

CORRECTED COPY

LEGISLATIVE BILL 15

Approved by the Governor February 13, 1993

Introduced by Kristensen, 37

AN ACT relating to highways; to amend sections 39-891, 39-893, 39-1301, 39-1302, and 39-1309, Reissue Revised Statutes of Nebraska, 1943, and section 39-1320, Revised Statutes Supplement, 1992; to authorize certain road projects as prescribed; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 39-891, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-891. Recognizing that obstructions on or near the boundary of the State of Nebraska impede commerce and travel between the State of Nebraska and adjoining states, the Legislature hereby declares that bridges over these obstructions are essential to the general welfare of the State of Nebraska.

Providing bridges over these obstructions and for the safe and efficient operation thereof of such bridges is deemed an urgent problem that is the proper concern of legislative action.

Such bridges, properly planned, designated, and managed, provide a safe passage for highway traffic to and from the state highway system and encourage commerce and travel between the State of Nebraska and adjoining states which increase the social and economic progress and general welfare of the state.

It is recognized that bridges between the State of Nebraska and adjoining states are not; and cannot be; the sole concern of the State of Nebraska. The nature of such bridges requires that a high degree of cooperation be exercised between the State of Nebraska and adjoining states in all phases of planning, construction, maintenance, and operation if proper benefits are to be realized.

It is also recognized that parties other than the State of Nebraska may wish to erect and control bridges between the State of Nebraska and adjoining states; and that the construction, operation, and financing of such bridges have previously been authorized by the Legislature. Such bridges also benefit the State of Nebraska, and it is not the intent of the Legislature to abolish such power previously granted.

To this end, it is the intention of the Legislature to supplement sections 39-1301 to 39-1362 and section 5 of this act, relating to state highways, in order that the powers and authority of the ~~Department of Roads~~ department relating to the planning, construction,

maintenance, acquisition, and operation of interstate bridges upon the state highway system may be clarified within a single act.

Acting under the direction of the Director-State Engineer, the ~~Department of Roads~~ department, with the advice of the State Highway Commission and the consent of the Governor, is given the power to enter into agreements with the United States and adjoining states, subject to the limitations imposed by the Constitution and the provisions of ~~sections 39-891 to 39-8,122~~ the Interstate Bridge Act of 1959.

The Legislature intends to place a high degree of trust in the hands of those officials whose duty it may be to enter into agreements with adjoining states and the United States for the planning, development, construction, acquisition, operation, maintenance, and protection of interstate bridges.

In order that the persons concerned may understand the limitations and responsibilities for planning, constructing, acquiring, operating, and maintaining interstate bridges upon the state highway system, it is necessary that the responsibilities for such work shall be fixed, ; but it is intended that the ~~Department of Roads~~ department, acting under the Director-State Engineer, shall have sufficient freedom to enter into agreements with adjoining states regarding any phase of planning, constructing, acquiring, maintaining, and operating interstate bridges upon the state highway system in order that the best interests of the State of Nebraska may always be served. The authority of the ~~Department of Roads~~ department to enter into agreements with adjoining states, as hereinafter granted in the act, is; therefor; essential.

The Legislature hereby determines and declares that the provisions of ~~sections 39-891 to 39-8,122~~ the act are necessary for the preservation of the public peace, health, and safety, for the promotion of the general welfare, and as a contribution to the national defense.

Sec. 2. That section 39-893, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-893. The provisions of ~~sections 39-891 to 39-8,122~~ the Interstate Bridge Act of 1959 are intended to be cumulative to, and not amendatory of, sections 39-1301 to 39-1362 and section 5 of this act.

Sec. 3. That section 39-1301, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-1301. Recognizing that safe and efficient highway transportation is a matter of important interest to all of the people in the state, the Legislature hereby determines and declares that an integrated system of highways is essential to the general welfare of the State of Nebraska.

Providing such a system of facilities and the efficient management, operation, and control thereof are recognized as urgent problems and the proper objectives of highway legislation.

Adequate highways provide for the free flow of traffic, † result in low cost of motor vehicle operation, † protect the health and safety of the citizens of the state, † increase property values, † and

generally promote economic and social progress of the state.

It is the intent of the Legislature to consider of paramount importance the convenience and safety of the traveling public in the location, relocation, or abandonment of highways.

In designating the highway system of this state, as provided by ~~the provisions of~~ sections 39-1301 to 39-1362 and section 5 of this act, the Legislature places a high degree of trust in the hands of those officials whose duty it shall be, within the limits of available funds, to plan, develop, construct, operate, maintain, and protect the highway facilities of this state, for present as well as for future uses.

The design, construction, maintenance, operation, and protection of adequate state highway facilities sufficient to meet the present demands as well as future requirements will, of necessity, require careful organization, with lines of authority definitely fixed, and basic rules of procedure established by the Legislature.

To this end, it is the intent of the Legislature, subject to the limitations of the Constitution and such mandates as the Legislature may impose by the provisions of ~~sections 39-1301 to 39-1362~~ such sections, to designate the Director-State Engineer and the ~~Department of Roads, acting under his direction~~ department, acting under the direction of the Director-State Engineer, as direct custodian of the state highway system, with full authority in all departmental administrative details, in all matters of engineering design, and in all matters having to do with the construction, maintenance, operation, and protection of the state highway system.

The Legislature intends to declare, in general terms, the powers and duties of the Director-State Engineer, leaving specific details to be determined by reasonable rules and regulations which may be promulgated by him or her. It is the intent of the Legislature to grant authority to the Director-State Engineer to exercise sufficient power and authority to enable him or her and the department to carry out the broad objectives ~~hereinbefore~~ stated in this section.

While it is necessary to fix responsibilities for the construction, maintenance, and operation of the several systems of highways, it is intended that the State of Nebraska shall have an integrated system of all roads and streets to provide safe and efficient highway transportation throughout the state. The authority ~~hereinafter~~ in such sections granted to the Director-State Engineer and to the political or governmental subdivisions or public corporations of this state to assist and cooperate with each other is therefor essential.

The Legislature hereby determines and declares that such sections ~~39-1301 to 39-1362~~ are necessary for the preservation of the public peace, health, and safety, for promotion of the general welfare, and as a contribution to the national defense.

Sec. 4. That section 39-1302, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-1302. ~~As used in~~ For purposes of sections 39-1301 to 39-1362 and section 5 of this act, unless the context otherwise requires:

(1) Abandon shall mean to reject all or part of the department's rights and responsibilities relating to all or part of a fragment, section, or route on the state highway system;

(2) Alley shall mean an established passageway for vehicles and pedestrians affording a secondary means of access in the rear to properties abutting on a street or highway;

(3) Arterial highway shall mean a highway primarily for through traffic, usually on a continuous route;

(4) Channel shall mean a natural or artificial watercourse;

(5) Connecting link shall mean the roads, streets, and highways designated as part of the state highway system and which are within the corporate limits of any city or village in this state;

(6) Controlled-access facility shall mean a highway or street especially designed for through traffic; and over, from, or to which owners or occupants of abutting land or other persons have no right or easement or only a controlled right or easement of access, light, air, or view by reason of the fact that their property abuts upon such controlled-access facility or for any other reason. Such highways or streets may be freeways, or they may be parkways;

(7) Department shall mean the Department of Roads; ~~of the State of Nebraska;~~

(8) Easement shall mean a right acquired by public authority to use or control property for a designated highway purpose;

(9) Expressway shall mean a divided arterial highway for through traffic with full or partial control of access and generally with grade separations at intersections;

(10) Freeway shall mean an expressway with full control of access;

(11) Frontage road shall mean a local street or road auxiliary to an arterial highway for service to abutting property and adjacent areas and for control of access;

(12) Highway shall mean a road or street, including the entire area within the right-of-way, which has been designated a part of the state highway system;

(13) Map shall mean a drawing or other illustration or a series of drawings or illustrations which may be considered together to complete a representation;

(14) Mileage shall mean the aggregate distance in miles without counting double mileage where there are one-way or divided roads, streets, or highways;

(15) Parking lane shall mean an auxiliary lane primarily for the parking of vehicles;

(16) Parkway shall mean an arterial highway for noncommercial traffic, with full or partial control of access, and usually located within a park or a ribbon of park-like development;

(17) Person shall include bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, joint-stock companies, and associations;

(18) Relinquish shall mean to surrender all or part of the rights and responsibilities relating to all or part of a fragment, section, or route on the state highway system to a political or governmental subdivision or public corporation of Nebraska;

(19) Right of access shall mean the rights of ingress and egress to or from a road, street, or highway; and the rights of owners or occupants of land abutting a road, street, or highway or other persons to a way or means of approach, light, air, or view;

(20) Right-of-way shall mean land, property, or interest therein, usually in a strip, acquired for or devoted to a road, street, or highway;

(21) Road shall mean a public way for the purposes of vehicular travel, including the entire area within the right-of-way. A road designated as part of the state highway system may be called a highway, while a road in an urban area may be called a street;

(22) Roadside shall mean the area adjoining the outer edge of the roadway. Extensive areas between the roadways of a divided highway may also be considered roadside;

(23) Roadway shall mean the portion of a highway, including shoulders, for vehicular use;

(24) State highway purposes shall have the meaning set forth in subsection (2) of section 39-1320;

(25) State highway system shall mean the roads, streets, and highways shown on the map provided for in section 39-1311; as forming a group of highway transportation lines for which the department shall be the primary authority. The state highway system shall include, but not be limited to, rights-of-way, connecting links, drainage facilities, and the bridges, appurtenances, easements, and structures used in conjunction with such roads, streets, and highways;

(26) Street shall mean a public way for the purposes of vehicular travel in a city or village and shall include the entire area within the right-of-way;

(27) Structure shall mean anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location;

(28) Title shall mean the evidence of a person's right to property or the right itself;

(29) Traveled way shall mean the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes;

(30) Written instrument shall mean a deed or any other document that states a contract, agreement, gift, or transfer of property;

(31) Displaced person shall mean any individual, family, business, or farm operation which moves from real property acquired for state highway purposes or for a federal-aid highway;

(32) Individual shall mean a person who is not a member of a family;

(33) Family shall mean two or more persons living together in the same dwelling unit who are related to each other by blood,

marriage, adoption, or legal guardianship;

(34) Business shall mean any lawful activity conducted primarily for the purchase and resale, manufacture, processing, or marketing of products, commodities, or other personal property; or for the sale of services to the public; or by a nonprofit corporation;

(35) Farm operation shall mean any activity conducted primarily for the production of one or more agricultural products or commodities for sale and home use; and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support;

(36) Federal-aid primary roads shall mean roads, streets, and highways, whether a part of the state highway system, county road systems, or city streets, which have been designated as federal-aid primary roads by the department and approved by the United States Secretary of Transportation, ~~of the United States~~, and shown on the maps provided for in section 39-1311;

(37) Commercial activity shall mean those activities generally recognized as commercial by zoning authorities in this state, and industrial activity shall mean those activities generally recognized as industrial by zoning authorities in this state, except that none of the following shall be considered commercial or industrial:

(a) Outdoor advertising structures;

(b) General agricultural, forestry, ranching, grazing, farming, and related activities, including but not limited to, wayside fresh produce stands;

(c) Activities normally or regularly in operation less than three months of the year;

(d) Activities conducted in a building principally used as a residence;

(e) Railroad tracks and minor sidings; and

(f) Activities more than six hundred sixty feet from the nearest edge of the right-of-way of the road or highway;

(38) Unzoned commercial or industrial area for purposes of control of outdoor advertising shall mean all areas within six hundred sixty feet of the nearest edge of the right-of-way of the interstate and federal-aid primary systems which are not zoned by state or local law, regulation, or ordinance and on which there is located one or more permanent structures devoted to a business or industrial activity or on which a commercial or industrial activity is conducted, whether or not a permanent structure is located thereon, the area between such activity and the highway, and the area along the highway extending outward six hundred feet from and beyond each edge of such activity; and, in the case of the primary system, may include the unzoned lands on both sides of such road or highway to the extent of the same dimensions; ~~PROVIDED~~, if those lands on the opposite side of the highway are not deemed scenic or having aesthetic value as determined by the department. In determining such an area, measurements shall be made from the furthest or outermost edges of the regularly used area of the commercial

or industrial activity, structures, normal points of ingress and egress, parking lots, and storage and processing areas constituting an integral part of such commercial or industrial activity;

(39) Zoned commercial or industrial areas shall mean those areas within six hundred sixty feet of the nearest edge of the right-of-way of the National System of Interstate and Defense Highways and all federal-aid primary roads, zoned by state or local authorities for industrial or commercial activities; and

(40) Visible, ~~as used in~~ for purposes of sections 39-1320.06, 39-1320.07, and 39-1320.09 in reference to advertising signs, displays, or devices, shall mean the message or advertising content of such sign, display, or device is capable of being seen without visual aid by a person of normal visual acuity. A sign shall be considered visible even though the message or advertising content may be seen but not read.

Sec. 5. The department may plan, design, construct, maintain, or otherwise undertake projects for which federal funds are available as a National Highway System project under 23 U.S.C. 103(i), as a Surface Transportation Program project under 23 U.S.C. 133(b), or as a Public Lands Highways Program project under 23 U.S.C. 204(h). The department may expend state funds to enable the state to participate in the benefits to be secured from these federal program funds. In accordance with the department's authority set out in sections 39-1306, 39-1307, and 39-1308, the department may assist any state agency, the Nebraska State Historical Society, the Game and Parks Commission, the University of Nebraska, any political or governmental subdivision, or any public corporation of this state in soliciting and expending federal funds under the federal acts listed in this section.

Sec. 6. That section 39-1309, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-1309. (1) The map prepared by the State Highway Commission showing a proposed state highway system in Nebraska, filed with the Clerk of the Legislature and referred to in the resolution filed with the Legislature on February 3, 1955, is hereby adopted by the Legislature as the state highway system on September 18, 1955, except ; **PROVIDED**; that a highway from Rushville in Sheridan County going south on the most feasible and direct route to the Smith Lake State Recreation Grounds shall be known as state highway 250; and shall be a part of the state highway system.

(2) The state highway system may be redesignated, relocated, redetermined, or recreated by the department; with the written advice of the State Highway Commission and the consent of the Governor. In redesignating, relocating, redetermining, or recreating the several routes of the state highway system, the following factors, except as provided in section 39-1309.01, shall be considered: (a) The actual or potential traffic volumes and other traffic survey data, (b) the relevant factors of construction, maintenance, right-of-way, and the costs thereof, (c) the safety and convenience of highway users, (d) the relative importance of each highway to existing business, industry, agriculture,

enterprise, and recreation and to the development of natural resources, business, industry, agriculture, enterprise, and recreation, (e) the desirability of providing an integrated system to serve interstate travel, principal market centers, principal municipalities, county seat municipalities, and travel to places of statewide interest, (f) the desirability of connecting the state highway system with any state park, any state forest reserve, any state game reserve, the grounds of any state institution, or any recreational, scenic, or historic place owned or operated by the state or federal governments, (g) the national defense, and (h) the general welfare of the people of the state.

(3) Any highways ~~presently maintained by the department and~~ not designated as a part of the state highway system as provided by sections 39-1301 to 39-1362 ~~and section 5 of this act shall be maintained until July 1, 1956, by the department. After July 1, 1956, such highways shall be~~ a part of the county road system, and the title to the right-of-way of such roads shall ~~after such date~~ vest in the counties ~~wherein in~~ which the roads are located.

Sec. 7. That section 39-1320, Revised Statutes Supplement, 1992, be amended to read as follows:

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

(2) State highway purposes, as referred to in subsection (1) of this section or otherwise in sections 39-1301 to 39-1362 and section 5 of this act, shall include provision for, but shall not be limited to, the following:

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

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

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

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

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

(f) The preservation of objects of attraction or scenic value adjacent to, along, or in close proximity to highways and the culture of trees and flora which may increase the scenic beauty of such highways;

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

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

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

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

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

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

(m) The control of outdoor advertising which is visible from the nearest edge of the right-of-way of the National System of Interstate and Defense Highways and all federal-aid primary roads, to the end that this state may comply with the provisions of 23 U.S.C. 131, as amended;

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

(o) The establishment and maintenance of wetlands to replace or to mitigate damage to wetlands affected by highway construction, reconstruction, or maintenance. The replacement lands shall be capable of being used to create wetlands comparable to the wetlands area affected. The area of the replacement lands may exceed the wetlands area affected. Lands may be acquired to establish a large or composite wetlands area, sometimes called a wetlands bank, not larger than an area which is one hundred fifty percent of the lands reasonably expected to be necessary for the mitigation of future impact on wetlands brought about by highway construction, reconstruction, or maintenance during the six-year plan in effect upon acquisition of the lands. For purposes of this section, wetlands shall have the definition found in 33 C.F.R. 328.3(b).

(3) The procedure to condemn property authorized by subsection (1) of this section or elsewhere in sections 39-1301 to 39-1362 and section 5 of this act shall be exercised in the manner set forth in sections 76-704 to 76-724 or as provided by section 39-1323, as the case may be.

Sec. 8. That original sections 39-891, 39-893, 39-1301, 39-1302, and 39-1309, Reissue Revised Statutes of Nebraska, 1943, and section 39-1320, Revised Statutes Supplement, 1992, are repealed.