

LEGISLATURE OF NEBRASKA
 ONE HUNDRED THIRD LEGISLATURE
 FIRST SESSION
LEGISLATIVE BILL 474

Introduced by Krist, 10.

Read first time January 22, 2013

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
 2 2-3226.01, 2-3226.05, 2-3226.08, 14-109, 15-202, 18-1208,
 3 18-2142.02, 18-2142.04, 19-4018, 19-4024, 19-4031,
 4 19-4034, and 35-106, Reissue Revised Statutes of
 5 Nebraska, and section 86-704, Revised Statutes Cumulative
 6 Supplement, 2012; to change and eliminate provisions
 7 relating to imposition of occupation taxes and provide
 8 procedures; to harmonize provisions; to provide an
 9 operative date; to repeal the original sections; and to
 10 outright repeal sections 15-203, 16-205, and 17-525,
 11 Reissue Revised Statutes of Nebraska.
 12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 2-3226.01, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 2-3226.01 (1) In order to implement its duties and
4 obligations under the Nebraska Ground Water Management and Protection
5 Act and in addition to other powers authorized by law, the board of a
6 district with jurisdiction that is part of a river basin for which
7 the district has, in accordance with section 46-715, adopted an
8 integrated management plan which references section 2-3226.04 and
9 explicitly states its intent in the plan to utilize qualified
10 projects described in section 2-3226.04 may issue negotiable bonds
11 and refunding bonds of the district and entitled river-flow
12 enhancement bonds, with terms determined appropriate by the board,
13 payable by (a) funds granted to such district by the state or federal
14 government for one or more qualified projects, (b) the ~~occupation~~-tax
15 authorized by section 2-3226.05, or (c) the levy authorized by
16 section 2-3225. The district may issue the bonds or refunding bonds
17 directly, or such bonds may be issued by any joint entity as defined
18 in section 13-803 whose member public agencies consist only of
19 qualified natural resources districts or by any joint public agency
20 as defined in section 13-2503 whose participating public agencies
21 consist only of qualified natural resources districts, in connection
22 with any joint project which is to be owned, operated, or financed by
23 the joint entity or joint public agency for the benefit of its member
24 natural resources districts. For the payment of such bonds or
25 refunding bonds, the district may pledge one or more permitted

1 payment sources.

2 (2) Within forty-five days after receipt of a written
3 request by the Natural Resources Committee of the Legislature, the
4 qualified natural resources districts shall submit an electronic
5 report to the committee containing an explanation of existing or
6 planned activities for river-flow enhancement, the revenue source for
7 implementing such activities, and a description of the estimated
8 benefit or benefits to the district or districts.

9 (3) If a district uses the proceeds of a bond issued
10 pursuant to this section for the purposes described in subdivision
11 (1) of section 2-3226.04 or the state uses funds for those same
12 purposes, the agreement to acquire water rights by purchase or lease
13 pursuant to such subdivision shall identify (a) the method of
14 payment, (b) the distribution of funds by the party or parties
15 receiving payments, (c) the water use or rights subject to the
16 agreement, and (d) the water use or rights allowed by the agreement.
17 If any irrigation district is party to the agreement, the irrigation
18 district shall allocate funds received under such agreement among its
19 users or members in a reasonable manner, giving consideration to the
20 benefits received and the value of the rights surrendered for the
21 specified contract period.

22 Sec. 2. Section 2-3226.05, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 2-3226.05 (1) A district with an integrated management
25 plan as described in subsection (1) of section 2-3226.01 may levy an

1 ~~occupation~~a tax upon the activity of irrigation of agricultural
2 lands within such district on an annual basis, not to exceed ten
3 dollars per irrigated acre, the proceeds of which may be used for (a)
4 repaying principal and interest on any bonds or refunding bonds
5 issued pursuant to section 2-3226.01 for one or more projects under
6 section 2-3226.04, (b) the repayment of financial assistance received
7 by the district pursuant to section 2-3226.07, or (c) payment of all
8 or any part of the costs and expenses of one or more qualified
9 projects described in section 2-3226.04. If such district has more
10 than one river basin as described in section 2-1504 within its
11 jurisdiction, such district shall confine ~~such occupation~~the tax
12 authorized in this section to the geographic area affected by an
13 integrated management plan adopted in accordance with section 46-715.

14 (2)(a) Acres classified by the county assessor as
15 irrigated shall be subject to such district's ~~occupation~~ tax unless
16 on or before March 1 in each year the record owner certifies to the
17 district the nonirrigation status of such acres.

18 (b) A district may exempt from the ~~occupation~~ tax acres
19 that are enrolled in local, state, or federal temporary irrigation
20 retirement programs that prohibit the application of irrigation water
21 in the year for which the tax is levied.

22 (c) Except as provided in subdivisions (2)(a) and (b) of
23 this section, a district is prohibited from providing an exemption
24 from, or allowing a request for a local refund of, ~~an occupation~~a
25 tax on irrigated acres regardless of the irrigation source while the

1 record owner maintains irrigated status on such acres in the year for
2 which the tax is levied.

3 (d) Notwithstanding subdivisions (2)(b) and (c) of this
4 section, the record owner may present evidence of the nonirrigation
5 status of the acres subject to the tax within twelve months after the
6 date the tax was levied and the district may refund amounts collected
7 upon such acres if ~~an occupation a~~ tax was not levied by the district
8 the previous year and the district had not adopted an integrated
9 management plan as described in subsection (1) of section 2-3226.01
10 by March 1 in the current year. Subdivision (2)(d) of this section
11 terminates on October 1, 2012.

12 (3) Any such ~~occupation~~-tax shall remain in effect so
13 long as the natural resources district has bonds outstanding which
14 have been issued stating such ~~occupation~~-tax as an available source
15 for payment and for the purpose of paying all or any part of the
16 costs and expenses of one or more projects authorized pursuant to
17 section 2-3226.04.

18 (4) Such ~~occupation~~-taxes shall be certified to,
19 collected by, and accounted for by the county treasurer at the same
20 time and in the same manner as general real estate taxes, and such
21 ~~occupation~~-taxes shall be and remain a perpetual lien against such
22 real estate until paid. Such ~~occupation~~-taxes shall become delinquent
23 at the same time and in the same manner as general real property
24 taxes. The county treasurer shall publish and post a list of
25 delinquent ~~occupation~~-taxes with the list of real property subject to

1 sale for delinquent property taxes provided for in section 77-1804.
2 In addition, the list shall be provided to natural resources
3 districts which levied the delinquent ~~occupation~~-taxes. The list
4 shall include the record owner's name, the parcel identification
5 number, and the amount of delinquent ~~occupation~~-tax. For services
6 rendered in the collection of the ~~occupation~~-tax, the county
7 treasurer shall receive the fee provided for collection of general
8 natural resources district money under section 33-114.

9 (5) Such lien shall be inferior only to general taxes
10 levied by political subdivisions of the state. When such ~~occupation~~
11 taxes have become delinquent and the real property on which the
12 irrigation took place has not been offered at any tax sale, the
13 district may proceed in district court in the county in which the
14 real estate is situated to foreclose in its own name the lien in the
15 same manner and with like effect as a foreclosure of a real estate
16 mortgage, except that sections 77-1903 to 77-1917 shall govern when
17 applicable.

18 Sec. 3. Section 2-3226.08, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 2-3226.08 (1) Any district receiving financial assistance
21 pursuant to section 2-3226.07 shall remit to the department the
22 proceeds of the property tax authorized pursuant to subdivision (1)
23 (d) of section 2-3225, the proceeds of the ~~occupation~~-tax authorized
24 pursuant to section 2-3226.05, or both, when such proceeds are
25 available for distribution until the amount of such financial

1 assistance has been repaid. Such proceeds shall be remitted within
2 fifteen days after receipt of the proceeds by the district.

3 (2) If the district does not receive proceeds described
4 in subsection (1) of this section, the district shall reimburse the
5 Water Contingency Cash Fund by such means as are provided by the
6 Legislature. Such reimbursement shall be made no later than June 30,
7 2013.

8 Sec. 4. Section 14-109, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 ~~14-109 (1)(a) The city council shall have power to tax~~
11 ~~for revenue, license, and regulate any person within the limits of~~
12 ~~the city by ordinance except as otherwise provided in this section.~~
13 ~~Such tax may include both a tax for revenue and license. The city~~
14 ~~council may raise revenue by levying and collecting a tax on any~~
15 ~~occupation or business within the limits of the city. The occupation~~
16 ~~tax shall be imposed in the manner provided in section 18-1208,~~
17 ~~except that section 18-1208 does not apply to an occupation tax~~
18 ~~subject to section 86-704. All such taxes shall be uniform in respect~~
19 ~~to the class upon which they are imposed. All scientific and literary~~
20 ~~lectures and entertainments shall be exempt from taxation, as well as~~
21 ~~concerts and all other musical entertainments given exclusively by~~
22 ~~the citizens of the city. It shall be the duty of the city clerk to~~
23 ~~deliver to the city treasurer the certified copy of the ordinance~~
24 ~~levying such tax, and the city clerk shall append thereto a warrant~~
25 ~~requiring the city treasurer to collect such tax.~~

1 ~~(b) For purposes of this subsection, limits of the city~~
2 ~~does not include the extraterritorial zoning jurisdiction of such~~
3 ~~city.~~

4 ~~(2)(a)-(1)(a)~~ Except as otherwise provided in subdivision
5 (c) of this subsection, the city council shall ~~also~~ have power to
6 require any individual whose primary residence or person who owns a
7 place of business which is within the limits of the city and that
8 owns and operates a motor vehicle within such limits to annually
9 register such motor vehicle in such manner as may be provided and to
10 require such person to pay an annual motor vehicle fee therefor and
11 to require the payment of such fee upon the change of ownership of
12 such vehicle. All such fees which may be provided for under this
13 subsection shall be credited to a separate fund of the city, thereby
14 created, to be used exclusively for constructing, repairing,
15 maintaining, or improving streets, roads, alleys, public ways, or
16 parts thereof or for the amortization of bonded indebtedness when
17 created for such purposes.

18 (b) No motor vehicle fee shall be required under this
19 subsection if (i) a vehicle is used or stored but temporarily in such
20 city for a period of six months or less in a twelve-month period,
21 (ii) an individual does not have a primary residence or a person does
22 not own a place of business within the limits of the city and does
23 not own and operate a motor vehicle within the limits of the city, or
24 (iii) an individual is a full-time student attending a postsecondary
25 institution within the limits of the city and the motor vehicle's

1 situs under the Motor Vehicle Certificate of Title Act is different
2 from the place at which he or she is attending such institution.

3 (c) ~~After December 31, 2012, no~~ No motor vehicle fee
4 shall be required of any individual whose primary residence is or
5 person who owns a place of business within the extraterritorial
6 zoning jurisdiction of such city.

7 (d) For purposes of this subsection, limits of the city
8 includes the extraterritorial zoning jurisdiction of such city.

9 ~~(3)~~ (2) For purposes of this section, person includes
10 bodies corporate, societies, communities, the public generally,
11 individuals, partnerships, limited liability companies, joint-stock
12 companies, cooperatives, and associations. Person does not include
13 any federal, state, or local government or any political subdivision
14 thereof.

15 Sec. 5. Section 15-202, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 15-202 A city of the primary class shall have power to
18 levy taxes for general revenue purposes on all property within the
19 corporate limits of the city taxable according to the laws of
20 Nebraska and to levy ~~an occupation~~ a tax on public service property
21 or corporations in such amounts as may be proper and necessary, in
22 the judgment of the mayor and council, for purposes of revenue. All
23 such taxes shall be uniform with respect to the class upon which they
24 are imposed. The ~~occupation~~ tax on public service property or
25 corporations may be based upon a certain percentage of the gross

1 receipts of such public service corporation or upon such other basis
2 as may be determined upon by the mayor and council. ~~and shall be~~
3 ~~imposed in the manner provided in section 18-1208, except that~~
4 ~~section 18-1208 does not apply to an occupation tax subject to~~
5 ~~section 86-704.~~

6 Sec. 6. Section 18-1208, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 18-1208 (1) A municipality may raise revenue by levying
9 and collecting an occupation tax on any person, partnership, limited
10 liability company, corporation, or business within the limits of the
11 municipality and may regulate same by ordinance. The occupation tax
12 shall be imposed in the manner provided in this section. All
13 occupation taxes shall be uniform in respect to the class upon which
14 they are imposed. All scientific and literary lectures and
15 entertainments shall be exempt from occupation taxes as well as
16 concerts and all other musical entertainments given exclusively by
17 the citizens of the municipality. The municipality may make a
18 reasonable classification of businesses, users of space, or kinds of
19 transactions for purposes of an occupation tax, however:

20 (a) An occupation tax may not be imposed based upon a
21 certain percentage of the gross receipts or sales volume of the
22 person, partnership, limited liability company, corporation, or
23 business;

24 (b) An occupation tax or fee may not be imposed upon
25 tobacco or tobacco products other than as provided in section

1 28-1423; and

2 (c) An occupation tax or fee may not be imposed upon
3 alcoholic liquor or those licensed to dispense alcoholic liquor other
4 than as provided in section 53-132.

5 ~~(1)-(2)~~ Except as otherwise provided in this section,
6 ~~after July 19, 2012,~~ a municipality may impose a new occupation tax
7 or increase the rate of an existing occupation tax, which new
8 occupation tax or increased rate of an existing occupation tax is
9 projected to generate annual occupation tax revenue in excess of the
10 applicable amount listed in subsection ~~(2)-(3)~~ of this section,
11 pursuant to ~~section 14-109, 15-202, 15-203, 16-205, or 17-525~~
12 subsection (1) of this section if the question of whether to impose
13 the tax or increase the rate of an existing occupation tax has been
14 submitted at an election held within the municipality and in which
15 all registered voters shall be entitled to vote on the question. The
16 officials of the municipality shall order the submission of the
17 question by submitting a certified copy of the resolution proposing
18 the tax or tax rate increase to the election commissioner or county
19 clerk at least fifty days before the election. The election shall be
20 conducted in accordance with the Election Act. If a majority of the
21 votes cast upon the question are in favor of the new tax or increased
22 rate of an existing occupation tax, then the governing body of such
23 municipality shall be empowered to impose the new tax or to impose
24 the increased tax rate. If a majority of those voting on the question
25 are opposed to the new tax or increased rate, then the governing body

1 of the municipality shall not impose the new tax or increased rate
2 but shall maintain any existing occupation tax at its current rate.

3 ~~(2)~~(3) The applicable amount of annual revenue for each
4 new occupation tax or annual revenue raised by the increased rate for
5 an existing occupation tax for purposes of subsection ~~(1)~~(2) of this
6 section is:

7 (a) For cities of the metropolitan class, six million
8 dollars;

9 (b) For cities of the primary class, three million
10 dollars;

11 (c) For cities of the first class, seven hundred thousand
12 dollars; and

13 (d) For cities of the second class and villages, three
14 hundred thousand dollars.

15 If in any fiscal year the revenue generated by the
16 occupation tax exceeds the amount listed in this subsection, the
17 municipality shall adjust the rate for the next fiscal year to offset
18 the excess collection and if the excess collection occurs during the
19 final fiscal year of imposition of the tax, the municipality shall
20 terminate the tax once the dollar limitation in this subsection has
21 been reached.

22 ~~(3)~~ After July 19, 2012, a ~~(4)~~ A municipality shall not
23 be required to submit the following questions to the registered
24 voters:

25 (a) Whether to change the rate of an occupation tax

1 imposed for a specific project which does not provide for deposit of
2 the tax proceeds in the municipality's general fund; or

3 (b) Whether to terminate an occupation tax earlier than
4 the determinable termination date under the original question
5 submitted to the registered voters.

6 This subsection applies to occupation taxes imposed prior
7 to, on, or after July 19, 2012.

8 (5) Funds collected from an occupation tax shall be used
9 for municipal purposes and may not be provided to another political
10 subdivision, state government entity, or nonprofit entity unless the
11 funds will be used for (a) a building that will become property of
12 the municipality or (b) infrastructure or public utilities upgrades
13 or public service support for the municipality.

14 ~~(4)-(6)~~ The provisions of this section do not apply to an
15 occupation tax subject to section 86-704.

16 (7) Any occupation tax adopted on or after July 19, 2012,
17 and prior to the operative date of this act shall terminate on
18 January 1, 2015, unless the tax complies with the requirements of
19 this section prior to January 1, 2015.

20 (8) The changes made to this section by this legislative
21 bill do not apply to occupation taxes imposed prior to July 19, 2012.

22 Sec. 7. Section 18-2142.02, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 18-2142.02 A city may levy a general business occupation
25 tax upon the businesses and users of space within an enhanced

1 employment area for the purpose of paying all or any part of the
2 costs and expenses of any redevelopment project within such enhanced
3 employment area as provided in section 18-1208. ~~For purposes of the~~
4 ~~tax imposed under this section, the governing body may make a~~
5 ~~reasonable classification of businesses, users of space, or kinds of~~
6 ~~transactions.~~ The collection of a tax imposed pursuant to this
7 section shall be made and enforced in such a manner as the governing
8 body shall by ordinance determine to produce the required revenue.
9 The governing body may provide that failure to pay the tax imposed
10 pursuant to this section shall constitute a violation of the
11 ordinance and subject the violator to a fine or other punishment as
12 provided by ordinance. Any such occupation tax agreed to by the
13 authority and the city shall remain in effect so long as the
14 authority has bonds outstanding which have been issued stating such
15 occupation tax as an available source for payment.

16 Sec. 8. Section 18-2142.04, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 18-2142.04 (1) For purposes of this section:

19 (a) Authorized work means the performance of any one or
20 more of the following purposes within an enhanced employment area
21 designated pursuant to this section:

22 (i) The acquisition, construction, maintenance, and
23 operation of public offstreet parking facilities for the benefit of
24 the enhanced employment area;

25 (ii) Improvement of any public place or facility in the

1 enhanced employment area, including landscaping, physical
2 improvements for decoration or security purposes, and plantings;

3 (iii) Construction or installation of pedestrian shopping
4 malls or plazas, sidewalks or moving sidewalks, parks, meeting and
5 display facilities, bus stop shelters, lighting, benches or other
6 seating furniture, sculptures, trash receptacles, shelters,
7 fountains, skywalks, and pedestrian and vehicular overpasses and
8 underpasses, and any useful or necessary public improvements;

9 (iv) Leasing, acquiring, constructing, reconstructing,
10 extending, maintaining, or repairing parking lots or parking garages,
11 both above and below ground, or other facilities for the parking of
12 vehicles, including the power to install such facilities in public
13 areas, whether such areas are owned in fee or by easement, in the
14 enhanced employment area;

15 (v) Creation and implementation of a plan for improving
16 the general architectural design of public areas in the enhanced
17 employment area;

18 (vi) The development of any public activities and
19 promotion of public events, including the management, promotion, and
20 advocacy of retail trade activities or other promotional activities,
21 in the enhanced employment area;

22 (vii) Maintenance, repair, and reconstruction of any
23 improvements or facilities authorized by the Community Development
24 Law;

25 (viii) Any other project or undertaking for the

1 betterment of the public facilities in the enhanced employment area,
2 whether the project is capital or noncapital in nature;

3 (ix) Enforcement of parking regulations and the provision
4 of security within the enhanced employment area; or

5 (x) Employing or contracting for personnel, including
6 administrators for any improvement program under the Community
7 Development Law, and providing for any service as may be necessary or
8 proper to carry out the purposes of the Community Development Law;

9 (b) Employee means a person employed at a business
10 located within an enhanced employment area; and

11 (c) Number of new employees means the number of
12 equivalent employees that are employed at a business located within
13 an enhanced employment area designated pursuant to this section
14 during a year that are in excess of the number of equivalent
15 employees during the year immediately prior to the year the enhanced
16 employment area was designated pursuant to this section.

17 (2) If an area is not blighted or substandard, a city may
18 designate an area as an enhanced employment area if the governing
19 body determines that new investment within such enhanced employment
20 area will result in at least (a) two new employees and new investment
21 of one hundred twenty-five thousand dollars in counties with fewer
22 than fifteen thousand inhabitants, (b) five new employees and new
23 investment of two hundred fifty thousand dollars in counties with at
24 least fifteen thousand inhabitants but fewer than twenty-five
25 thousand inhabitants, (c) ten new employees and new investment of

1 five hundred thousand dollars in counties with at least twenty-five
2 thousand inhabitants but fewer than fifty thousand inhabitants, (d)
3 fifteen new employees and new investment of one million dollars in
4 counties with at least fifty thousand inhabitants but fewer than one
5 hundred thousand inhabitants, (e) twenty new employees and new
6 investment of one million five hundred thousand dollars in counties
7 with at least one hundred thousand inhabitants but fewer than two
8 hundred thousand inhabitants, (f) twenty-five new employees and new
9 investment of two million dollars in counties with at least two
10 hundred thousand inhabitants but fewer than four hundred thousand
11 inhabitants, or (g) thirty new employees and new investment of three
12 million dollars in counties with at least four hundred thousand
13 inhabitants. Any business that has one hundred thirty-five thousand
14 square feet or more and annual gross sales of ten million dollars or
15 more shall provide an employer-provided health benefit of at least
16 three thousand dollars annually to all new employees who are working
17 thirty hours per week or more on average and have been employed at
18 least six months. In making such determination, the governing body
19 may rely upon written undertakings provided by any owner of property
20 within such area.

21 (3) Upon designation of an enhanced employment area under
22 this section, a city may levy a general business occupation tax upon
23 the businesses and users of space within such enhanced employment
24 area for the purpose of paying all or any part of the costs and
25 expenses of authorized work within such enhanced employment area as

1 provided in section 18-1208. For purposes of the tax imposed under
2 this section, the governing body may make a reasonable classification
3 of businesses, users of space, or kinds of transactions. The
4 collection of a tax imposed pursuant to this section shall be made
5 and enforced in such a manner as the governing body shall by
6 ordinance determine to produce the required revenue. The governing
7 body may provide that failure to pay the tax imposed pursuant to this
8 section shall constitute a violation of the ordinance and subject the
9 violator to a fine or other punishment as provided by ordinance. Any
10 occupation tax levied by the city under this section shall remain in
11 effect so long as the city has bonds outstanding which have been
12 issued under the authority of this section and are secured by such
13 occupation tax or that state such occupation tax as an available
14 source for payment. The total amount of occupation taxes levied shall
15 not exceed the total costs and expenses of the authorized work
16 including the total debt service requirements of any bonds the
17 proceeds of which are expended for or allocated to such authorized
18 work. The assessments or taxes levied must be specified by ordinance
19 and the proceeds shall not be used for any purpose other than the
20 making of such improvements and for the repayment of bonds issued in
21 whole or in part for the financing of such improvements. The
22 authority to levy the general business occupation tax contained in
23 this section and the authority to issue bonds secured by or payable
24 from such occupation tax shall be independent of and separate from
25 any occupation tax referenced in section 18-2103.

1 (4) A city may issue revenue bonds for the purpose of
2 defraying the cost of authorized work and to secure the payment of
3 such bonds with the occupation tax revenue described in this section.
4 Such revenue bonds may be issued in one or more series or issues
5 where deemed advisable, and each such series or issue may contain
6 different maturity dates, interest rates, priorities on revenue
7 available for payment of such bonds and priorities on securities
8 available for guaranteeing payment thereof, and such other differing
9 terms and conditions as are deemed necessary. The following shall
10 apply to any such bonds:

11 (a) Such bonds shall be limited obligations of the city.
12 Bonds and interest on such bonds, issued under the authority of this
13 section, shall not constitute nor give rise to a pecuniary liability
14 of the city or a charge against its general credit or taxing powers.
15 Such limitation shall be plainly stated upon the face of each of such
16 bonds;

17 (b) Such bonds may (i) be executed and delivered at any
18 time and from time to time, (ii) be in such form and denominations,
19 (iii) be of such tenor, (iv) be payable in such installments and at
20 such time or times not exceeding twenty years from their date, (v) be
21 payable at such place or places, (vi) bear interest at such rate or
22 rates, payable at such place or places, and evidenced in such manner,
23 (vii) be redeemable prior to maturity, with or without premium, and
24 (viii) contain such provisions as shall be deemed in the best
25 interest of the city and provided for in the proceedings of the

1 governing body under which the bonds shall be authorized to be
2 issued;

3 (c) The authorization, terms, issuance, execution, or
4 delivery of such bonds shall not be subject to sections 10-101 to
5 10-126; and

6 (d) Such bonds may be sold at public or private sale in
7 such manner and at such time or times as may be determined by the
8 governing body to be most advantageous. The city may pay all
9 expenses, premiums, and commissions which the governing body may deem
10 necessary or advantageous in connection with the authorization, sale,
11 and issuance thereof from the proceeds or the sale of the bonds or
12 from the revenue of the occupation tax described in this section.

13 Sec. 9. Section 19-4018, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 19-4018 Pursuant to sections 19-4015 to 19-4038 cities of
16 the metropolitan, primary, first, or second class may impose (1) a
17 special assessment upon the property within a business improvement
18 district in the city or (2) a general business ~~license and~~ occupation
19 tax on businesses and users of space within a business improvement
20 district as provided in section 18-1208. The proceeds or other
21 available funds may be used for the purposes stated in section
22 19-4019.

23 Sec. 10. Section 19-4024, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 19-4024 Upon receiving the recommendation from the

1 business improvement board, the city council, after receipt of
2 recommendations from the planning commission if the city has a
3 planning commission, may create one or more business improvement
4 districts by adopting a resolution of intention to establish a
5 district or districts. The resolution shall contain the following
6 information:

7 (1) A description of the boundaries of any proposed
8 district;

9 (2) The time and place of a hearing to be held by the
10 city council to consider establishment of a district or districts;

11 (3) The proposed public facilities and improvements to be
12 made or maintained within any such district; and

13 (4) The proposed or estimated costs for improvements and
14 facilities within any district, and the method by which the revenue
15 shall be raised. If a special assessment is proposed, the resolution
16 also shall state the proposed method of assessment.

17 The notice of intention shall recite that the method of
18 raising revenue shall be fair and equitable. In the use of a general
19 occupation tax, the tax shall be based primarily on the square
20 footage of the owner's and user's place of business. In the use of a
21 special assessment, the assessment shall be based upon the special
22 benefit to the property within the district.

23 Sec. 11. Section 19-4031, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 19-4031 (1) In addition to or in place of the special

1 assessments authorized by sections 19-4015 to 19-4038, a city may
2 levy a general business occupation tax upon the businesses and users
3 of space within a district established for acquiring, constructing,
4 maintaining or operating public offstreet parking facilities and
5 providing in connection therewith other public improvements and
6 facilities authorized by sections 19-4015 to 19-4038, for the purpose
7 of paying all or any part of the total cost and expenses of any
8 authorized improvement or facility within such district. The general
9 business occupation tax shall be levied as provided in section
10 18-1208. Notice of a hearing on any such tax levied under sections
11 19-4015 to 19-4038 shall be given to the businesses and users of
12 space of such districts, and appeals may be taken, all in the manner
13 provided in section 19-4030.

14 (2) For the purposes of the tax to be imposed under this
15 section, the city council may make a reasonable classification of
16 businesses or users of space. The collection of a tax imposed
17 pursuant to this section shall be made and enforced in such a manner
18 as the city council shall by ordinance determine to produce the
19 required revenue. The city council may provide that failure to pay
20 the tax imposed pursuant to this section shall constitute a violation
21 of the ordinance and subject the violator to a fine or other
22 punishment as provided by ordinance.

23 Sec. 12. Section 19-4034, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 19-4034 A city may levy a general business occupation

1 tax, or a special assessment against the real estate located in a
2 district to the extent of special benefit to such real estate, for
3 the purpose of paying all or any part of the cost of maintenance,
4 repair, and reconstruction, including utility costs of any
5 improvement or facility in the district. Districts created for
6 taxation or assessment of maintenance, repair, and reconstruction
7 costs, including utility costs of improvements or facilities which
8 are authorized by sections 19-4015 to 19-4038, but which were not
9 acquired or constructed pursuant to sections 19-4015 to 19-4038, may
10 be taxed or assessed as provided in sections 19-4015 to 19-4038. Any
11 occupation tax levied under this section shall be limited to those
12 improvements and facilities authorized by section 19-4030. The
13 occupation tax shall be levied as provided in section 18-1208. The
14 city council may levy such taxes or assessments under either of the
15 following methods:

16 (1) The city council, sitting as a board of equalization,
17 may, not more frequently than annually, determine the costs of
18 maintenance or repair, and reconstruction, of a facility. Such costs
19 shall be either assessed to the real estate located in such district
20 in accordance with the proposed method of assessment, or taxed
21 against the businesses and users of space in the district, whichever
22 may be applicable as determined by the ordinance creating the
23 district. However, if the city council finds that the method of
24 assessment proposed in the ordinance creating the district does not
25 provide a fair and equitable method of apportioning such costs, then

1 it may assess the costs under such method as the city council finds
2 to be fair and equitable. At the hearing on such taxes or
3 assessments, objections may be made to the total cost and the
4 proposed allocation of such costs among the parcels of real estate or
5 businesses in such district; or

6 (2) After notice is given to the owners or businesses as
7 provided in section 19-4030 the city council may establish and may
8 change from time to time, the percentage of such costs for
9 maintenance, repair, and reconstruction which each parcel of real
10 estate or each business or user of space in any district shall pay.
11 The city council shall annually determine the total amount of such
12 costs for each period since costs were last taxed or assessed, and
13 shall, after a hearing, tax or assess such costs to the real estate
14 in the district in accordance with the percentages previously
15 established at such hearing. Notice of such hearing shall be given as
16 provided in section 19-4030 and shall state the total costs and
17 percentage to be taxed or assessed to each parcel of real estate.
18 Unless objections are filed with the city clerk at least five days
19 before the hearing, all objections to the amount of total costs and
20 the assessment percentages should be deemed to have been waived and
21 the assessments shall be levied as stated in such notice except that
22 the city council may reduce any assessment percentage.

23 Sec. 13. Section 35-106, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 35-106 The municipal authorities of any city of the first

1 or second class or village, shall have authority, by ordinance, to
2 impose an ~~occupation~~ a tax of not more than five dollars per annum on
3 each fire insurance corporation, company, or association, doing
4 business in such city or village, for the use, support, and benefit
5 of volunteer fire departments, regularly organized under the laws of
6 the State of Nebraska regulating the same. The municipal clerk shall
7 collect with diligence the ~~occupation~~ tax so imposed. Upon the
8 receipt of ~~said~~ the tax the municipal clerk shall pay over the
9 proceeds thereof to the municipal treasurer who shall credit the same
10 to a fund to be known as special ~~occupation~~ tax fund for benefit of
11 the volunteer fire department. Upon proper claim filed by the chief
12 of the fire department and allowed by the local governing body of the
13 municipality, the municipal treasurer shall pay over the proceeds of
14 the tax in the fund from time to time for the use of the fire
15 department, as hereinbefore provided.

16 Sec. 14. Section 86-704, Revised Statutes Cumulative
17 Supplement, 2012, is amended to read:

18 86-704 (1) Any telecommunications company, incorporated
19 or qualified to do business in this state, is granted the right to
20 construct, operate, and maintain telecommunications lines and related
21 facilities along, upon, across, and under the public highways of this
22 state, and upon and under lands in this state, whether state or
23 privately owned, except that (a) such lines and related facilities
24 shall be so constructed and maintained as not to interfere with the
25 ordinary use of such lands or of such highways by the public and (b)

1 all aerial wires and cables shall be placed at a height of not less
2 than eighteen feet above all highway crossings.

3 (2) Sections 86-701 to 86-707 shall not transfer the
4 rights now vested in municipalities in relation to the regulation of
5 the poles, wires, cables, and other appliances or authorize a
6 telecommunications company to erect any poles or construct any
7 conduit, cable, or other facilities along, upon, across, or under a
8 public highway within a municipality without first obtaining the
9 consent of the governing body of the municipality. The municipality
10 shall not exercise any authority over any rights the
11 telecommunications company may have to deliver telecommunications
12 services as authorized by the Public Service Commission or the
13 Federal Communications Commission.

14 (3) Consent from a governing body for the use of a public
15 highway within a municipality shall be based upon a lawful exercise
16 of its statutory and constitutional authority. Such consent shall not
17 be unreasonably withheld, and a preference or disadvantage shall not
18 be created through the granting or withholding of such consent. A
19 municipality shall not adopt an ordinance that prohibits or has the
20 effect of prohibiting the ability of a telecommunications company to
21 provide telecommunications service.

22 (4)(a) A municipality shall not levy a tax, fee, or
23 charge for any right or privilege of engaging in a telecommunications
24 business or for the use by a telecommunications company of a public
25 highway, except that a municipality may levy: ~~other than:~~

1 ~~(i)(A) Until January 1, 2013, an occupation tax~~
2 ~~authorized under section 14-109, 15-202, 15-203, 16-205, or 17-525;~~
3 ~~and~~

4 ~~(B) Beginning January 1, 2013, an occupation tax~~
5 ~~authorized under section 14-109, 15-202, 15-203, 16-205, or 17-525~~
6 ~~that meets the following requirements:~~

7 (i) An occupation tax that meets the following
8 requirements:

9 ~~(I)(A)~~ The occupation tax shall be imposed only on the
10 receipts from the sale of telecommunications service as defined in
11 subdivision (7)(aa) of section 77-2703.04; and

12 ~~(II)(B)~~ The occupation tax shall not exceed six and
13 twenty-five hundredths percent except as provided in subsection (5)
14 of this section; and

15 (ii) A public highway construction permit fee or charge
16 to the extent that the fee or charge applies to all persons seeking
17 use of the public highway in a substantially similar manner. All
18 public highway construction permit fees or charges shall be directly
19 related to the costs incurred by the municipality in providing
20 services relating to the granting or administration of permits. Any
21 highway construction permit fee or charge shall also be reasonably
22 related in time to the occurrence of such costs.

23 (b) Any tax, fee, or charge imposed by a municipality
24 shall be competitively neutral.

25 ~~(5) Beginning January 1, 2013, a A municipality may~~

1 increase an occupation tax described in subdivision ~~(4)(a)(i)(B)~~(4)
2 (a)(i) of this section to a rate that exceeds the limit contained in
3 subdivision ~~(4)(a)(i)(B)(II)~~(4)(a)(i)(B) of this section if the
4 question of whether to increase such rate has been submitted at a
5 primary or general election at which members of the governing body of
6 the municipality are nominated or elected or at a special election
7 held within the municipality and in which all registered voters shall
8 be entitled to vote on such question. A municipality may not increase
9 its existing rate pursuant to this subsection by more than twenty-
10 five hundredths percent at any one election. The officials of the
11 municipality shall order the submission of the question by submitting
12 a certified copy of the resolution proposing the rate increase to the
13 election commissioner or county clerk at least fifty days before the
14 election. The election shall be conducted in accordance with the
15 Election Act. If a majority of the votes cast upon such question are
16 in favor of such rate increase, then the governing body of such
17 municipality shall be empowered to impose the rate increase. If a
18 majority of those voting on the question are opposed to such rate
19 increase, then the governing body of the municipality shall not
20 impose such rate increase.

21 (6) The changes made by Laws 1999, LB 496, shall not be
22 construed to affect the terms or conditions of any franchise,
23 license, or permit issued by a municipality prior to August 28, 1999,
24 or to release any party from any obligations thereunder. Such
25 franchises, licenses, or permits shall remain fully enforceable in

1 accordance with their terms. A municipality may lawfully enter into
2 agreements with franchise holders, licensees, or permittees to modify
3 or terminate an existing franchise, license, or agreement.

4 (7) Taxes or fees shall not be collected by a
5 municipality through the provision of in-kind services by a
6 telecommunications company, and a municipality shall not require the
7 provision of in-kind services as a condition of consent to the use of
8 a public highway.

9 (8) The terms of any agreement between a municipality and
10 a telecommunications company regarding use of public highways shall
11 be matters of public record and shall be made available to any member
12 of the public upon request, except that information submitted to a
13 municipality by a telecommunications company which such
14 telecommunications company determines to be proprietary shall be
15 deemed to be a trade secret pursuant to subdivision (3) of section
16 84-712.05 and shall be accorded full protection from disclosure to
17 third parties in a manner consistent with state law.

18 Sec. 15. This act becomes operative on January 1, 2014.

19 Sec. 16. Original sections 2-3226.01, 2-3226.05,
20 2-3226.08, 14-109, 15-202, 18-1208, 18-2142.02, 18-2142.04, 19-4018,
21 19-4024, 19-4031, 19-4034, and 35-106, Reissue Revised Statutes of
22 Nebraska, and section 86-704, Revised Statutes Cumulative Supplement,
23 2012, are repealed.

24 Sec. 17. The following sections are outright repealed:
25 Sections 15-203, 16-205, and 17-525, Reissue Revised Statutes of

LB 474

LB 474

1 Nebraska.