

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 165**

Introduced by Fischer, 43.

Read first time January 07, 2011

Committee: Revenue

A BILL

1 FOR AN ACT relating to telecommunications; to amend sections 14-109,  
2 15-202, 15-203, 16-205, 17-525, and 86-704, Reissue  
3 Revised Statutes of Nebraska; to adopt the Nebraska  
4 Municipal Telecommunications Service Occupation Tax Act;  
5 to harmonize provisions; to provide severability; and to  
6 repeal the original sections.

7 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 7 of this act shall be known and  
2 may be cited as the Nebraska Municipal Telecommunications Service  
3 Occupation Tax Act.

4           Sec. 2. The Legislature hereby finds and declares that  
5 municipal occupation taxes on telecommunications services are a  
6 matter of statewide concern for the reasons that such taxes (1)  
7 affect the affordability of telecommunications service, which is an  
8 essential service for all Nebraska consumers, (2) cause  
9 telecommunications service providers to reduce or refrain from  
10 investing in advanced telecommunications infrastructure in Nebraska,  
11 and (3) when imposed by municipalities on fees, taxes, and regulatory  
12 surcharges that telecommunications service providers are required by  
13 state law to collect from consumers, create additional, unfair  
14 burdens on both consumers and telecommunications service providers.

15           Sec. 3. For purposes of the Nebraska Municipal  
16 Telecommunications Service Occupation Tax Act:

17           (1) Occupation tax means a tax described in subdivision  
18 (4)(a)(i) of section 86-704 or an occupation tax imposed by a  
19 municipality under the authority of a charter, including a home rule  
20 charter, described in Article XI, sections 2 to 5, of the  
21 Constitution of Nebraska;

22           (2) Telecommunications has the same meaning as in section  
23 86-117;

24           (3) Telecommunications company has the same meaning as in  
25 section 86-119;

1           (4) Telecommunications occupation tax means an occupation  
2 tax that is imposed on or measured by receipts from selling  
3 telecommunications service; and

4           (5) Telecommunications service has the same meaning as in  
5 section 86-121.

6           Sec. 4. (1) No occupation tax that is imposed on receipts  
7 from the sale of telecommunications service shall apply to or be  
8 measured by other receipts.

9           (2) No occupation tax other than a telecommunications  
10 occupation tax shall apply to a telecommunications company, unless  
11 such occupation tax applies generally with respect to a broad range  
12 of taxpayers and with respect to business activities other than  
13 activities that are necessary or otherwise related to the provision  
14 of telecommunications service.

15           (3) No tax or fee that is required to be collected by a  
16 telecommunications company from its customers shall be treated as  
17 taxable receipts for purposes of any telecommunications occupation  
18 tax.

19           Sec. 5. (1) No telecommunications occupation tax shall be  
20 imposed at a rate that exceeds the applicable rate cap provided by  
21 subsection (2) of this section.

22           (2) The following rate caps apply with respect to  
23 receipts from selling telecommunications service that are earned in  
24 the following periods:

25           (a) For the period beginning January 1, 2012, and ending

1 December 31, 2012, six percent;

2 (b) For the period beginning January 1, 2013, and ending  
3 December 31, 2013, five percent;

4 (c) For the period beginning January 1, 2014, and ending  
5 December 31, 2014, four percent;

6 (d) For the period beginning January 1, 2015, and ending  
7 December 31, 2015, three percent;

8 (e) For the period beginning January 1, 2016, and ending  
9 December 31, 2016, two percent; and

10 (f) For the period beginning January 1, 2017, and ending  
11 December 31, 2017, one percent.

12 Sec. 6. (1) No municipality shall impose a new  
13 telecommunications occupation tax after the effective date of this  
14 act unless and until the question of whether to impose such tax has  
15 been submitted at a primary, general, or special election held within  
16 the municipality and in which all registered voters shall be entitled  
17 to vote on such question. The officials of the municipality shall  
18 order the submission of the question by submitting a certified copy  
19 of the resolution proposing the tax to the election commissioner or  
20 county clerk by March 1 for a primary election, by September 1 for a  
21 general election, or at least fifty days before a special election.  
22 The election shall be conducted in accordance with the Election Act.  
23 If a majority of the votes cast upon such question are in favor of  
24 such tax, then the governing body of such municipality shall be  
25 empowered to impose such a tax, subject to the limitations of the

1 Nebraska Municipal Telecommunications Service Occupation Tax Act. If  
2 a majority of those voting on the question are opposed to such tax,  
3 then the governing body of the municipality shall not impose such a  
4 tax.

5 (2) No municipality shall increase the rate of a  
6 telecommunications occupation tax existing on the effective date of  
7 this act unless and until the question of whether to increase such  
8 rate has been submitted at a primary, general, or special election  
9 held within the municipality and in which all registered voters shall  
10 be entitled to vote on such question. The officials of the  
11 municipality shall order the submission of the question by submitting  
12 a certified copy of the resolution proposing the rate increase to the  
13 election commissioner or county clerk by March 1 for a primary  
14 election, by September 1 for a general election, or at least fifty  
15 days before a special election. The election shall be conducted in  
16 accordance with the Election Act. If a majority of the votes cast  
17 upon such question are in favor of such rate increase, then the  
18 governing body of such municipality shall be empowered to impose the  
19 rate increase, subject to the limitations of the Nebraska Municipal  
20 Telecommunications Service Occupation Tax Act. If a majority of those  
21 voting on the question are opposed to such rate increase, then the  
22 governing body of the municipality shall not impose such a rate  
23 increase.

24 Sec. 7. No telecommunications occupation tax shall be  
25 imposed with respect to receipts from selling telecommunications

1 service that are earned after December 31, 2017.

2           Sec. 8. Section 14-109, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           14-109 The council shall have power to tax for revenue,  
5 license, and regulate pawnbrokers, peddlers, auctioneers, brokers,  
6 hawkers, commission merchants, showmen, jugglers, innkeepers, liquor  
7 dealers, toll bridges, ferries, insurance, telegraph and express  
8 companies and vendors of patents. Such tax may include both a tax for  
9 revenue and license. If the applicant is an individual, an  
10 application for a license shall include the applicant's social  
11 security number. ~~The~~ Except as otherwise provided in the Nebraska  
12 Municipal Telecommunications Service Occupation Tax Act, the city  
13 council shall have power to raise revenue by levying and collecting a  
14 tax on any occupation or business within the limits of the city and  
15 regulate the same by ordinance. All such taxes shall be uniform in  
16 respect to the class upon which they are imposed. All scientific and  
17 literary lectures and entertainments shall be exempt from taxation,  
18 as well as concerts and all other musical entertainments given  
19 exclusively by the citizens of the city. It shall be the duty of the  
20 city clerk to deliver to the city treasurer the certified copy of the  
21 ordinance levying such tax, and the city clerk shall append thereto a  
22 warrant requiring the city treasurer to collect such tax. The city  
23 council shall also have power to require any person, firm, or  
24 corporation owning or using any vehicle in a city of the metropolitan  
25 class annually to register such vehicle in such manner as may be

1 provided and to require such person to pay an annual registration fee  
2 therefor and to require the payment of registration fees upon the  
3 change of ownership of such vehicle. All registration fees which may  
4 be thus provided for shall be credited to a separate fund of the  
5 city, thereby created, to be used exclusively for the repairing of  
6 streets in such city. No registration fee shall be required where a  
7 vehicle is used but temporarily in such city for a period of not more  
8 than one week.

9           Sec. 9. Section 15-202, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           15-202 A city of the primary class shall have power to  
12 levy taxes for general revenue purposes on all property within the  
13 corporate limits of the city taxable according to the laws of  
14 Nebraska and, except as otherwise provided in the Nebraska Municipal  
15 Telecommunications Service Occupation Tax Act, to levy an occupation  
16 tax on public service property or corporations in such amounts as may  
17 be proper and necessary, in the judgment of the mayor and council,  
18 for purposes of revenue. All such taxes shall be uniform with respect  
19 to the class upon which they are imposed. The occupation tax may be  
20 based upon a certain percentage of the gross receipts of such public  
21 service corporation or upon such other basis as may be determined  
22 upon by the mayor and council, except as otherwise provided in the  
23 Nebraska Municipal Telecommunications Service Occupation Tax Act.

24           Sec. 10. Section 15-203, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1                   15-203 A city of the primary class shall have power to  
2 raise revenue by levying and collecting a license or occupation tax  
3 on any person, partnership, limited liability company, corporation,  
4 or business within the limits of the city and regulate the same by  
5 ordinance except as otherwise provided in this section, ~~and~~ in  
6 section 15-212, and in the Nebraska Municipal Telecommunications  
7 Service Occupation Tax Act. All such taxes shall be uniform in  
8 respect to the class upon which they are imposed. All scientific and  
9 literary lectures and entertainments shall be exempt from such  
10 taxation as well as concerts and all other musical entertainments  
11 given exclusively by the citizens of the city.

12                   Sec. 11. Section 16-205, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14                   16-205 ~~A~~ Except as otherwise provided in the Nebraska  
15 Municipal Telecommunications Service Occupation Tax Act, a city of  
16 the first class may raise revenue by levying and collecting a license  
17 or occupation tax on any person, partnership, limited liability  
18 company, corporation, or business within the limits of the city and  
19 ~~to~~ regulate the same by ordinance. All such taxes shall be uniform in  
20 respect to the class upon which they are imposed. All scientific and  
21 literary lectures and entertainments shall be exempt from such  
22 taxation as well as concerts and all other musical entertainments  
23 given exclusively by the citizens of the city.

24                   Sec. 12. Section 17-525, Reissue Revised Statutes of  
25 Nebraska, is amended to read:



1                   17-525 ~~Second-class~~ Except as otherwise provided in the  
2 Nebraska Municipal Telecommunications Service Occupation Tax Act,  
3 second-class cities and villages shall have power to raise revenue by  
4 levying and collecting a license tax on any occupation or business  
5 within the limits of the city or village, and regulate the same by  
6 ordinance. All such taxes shall be uniform in respect to the classes  
7 upon which they are imposed. All ~~;~~ ~~Provided,~~ all scientific and  
8 literary lectures and entertainments shall be exempt from such  
9 taxation, as well as concerts and other musical entertainments given  
10 exclusively by the citizens of the city or village.

11                   Sec. 13. Section 86-704, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

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

23                   (2) Sections 86-701 to 86-707 shall not transfer the  
24 rights now vested in municipalities in relation to the regulation of  
25 the poles, wires, cables, and other appliances or authorize a

1 telecommunications company to erect any poles or construct any  
2 conduit, cable, or other facilities along, upon, across, or under a  
3 public highway within a municipality without first obtaining the  
4 consent of the governing body of the municipality. The municipality  
5 shall not exercise any authority over any rights the  
6 telecommunications company may have to deliver telecommunications  
7 services as authorized by the Public Service Commission or the  
8 Federal Communications Commission.

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

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

21 (i) An occupation tax that complies with the Nebraska  
22 Municipal Telecommunications Service Occupation Tax Act and is  
23 authorized under section 14-109, 15-202, 15-203, 16-205, or 17-525;  
24 and

25 (ii) A public highway construction permit fee or charge

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

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

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

18 (6) Taxes or fees shall not be collected by a  
19 municipality through the provision of in-kind services by a  
20 telecommunications company, and a municipality shall not require the  
21 provision of in-kind services as a condition of consent to the use of  
22 a public highway.

23 (7) The terms of any agreement between a municipality and  
24 a telecommunications company regarding use of public highways shall  
25 be matters of public record and shall be made available to any member

1 of the public upon request, except that information submitted to a  
2 municipality by a telecommunications company which such  
3 telecommunications company determines to be proprietary shall be  
4 deemed to be a trade secret pursuant to subdivision (3) of section  
5 84-712.05 and shall be accorded full protection from disclosure to  
6 third parties in a manner consistent with state law.

7           Sec. 14. If any section in this act or any part of any  
8 section is declared invalid or unconstitutional, the declaration  
9 shall not affect the validity or constitutionality of the remaining  
10 portions.

11           Sec. 15. Original sections 14-109, 15-202, 15-203,  
12 16-205, 17-525, and 86-704, Reissue Revised Statutes of Nebraska, are  
13 repealed.