

**As Introduced**

**125th General Assembly  
Regular Session  
2003-2004**

**H. B. No. 591**

**Representative Collier**

—

**A BILL**

To amend sections 1332.01, 1332.02, 1332.03, 1332.04, 1  
1332.05, 1332.06, 1332.07, and 1332.09 of the 2  
Revised Code to extend cable competition law to 3  
the provision by a political subdivision of 4  
telecommunications service over a cable system or 5  
using telecommunications equipment. 6

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 1332.01, 1332.02, 1332.03, 1332.04, 7  
1332.05, 1332.06, 1332.07, and 1332.09 of the Revised Code be 8  
amended to read as follows: 9

**Sec. 1332.01.** As used in sections 1332.01 to 1332.10 of the 10  
Revised Code: 11

(A) "Applicable generally accepted accounting principles" 12  
means accounting principles and standards set forth in all 13  
applicable pronouncements of the governmental accounting standards 14  
board. 15

(B) "Cable service," "cable system," "franchise," and 16  
"franchising authority" have the same meanings as in the 17  
"Telecommunications Act of 1996," Pub. L. No. 104-104, Title III, 18  
Sections 301(a) and 302 (b)(2), 110 Stat. 114, 124, 47 U.S.C.A. 19  
522. 20

(C) "Cable service provider" means any person or group of persons that is engaged in the provision of cable service over a cable system and directly or indirectly owns a significant interest in the cable system, or that, through any arrangement, otherwise controls or is responsible for the management and operation of the cable system.

(D) "Color of office," "public office," and "public official" have the same meanings as in section 117.01 of the Revised Code.

(E) "Direct costs" means all costs, whether capital costs, operating costs, or otherwise, that would be eliminated if the service or function to which they relate were discontinued.

(F) "Full cost accounting" means, in accordance with applicable generally accepted accounting principles, accounting for all direct and indirect costs, including capital costs, that are incurred in the ownership, management, or operation of a cable system or provision of cable service over a cable system or in the ownership, management, or operation of telecommunications equipment or the provision of telecommunications service over a cable system or using telecommunications equipment.

(G) "Indirect costs" means all costs, whether capital costs, operating costs, or otherwise, that are not direct costs. Indirect costs that support multiple services or functions shall be allocated among those services and functions in proportion to the relative burden each service or function places on the cost category and by any reasonable method consistent with applicable generally accepted accounting principles.

(H) "Person" includes any individual, corporation, partnership, limited liability company, association, trust, or political subdivision.

(I) "Private cable service provider" means any cable service provider other than a public cable service provider.

(J) "Private cable service regulation" means any regulation, rule, requirement, or restriction of or by a political subdivision of this state that applies, by resolution, ordinance, rule, regulation, franchising agreement, or otherwise, to the terms and conditions of service, conditions of access to public property, permits for pole attachments, or any other matter concerning or affecting the provision of cable service over a cable system by a private cable service provider.

(K) "Private telecommunications service provider" means any telecommunications service provider other than a public telecommunications service provider.

(L) "Private telecommunications service regulation" means any regulation, rule, requirement, or restriction by a political subdivision of this state that applies by resolution, ordinance, rule, regulation, franchising agreement, or otherwise, to the terms and conditions of service, conditions of access to public property, permits for pole attachments, or any other matter concerning or affecting the provision by a private telecommunications service provider of telecommunications service over a cable service or using telecommunications equipment.

(M) "Public cable service provider" means any cable service provider that is a political subdivision of this state.

~~(L)~~(N) "Public cable service recipient" means any household or business that receives cable service or benefits from video programming service, transmission service, distribution service, repair service, billing service, or customer service that is provided by, originates from, or is controlled by a public cable service provider of a political subdivision.

~~(M)~~(O) "Public money" means any of the following:

(1) Any money received, collected by, or due a public official under color of office;

(2) Any money collected by any person on behalf of a public office or as a purported representative or agent of the public office; 83  
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(3) Any money received by any person, whether directly or indirectly, from the United States, this state, a county, municipal corporation, township, or any other public office for the purpose of performing or assisting with a governmental function or program authorized by or the responsibility of the United States, this state, a county, municipal corporation, township, or any other public office. 86  
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(P) "Public telecommunications service provider" means any telecommunications service provider that is a political subdivision of this state. 93  
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(O) "Public telecommunications service recipient" means any household or business that receives telecommunications service or benefits from telecommunications service, transmission service, distribution service, repair service, billing service, or customer service that is provided by, originates from, or is controlled by a public telecommunications service provider. 96  
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(R) "Telecommunications equipment" and "telecommunications service" have the same meanings as in P.L. 105-33, Title III, Section 3001(b), 111 Stat. 258, 47 U.S.C. 153. 102  
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(S) "Telecommunications service provider" means any person or group of persons that is engaged in providing telecommunications service over a cable system or using telecommunications equipment and either directly or indirectly owns a significant interest in that system or equipment or, through any arrangement, otherwise controls or is responsible for the management and operation of that system or equipment. 105  
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**Sec. 1332.02.** It is the public policy of this state under 112

sections 1332.01 to 1332.10 of the Revised Code to: 113

(A) Ensure fair competition in the provision in this state of 114  
cable service over a cable system and of telecommunications 115  
service, consistent with the procompetitive policies of the 116  
"Telecommunications Act of 1996," Pub. L. No. 104-104, 110 Stat. 117  
56, 47 U.S.C.A. 151, for the purposes of providing the widest 118  
possible diversity of entertainment, information, ~~and~~ news 119  
sources, and telecommunications service to the general public; 120  
advancing the unfettered exercise of rights under the first 121  
amendment to the United States Constitution to free speech and the 122  
free flow of information; enhancing the development and widespread 123  
use of technological advances in the provision of cable service 124  
over a cable system and of telecommunications service; and 125  
encouraging improved customer service at competitive rates; 126

(B) Ensure that all cable service over a cable system ~~is~~ and 127  
all telecommunications service are provided in this state within a 128  
comprehensive and nondiscriminatory federal, state, and local 129  
scheme. 130

**Sec. 1332.03.** (A) Nothing in sections 1332.01 to 1332.10 of 131  
the Revised Code is a determination by the general assembly that 132  
the provision by a municipal corporation of cable service over a 133  
cable system ~~by a municipal corporation or of telecommunications~~ 134  
service over a cable system or using telecommunications equipment 135  
does or does not constitute a public utility pursuant to Section 4 136  
of Article XVIII, Ohio Constitution. 137

(B) Nothing in sections 1332.01 to 1332.10 of the Revised 138  
Code confers authority on a political subdivision of this state to 139  
own, lease, or operate a cable system ~~or to~~, provide cable service 140  
over a cable system, or provide telecommunications service over a 141  
cable system or using telecommunications equipment; rather, that 142  
authority, if any, is as otherwise may be conferred by law. 143

(C) Except as expressly provided in sections 1332.01 to 144  
1332.10 of the Revised Code, nothing in those sections restricts 145  
the authority of a political subdivision of this state, otherwise 146  
conferred by law, to grant a franchise to provide cable service or 147  
telecommunications service. 148

**Sec. 1332.04.** (A) No political subdivision of this state 149  
shall provide cable service over a cable system or 150  
telecommunications service over a cable system or using 151  
telecommunications equipment, whether bundled with other services 152  
or unbundled, except in accordance with sections 1332.01 to 153  
1332.10 of the Revised Code. 154

(B)(1) No political subdivision of this state that is a 155  
public cable service provider or contracts with a public cable 156  
service provider for cable service over a cable system, or that is 157  
a public telecommunications service provider or contracts with a 158  
public telecommunications service provider for telecommunications 159  
service over a cable system or using telecommunications equipment, 160  
shall, by any means, do any of the following: 161

(a) Prefer or advantage any public cable service provider or 162  
public telecommunications service provider or discriminate against 163  
any private cable service provider or private telecommunications 164  
service provider in any material matter affecting the provision, 165  
within the jurisdiction of the political subdivision, of cable 166  
service over a cable system or of telecommunications service over 167  
a cable system or using telecommunications equipment; 168

(b) Fail to apply any private cable service or private 169  
telecommunication service regulation without discrimination to, 170  
respectively, a public cable service provider or public 171  
telecommunications service provider within the jurisdiction of the 172  
political subdivision; 173

(c) Fail to pay all applicable fees, including, but not 174  
limited to, franchise fees, permit fees, pole attachment fees, or 175  
the equivalent of any such fees; 176

(d) Subsidize in any manner the operations of a public cable 177  
service provider or public telecommunications service provider 178  
with public money of the political subdivision. 179

(2) Nothing in division (B)(1) of this section requires the 180  
application of a private cable service regulation to a public 181  
cable service provider or a private telecommunications service 182  
regulation to a public telecommunications service provider if that 183  
application would be without legal or practical consequence, such 184  
as the application of a private cable service regulation requiring 185  
provision of an insurance bond, which application to a public 186  
cable service provider would require it to insure its performance 187  
to itself. 188

(C) No political subdivision of this state that is a public 189  
cable service provider or public telecommunications service 190  
provider shall have extraterritorial public cable or public 191  
telecommunications service recipients in excess of fifty per cent 192  
of, respectively, the number of public cable or public 193  
telecommunications service recipients that reside within the 194  
geographical limits of the political subdivision. Nothing in this 195  
division prohibits public cable service providers from jointly 196  
owning and operating head-end equipment or prohibits public 197  
telecommunications service providers from jointly owning and 198  
operating telecommunications equipment. Each such public cable 199  
service provider shall pay that proportion of the full costs of 200  
owning and operating such head-end equipment, including, but not 201  
limited to, the costs of construction, acquisition, installation, 202  
improvement, enhancement, modification, financing, maintenance, 203  
repair, and operation, and each such public telecommunications 204  
provider shall pay that proportion of such full costs of owning 205

and operating telecommunications equipment, equal to the total 206  
population of the political subdivision that is ~~such public cable~~ 207  
~~service~~ the provider divided by the total population of all 208  
political subdivisions that are ~~public cable service~~ such 209  
providers jointly owning and operating ~~such,~~ as applicable, that 210  
head-end equipment, or that telecommunications equipment 211  
determined annually or with such frequency as ~~such public cable~~ 212  
~~service~~ the providers otherwise agree. 213

(D) No political subdivision of this state that is a 214  
franchising authority shall unreasonably withhold a request by a 215  
cable service provider or telecommunications service provider to 216  
transfer, modify, or renew, in accordance with the terms of the 217  
franchise and, as applicable, in accordance with the provisions of 218  
the "Telecommunications Act of 1996," Pub. L. No. 104-104, Title 219  
III, Section 301(i), 110 Stat. 117, 47 U.S.C.A. 537, the "Cable 220  
Communications Policy Act of 1984," Pub. L. No. 98-549, Section 2, 221  
98 Stat. 2790, 47 U.S.C.A. 545, or the "Cable Television Consumer 222  
Protection and Competition Act of 1992," Pub. L. No. 102-385, 223  
Section 18, 106 Stat. 1493, 47 U.S.C.A. 546, its existing 224  
franchise, as otherwise authorized by law, to provide cable 225  
service over a cable system or to provide telecommunications 226  
service over a cable system or using telecommunications equipment. 227

**Sec. 1332.05.** (A)(1) In addition to satisfying any other 228  
applicable notice and hearing requirements, the legislative 229  
authority of a political subdivision of this state shall provide 230  
notice in accordance with division (B) of this section of its 231  
consideration of an ordinance or resolution that would authorize 232  
the expenditure of public money for a cable system or the 233  
provision of cable service over a cable system or for 234  
telecommunications equipment or the provision of 235  
telecommunications service over a cable system or using 236  
telecommunications equipment, including, but not limited to, an 237

ordinance or resolution that would authorize any of the following:	238
(a) A feasibility study, marketing study, or any cost-benefit analysis concerning the establishment, acquisition, construction, improvement, financing, leasing, management, or operation of a cable system or the provision of cable service over a cable system <u>or the establishment, acquisition, construction, improvement, financing, leasing, management, or operation of telecommunications equipment or the provision of telecommunications service over a cable system or using telecommunications equipment;</u>	239 240 241 242 243 244 245 246
(b) The acquisition, construction, installation, improvement, financing, lease, or agreement for management or operation of facilities capable of providing cable service over a cable system <u>or of providing telecommunications service over a cable system or using telecommunications equipment;</u>	247 248 249 250 251
(c) An agreement or arrangement for the use of a cable system <del>or for</del> the provision of cable service over a cable system <u>or for the use of telecommunications equipment or the provision of telecommunications service over a cable system or using telecommunications equipment;</u>	252 253 254 255 256
(d) Approval of the terms of a franchise agreement for the political subdivision as a public cable service provider, if any such agreement exists, or with any other public cable service provider, <u>to provide cable service over a cable system; or of the terms of a franchise or other agreement, if any, for the political subdivision as a public telecommunications service provider to provide telecommunications service over a cable system or using telecommunications equipment, or the terms of a franchise or other agreement with any other public telecommunications service provider to so provide telecommunications service.</u>	257 258 259 260 261 262 263 264 265 266
(2) Any ordinance or resolution enacted by the legislative authority of a political subdivision of this state authorizing the	267 268

formation of a public cable service provider or public 269  
telecommunications service provider by the political subdivision 270  
shall include a comprehensible statement of the general plan for 271  
financing the acquisition, construction, installation, 272  
improvement, or lease of the cable system or of the 273  
telecommunications equipment. No such ordinance or resolution 274  
shall be deemed an emergency ordinance or resolution or a measure 275  
necessary for the immediate preservation of the public peace, 276  
health, or safety in the political subdivision, and no such 277  
ordinance or resolution shall take effect sooner than thirty days 278  
after its date of enactment. If, within thirty days after such 279  
date of enactment, a petition signed by ten per cent of the 280  
electors of the political subdivision, based upon the total number 281  
of votes cast at the last preceding general election of the 282  
political subdivision, shall be filed with the appropriate office 283  
demanding a referendum on the ordinance or resolution, the 284  
ordinance or resolution shall not take effect until submitted to 285  
the electors and approved by a majority of those voting on it. 286

(3) Divisions (A)(1) and (2) of this section apply only with 287  
respect to the first time an ordinance or resolution described, 288  
respectively, in division (A)(1) or (2) of this section is 289  
considered or enacted, respectively, by a legislative authority, 290  
and a legislative authority need not comply with division (A)(1) 291  
or (2) of this section regarding any ordinance or resolution that 292  
pertains to the same cable system or the same telecommunications 293  
equipment and that is considered or enacted, respectively, 294  
subsequent to an ordinance or resolution that was enacted and that 295  
complied with division (A)(1) or (2) of this section, 296  
respectively. 297

(B) Notice under division (A)(1) of this section shall be 298  
given at least forty-five days prior to the enactment of the 299  
ordinance or resolution and shall be given to all persons that 300

have filed a pending application with the political subdivision to 301  
provide within its jurisdiction cable service over a cable system 302  
or are providing cable service over a cable system pursuant to a 303  
franchise granted by the political subdivision or, if the 304  
ordinance or resolution concerns the provision of 305  
telecommunications service, to all telecommunications service 306  
providers that have filed any requisite pending application with 307  
the political subdivision to provide or that are providing that 308  
service within the political subdivision. The notice shall be in 309  
writing, delivered to the address designated by the person as the 310  
address for receipt of notices or, if no such designation has been 311  
made, to the operating address of that person as registered with 312  
the political subdivision. The notice shall be delivered by 313  
certified mail, registered mail, overnight delivery, or a similar 314  
method of receipted delivery. 315

(C) No political subdivision shall fail to comply with 316  
division (A) of this section. 317

**Sec. 1332.06.** (A) A political subdivision of this state that 318  
is a public cable service provider or a public telecommunications 319  
service provider shall maintain a special fund for, respectively, 320  
its cable system and the provision of cable service over that 321  
cable system or for its telecommunications equipment and the 322  
provision of telecommunications service over a cable system or 323  
using telecommunications equipment and shall be subject, with 324  
respect to ~~that~~ either special fund, to sections 5705.09, 5705.10, 325  
5705.14, 5705.15, 5705.16, 5705.39, 5705.40, 5705.41, 5705.44, and 326  
5705.45 and any other applicable provision of Chapter 5705. of the 327  
Revised Code concerning the establishment or maintenance of the 328  
special fund. 329

(B) A political subdivision of this state that is a public 330  
cable service provider or a public telecommunications service 331

provider shall prepare and publish, on or before the first day of 332  
June of each year for the prior calendar year, an annual report 333  
on, respectively, its cable system and the provision of cable 334  
service over that cable system or its telecommunications equipment 335  
and the provision of telecommunications service over a cable 336  
system or using telecommunications equipment. The report shall be 337  
substantially in accordance with full cost accounting and shall 338  
include disclosure of the amount, source, and cost of working 339  
capital utilized for its cable system and the provision of cable 340  
service over that cable system ~~and~~ or its telecommunications 341  
equipment and the provision of telecommunications service over a 342  
cable system or using telecommunications equipment, as well as 343  
estimates of the amount of any franchise fee, regulatory fee, 344  
occupation tax, pole attachment fee, property tax, or other fee or 345  
tax that would be applicable to its cable system and the provision 346  
of cable service over that cable system, or to its 347  
telecommunications equipment and the provision of 348  
telecommunications service over a cable system or using 349  
telecommunications equipment, but for any exemption by reason of 350  
its status as a political subdivision, which exemption is 351  
authorized by law. Nothing in sections 1332.01 to 1332.10 of the 352  
Revised Code requires any elected official of the political 353  
subdivision to maintain a log or other record of the time the 354  
official spends on the business of the public cable service 355  
provider or the public telecommunications service provider in the 356  
course of official duties. 357

(C) No political subdivision shall fail to comply with 358  
division (A) or (B) of this section. 359

**Sec. 1332.07.** A violation of any provision of division (B) of 360  
section 1332.04 of the Revised Code by a political subdivision, 361  
whether as a franchising authority, public cable service provider, 362  
public telecommunications service provider, or otherwise, relieves 363

any other cable service provider in the jurisdiction of the 364  
political subdivision from any obligation to comply with or 365  
perform any regulation, rule, requirement, or restriction that is 366  
the subject of the violation, and entitles any ~~such~~ other cable 367  
service provider or telecommunications service provider to 368  
equivalent treatment, right, or benefit. 369

**Sec. 1332.09.** (A) A political subdivision subject to division 370  
(A), (B), or (C) of section 1332.04 or division (C) of section 371  
1332.05 of the Revised Code may bring a civil action for 372  
declaratory relief in the court of common pleas in the county in 373  
which the political subdivision is located or in any county of 374  
this state in which the political subdivision is a public cable 375  
service provider or public telecommunications service provider. 376

(B) A person that is or is likely to be adversely affected by 377  
a violation of division (A), (B), or (C) of section 1332.04 or 378  
division (C) of section 1332.05 of the Revised Code may bring a 379  
civil action for declaratory or injunctive relief in such a court 380  
of common pleas. Such person that is or is likely to be adversely 381  
affected includes a person that provides, or has filed a pending 382  
application to provide, within the jurisdiction of the political 383  
subdivision, cable service over a cable system or 384  
telecommunications service over a cable system or using 385  
telecommunications equipment, and includes any other political 386  
subdivision in which such allegedly noncomplying political 387  
subdivision is, or has filed a pending application to become, 388  
respectively, a public cable service provider or a public 389  
telecommunications service provider. 390

(C)(1) If an arbitration opinion under section 1332.08 of the 391  
Revised Code contains a finding of a violation by a political 392  
subdivision of division (A), (B), or (C) of section 1332.04 or 393  
division (C) of section 1332.05 of the Revised Code and the 394

political subdivision fails to rectify the violation promptly, and 395  
any person adversely affected by the violation substantially 396  
prevails in a subsequent civil action against the political 397  
subdivision under division (B) of this section regarding the 398  
violation not promptly rectified, the political subdivision is 399  
liable to the person for the person's costs and reasonable 400  
attorney's fees incurred in connection with the civil action. 401

(2) If an arbitration opinion under section 1332.08 of the 402  
Revised Code does not contain a finding of a violation by a 403  
political subdivision of division (A), (B), or (C) of section 404  
1332.04 or division (C) of section 1332.05 of the Revised Code and 405  
the political subdivision substantially prevails in a subsequent 406  
civil action brought against it under division (B) of this section 407  
respecting an alleged violation, the complainants in the civil 408  
action are liable to the political subdivision for its costs and 409  
reasonable attorney's fees incurred in connection with the civil 410  
action. 411

(3) The court shall exercise its equitable discretion in 412  
determining the appropriate amount of attorney's fees to be 413  
awarded under division (C)(1) or (2) of this section. In 414  
exercising that discretion, the court shall consider at least all 415  
of the following: the degree to which the party partially 416  
prevailed, the reasonableness of the party's action, the 417  
reasonableness of the arbitrator's decision, the effort or lack of 418  
effort of the parties to reach a settlement, and the good faith or 419  
lack of good faith of the parties. 420

**Section 2.** That existing sections 1332.01, 1332.02, 1332.03, 421  
1332.04, 1332.05, 1332.06, 1332.07, and 1332.09 of the Revised 422  
Code are hereby repealed. 423