

LEGISLATIVE BILL 277

Approved by the Governor May 16, 2007

Introduced by Mines, 18

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

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

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

39-1320 (1) The Department of Roads 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, 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 Highway Beautification Control System as defined in section 39-201.01 to 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 as required by sections 39-2115 to 39-2117, an annual plan under section 39-2119, or an annual metropolitan transportation

improvement program under section 4 of this act 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 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. 2. Section 39-2116, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

39-2119 Each county and municipality shall annually prepare and file, ~~under the provisions of section 39-2115,~~ sections 39-2115 to 39-2117 or section 4 of this act, with the Board of Public Roads Classifications and Standards, a plan or program for specific road or street improvements for the current year. ~~The + PROVIDED, that the annual plan or program~~ shall be filed on or before March 1 of each year. No such plan or program shall be adopted until after a local public hearing thereon and its approval by the local governing body. The board shall prescribe the nature and time of notice of such hearing, which shall be such as shall be likely to come to the attention of interested citizens in the jurisdiction involved. The board shall review each such annual plan or program within sixty days after it has been filed to determine whether it is consistent with the county's or municipality's current six-year plan. The county or municipality shall be required to justify any inconsistency with the six-year plan to the satisfaction of the board. If any county or municipality shall fail to comply with the provisions of this section, the board shall so notify the local governing board, the Governor, and the State Treasurer, who shall suspend distribution of any highway-user revenue allocated to such county or municipality until there has been compliance. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality.

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

Sec. 4. Any county or municipality that is designated as a metropolitan planning organization pursuant to 23 U.S.C. 134(d), as such section existed on January 1, 2007, may, in lieu of submission of a six-year plan under sections 39-2115 to 39-2117 or an annual plan under section 39-2119, submit an annual metropolitan transportation improvement program pursuant to section 23 U.S.C. 134(j), as such section existed on January 1, 2007, that is treated as such plans required under sections 39-2115 to 39-2117 and 39-2119.

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

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

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

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

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

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

- (1) Developing and annually updating a long-range plan based on needs and coordinated with adjacent local governmental units;
- (2) Developing an annual program for design, construction, and maintenance;
- (3) Developing an annual budget based on programmed projects and activities;
- (4) Submitting such plans, programs, and budgets to the local governing body for approval;
- (5) Implementing the capital improvements and maintenance activities provided in the approved plans, programs, and budgets; and
- (6) Preparing and submitting annually to the Board of Public Roads Classifications and Standards the county's one-year plans, and six-year plans, or annual metropolitan transportation improvement programs for highway, road, and street improvements as set forth in under sections 39-2115 to 39-2117, and 39-2119, and section 4 of this act and a report showing the actual receipts, expenditures, and accomplishments compared with those budgeted and programmed in the county's annual plans as set forth in section 39-2120.

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

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

- (1) Developing and annually updating a long-range plan based on needs and coordinated with adjacent local governmental units;
- (2) Developing an annual program for design, construction, and maintenance;
- (3) Developing an annual budget based on programmed projects and activities;
- (4) Submitting such plans, programs, and budgets to the local governing body for approval;
- (5) Implementing the capital improvements and maintenance activities provided in the approved plans, programs, and budgets; and
- (6) Preparing and submitting annually to the Board of Public Roads Classifications and Standards the one-year plans, and six-year plans, or annual metropolitan transportation improvement programs of the municipality or municipal county for highway, road, and street improvements as set forth in under sections 39-2115 to 39-2117, and 39-2119, and section 4 of this act and a report showing the actual receipts, expenditures, and accomplishments compared with those budgeted and programmed in the annual plans of the municipality or municipal county as set forth in section 39-2120.

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