursuant to an agreement:
 - (i) under Title 11, Chapter 13, Interlocal Cooperation Act; and
 - (ii) to which a municipality is a party.
 - (b) The requirements of Subsection (3)(a)(ii)(A) do not apply to a municipality or municipal entity that issues revenue bonds, or to a municipality that is a member of a municipal entity that issues revenue bonds, if:
 - (i) on or before March 2, 2004, the municipality that is issuing revenue bonds or that is a member of a municipal entity that is issuing revenue bonds has published the first notice described in Subsection (4)(b)(iii);
 - (ii) on or before April 15, 2004, the municipality that is issuing revenue bonds or that is a member of a municipal entity that is issuing revenue bonds makes the decision to pledge the revenues described in Subsection (3)(a)(ii) as security for the revenue bonds described in this Subsection (4)(b)(ii);
 - (iii) the municipality that is issuing the revenue bonds or the municipality that is a member of the municipal entity that is issuing the revenue bonds has:
 - (A) held a public hearing for which public notice was given by publication of the notice:
 - (I) in a newspaper published in the municipality or in a newspaper of general circulation within the municipality for two consecutive weeks, with the first publication being not less than 14 days before the public hearing; and
 - (II) on the Utah Public Notice Website created in Section 63F-1-701, for two weeks before the public hearing; and
 - (B) the notice identifies:
 - (I) that the notice is given pursuant to Title 11, Chapter 14, Local Government Bonding Act;
 - (II) the purpose for the bonds to be issued;
 - (III) the maximum amount of the revenues described in Subsection (3)(a)(ii) that will be pledged in any fiscal year;
 - (IV) the maximum number of years that the pledge will be in effect; and
 - (V) the time, place, and location for the public hearing;
 - (iv) the municipal entity that issues revenue bonds:
 - (A) adopts a final financing plan; and
 - (B) in accordance with Title 63G, Chapter 2, Government Records Access and Management Act, makes available to the public at the time the municipal entity adopts the final financing plan:
 - (I) the final financing plan; and
 - (II) all contracts entered into by the municipal entity, except as protected by Title 63G, Chapter 2, Government Records Access and Management Act;
 - (v) any municipality that is a member of a municipal entity described in Subsection (4)(b)(iv):

- (A) not less than 30 calendar days after the municipal entity complies with Subsection (4)(b)(iv)(B), holds a final public hearing;
 - (B) provides notice, at the time the municipality schedules the final public hearing, to any person who has provided to the municipality a written request for notice; and
 - (C) makes all reasonable efforts to provide fair opportunity for oral testimony by all interested parties; and
 - (vi) except with respect to a municipality that issued bonds prior to March 1, 2004, not more than 50% of the average annual debt service of all revenue bonds described in this section to provide service throughout the municipality or municipal entity may be paid from the revenues described in Subsection (3)(a)(ii).
- (5) On or after July 1, 2007, the requirements of Subsection (3)(a)(ii)(A) do not apply to a municipality that issues revenue bonds if:
- (a) the municipality that is issuing the revenue bonds has:
 - (i) held a public hearing for which public notice was given by publication of the notice:
 - (A) in a newspaper published in the municipality or in a newspaper of general circulation within the municipality for two consecutive weeks, with the first publication being not less than 14 days before the public hearing; and
 - (B) on the Utah Public Notice Website created in Section 63F-1-701, for 14 days before the public hearing; and
 - (ii) the notice identifies:
 - (A) that the notice is given pursuant to Title 11, Chapter 14, Local Government Bonding Act;
 - (B) the purpose for the bonds to be issued;
 - (C) the maximum amount of the revenues described in Subsection (3)(a)(ii) that will be pledged in any fiscal year;
 - (D) the maximum number of years that the pledge will be in effect; and
 - (E) the time, place, and location for the public hearing; and
 - (b) except with respect to a municipality that issued bonds prior to March 1, 2004, not more than 50% of the average annual debt service of all revenue bonds described in this section to provide service throughout the municipality or municipal entity may be paid from the revenues described in Subsection (3)(a)(ii).
- (6) A municipality that issues bonds pursuant to this section may not make or grant any undue or unreasonable preference or advantage to itself or to any private provider of:
- (a) cable television services; or
 - (b) public telecommunications services.

Amended by Chapter 176, 2014 General Session

10-18-303 General operating limitations.

A municipality that provides a cable television service or a public telecommunications service under this chapter is subject to the operating limitations of this section.

- (1) A municipality that provides a cable television service shall comply with:
 - (a) the Cable Communications Policy Act of 1984, 47 U.S.C. 521, et seq.; and
 - (b) the regulations issued by the Federal Communications Commission under the Cable Communications Policy Act of 1984, 47 U.S.C. 521, et seq.
- (2) A municipality that provides a public telecommunications service shall comply with:
 - (a) the Telecommunications Act of 1996, Pub. L. 104-104;
 - (b) the regulations issued by the Federal Communications Commission under the Telecommunications Act of 1996, Pub. L. 104-104;

- (c) Section 54-8b-2.2 relating to:
 - (i) the interconnection of essential facilities; and
 - (ii) the purchase and sale of essential services; and
- (d) the rules made by the Public Service Commission of Utah under Section 54-8b-2.2.
- (3) A municipality may not cross subsidize its cable television services or its public telecommunications services with:
 - (a) tax dollars;
 - (b) income from other municipal or utility services;
 - (c) below-market rate loans from the municipality; or
 - (d) any other means.
- (4)
 - (a) A municipality may not make or grant any undue or unreasonable preference or advantage to itself or to any private provider of:
 - (i) cable television services; or
 - (ii) public telecommunications services.
 - (b) A municipality shall apply without discrimination as to itself and to any private provider the municipality's ordinances, rules, and policies, including those relating to:
 - (i) obligation to serve;
 - (ii) access to public rights of way;
 - (iii) permitting;
 - (iv) performance bonding;
 - (v) reporting; and
 - (vi) quality of service.
 - (c) Subsections (4)(a) and (b) do not supersede the exception for a rural telephone company in Section 251 of the Telecommunications Act of 1996, Pub. L. 104-104.
- (5) In calculating the rates charged by a municipality for a cable television service or a public telecommunications service, the municipality:
 - (a) shall include within its rates an amount equal to all taxes, fees, and other assessments that would be applicable to a similarly situated private provider of the same services, including:
 - (i) federal, state, and local taxes;
 - (ii) franchise fees;
 - (iii) permit fees;
 - (iv) pole attachment fees; and
 - (v) fees similar to those described in Subsections (5)(a)(i) through (iv); and
 - (b) may not price any cable television service or public telecommunications service at a level that is less than the sum of:
 - (i) the actual direct costs of providing the service;
 - (ii) the actual indirect costs of providing the service; and
 - (iii) the amount determined under Subsection (5)(a).
- (6)
 - (a) A municipality that provides cable television services or public telecommunications services shall establish and maintain a comprehensive price list of all cable television services or public telecommunications services offered by the municipality.
 - (b) The price list required by Subsection (6)(a) shall:
 - (i) include all terms and conditions relating to the municipality providing each cable television service or public telecommunications service offered by the municipality;
 - (ii)
 - (A) be published in a newspaper having general circulation in the municipality; and

- (B) be published in accordance with Section 45-1-101; and
- (iii) be available for inspection:
 - (A) at a designated office of the municipality; and
 - (B) during normal business hours.
- (c) At least five days before the date a change to a municipality's price list becomes effective, the municipality shall:
 - (i) notify the following of the change:
 - (A) all subscribers to the services for which the price list is being changed; and
 - (B) any other persons requesting notification of any changes to the municipality's price list; and
 - (ii)
 - (A) publish notice in a newspaper of general circulation in the municipality; and
 - (B) publish notice in accordance with Section 45-1-101.
- (d) In accordance with Subsection (6)(c)(ii)(A), if there is no newspaper of general circulation in the municipality, the municipality shall publish the notice required by this Subsection (6) in a newspaper of general circulation that is nearest the municipality.
- (e) A municipality may not offer a cable television service or a public telecommunications service except in accordance with the prices, terms, and conditions set forth in the municipality's price list.
- (7) A municipality may not offer to provide or provide cable television services or public telecommunications services to a subscriber that does not reside within the geographic boundaries of the municipality.
- (8)
 - (a) A municipality shall keep accurate books and records of the municipality's:
 - (i) cable television services; and
 - (ii) public telecommunications services.
 - (b) The books and records required to be kept under Subsection (8)(a) are subject to legislative audit to verify the municipality's compliance with the requirements of this chapter including:
 - (i) pricing;
 - (ii) recordkeeping; and
 - (iii) antidiscrimination.
- (9) A municipality may not receive distributions from the Universal Public Telecommunications Service Support Fund established in Section 54-8b-15.

Amended by Chapter 388, 2009 General Session

10-18-304 Eminent domain.

A municipality may not exercise its power of eminent domain to condemn plant and equipment of a private provider for the purpose of providing to a subscriber:

- (1) a cable television service; or
- (2) a public telecommunications service.

Enacted by Chapter 83, 2001 General Session

10-18-305 Quality of service standards.

- (1) A municipality that provides a cable television service or a public telecommunications service shall adopt an ordinance governing the quality of service the municipality shall provide to its subscribers.

- (2) The ordinance required by Subsection (1) shall:
- (a) be competitively neutral; and
 - (b) contain standards that are substantially similar to the standards imposed on private providers operating within the geographic boundaries of the municipality under:
 - (i) the Cable Communications Policy Act of 1984, 47 U.S.C. 521, et seq.;
 - (ii) the Telecommunications Act of 1996, Pub. L. 104-104;
 - (iii) Title 54, Public Utilities;
 - (iv) regulations issued by the Federal Communications Commission under the statutes listed in Subsections (2)(b)(i) and (ii); and
 - (v) rules made by the Public Service Commission of Utah under Title 54, Public Utilities.

Enacted by Chapter 83, 2001 General Session

10-18-306 Enforcement and appeal.

- (1) Before a person that is or is likely to have a substantial interest affected by a municipality's violation of this chapter may file an action in district court for violation of this chapter, that person shall file a written complaint with the municipality in accordance with this section.
- (2)
- (a) A municipality that provides a cable television service or a public telecommunications service shall enact an ordinance establishing a procedure for the filing and resolution of complaints relating to the municipality providing:
 - (i) a cable television service; or
 - (ii) a public telecommunications service.
 - (b) The procedure required by Subsection (2)(a) shall:
 - (i) permit any person described in Subsection (1) to file a complaint including:
 - (A) an individual subscriber; or
 - (B) a private provider that competes with the municipality in the geographic boundaries of the municipality;
 - (ii) establish an expedited process that requires within 45 days after the date the complaint is filed:
 - (A) that a hearing be held, unless the parties to the proceeding waive the requirement of a hearing; and
 - (B) the issuance of a final decision; and
 - (iii) provide that failure to render a decision within the time allotted shall be treated as an adverse decision for purposes of appeal.
- (3) Appeal of an adverse decision from the municipality may be taken to the district court for a de novo proceeding.

Enacted by Chapter 83, 2001 General Session