

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1049

Introduced by Bostar, 29.

Read first time January 08, 2024

Committee: Revenue

1 A BILL FOR AN ACT relating to telecommunications; to amend section
2 86-704, Reissue Revised Statutes of Nebraska; to change a municipal
3 occupation tax on the sale of telecommunications service as
4 prescribed; to eliminate obsolete provisions; to harmonize
5 provisions; and to repeal the original section.
6 Be it enacted by the people of the State of Nebraska,

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

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

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

23 (3) Consent from a governing body for the use of a public highway
24 within a municipality shall be based upon a lawful exercise of its
25 statutory and constitutional authority. Such consent shall not be
26 unreasonably withheld, and a preference or disadvantage shall not be
27 created through the granting or withholding of such consent. A
28 municipality shall not adopt an ordinance that prohibits or has the
29 effect of prohibiting the ability of a telecommunications company to
30 provide telecommunications service.

31 (4)(a) A municipality shall not levy a tax, fee, or charge for any

1 right or privilege of engaging in a telecommunications business or for
2 the use by a telecommunications company of a public highway other than:

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

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

11 ~~(B) Except as provided in subsection (5) of this section, the (II)~~
12 ~~The~~ occupation tax shall not exceed:

13 ~~(I) Before October 1, 2024, six and twenty-five hundredths percent;~~
14 ~~and~~

15 ~~(II) Beginning October 1, 2024, four percent except as provided in~~
16 ~~subsection (5) of this section; and~~

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

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

27 (5) ~~A Beginning January 1, 2013, a municipality may increase an~~
28 ~~occupation tax described in subdivision (4)(a)(i) (4)(a)(i)(B) of this~~
29 ~~section to a rate that exceeds the limit contained in subdivision (4)(a)~~
30 ~~(i)(B) (4)(a)(i)(B)(II) of this section if the question of whether to~~
31 ~~increase such rate has been submitted at a primary or general election at~~

1 which members of the governing body of the municipality are nominated or
2 elected or at a special election held within the municipality and in
3 which all registered voters shall be entitled to vote on such question. A
4 municipality may not increase its existing rate pursuant to this
5 subsection by more than twenty-five hundredths percent at any one
6 election. The officials of the municipality shall order the submission of
7 the question by submitting a certified copy of the resolution proposing
8 the rate increase to the election commissioner or county clerk at least
9 fifty days before the election. The election shall be conducted in
10 accordance with the Election Act. If a majority of the votes cast upon
11 such question are in favor of such rate increase, then the governing body
12 of such municipality shall be empowered to impose the rate increase. If a
13 majority of those voting on the question are opposed to such rate
14 increase, then the governing body of the municipality shall not impose
15 such rate increase.

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

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

28 (8) The terms of any agreement between a municipality and a
29 telecommunications company regarding use of public highways shall be
30 matters of public record and shall be made available to any member of the
31 public upon request, except that information submitted to a municipality

1 by a telecommunications company which such telecommunications company
2 determines to be proprietary shall be deemed to be a trade secret
3 pursuant to subdivision (3) of section 84-712.05 and shall be accorded
4 full protection from disclosure to third parties in a manner consistent
5 with state law.

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