A bill for an act

relating to telecommunications; reducing the plurality necessary in a local election for a municipality to own and operate a telephone exchange; granting authority to counties; providing limitations on a municipality's method of financing a telephone exchange; requiring a feasibility study; prohibiting discrimination in favor of a municipality's own telephone exchange; requiring competitive bidding; amending Minnesota Statutes 2008, section 237.19.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 237.19, is amended to read:

237.19 MUNICIPAL TELECOMMUNICATIONS SERVICES.

Subdivision 1. **Referendum required.** Any municipality shall have the right to own and operate a telephone exchange within its own borders, subject to the provisions of this chapter. It may construct such plant, or purchase an existing plant by agreement with the owner, or where it cannot agree with the owner on price, it may acquire an existing plant by condemnation, as hereinafter provided, but in no case shall a municipality construct or purchase such a plant or proceed to acquire an existing plant by condemnation until such action by it is authorized by a majority of the electors voting upon the proposition at a general election or a special election called for that purpose, and if the proposal is to construct a new exchange where an exchange already exists, it shall not be authorized to do so unless ~~65 percent~~ a majority of those voting thereon vote in favor of the undertaking. A municipality that owns and operates a telephone exchange may enter into a joint venture as a partner or shareholder with a telecommunications organization to provide telecommunications services within its service area. For the purpose of this section "municipality" includes a county.

Subd. 2. **Taxpayer protections.** (a) Notwithstanding another law, a municipality shall not, in whole or in part, finance, refinance, pay the costs or expenses of, or otherwise fund the construction, acquisition, or operation of a telephone exchange, directly or indirectly, through issuance of debt, liability, or obligation, or secure or otherwise become contingently liable for the costs or expenses, except through the use of the revenues directly earned or to be earned from the operation of the telephone exchange. This subdivision does not preclude a municipality that has, on the effective date of this act, already approved a sales tax from using the revenue derived from the tax for constructing, acquiring, or operating a telephone exchange.

(b) This subdivision does not prohibit:

(1) the use of otherwise available funds to pay the reasonable costs of studying the feasibility of operating a telephone exchange or conducting an election on a proposal for the operation of a telephone exchange; or

(2) the sale to nongovernmental investors of revenue bonds to fund the construction or acquisition of a telephone exchange if principal, interest, and premium are payable upon maturity or default and are actually paid solely from, and all obligations under the bonds are secured solely by, the net revenues earned or to be earned by the ownership or operation of the telephone exchange.

Subd. 3. **Feasibility study.** (a) Before conducting the referendum under subdivision 1, the municipality must prepare and make publicly available a written report on the feasibility of owning or acquiring and operating a telephone exchange. The feasibility report must, at minimum, address and disclose:

(1) the cost of establishing, acquiring, or leasing the telephone exchange facilities and an explanation of how these costs will be paid;

(2) detailed projected income statements for each of the first five years of operation of the telephone exchange. In addition to including revenue and expense detail, the projected income statements must also include allowances for depreciation, and a maintenance and upgrade plan for the telephone exchange to avoid technological obsolescence;

(3) a five-year projected capital budget; and

(4) the costs incurred by the municipality in preparing the feasibility report and a list of the individuals or firms paid by the municipality for assistance in studying the feasibility of the project.

(b) Not less than 60 days before the referendum, the municipality must hold a public hearing regarding the feasibility report. Public notice of the hearing must be given to inform the public of the availability of the feasibility report for inspection and copying.

(c) The ballot issue for the referendum must include, in addition to any other information required by law, a statement of the maximum costs disclosed under paragraph (a), clauses (1) and (2), to construct, acquire, and operate the telephone exchange, which costs shall not be exceeded without voter approval in another election.

Subd. 4. **Nondiscrimination.** A municipality shall not discriminate in favor of its own telephone exchange system by granting itself more favorable or less burdensome terms and conditions than a competitive telephone exchange operator with respect to the access and use of public rights-of-way, municipally owned or controlled conduit, towers, telephone poles, and permitting fees charged for access to the municipally owned and managed facilities. A municipality operating a telephone exchange under this section shall:

(1) approve or reject all permit applications seeking access to the facilities from a private telecommunications service provider within 30 days of submission; and

(2) deny a permit application only for cause and must provide a written explanation for any denial.

A permit not acted on within 30 days by a municipality operating a telephone exchange under this section shall be considered approved.

Subd. 5. **Competitive bidding required.** All agreements between a municipality and any firm or individual related to a feasibility study, construction or acquisition, and operation of a telephone exchange, is a "contract" as defined under section 471.345, subdivision 2.

EFFECTIVE DATE. This section is effective the day following final enactment.