

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 277

Introduced By: Mines, 18
Read first time: January 10, 2007
Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to the Department of Roads; to amend sections
2 39-1320, 39-2116, 39-2119, 39-2124, 39-2125, 39-2502, and
3 39-2512, Reissue Revised Statutes of Nebraska; to provide
4 for the submission of a metropolitan transportation
5 improvement program in lieu of the department's annual and
6 six-year plans as prescribed; to harmonize provisions; and
7 to repeal the original sections.

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

1 Section 1. Section 39-1320, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 39-1320. (1) The Department of Roads is hereby authorized to
4 acquire, either temporarily or permanently, lands, real or personal
5 property or any interests therein, or any easements deemed to be
6 necessary or desirable for present or future state highway purposes by
7 gift, agreement, purchase, exchange, condemnation, or otherwise. Such
8 lands or real property may be acquired in fee simple or in any lesser
9 estate. It is the intention of the Legislature that all property
10 leased or purchased from the owner shall receive a fair price.

11 (2) State highway purposes, as referred to in subsection (1)
12 of this section or otherwise in sections 39-1301 to 39-1362, shall
13 include provision for, but shall not be limited to, the following:

14 (a) The construction, reconstruction, relocation,
15 improvement, and maintenance of the state highway system. The
16 right-of-way for such highways shall be of such width as is deemed
17 necessary by the department;

18 (b) Adequate drainage in connection with any highway, cuts,
19 fills, or channel changes and the maintenance thereof;

20 (c) Controlled-access facilities, including air, light,
21 view, and frontage and service roads to highways;

22 (d) Weighing stations, shops, storage buildings and yards,
23 and road maintenance or construction sites;

24 (e) Road material sites, sites for the manufacture of road
25 materials, and access roads to such sites;

26 (f) The preservation of objects of attraction or scenic
27 value adjacent to, along, or in close proximity to highways and the

1 culture of trees and flora which may increase the scenic beauty of
2 such highways;

3 (g) Roadside areas or parks adjacent to or near any highway;

4 (h) The exchange of property for other property to be used
5 for rights-of-way or other purposes set forth in subsection (1) or (2)
6 of this section if the interests of the state will be served and
7 acquisition costs thereby reduced;

8 (i) The maintenance of an unobstructed view of any portion
9 of a highway so as to promote the safety of the traveling public;

10 (j) The construction and maintenance of stock trails and
11 cattle passes;

12 (k) The erection and maintenance of marking and warning
13 signs and traffic signals;

14 (l) The construction and maintenance of sidewalks and
15 highway illumination;

16 (m) The control of outdoor advertising which is visible from
17 the nearest edge of the right-of-way of the Highway Beautification
18 Control System as defined in section 39-201.01 to comply with the
19 provisions of 23 U.S.C. 131, as amended;

20 (n) The relocation of or giving assistance in the relocation
21 of individuals, families, businesses, or farm operations occupying
22 premises acquired for state highway or federal-aid road purposes; and

23 (o) The establishment and maintenance of wetlands to replace
24 or to mitigate damage to wetlands affected by highway construction,
25 reconstruction, or maintenance. The replacement lands shall be capable
26 of being used to create wetlands comparable to the wetlands area
27 affected. The area of the replacement lands may exceed the wetlands

1 area affected. Lands may be acquired to establish a large or composite
2 wetlands area, sometimes called a wetlands bank, not larger than an
3 area which is one hundred fifty percent of the lands reasonably
4 expected to be necessary for the mitigation of future impact on
5 wetlands brought about by highway construction, reconstruction, or
6 maintenance during the six-year plan as required by section 39-2115,
7 an annual plan under section 39-2119, or an annual metropolitan
8 transportation improvement program under section 4 of this act in
9 effect upon acquisition of the lands. For purposes of this section,
10 wetlands shall have the definition found in 33 C.F.R. 328.3(b).

11 (3) The procedure to condemn property authorized by
12 subsection (1) of this section or elsewhere in sections 39-1301 to
13 39-1362 shall be exercised in the manner set forth in sections 76-704
14 to 76-724 or as provided by section 39-1323, as the case may be.

15 Sec. 2. Section 39-2116, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 39-2116. The Board of Public Roads Classifications and
18 Standards shall review all six-year plans required by section 39-2115
19 or annual metropolitan transportation improvement programs under
20 section 4 of this act submitted to it and make such recommendations
21 for changes therein as it believes necessary or desirable in order to
22 achieve the orderly development of an integrated system of highways,
23 roads, and streets, but in so doing the board shall take into account
24 the fact that individual priorities of needs may not lend themselves
25 to immediate integration. The department and each county and
26 municipality shall give careful and serious consideration to any such
27 recommendations received from the board and shall not reject them

1 except for substantial or compelling reason.

2 Sec. 3. Section 39-2119, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 39-2119. Each county and municipality shall annually prepare
5 and file, under ~~the provisions of~~ section 39-2115 or section 4 of
6 this act, with the Board of Public Roads Classifications and
7 Standards, a plan or program for specific road or street
8 improvements for the current year. ~~The ; PROVIDED, that the annual~~
9 plan or program shall be filed on or before March 1 of each year. No
10 such plan or program shall be adopted until after a local public
11 hearing thereon and its approval by the local governing body. The
12 board shall prescribe the nature and time of notice of such hearing,
13 which shall be such as shall be likely to come to the attention of
14 interested citizens in the jurisdiction involved. The board shall
15 review each such annual plan or program within sixty days after it
16 has been filed to determine whether it is consistent with the county's
17 or municipality's current six-year plan. The county or municipality
18 shall be required to justify any inconsistency with the six-year plan
19 to the satisfaction of the board. If any county or municipality shall
20 fail to comply with the provisions of this section, the board shall so
21 notify the local governing board, the Governor, and the State
22 Treasurer, who shall suspend distribution of any highway-user revenue
23 allocated to such county or municipality until there has been
24 compliance. Such funds shall be held in escrow for six months until
25 the county or municipality complies. If the county or municipality
26 complies within the six-month period it shall receive the money in
27 escrow, but after six months, if the county or municipality fails to

1 comply, the money in the escrow account shall be lost to the county or
2 municipality.

3 Any county or municipality on a fiscal construction year
4 basis may apply to the Board of Public Roads Classifications and
5 Standards for a new anniversary date. The board may grant a new
6 anniversary date, but such date shall not be later than July 1.

7 Sec. 4. Any county or municipality that is designated as a
8 metropolitan planning organization pursuant to 23 U.S.C. 134(b), as
9 such section existed on January 1, 2007, may, in lieu of submission
10 of a six-year plan under section 39-2115 or an annual plan under
11 section 39-2119, submit an annual metropolitan transportation
12 improvement program pursuant to section 23 U.S.C. 134(h), as such
13 section existed on January 1, 2007, that is treated as such plans
14 required under sections 39-2115 and 39-2119.

15 Sec. 5. Section 39-2124, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 39-2124. It is the intent of the Legislature to recognize
18 the responsibilities of the Department of Roads, of the counties, and
19 of the municipalities in their planning programs as authorized by
20 state law and by home rule charter and to encourage the acceptance and
21 implementation of comprehensive, continuing, cooperative, and
22 coordinated planning by the state, the counties, and the
23 municipalities. Sections 13-914 and 39-2101 to 39-2125 and section 4
24 of this act are not intended to prohibit or inhibit the actions of
25 the counties and of the municipalities in their planning programs and
26 their subdivision regulations, nor are sections 13-914 and 39-2101 to
27 39-2125 and section 4 of this act intended to restrict the actions

1 of the municipalities in their creation of street improvement
2 districts and in their assessment of property for special benefits as
3 authorized by state law or by home rule charter.

4 Sec. 6. Section 39-2125, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 39-2125. Sections 13-914 and 39-2101 to 39-2125 and section
7 4 of this act shall be construed as an independent act, complete in
8 itself, and in the event of conflict between any provisions of
9 sections 13-914 and 39-2101 to 39-2125 and section 4 of this act and
10 any other statutes, the provisions of sections 13-914 and 39-2101 to
11 39-2125 and section 4 of this act shall control.

12 Sec. 7. Section 39-2502, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 39-2502. An incentive payment shall be made to each county
15 having in its employ a county highway superintendent licensed under
16 the County Highway and City Street Superintendents Act, during the
17 calendar year preceding the year in which payment is made. For
18 purposes of sections 39-2501 to 39-2510, county highway superintendent
19 means a person who actually performs the following duties:

20 (1) Developing and annually updating a long-range plan based
21 on needs and coordinated with adjacent local governmental units;

22 (2) Developing an annual program for design, construction,
23 and maintenance;

24 (3) Developing an annual budget based on programmed projects
25 and activities;

26 (4) Submitting such plans, programs, and budgets to the
27 local governing body for approval;

1 (5) Implementing the capital improvements and maintenance
2 activities provided in the approved plans, programs, and budgets; and

3 (6) Preparing and submitting annually to the Board of Public
4 Roads Classifications and Standards the county's one-year plans,
5 ~~and~~ six-year plans, or annual metropolitan transportation
6 improvement programs for highway, road, and street improvements ~~as~~
7 ~~set forth in~~ under sections 39-2115, ~~to 39-2117 and 39-2119,~~
8 and section 4 of this act and a report showing the actual receipts,
9 expenditures, and accomplishments compared with those budgeted and
10 programmed in the county's annual plans as set forth in section
11 39-2120.

12 Sec. 8. Section 39-2512, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 39-2512. An incentive payment shall be made to each
15 municipality or municipal county having in its employ a city street
16 superintendent licensed under the County Highway and City Street
17 Superintendents Act, during the calendar year preceding the year in
18 which payment is made. For purposes of sections 39-2511 to 39-2520,
19 city street superintendent means a person who actually performs the
20 following duties:

21 (1) Developing and annually updating a long-range plan based
22 on needs and coordinated with adjacent local governmental units;

23 (2) Developing an annual program for design, construction,
24 and maintenance;

25 (3) Developing an annual budget based on programmed projects
26 and activities;

27 (4) Submitting such plans, programs, and budgets to the

1 local governing body for approval;

2 (5) Implementing the capital improvements and maintenance
3 activities provided in the approved plans, programs, and budgets; and

4 (6) Preparing and submitting annually to the Board of Public
5 Roads Classifications and Standards the one-year plans, ~~and~~
6 six-year plans, or annual metropolitan transportation improvement
7 programs of the municipality or municipal county for highway, road,
8 and street improvements ~~as set forth in~~ under sections 39-2115,
9 ~~to 39-2117 and 39-2119,~~ and section 4 of this act and a report
10 showing the actual receipts, expenditures, and accomplishments
11 compared with those budgeted and programmed in the annual plans of the
12 municipality or municipal county as set forth in section 39-2120.

13 Sec. 9. Original sections 39-1320, 39-2116, 39-2119,
14 39-2124, 39-2125, 39-2502, and 39-2512, Reissue Revised Statutes of
15 Nebraska, are repealed.