

SENATE BILL NO. 277—COMMITTEE ON COMMERCE AND LABOR

MARCH 23, 2005

Referred to Committee on Commerce and Labor

SUMMARY—Restricts and takes away authority of cities and counties to impose franchise fees and other similar fees upon certain public utilities. (BDR 58-366)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted-material~~ is material to be omitted.

AN ACT relating to public utilities; restricting and taking away the authority of cities and counties to impose franchise fees and other similar fees upon certain public utilities; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 709.050 is hereby amended to read as follows:
2 709.050 1. The board of county commissioners may grant to
3 any person, company, corporation or association the franchise, right
4 and privilege to construct, install, operate and maintain street
5 railways, electric light, heat and power lines, gas and water mains,
6 telephone and telegraph lines, and all necessary or proper appliances
7 used in connection therewith or appurtenant thereto, in the streets,
8 alleys, avenues and other places in any unincorporated town in the
9 county, and along the public roads and highways of the county,
10 when the applicant complies with the terms and provisions of NRS
11 709.050 to 709.170, inclusive.
12 2. The board of county commissioners shall not:
13 (a) Impose any terms or conditions on a franchise granted
14 pursuant to subsection 1 for the provision of telecommunications
15 service or interactive computer service other than terms or
16 conditions concerning ~~the~~ :



(1) *The* placement and location of the telephone or telegraph lines ; and

(2) *Except as otherwise provided in NRS 354.59883*, fees imposed for a business license or the franchise, right or privilege to construct, install or operate such lines.

(b) Require a company that provides telecommunications service or interactive computer service to obtain a franchise if it provides telecommunications service over the telephone or telegraph lines owned by another company.

3. As used in NRS 709.050 to 709.170, inclusive:

(a) "Interactive computer service" has the meaning ascribed to it in 47 U.S.C. § 230(e)(2), as that section existed on July 16, 1997.

(b) "Street railway" means:

(1) A system of public transportation operating over fixed rails on the surface of the ground; or

(2) An overhead or underground system, other than a monorail, used for public transportation.

➡ The term does not include a super speed ground transportation system as defined in NRS 705.4292.

(c) "Telecommunications service" has the meaning ascribed to it in 47 U.S.C. § 153(46), as that section existed on July 16, 1997.

4. As used in this section, "monorail" has the meaning ascribed to it in NRS 705.650.

Sec. 2. NRS 711.200 is hereby amended to read as follows:

711.200 1. The total amount of fees paid in any one year to a local government for a franchise must not exceed ~~5 percent of the~~ *amount permitted by NRS 354.59883, as calculated using* the company's gross revenue for the preceding year.

2. In determining the gross revenue of a company the governing body shall:

(a) Consider any applicable regulations of the Federal Communications Commission; and

(b) Deduct an amount equal to any fees or annual assessment paid by the company for the use of pay or premium channels.

Sec. 3. NRS 244.335 is hereby amended to read as follows:

244.335 1. Except as otherwise provided in subsection 2, the board of county commissioners may:

(a) Except as otherwise provided in NRS 598D.150, regulate all character of lawful trades, callings, industries, occupations, professions and business conducted in its county outside of the limits of incorporated cities and towns.

(b) Except as otherwise provided in NRS 244.3359 , *354.59883* and 576.128, fix, impose and collect a license tax for revenue or for regulation, or for both revenue and regulation, on such trades, callings, industries, occupations, professions and business.



2. The county license boards have the exclusive power in their respective counties to regulate entertainers employed by an entertainment by referral service and the business of conducting a dancing hall, escort service, entertainment by referral service or gambling game or device permitted by law, outside of an incorporated city. The county license boards may fix, impose and collect license taxes for revenue or for regulation, or for both revenue and regulation, on such employment and businesses.

3. No license to engage in any type of business may be granted unless the applicant for the license signs an affidavit affirming that the business has complied with the provisions of NRS 360.780. The county license board shall provide upon request an application for a business license pursuant to NRS 360.780.

4. No license to engage in business as a seller of tangible personal property may be granted unless the applicant for the license presents written evidence that:

(a) The Department of Taxation has issued or will issue a permit for this activity, and this evidence clearly identifies the business by name; or

(b) Another regulatory agency of the State has issued or will issue a license required for this activity.

5. Any license tax levied for the purposes of NRS 244.3358 or 244A.597 to 244A.655, inclusive, constitutes a lien upon the real and personal property of the business upon which the tax was levied until the tax is paid. The lien has the same priority as a lien for general taxes. The lien must be enforced in the following manner:

(a) By recording in the office of the county recorder, within 6 months after the date on which the tax became delinquent or was otherwise determined to be due and owing, a notice of the tax lien containing the following:

(1) The amount of tax due and the appropriate year;

(2) The name of the record owner of the property;

(3) A description of the property sufficient for identification; and

(4) A verification by the oath of any member of the board of county commissioners or the county fair and recreation board; and

(b) By an action for foreclosure against the property in the same manner as an action for foreclosure of any other lien, commenced within 2 years after the date of recording of the notice of the tax lien, and accompanied by appropriate notice to other lienholders.

6. The board of county commissioners may delegate the authority to enforce liens from taxes levied for the purposes of NRS 244A.597 to 244A.655, inclusive, to the county fair and recreation board. If the authority is so delegated, the board of county commissioners shall revoke or suspend the license of a business



1 upon certification by the county fair and recreation board that the
2 license tax has become delinquent, and shall not reinstate the license
3 until the tax is paid. Except as otherwise provided in NRS 244.3357,
4 all information concerning license taxes levied by an ordinance
5 authorized by this section or other information concerning the
6 business affairs or operation of any licensee obtained as a result of
7 the payment of such license taxes or as the result of any audit or
8 examination of the books by any authorized employee of a county
9 fair and recreation board of the county for any license tax levied for
10 the purpose of NRS 244A.597 to 244A.655, inclusive, is
11 confidential and must not be disclosed by any member, officer or
12 employee of the county fair and recreation board or the county
13 imposing the license tax unless the disclosure is authorized by the
14 affirmative action of a majority of the members of the appropriate
15 county fair and recreation board. Continuing disclosure may be so
16 authorized under an agreement with the Department of Taxation for
17 the exchange of information concerning taxpayers.

18 **Sec. 4.** NRS 268.088 is hereby amended to read as follows:

19 268.088 The governing body of an incorporated city shall not:

20 1. Impose any terms or conditions on a franchise for the
21 provision of telecommunications service or interactive computer
22 service other than terms or conditions concerning ~~the~~ :

23 (a) *The* placement and location of the telephone or telegraph
24 lines ; and

25 (b) *Except as otherwise provided in NRS 354.59883*, fees
26 imposed for a business license or the franchise, right or privilege to
27 construct, install or operate such lines.

28 2. Require a company that provides telecommunications
29 service or interactive computer service to obtain a franchise if it
30 provides telecommunications service over the telephone or telegraph
31 lines owned by another company.

32 3. Require a person who holds a franchise for the provision of
33 telecommunications service to place its facilities in ducts or conduits
34 or on poles owned or leased by the city.

35 4. As used in this section:

36 (a) "Interactive computer service" has the meaning ascribed to it
37 in 47 U.S.C. § 230(e)(2), as that section existed on July 16, 1997.

38 (b) "Telecommunications service" has the meaning ascribed to it
39 in 47 U.S.C. § 153(46), as that section existed on July 16, 1997.

40 **Sec. 5.** NRS 268.095 is hereby amended to read as follows:

41 268.095 1. The city council or other governing body of each
42 incorporated city in this State, whether organized under general law
43 or special charter, may:

44 (a) Except as otherwise provided in NRS 268.0968 , *354.59883*
45 and 576.128, fix, impose and collect for revenues or for regulation,



1 or both, a license tax on all character of lawful trades, callings,
2 industries, occupations, professions and businesses conducted
3 within its corporate limits.

4 (b) Assign the proceeds of any one or more of such license taxes
5 to the county within which the city is situated for the purpose or
6 purposes of making the proceeds available to the county:

7 (1) As a pledge as additional security for the payment of any
8 general obligation bonds issued pursuant to NRS 244A.597 to
9 244A.655, inclusive;

10 (2) For redeeming any general obligation bonds issued
11 pursuant to NRS 244A.597 to 244A.655, inclusive;

12 (3) For defraying the costs of collecting or otherwise
13 administering any such license tax so assigned, of the county fair
14 and recreation board and of officers, agents and employees hired
15 thereby, and of incidentals incurred thereby;

16 (4) For operating and maintaining recreational facilities
17 under the jurisdiction of the county fair and recreation board;

18 (5) For improving, extending and bettering recreational
19 facilities authorized by NRS 244A.597 to 244A.655, inclusive; and

20 (6) For constructing, purchasing or otherwise acquiring such
21 recreational facilities.

22 (c) Pledge the proceeds of any tax imposed on the revenues from
23 the rental of transient lodging pursuant to this section for the
24 payment of any general or special obligations issued by the city for
25 a purpose authorized by the laws of this State.

26 (d) Use the proceeds of any tax imposed pursuant to this section
27 on the revenues from the rental of transient lodging:

28 (1) To pay the principal, interest or any other indebtedness
29 on any general or special obligations issued by the city pursuant to
30 the laws of this State;

31 (2) For the expense of operating or maintaining, or both, any
32 facilities of the city; and

33 (3) For any other purpose for which other money of the city
34 may be used.

35 2. The proceeds of any tax imposed pursuant to this section
36 that are pledged for the repayment of general obligations may be
37 treated as "pledged revenues" for the purposes of NRS 350.020.

38 3. No license to engage in any type of business may be granted
39 unless the applicant for the license signs an affidavit affirming that
40 the business has complied with the provisions of NRS 360.780. The
41 city licensing agency shall provide upon request an application for a
42 business license pursuant to NRS 360.780.

43 4. No license to engage in business as a seller of tangible
44 personal property may be granted unless the applicant for the license
45 presents written evidence that:



1 (a) The Department of Taxation has issued or will issue a permit
2 for this activity, and this evidence clearly identifies the business by
3 name; or

4 (b) Another regulatory agency of the State has issued or will
5 issue a license required for this activity.

6 5. Any license tax levied under the provisions of this section
7 constitutes a lien upon the real and personal property of the business
8 upon which the tax was levied until the tax is paid. The lien has the
9 same priority as a lien for general taxes. The lien must be enforced
10 in the following manner:

11 (a) By recording in the office of the county recorder, within 6
12 months following the date on which the tax became delinquent or
13 was otherwise determined to be due and owing, a notice of the tax
14 lien containing the following:

- 15 (1) The amount of tax due and the appropriate year;
16 (2) The name of the record owner of the property;
17 (3) A description of the property sufficient for identification;

18 and

19 (4) A verification by the oath of any member of the board of
20 county commissioners or the county fair and recreation board; and

21 (b) By an action for foreclosure against such property in the
22 same manner as an action for foreclosure of any other lien,
23 commenced within 2 years after the date of recording of the notice
24 of the tax lien, and accompanied by appropriate notice to other
25 lienholders.

26 6. The city council or other governing body of each
27 incorporated city may delegate the power and authority to enforce
28 such liens to the county fair and recreation board. If the authority is
29 so delegated, the governing body shall revoke or suspend the license
30 of a business upon certification by the board that the license tax has
31 become delinquent, and shall not reinstate the license until the tax is
32 paid. Except as otherwise provided in NRS 268.0966, all
33 information concerning license taxes levied by an ordinance
34 authorized by this section or other information concerning the
35 business affairs or operation of any licensee obtained as a result of
36 the payment of those license taxes or as the result of any audit or
37 examination of the books of the city by any authorized employee of
38 a county fair and recreation board for any license tax levied for the
39 purpose of NRS 244A.597 to 244A.655, inclusive, is confidential
40 and must not be disclosed by any member, official or employee of
41 the county fair and recreation board or the city imposing the license
42 tax unless the disclosure is authorized by the affirmative action of a
43 majority of the members of the appropriate county fair and
44 recreation board. Continuing disclosure may be so authorized under



1 an agreement with the Department of Taxation for the exchange of
2 information concerning taxpayers.

3 7. The powers conferred by this section are in addition and
4 supplemental to, and not in substitution for, and the limitations
5 imposed by this section do not affect the powers conferred by, any
6 other law. No part of this section repeals or affects any other law or
7 any part thereof, it being intended that this section provide a
8 separate method of accomplishing its objectives, and not an
9 exclusive one.

10 **Sec. 6.** NRS 354.59881 is hereby amended to read as follows:

11 354.59881 As used in NRS 354.59881 to ~~[354.59889,]~~
12 **354.59883**, inclusive, unless the context otherwise requires, the
13 words and terms defined in NRS 354.598811 to ~~[354.598818,]~~
14 **354.598817**, inclusive, have the meanings ascribed to them in those
15 sections.

16 **Sec. 7.** NRS 354.598814 is hereby amended to read as
17 follows:

18 354.598814 "Fee" means ~~[a]~~ **any fee or** charge imposed by a
19 city or county upon a public utility for **the privilege of conducting**
20 **business in the city or county or for** a business license, a franchise
21 or a right-of-way over **any** streets or other public areas ~~[, except:]~~ **of**
22 **the city or county, regardless of the name given to the fee or**
23 **charge, except that the term does not include:**

24 1. Any charge paid pursuant to the provisions of NRS 709.110,
25 709.230 or 709.270; or

26 2. A term or condition of a franchise granted by:

27 (a) A county whose population is 400,000 or more, or by an
28 incorporated city that is located in whole or in part within such a
29 county, that requires a community antenna television company to
30 provide channels for public, educational or governmental access.

31 (b) A county or an incorporated city not specified in paragraph
32 (a) that requires a community antenna television company to
33 provide channels, facilities or equipment for public, educational or
34 governmental access.

35 **Sec. 8.** NRS 354.598814 is hereby amended to read as
36 follows:

37 354.598814 "Fee" means any fee or charge imposed by a city
38 or county upon a public utility for the privilege of conducting
39 business in the city or county or for a business license, a franchise or
40 a right-of-way over any streets or other public areas of the city or
41 county, regardless of the name given to the fee or charge, except
42 that the term does not include:

43 1. **Any charge paid pursuant to the provisions of NRS**
44 **244A.7641 to 244A.7647, inclusive;**



2. Any charge paid pursuant to the provisions of NRS 709.110, 709.230 or 709.270; or

~~[2-]~~ 3. A term or condition of a franchise granted by:

(a) A county whose population is 400,000 or more, or by an incorporated city that is located in whole or in part within such a county, that requires a community antenna television company to provide channels for public, educational or governmental access.

(b) A county or an incorporated city not specified in paragraph (a) that requires a community antenna television company to provide channels, facilities or equipment for public, educational or governmental access.

Sec. 9. NRS 354.59883 is hereby amended to read as follows:

354.59883 **1.** A city or county shall not adopt an ordinance imposing or increasing a fee ~~[-~~

~~1. If that] if:~~

(a) *The* ordinance would alter the terms of any existing franchise agreement between the city or county and a public utility ~~[-~~

~~2. That] , unless an alteration in the terms of any existing franchise agreement is necessary to comply with the provisions of subsection 2;~~

(b) *The fee* applies to any public utility which does not derive revenue from customers located within the jurisdiction of the city or county ~~[-~~

~~3. If, after] ;~~

(c) *After* the adoption of the ordinance ~~[-~~

~~(a) Any] , any~~ part of a fee to which the ordinance applies will be based upon any revenue of a public utility other than its revenue from customers located within the jurisdiction of the city or county ~~[-~~

~~(b) The total cumulative amount of all fees the city or county imposes upon a public utility to which the ordinance applies will exceed:~~

~~(1) Except as otherwise provided in subparagraph (2), 5 percent of the utility's gross revenue from customers located within the jurisdiction of the city or county.~~

~~(2)] ; or~~

(d) *The ordinance would violate the provisions of subsection 2.*

2. Notwithstanding any other statute or local charter, ordinance or franchise agreement to the contrary:

(a) For a public utility that sells or resells personal wireless services ~~[-, 5] :~~

(1) On and after July 1, 2005, until June 30, 2006, the total cumulative amount of all fees the city or county imposes upon the public utility may not exceed 3 percent of its gross revenue from



1 *the first \$15 charged monthly for each line of access for each of*
2 *its customers whose place of primary use is located within the*
3 *jurisdiction of the city or county.*

4 (2) *On and after July 1, 2006, until June 30, 2007, the total*
5 *cumulative amount of all fees the city or county imposes upon the*
6 *public utility may not exceed 1 percent of its gross revenue from the*
7 *first \$15 charged monthly for each line of access for each of its*
8 *customers whose place of primary use is located within the*
9 *jurisdiction of the city or county.*

10 (b) *For all other public utilities:*

11 (1) *On and after July 1, 2005, until June 30, 2006, the total*
12 *cumulative amount of all fees the city or county imposes upon the*
13 *public utility may not exceed 3 percent of the utility's gross*
14 *revenue from customers located within the jurisdiction of the city*
15 *or county.*

16 (2) *On and after July 1, 2006, until June 30, 2007, the total*
17 *cumulative amount of all fees the city or county imposes upon the*
18 *public utility may not exceed 1 percent of the utility's gross*
19 *revenue from customers located within the jurisdiction of the city*
20 *or county.*

21 **Sec. 10.** NRS 354.59883 is hereby amended to read as
22 follows:

23 354.59883 ~~[1. A city or county shall not adopt an ordinance~~
24 ~~imposing or increasing a fee if:~~

25 ~~—(a) The ordinance would alter the terms of any existing franchise~~
26 ~~agreement between the city or county and a public utility, unless an~~
27 ~~alteration in the terms of any existing franchise agreement is~~
28 ~~necessary to comply with the provisions of subsection 2.~~

29 ~~—(b) The fee applies to any public utility which does not derive~~
30 ~~revenue from customers located within the jurisdiction of the city or~~
31 ~~county;~~

32 ~~—(c) After the adoption of the ordinance, any part of a fee to~~
33 ~~which the ordinance applies will be based upon any revenue of a~~
34 ~~public utility other than its revenue from customers located within~~
35 ~~the jurisdiction of the city or county; or~~

36 ~~—(d) The ordinance would violate the provisions of subsection 2.~~

37 ~~—2.] Notwithstanding any other statute or local charter,~~
38 ~~ordinance or franchise agreement to the contrary [:~~

39 ~~—(a) For a public utility that sells or resells personal wireless~~
40 ~~services:~~

41 ~~—(1) On and after July 1, 2005, until June 30, 2006, the total~~
42 ~~cumulative amount of all fees the city or county imposes upon the~~
43 ~~public utility may not exceed 3 percent of its gross revenue from the~~
44 ~~first \$15 charged monthly for each line of access for each of its~~



~~customers whose place of primary use is located within the jurisdiction of the city or county.~~

~~— (2) On and after July 1, 2006, until June 30, 2007, the total cumulative amount of all fees the city or county imposes upon the public utility may not exceed 1 percent of its gross revenue from the first \$15 charged monthly for each line of access for each of its customers whose place of primary use is located within the jurisdiction of the city or county.~~

~~— (b) For all other public utilities:~~

~~— (1) On and after July 1, 2005, until June 30, 2006, the total cumulative amount of all fees the city or county imposes upon the public utility may not exceed 3 percent of the utility's gross revenue from customers located within the jurisdiction of the city or county.~~

~~— (2) On and after July 1, 2006, until June 30, 2007, the total cumulative amount of all fees the~~ , a city or county ~~[imposes upon the]~~ *shall not impose any fees upon a* public utility ~~[may not exceed 1 percent of the utility's gross revenue from]~~ *for providing service on or after July 1, 2007, to* customers located within the jurisdiction of the city or county ~~[]~~ *or within any other jurisdiction.*

Sec. 11. NRS 354.5989 is hereby amended to read as follows:

354.5989 1. A local government shall not increase any fee for a business license or adopt a fee for a business license issued for revenue or regulation, or both, except as permitted by this section. This prohibition does not apply to fees:

(a) Imposed by hospitals, county airports, airport authorities, convention authorities, the Las Vegas Valley Water District or the Clark County Sanitation District;

(b) Imposed on public utilities for the privilege of doing business pursuant to a franchise;

(c) For business licenses which are calculated as a fraction or percentage of the gross revenue of the business;

(d) Imposed pursuant to NRS 244.348, 268.0973, 268.821 or 269.182; or

(e) Regulated pursuant to NRS 354.59881 to ~~[354.59889,]~~ **354.59883**, inclusive.

2. The amount of revenue the local government derives or is allowed to derive, whichever is greater, from all fees for business licenses except:

(a) The fees excluded by subsection 1, for the fiscal year ended on June 30, 1991; and

(b) The fees collected for a particular type of business during the immediately preceding fiscal year ending on June 30 that a local government will not collect in the next subsequent fiscal year,

➤ is the base from which the maximum allowable revenue from such fees must be calculated for the next subsequent fiscal year. To



1 the base must be added the sum of the amounts respectively equal to
2 the product of the base multiplied by the percentage increase in the
3 population of the local government added to the percentage increase
4 in the Consumer Price Index for the year ending on December 31
5 next preceding the year for which the limit is being calculated. The
6 amount so determined becomes the base for computing the allowed
7 increase for each subsequent year.

8 3. A local government may not increase any fee for a business
9 license which is calculated as a fraction or percentage of the gross
10 revenue of the business if its total revenues from such fees have
11 increased during the preceding fiscal year by more than the increase
12 in the Consumer Price Index during that preceding calendar year.
13 The provisions of this subsection do not apply to a fee imposed
14 pursuant to NRS 244.348, 268.0973, 268.821 or 269.182, or
15 regulated pursuant to NRS 354.59881 to ~~354.59889,~~ 354.59883,
16 inclusive.

17 4. A local government may submit an application to increase
18 its revenue from fees for business licenses beyond the amount
19 allowable pursuant to this section to the Nevada Tax Commission,
20 which may grant the application only if it finds that the rate of a
21 business license of the local government is substantially below that
22 of other local governments in the State.

23 5. The provisions of this section apply to a business license
24 regardless of the fund to which the revenue from it is assigned. An
25 ordinance or resolution enacted by a local government in violation
26 of the provisions of this section is void.

27 6. As used in this section, "fee for a business license" does not
28 include a tax imposed on the revenues from the rental of transient
29 lodging.

30 **Sec. 12.** NRS 244A.76455, 354.598813, 354.5988165,
31 354.598818, 354.59885, 354.59887, 354.59888, 354.59889 and
32 711.200 are hereby repealed.

33 **Sec. 13.** 1. The provisions of this act apply to any franchise
34 agreement between a city or county and a public utility entered into
35 before, on or after July 1, 2005.

36 2. Any provision of a local charter, ordinance or franchise
37 agreement that is in conflict with the provisions of this act is void
38 and must not be given effect to the extent that it conflicts with the
39 provisions of this act.

40 **Sec. 14.** 1. This section and sections 1 to 5, inclusive, 7, 9
41 and 13 of this act become effective on July 1, 2005.

42 2. Sections 6, 8, 10, 11 and 12 of this act become effective on
43 July 1, 2007.



LEADLINES OF REPEALED SECTIONS

244A.76455 Requiring deposit of business license fees imposed in county whose population is less than 100,000 on providers of personal wireless service into special revenue fund; exceptions.

354.598813 Limitations on fees applicable to public utilities: "Delinquent amount" defined.

354.5988165 Limitations on fees applicable to public utilities: "Place of primary use" defined.

354.598818 Limitations on fees applicable to public utilities: "Revenue" defined.

354.59885 Limitations on fees applicable to public utilities: Submission of certain information by public utility before commencement of service; quarterly statements of revenue required; identification of customers provided to public utility; information included in bill.

354.59887 Limitations on fees applicable to public utilities: Rate; quarterly payments; collection; penalties and interest on delinquent amounts; apportionment among customers of public utility.

354.59888 Limitations on fees applicable to public utilities: Errors concerning billing for certain fees or designation of place of primary use; notification by customers of certain public utilities.

354.59889 Limitations on fees applicable to public utilities: Change of fees.

711.200 Fees for franchise.

