

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 277
FINAL READING

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
6 annual and six-year plans as prescribed; to harmonize
7 provisions; and 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
4 to acquire, either temporarily or permanently, lands, real or
5 personal property or any interests therein, or any easements deemed
6 to be necessary or desirable for present or future state highway
7 purposes by gift, agreement, purchase, exchange, condemnation, or
8 otherwise. Such lands or real property may be acquired in fee
9 simple or in any lesser estate. It is the intention of the
10 Legislature that all property leased or purchased from the owner
11 shall receive a fair price.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (o) The establishment and maintenance of wetlands to
6 replace or to mitigate damage to wetlands affected by highway
7 construction, reconstruction, or maintenance. The replacement lands
8 shall be capable of being used to create wetlands comparable to
9 the wetlands area affected. The area of the replacement lands
10 may exceed the wetlands area affected. Lands may be acquired to
11 establish a large or composite wetlands area, sometimes called a
12 wetlands bank, not larger than an area which is one hundred fifty
13 percent of the lands reasonably expected to be necessary for the
14 mitigation of future impact on wetlands brought about by highway
15 construction, reconstruction, or maintenance during the six-year
16 plan as required by sections 39-2115 to 39-2117, an annual plan
17 under section 39-2119, or an annual metropolitan transportation
18 improvement program under section 4 of this act in effect upon
19 acquisition of the lands. For purposes of this section, wetlands
20 shall have the definition found in 33 C.F.R. 328.3(b).

21 (3) The procedure to condemn property authorized by
22 subsection (1) of this section or elsewhere in sections 39-1301
23 to 39-1362 shall be exercised in the manner set forth in sections
24 76-704 to 76-724 or as provided by section 39-1323, as the case may
25 be.

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

3 39-2116 The Board of Public Roads Classifications
4 and Standards shall review all six-year plans required by
5 sections 39-2115 to 39-2117 or annual metropolitan transportation
6 improvement programs under section 4 of this act submitted to it
7 and make such recommendations for changes therein as it believes
8 necessary or desirable in order to achieve the orderly development
9 of an integrated system of highways, roads, and streets, but
10 in so doing the board shall take into account the fact that
11 individual priorities of needs may not lend themselves to immediate
12 integration. The department and each county and municipality shall
13 give careful and serious consideration to any such recommendations
14 received from the board and shall not reject them except for
15 substantial or compelling reason.

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

18 39-2119 Each county and municipality shall annually
19 prepare and file, under ~~the provisions of section 39-2115,~~ sections
20 39-2115 to 39-2117 or section 4 of this act, with the Board of
21 Public Roads Classifications and Standards, a plan or program for
22 specific road or street improvements for the current year. The ~~+~~
23 ~~PROVIDED, that the annual plan or program~~ shall be filed on or
24 before March 1 of each year. No such plan or program shall be
25 adopted until after a local public hearing thereon and its approval

1 by the local governing body. The board shall prescribe the nature
2 and time of notice of such hearing, which shall be such as shall
3 be likely to come to the attention of interested citizens in the
4 jurisdiction involved. The board shall review each such annual plan
5 or program within sixty days after it has been filed to determine
6 whether it is consistent with the county's or municipality's
7 current six-year plan. The county or municipality shall be required
8 to justify any inconsistency with the six-year plan to the
9 satisfaction of the board. If any county or municipality shall
10 fail to comply with the provisions of this section, the board
11 shall so notify the local governing board, the Governor, and the
12 State Treasurer, who shall suspend distribution of any highway-user
13 revenue allocated to such county or municipality until there has
14 been compliance. Such funds shall be held in escrow for six
15 months until the county or municipality complies. If the county or
16 municipality complies within the six-month period it shall receive
17 the money in escrow, but after six months, if the county or
18 municipality fails to comply, the money in the escrow account shall
19 be lost to the county or municipality.

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

24 Sec. 4. Any county or municipality that is designated as
25 a metropolitan planning organization pursuant to 23 U.S.C. 134(d),

1 as such section existed on January 1, 2007, may, in lieu of
2 submission of a six-year plan under sections 39-2115 to 39-2117 or
3 an annual plan under section 39-2119, submit an annual metropolitan
4 transportation improvement program pursuant to section 23 U.S.C.
5 134(j), as such section existed on January 1, 2007, that is treated
6 as such plans required under sections 39-2115 to 39-2117 and
7 39-2119.

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

10 39-2124 It is the intent of the Legislature to recognize
11 the responsibilities of the Department of Roads, of the counties,
12 and of the municipalities in their planning programs as authorized
13 by state law and by home rule charter and to encourage the
14 acceptance and implementation of comprehensive, continuing,
15 cooperative, and coordinated planning by the state, the counties,
16 and the municipalities. Sections 13-914 and 39-2101 to 39-2125 and
17 section 4 of this act are not intended to prohibit or inhibit the
18 actions of the counties and of the municipalities in their planning
19 programs and their subdivision regulations, nor are sections 13-914
20 and 39-2101 to 39-2125 and section 4 of this act intended to
21 restrict the actions of the municipalities in their creation of
22 street improvement districts and in their assessment of property
23 for special benefits as authorized by state law or by home rule
24 charter.

25 Sec. 6. Section 39-2125, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 39-2125 Sections 13-914 and 39-2101 to 39-2125 and
3 section 4 of this act shall be construed as an independent
4 act, complete in itself, and in the event of conflict between any
5 provisions of sections 13-914 and 39-2101 to 39-2125 and section
6 4 of this act and any other statutes, the provisions of sections
7 13-914 and 39-2101 to 39-2125 and section 4 of this act shall
8 control.

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

11 39-2502 An incentive payment shall be made to each county
12 having in its employ a county highway superintendent licensed
13 under the County Highway and City Street Superintendents Act,
14 during the calendar year preceding the year in which payment is
15 made. For purposes of sections 39-2501 to 39-2510, county highway
16 superintendent means a person who actually performs the following
17 duties:

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

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

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

25 (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;
4 and

5 (6) Preparing and submitting annually to the Board of
6 Public Roads Classifications and Standards the county's one-year
7 plans, and six-year plans, or annual metropolitan transportation
8 improvement programs for highway, road, and street improvements as
9 ~~set forth in~~ under sections 39-2115 to 39-2117, and 39-2119, and
10 section 4 of this act and a report showing the actual receipts,
11 expenditures, and accomplishments compared with those budgeted and
12 programmed in the county's annual plans as set forth in section
13 39-2120.

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

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

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

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

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

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

7 (5) Implementing the capital improvements and maintenance
8 activities provided in the approved plans, programs, and budgets;
9 and

10 (6) Preparing and submitting annually to the Board of
11 Public Roads Classifications and Standards the one-year plans, and
12 six-year plans, or annual metropolitan transportation improvement
13 programs of the municipality or municipal county for highway, road,
14 and street improvements as set forth in under sections 39-2115
15 to 39-2117, and 39-2119, and section 4 of this act and a report
16 showing the actual receipts, expenditures, and accomplishments
17 compared with those budgeted and programmed in the annual plans
18 of the municipality or municipal county as set forth in section
19 39-2120.

20 Sec. 9. Original sections 39-1320, 39-2116, 39-2119,
21 39-2124, 39-2125, 39-2502, and 39-2512, Reissue Revised Statutes of
22 Nebraska, are repealed.