

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 732

Introduced by Mello, 5.

Read first time January 04, 2012

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to cities and villages; to amend sections 14-366,
2 15-229, 17-559, 18-1755, and 19-709, Reissue Revised
3 Statutes of Nebraska; to provide procedures for the use
4 of eminent domain for trails; to harmonize provisions; to
5 repeal the original sections; and to declare an
6 emergency.

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

1 Section 1. Sections 1 to 8 of this act are procedures for
2 the use of eminent domain by a city or village to take private real
3 property for a trail.

4 Sec. 2. For purposes of sections 1 to 8 of this act:

5 (1) Private real property does not include any public
6 land such as real property under the general management of the Board
7 of Educational Lands and Funds;

8 (2) Supermajority means sixty-seven percent or more; and

9 (3) Trail means a thoroughfare or track across real
10 property used for recreational purposes. Trail does not include a
11 sidewalk.

12 Sec. 3. Before establishing a trail, a city or village
13 shall consider, at a public hearing, all of the following:

14 (1) The proposed route for the trail, including maps and
15 illustrations, and the mode of travel to be permitted;

16 (2) The areas adjacent to such route to be utilized by
17 the city or village for scenic, historic, natural, cultural, or
18 developmental purposes;

19 (3) The characteristics that make the proposed route
20 suitable as a trail;

21 (4) The plans for developing, operating, and maintaining
22 the proposed trail;

23 (5) Any anticipated problems enforcing the proper use of
24 the proposed trail or hazards to private real property adjacent to
25 such trail;

1 (6) The current status of the real property ownership and
2 current and potential use of the real property in and along the
3 proposed route;

4 (7) The estimated cost of acquisition of the real
5 property, or an interest therein, needed for the proposed route; and

6 (8) The extent and type of private real property interest
7 needed to establish the proposed trail, the right-of-way acquisition
8 process to be followed, and the circumstances under which eminent
9 domain may be utilized.

10 Sec. 4. If the city or village decides to establish the
11 trail after following the procedure under section 3 of this act, the
12 city or village may acquire private real property, or an interest
13 therein, to develop and maintain the trail by:

14 (1) Seeking to secure the written consent of the private
15 real property owners affected by the trail to enter into negotiations
16 and proceeding in good faith to reach negotiated agreements with such
17 owners for the private real property, or an interest therein needed;
18 or

19 (2) If all reasonable efforts to secure written consent
20 and negotiated agreements to acquire private real property, or an
21 interest therein, have failed, the governing body of the city or
22 village may, by resolution adopted by a supermajority of the
23 governing body at a public meeting, elect to conduct a proceeding to
24 determine whether to use the power of eminent domain to acquire such
25 property. Such proceeding shall be a public hearing with general

1 notice to the public and specific notice by registered mail to all
2 private real property owners whose property would be subject to
3 condemnation by eminent domain. The public hearing shall be held no
4 sooner than forty-five days after the date the resolution is adopted.
5 At the public hearing, the governing body shall receive evidence on
6 the question of whether to acquire private real property by eminent
7 domain for the purpose of constructing the trail. The governing body
8 may, by vote of a supermajority of its members, elect to proceed with
9 eminent domain to acquire such property if it finds, by clear and
10 convincing evidence received at the public hearing, that all of the
11 following criteria are met:

12 (a) Whether the trail has been publicized at a public
13 hearing held in accordance with section 3 of this act in the area
14 where the trail is planned and reasonable notice of the hearing was
15 provided to affected private real property owners;

16 (b) Whether good faith attempts to negotiate agreements
17 meeting the requirements of subdivision (1) of this section with the
18 affected private real property owners have been made and have failed
19 for some or all of the private real property that is determined by
20 the governing body to be necessary for the trail to be developed;

21 (c) Whether all other trail route alternatives have been
22 considered, with an evaluation of the extent to which private real
23 property may be involved and which may require the exercise of
24 eminent domain for each alternate route;

25 (d) Whether in locating the proposed trail consideration

1 was given to the directness of the route; potential benefit to
2 communities and public facilities adjacent to the trail route; trail
3 design and costs; safety to trail users, vehicle operators, and
4 adjacent persons; and adverse impacts and intrusions upon private
5 real property owners or persons using such property;

6 (e) Whether good faith attempts have been made to address
7 the concerns of affected private real property owners regarding trail
8 design, privacy, land protection, management, and maintenance; and

9 (f) Whether any development and management of the trail
10 is designed to harmonize with and complement any established forest
11 or agricultural plan for the affected private real property.

12 Sec. 5. When the acquisition of a parcel of private real
13 property, or an interest therein, for a trail divides the private
14 real property in such a manner that the owner has no reasonable
15 access to one part of the divided parcel, the city or village shall
16 allow reasonable access across the trail at a location mutually
17 agreed upon by the owner of such divided parcel and the city or
18 village.

19 Sec. 6. Acquisition of private real property, or an
20 interest therein, and any utilization of eminent domain approved
21 under sections 1 to 8 of this act to establish a proposed trail shall
22 be conducted in the manner and subject to the requirements provided
23 in sections 25-2501 to 25-2506 and 76-701 to 76-726.

24 Sec. 7. (1) A private real property owner or lessee of
25 property adjoining a trail has no duty (a) to maintain or repair the

1 trail or (b) to protect users of the trail from danger resulting from
2 conditions on the trail unless such conditions are the result of an
3 intentional or negligent act of such owner or lessee.

4 (2) A negotiated written agreement between a city or
5 village and a private real property owner regarding the acquisition
6 of real property, or an interest therein, by the city or village to
7 establish and maintain a trail shall clearly express both parties'
8 rights and obligations, including the obligation of the city or
9 village to maintain the trail and the liability of the city or
10 village for property damage or personal injury, or both, to users of
11 the trail.

12 Sec. 8. An affected private real property owner may
13 appeal the decision of the governing body of the city or village to
14 use eminent domain under sections 1 to 8 of this act by petition in
15 error to the district court of the county where the affected private
16 real property is located. No petition to condemn private real
17 property affected by the proposed trail shall be filed in county
18 court until any error proceeding under this section is final.

19 Sec. 9. Section 14-366, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 14-366 The city may purchase or acquire by the exercise
22 of the power of eminent domain private property or public property
23 which is not at the time devoted to a specific public use, for the
24 following purposes and uses: (1) For streets, alleys, avenues, parks,
25 recreational areas, parkways, playgrounds, boulevards, sewers, public

1 squares, market places, and for other needed public uses or purposes
2 authorized by this act, and for adding to, enlarging, widening, or
3 extending any of the foregoing; and (2) for constructing or enlarging
4 waterworks, gas plants, or other municipal utility purposes or
5 enterprises authorized by this act. The power to so purchase or
6 appropriate private property or public property, as in this act
7 specified, for parks, recreational areas, parkways, boulevards,
8 sewers, and for the purpose of constructing waterworks, gas works,
9 light plants, or other municipal enterprises authorized by this act,
10 may be exercised by the city within the corporate limits of the city
11 or within seventy-five miles thereof. The power to so purchase or
12 appropriate private property or public property, as in this act
13 specified, for streets, alleys, avenues, and other construction of
14 like kind may be exercised by the city within the corporate limits of
15 the city or within three miles thereof. The procedure to condemn
16 property shall be exercised in the manner set forth in sections
17 76-704 to 76-724, except as to property specifically excluded by
18 section 76-703 and as to which sections 1 to 8 of this act are
19 applicable.

20 Sec. 10. Section 15-229, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 15-229 A ~~primary city is hereby authorized to~~ city of the
23 primary class may acquire, either temporarily or permanently, lands,
24 real or personal property or any interests therein, or any easements
25 deemed to be necessary or desirable for any present or future

1 necessary or authorized public purpose within or without the city by
2 gift, agreement, purchase, condemnation, or otherwise. In all such
3 cases the city shall make the person or persons whose property shall
4 be taken or injured thereby adequate compensation therefor. The
5 procedure to condemn property shall be exercised in the manner set
6 forth in sections 76-704 to 76-724, except as to property
7 specifically excluded by section 76-703 and as to which sections 1 to
8 8 of this act, sections 19-701 to 19-707, or the Municipal Natural
9 Gas System Condemnation Act is applicable. A ~~primary city shall have~~
10 ~~authority to~~ of the primary class may enter upon any property to make
11 surveys, examinations, investigations, and tests, and to acquire
12 other necessary and relevant data in contemplation of establishing a
13 location of a necessary or authorized public purpose, acquiring
14 property therefor, or performing other operations incident to
15 construction, reconstruction, or maintenance of such public purpose.
16 Entry, ~~and entry~~ upon any property pursuant to ~~this such~~ authority
17 shall not be considered to be a legal trespass and no damages shall
18 be recovered on that account alone. In case of any actual or
19 demonstrable damages to the premises, the city shall pay the owner of
20 the premises the amount of the damages. Upon the failure of the
21 landowner and the city to agree upon the amount of damages, the
22 landowner, in addition to any other available remedy, may file a
23 petition as provided for in section 76-705. The entry by the city or
24 its representatives shall be made only after notice of the entry and
25 its purpose.

1 Sec. 11. Section 17-559, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 17-559 ~~Second class cities~~ Cities of the second class and
4 villages ~~shall have power to~~ may create, open, widen, or extend any
5 street, avenue, alley, offstreet parking area, or other public way,
6 or annul, vacate, or discontinue the same; ~~to~~ take private property
7 for public use for the purpose of erecting or establishing market
8 houses, market places, parks, swimming pools, airports, gas systems,
9 including distribution facilities, water systems, power plants,
10 including electrical distribution facilities, sewer systems, or for
11 any other needed public purpose; and ~~to~~ exercise the power of eminent
12 domain within or without the city or village limits for the purpose
13 of establishing and operating power plants, including electrical
14 distribution facilities, to supply such city or village with public
15 utility service, and for sewerage purposes, water supply systems, or
16 airports. The procedure to condemn property shall be exercised in the
17 manner set forth in sections 76-704 to 76-724, except as to property
18 specifically excluded by section 76-703 and as to which sections 1 to
19 8 of this act, sections 19-701 to 19-707, or the Municipal Natural
20 Gas System Condemnation Act is applicable. For purposes of this
21 section, electrical distribution facilities shall be located within
22 the retail service area of such city or village as approved by and on
23 file with the Nebraska Power Review Board, pursuant to Chapter 70,
24 article 10.

25 Sec. 12. Section 18-1755, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 18-1755 A city of the metropolitan, primary, first, or
3 second class or village acquiring an interest in real property by
4 purchase or eminent domain shall do so only after the governing body
5 has authorized the acquisition by action taken in a public meeting
6 after notice and public hearing. The city or village shall provide to
7 the public a right of access for recreational use to the real
8 property acquired for public recreational purposes. Such access shall
9 be at designated access points and shall be equal to the right of
10 access for recreational use held by adjacent landowners. The right of
11 access granted to the public for recreational use shall meet or
12 exceed such right held by a private landowner adjacent to the real
13 property. The procedure to condemn property shall be exercised in the
14 manner set forth in sections 76-704 to 76-724, except as to property
15 specifically excluded by section 76-703 and as to which sections 1 to
16 8 of this act, sections 19-701 to 19-707, or the Municipal Natural
17 Gas System Condemnation Act is applicable.

18 Sec. 13. Section 19-709, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 19-709 The mayor and city council of any city of the
21 first or second class or the chairperson and members of the board of
22 trustees of any village shall have power to purchase or appropriate
23 private property or school lands for the use of the city or village
24 for streets, alleys, avenues, parks, parkways, boulevards, sanitary
25 sewers, storm water sewers, public squares, public auditoriums,

1 public fire stations, training facilities for firefighters, market
2 places, public heating plants, power plants, gas works, electric
3 light plants, wells, or waterworks, including mains, pipelines, and
4 settling basins therefor, and to acquire outlets and the use of
5 streams for sewage disposal. When necessary for the proper
6 construction of any of the works above provided, the right of
7 appropriation shall extend such distance as may be necessary from the
8 corporate limits of the city or village, except that no city of the
9 first or second class or village may acquire through the exercise of
10 the power of eminent domain or otherwise any real estate within the
11 zoning jurisdiction of any other city of the first or second class or
12 village for any of the works enumerated in this section if the use
13 for which the real estate is to be acquired would be contrary to or
14 would not be a use permitted by the existing zoning ordinances and
15 regulations of such other city or village, but such real estate may
16 be acquired within the zoning jurisdiction of another city of the
17 first or second class or village for such contrary or nonpermitted
18 use if the governing body of such other city or village shall approve
19 such acquisition and use. Such power shall also include the right to
20 appropriate for any of the above purposes any plant or works already
21 constructed, or any part thereof, whether the same lies wholly within
22 the city or village or part within and part without the city or
23 village or beyond the corporate limits of such city or village,
24 including all real estate, buildings, machinery, pipes, mains,
25 hydrants, basins, reservoirs, and all appurtenances reasonably

1 necessary thereto and a part thereof, or connected with such works or
2 plants, and all franchises to own and operate the same, if any. The
3 procedure to condemn property shall be exercised in the manner set
4 forth in sections 76-704 to 76-724, except as to property
5 specifically excluded by section 76-703 and as to which sections 1 to
6 8 of this act, sections 19-701 to 19-707, or the Municipal Natural
7 Gas System Condemnation Act is applicable.

8 Sec. 14. Original sections 14-366, 15-229, 17-559,
9 18-1755, and 19-709, Reissue Revised Statutes of Nebraska, are
10 repealed.

11 Sec. 15. Since an emergency exists, this act takes effect
12 when passed and approved according to law.