

AMENDMENTS TO LB 165

Introduced by Revenue

1 1. Strike the original sections and insert the following
2 new sections:

3 Section 1. Section 86-704, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 86-704 (1) Any telecommunications company, incorporated
6 or qualified to do business in this state, is granted the right
7 to construct, operate, and maintain telecommunications lines and
8 related facilities along, upon, across, and under the public
9 highways of this state, and upon and under lands in this state,
10 whether state or privately owned, except that (a) such lines and
11 related facilities shall be so constructed and maintained as not to
12 interfere with the ordinary use of such lands or of such highways
13 by the public and (b) all aerial wires and cables shall be placed
14 at a height of not less than eighteen feet above all highway
15 crossings.

16 (2) Sections 86-701 to 86-707 shall not transfer the
17 rights now vested in municipalities in relation to the regulation
18 of the poles, wires, cables, and other appliances or authorize
19 a telecommunications company to erect any poles or construct any
20 conduit, cable, or other facilities along, upon, across, or under
21 a public highway within a municipality without first obtaining
22 the consent of the governing body of the municipality. The
23 municipality shall not exercise any authority over any rights the

1 telecommunications company may have to deliver telecommunications
2 services as authorized by the Public Service Commission or the
3 Federal Communications Commission.

4 (3) Consent from a governing body for the use of a public
5 highway within a municipality shall be based upon a lawful exercise
6 of its statutory and constitutional authority. Such consent shall
7 not be unreasonably withheld, and a preference or disadvantage
8 shall not be created through the granting or withholding of
9 such consent. A municipality shall not adopt an ordinance that
10 prohibits or has the effect of prohibiting the ability of a
11 telecommunications company to provide telecommunications service.

12 (4)(a) A municipality shall not levy a tax, fee,
13 or charge for any right or privilege of engaging in a
14 telecommunications business or for the use by a telecommunications
15 company of a public highway other than:

16 (i) An occupation tax authorized under section 14-109,
17 15-202, 15-203, 16-205, or 17-525~~+~~ and that meets the following
18 requirements:

19 (A) The occupation tax shall be imposed only on the
20 receipts from the sale of telecommunications service as defined in
21 subdivision (7)(aa) of section 77-2703.04; and

22 (B) The occupation tax shall not exceed six and
23 twenty-five hundredths percent except as provided in subsection (5)
24 of this section; and

25 (ii) A public highway construction permit fee or charge
26 to the extent that the fee or charge applies to all persons seeking
27 use of the public highway in a substantially similar manner.

1 All public highway construction permit fees or charges shall be
2 directly related to the costs incurred by the municipality in
3 providing services relating to the granting or administration of
4 permits. Any highway construction permit fee or charge shall also
5 be reasonably related in time to the occurrence of such costs.

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

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

1 rate increase.

2 ~~(5)~~ (6) The changes made by Laws 1999, LB 496, shall not
3 be construed to affect the terms or conditions of any franchise,
4 license, or permit issued by a municipality prior to August 28,
5 1999, or to release any party from any obligations thereunder. Such
6 franchises, licenses, or permits shall remain fully enforceable
7 in accordance with their terms. A municipality may lawfully enter
8 into agreements with franchise holders, licensees, or permittees to
9 modify or terminate an existing franchise, license, or agreement.

10 ~~(6)~~ (7) Taxes or fees shall not be collected by a
11 municipality through the provision of in-kind services by a
12 telecommunications company, and a municipality shall not require
13 the provision of in-kind services as a condition of consent to the
14 use of a public highway.

15 ~~(7)~~ (8) The terms of any agreement between a municipality
16 and a telecommunications company regarding use of public highways
17 shall be matters of public record and shall be made available to
18 any member of the public upon request, except that information
19 submitted to a municipality by a telecommunications company which
20 such telecommunications company determines to be proprietary shall
21 be deemed to be a trade secret pursuant to subdivision (3) of
22 section 84-712.05 and shall be accorded full protection from
23 disclosure to third parties in a manner consistent with state law.

24 Sec. 2. Original section 86-704, Reissue Revised Statutes
25 of Nebraska, is repealed.

26 Sec. 3. Since an emergency exists, this act takes effect
27 when passed and approved according to law.