

AMENDMENTS TO LB 165

(Amendments to Standing Committee amendments, AM316)

Introduced by Cornett

1           1. Strike sections 1 and 3 and all amendments thereto and  
2 insert the following new section:

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

1 municipality shall not exercise any authority over any rights the  
2 telecommunications company may have to deliver telecommunications  
3 services as authorized by the Public Service Commission or the  
4 Federal Communications Commission.

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

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

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

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

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

26 (II) The occupation tax shall not exceed six and  
27 twenty-five hundredths percent except as provided in subsection

1 (5) of this section; and

2 (ii) A public highway construction permit fee or charge  
3 to the extent that the fee or charge applies to all persons seeking  
4 use of the public highway in a substantially similar manner.  
5 All public highway construction permit fees or charges shall be  
6 directly related to the costs incurred by the municipality in  
7 providing services relating to the granting or administration of  
8 permits. Any highway construction permit fee or charge shall also  
9 be reasonably related in time to the occurrence of such costs.

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

12 (5) Beginning January 1, 2013, a municipality may  
13 increase an occupation tax described in subdivision (4)(a)(i)(B)  
14 of this section to a rate that exceeds the limit contained in  
15 subdivision (4)(a)(i)(B)(II) of this section if the question of  
16 whether to increase such rate has been submitted at a primary or  
17 general election at which members of the governing body of the  
18 municipality are nominated or elected or at a special election  
19 held within the municipality and in which all registered voters  
20 shall be entitled to vote on such question. A municipality may not  
21 increase its existing rate pursuant to this subsection by more than  
22 twenty-five hundredths percent at any one election. The officials  
23 of the municipality shall order the submission of the question by  
24 submitting a certified copy of the resolution proposing the rate  
25 increase to the election commissioner or county clerk at least  
26 fifty days before the election. The election shall be conducted in  
27 accordance with the Election Act. If a majority of the votes cast

1 upon such question are in favor of such rate increase, then the  
2 governing body of such municipality shall be empowered to impose  
3 the rate increase. If a majority of those voting on the question  
4 are opposed to such rate increase, then the governing body of the  
5 municipality shall not impose such rate increase.

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

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

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