

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 165
Final Reading

Introduced by Fischer, 43.

Read first time January 07, 2011

Committee: Revenue

A BILL

1 FOR AN ACT relating to telecommunications; to amend section 86-704,
2 Reissue Revised Statutes of Nebraska; to change municipal
3 occupation tax provisions; and to repeal the original
4 section.
5 Be it enacted by the people of the State of Nebraska,

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

3 86-704 (1) Any telecommunications company, incorporated
4 or qualified to do business in this state, is granted the right to
5 construct, operate, and maintain telecommunications lines and related
6 facilities along, upon, across, and under the public highways of this
7 state, and upon and under lands in this state, whether state or
8 privately owned, except that (a) such lines and related facilities
9 shall be so constructed and maintained as not to interfere with the
10 ordinary use of such lands or of such highways by the public and (b)
11 all aerial wires and cables shall be placed at a height of not less
12 than eighteen feet above all highway crossings.

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

24 (3) Consent from a governing body for the use of a public
25 highway within a municipality shall be based upon a lawful exercise

1 of its statutory and constitutional authority. Such consent shall not
2 be unreasonably withheld, and a preference or disadvantage shall not
3 be created through the granting or withholding of such consent. A
4 municipality shall not adopt an ordinance that prohibits or has the
5 effect of prohibiting the ability of a telecommunications company to
6 provide telecommunications service.

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

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

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

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

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

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

1 public highway construction permit fees or charges shall be directly
2 related to the costs incurred by the municipality in providing
3 services relating to the granting or administration of permits. Any
4 highway construction permit fee or charge shall also be reasonably
5 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) Beginning January 1, 2013, a municipality may
9 increase an occupation tax described in subdivision (4)(a)(i)(B) of
10 this section to a rate that exceeds the limit contained in
11 subdivision (4)(a)(i)(B)(II) of this section if the question of
12 whether to increase such rate has been submitted at a primary or
13 general election at which members of the governing body of the
14 municipality are nominated or elected or at a special election held
15 within the municipality and in which all registered voters shall be
16 entitled to vote on such question. A municipality may not increase
17 its existing rate pursuant to this subsection by more than twenty-
18 five hundredths percent at any one election. The officials of the
19 municipality shall order the submission of the question by submitting
20 a certified copy of the resolution proposing the rate increase to the
21 election commissioner or county clerk at least fifty days before the
22 election. The election shall be conducted in accordance with the
23 Election Act. If a majority of the votes cast upon such question are
24 in favor of such rate increase, then the governing body of such
25 municipality shall be empowered to impose the rate increase. If a

1 majority of those voting on the question are opposed to such rate
2 increase, then the governing body of the municipality shall not
3 impose such rate increase.

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

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

17 ~~(7)~~(8) The terms of any agreement between a municipality
18 and a telecommunications company regarding use of public highways
19 shall be matters of public record and shall be made available to any
20 member of the public upon request, except that information submitted
21 to a municipality by a telecommunications company which such
22 telecommunications company determines to be proprietary shall be
23 deemed to be a trade secret pursuant to subdivision (3) of section
24 84-712.05 and shall be accorded full protection from disclosure to
25 third parties in a manner consistent with state law.

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