

AMENDMENTS TO LB311

(Amendments to Standing Committee amendments, AM1111)

Introduced by DeBoer, 10.

1           1. Strike section 19 and insert the following new section:

2           **Sec. 19.** Section 86-704, Reissue Revised Statutes of Nebraska, is  
3 amended to read:

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

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

1 conditions.

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

11 (4) ~~(4)(a)~~ A municipality shall not levy a tax, fee, or charge for  
12 any right or privilege of engaging in a telecommunications business or  
13 for the use by a telecommunications company of a public highway other  
14 than:

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

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

20 (ii) ~~(B)~~ Except as provided in subsection (5) of this section, the  
21 occupation tax shall not exceed:

22 (A) ~~(I)~~ Before October 1, 2024, six and twenty-five hundredths  
23 percent; and

24 (B) ~~(II)~~ Beginning October 1, 2024, four percent; and

25 (b) ~~(ii)~~ A public highway construction permit fee or charge that  
26 complies with subsection (7) of this section. ~~to the extent that the fee~~  
27 ~~or charge applies to all persons seeking use of the public highway in a~~  
28 ~~substantially similar manner. All public highway construction permit fees~~  
29 ~~or charges shall be directly related to the costs incurred by the~~  
30 ~~municipality in providing services relating to the granting or~~  
31 ~~administration of permits. Any highway construction permit fee or charge~~

1 ~~shall also be reasonably related in time to the occurrence of such costs.~~

2 ~~(b) Any tax, fee, or charge imposed by a municipality shall be~~  
3 ~~competitively neutral.~~

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

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

31 (7) Any public highway construction permit fee or charge that is

1 imposed by a governing entity for the use of a public highway shall (a)  
2 apply to all persons seeking use of the public highway in a substantially  
3 similar manner, (b) be directly related to the costs incurred by the  
4 governing entity in providing services relating to the granting or  
5 administration of permits, and (c) be reasonably related in time to the  
6 occurrence of such costs.

7 (8) Any tax, fee, or charge imposed by a governing entity as  
8 described in this section shall be competitively neutral.

9 (9) ~~(7)~~ Taxes or fees shall not be collected by a governing entity  
10 municipality through the provision of in-kind services by a  
11 telecommunications company, and a governing entity municipality shall not  
12 require the provision of in-kind services as a condition of consent to  
13 the use of a public highway.

14 (10) ~~(8)~~ The terms of any agreement between a governing entity  
15 municipality and a telecommunications company regarding use of public  
16 highways shall be matters of public record and shall be made available to  
17 any member of the public upon request, except that information submitted  
18 to a governing entity municipality by a telecommunications company which  
19 such telecommunications company determines to be proprietary shall be  
20 deemed to be a trade secret pursuant to subdivision (3) of section  
21 84-712.05 and shall be accorded full protection from disclosure to third  
22 parties in a manner consistent with state law.

23 (11) For purposes of this section, unless the context otherwise  
24 requires:

25 (a) Governing entity has the same meaning as in section 12 of this  
26 act;

27 (b) Internet-protocol-enabled service has the same meaning as in  
28 section 86-111.01;

29 (c) Telecommunications service has the same meaning as in section  
30 86-121; and

31 (d) Voice over Internet protocol service has the same meaning as in

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1 section 86-121.01.