

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1038

FINAL READING

Introduced by Davis, 43.

Read first time January 19, 2016

Committee: Natural Resources

1 A BILL FOR AN ACT relating to natural resources; to amend sections
2 2-945.01, 2-958.02, 39-891, 39-893, 39-1301, 39-1302, 39-1309,
3 39-1320, 46-290, 70-668, 70-669, and 72-2008, Reissue Revised
4 Statutes of Nebraska, and section 72-2007, Revised Statutes
5 Supplement, 2015; to change provisions relating to grants for
6 certain vegetation management programs; to create the Riparian
7 Vegetation Management Task Force; to provide powers and duties; to
8 require an annual report; to provide for the issuance of permits to
9 control vegetation obscuring advertising signage along highways as
10 prescribed; to provide duties for the Department of Roads; to change
11 provisions relating to water appropriations; to require legislative
12 confirmation of certain appointments to the Niobrara Council; to
13 change provisions relating to support by the Game and Parks
14 Commission under the Niobrara Scenic River Act; to eliminate
15 obsolete provisions; to harmonize provisions; to repeal the original
16 sections; and to outright repeal sections 2-967 and 2-968, Revised
17 Statutes Cumulative Supplement, 2014.
18 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 2-945.01, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 2-945.01 Sections 2-945.01 to 2-966 and sections 3 and 4 of this act
4 ~~2-968~~ shall be known and may be cited as the Noxious Weed Control Act.

5 Sec. 2. Section 2-958.02, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 2-958.02 (1) From funds available in the Noxious Weed and Invasive
8 Plant Species Assistance Fund, the director may administer a grant
9 program to assist local control authorities and other weed management
10 entities in the cost of implementing and maintaining noxious weed control
11 programs and in addressing special weed control problems as provided in
12 this section.

13 (2) The director shall receive applications by local control
14 authorities and weed management entities for assistance under this
15 subsection and, in consultation with the advisory committee created under
16 section 2-965.01, award grants for any of the following eligible
17 purposes:

18 (a) To conduct applied research to solve locally significant weed
19 management problems;

20 (b) To demonstrate innovative control methods or land management
21 practices which have the potential to reduce landowner costs to control
22 noxious weeds or improve the effectiveness of noxious weed control;

23 (c) To encourage the formation of weed management entities;

24 (d) To respond to introductions or infestations of invasive plants
25 that threaten or potentially threaten the productivity of cropland and
26 rangeland over a wide area;

27 (e) To respond to introductions and infestations of invasive plant
28 species that threaten or potentially threaten the productivity and
29 biodiversity of wildlife and fishery habitats on public and private
30 lands;

31 (f) To respond to special weed control problems involving weeds not

1 included in the list of noxious weeds promulgated by rule and regulation
2 of the director if the director has approved a petition to bring such
3 weeds under the county control program;

4 (g) To conduct monitoring or surveillance activities to detect, map,
5 or determine the distribution of invasive plant species and to determine
6 susceptible locations for the introduction or spread of invasive plant
7 species; and

8 (h) To conduct educational activities.

9 (3) The director shall select and prioritize applications for
10 assistance under subsection (2) of this section based on the following
11 considerations:

12 (a) The seriousness of the noxious weed or invasive plant problem or
13 potential problem addressed by the project;

14 (b) The ability of the project to provide timely intervention to
15 save current and future costs of control and eradication;

16 (c) The likelihood that the project will prevent or resolve the
17 problem or increase knowledge about resolving similar problems in the
18 future;

19 (d) The extent to which the project will leverage federal funds and
20 other nonstate funds;

21 (e) The extent to which the applicant has made progress in
22 addressing noxious weed or invasive plant problems;

23 (f) The extent to which the project will provide a comprehensive
24 approach to the control or eradication of noxious weeds or invasive plant
25 species as identified and listed by the Nebraska Invasive Species
26 Council;

27 (g) The extent to which the project will reduce the total population
28 or area of infestation of a noxious weed or invasive plant species as
29 identified and listed by the Nebraska Invasive Species Council;

30 (h) The extent to which the project uses the principles of
31 integrated vegetation management and sound science; and

1 (i) Such other factors that the director determines to be relevant.

2 (4) The director shall receive applications for grants under this
3 subsection and shall award grants to recipients and programs eligible
4 under this subsection. Priority shall be given to grant applicants whose
5 proposed programs are consistent with vegetation management goals and
6 priorities and plans and policies of the Riparian Vegetation Management
7 Task Force ~~established under~~ ~~created pursuant to~~ section 4 of this act
8 ~~2-968~~. Beginning in fiscal year 2016-17 ~~2009-10~~, it is the intent of the
9 Legislature to appropriate one ~~two~~ million dollars annually for the
10 management of vegetation within the banks of a natural stream or within
11 one hundred feet of the banks of a channel of any natural stream. Such
12 funds shall only be used to pay for activities and equipment as part of
13 vegetation management programs that have as their primary objective
14 improving conveyance of streamflow in natural streams. Grants from funds
15 appropriated as provided in this subsection shall be disbursed only to
16 weed management entities, local weed control authorities, and natural
17 resources districts, whose territory includes ~~one or more fully~~
18 ~~appropriated or overappropriated~~ river basins, ~~as designated by the~~
19 ~~Department of Natural Resources~~ with priority given to ~~fully appropriated~~
20 river basins that are the subject of an interstate compact or decree. The
21 Game and Parks Commission shall assist grant recipients in implementing
22 grant projects under this subsection, and interlocal agreements under the
23 Interlocal Cooperation Act or the Joint Public Agency Act shall be
24 utilized whenever possible in carrying out the grant projects.—This
25 subsection terminates on June 30, 2013.

26 (5) Nothing in this section shall be construed to relieve control
27 authorities of their duties and responsibilities under the Noxious Weed
28 Control Act or the duty of a person to control the spread of noxious
29 weeds on lands owned and controlled by him or her.

30 (6) The Department of Agriculture may adopt and promulgate necessary
31 rules and regulations to carry out this section.

1 ~~(7)(a) The director shall apply for a grant from the Nebraska~~
2 ~~Environmental Trust Fund prior to the application deadline in September~~
3 ~~of 2009 for grants to be awarded and funded in April of 2010.~~

4 ~~(7 b) The director may annually shall apply for conservation funding~~
5 ~~a grant from the Natural Resources Conservation Service of the United~~
6 ~~States Department of Agriculture prior to July 31, 2009.~~

7 Sec. 3. The Riparian Vegetation Management Task Force is created.
8 The Governor shall appoint the members of the task force. The members
9 shall include one surface water project representative from each river
10 basin that has ever been determined to be fully appropriated pursuant to
11 section 46-714 or 46-720 or is designated as overappropriated pursuant to
12 section 46-713 by the Department of Natural Resources; one surface water
13 project representative from a river basin that has not been determined to
14 be fully appropriated pursuant to section 46-714 or 46-720 or is not
15 designated as overappropriated pursuant to section 46-713 by the
16 Department of Natural Resources; one representative from the Department
17 of Agriculture, the Department of Environmental Quality, the Department
18 of Natural Resources, the office of the State Forester, the Game and
19 Parks Commission, and the University of Nebraska; three representatives
20 selected from a list of at least ten individuals nominated by the
21 Nebraska Association of Resources Districts; two representatives selected
22 from a list of at least five individuals nominated by the Nebraska Weed
23 Control Association; one riparian landowner from each of the state's
24 congressional districts; and one representative from the Nebraska
25 Environmental Trust. In addition to such members, any member of the
26 Legislature may serve as a nonvoting, ex officio member of the task force
27 at his or her option. For administrative and budgetary purposes only, the
28 task force shall be housed within the Department of Agriculture.

29 Sec. 4. The Riparian Vegetation Management Task Force, in
30 consultation with appropriate federal agencies, shall develop and
31 prioritize vegetation management goals and objectives, analyze the cost-

1 effectiveness of available vegetation treatment, and develop plans and
2 policies to achieve such goals and objectives. Any plan shall utilize the
3 principles of integrated vegetation management and sound science. The
4 task force shall convene within thirty days after the appointment of the
5 members is complete to elect a chairperson and conduct such other
6 business as deemed necessary. An annual report shall be submitted to the
7 Governor and the Legislature by June 30 each year with the first report
8 due on June 30, 2017. The report submitted to the Legislature shall be
9 submitted electronically. It is the intent of the Legislature that
10 expenses of the task force not exceed twenty-five thousand dollars of the
11 total appropriation to the program per fiscal year.

12 Sec. 5. Section 39-891, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 39-891 Recognizing that obstructions on or near the boundary of the
15 State of Nebraska impede commerce and travel between the State of
16 Nebraska and adjoining states, the Legislature hereby declares that
17 bridges over these obstructions are essential to the general welfare of
18 the State of Nebraska.

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

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

27 It is recognized that bridges between the State of Nebraska and
28 adjoining states are not and cannot be the sole concern of the State of
29 Nebraska. The nature of such bridges requires that a high degree of
30 cooperation be exercised between the State of Nebraska and adjoining
31 states in all phases of planning, construction, maintenance, and

1 operation if proper benefits are to be realized.

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

8 To this end, it is the intention of the Legislature to supplement
9 sections 39-1301 to 39-1362 and section 11 of this act, relating to state
10 highways, in order that the powers and authority of the department
11 relating to the planning, construction, maintenance, acquisition, and
12 operation of interstate bridges upon the state highway system may be
13 clarified within a single act.

14 Acting under the direction of the Director-State Engineer, the
15 department, with the advice of the State Highway Commission and the
16 consent of the Governor, is given the power to enter into agreements with
17 the United States and adjoining states, subject to the limitations
18 imposed by the Constitution and the provisions of the Interstate Bridge
19 Act of 1959.

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

25 In order that the persons concerned may understand the limitations
26 and responsibilities for planning, constructing, acquiring, operating,
27 and maintaining interstate bridges upon the state highway system, it is
28 necessary that the responsibilities for such work shall be fixed, but it
29 is intended that the department, acting under the Director-State
30 Engineer, shall have sufficient freedom to enter into agreements with
31 adjoining states regarding any phase of planning, constructing,

1 acquiring, maintaining, and operating interstate bridges upon the state
2 highway system in order that the best interests of the State of Nebraska
3 may always be served. The authority of the department to enter into
4 agreements with adjoining states, as granted in the act, is therefor
5 essential.

6 The Legislature hereby determines and declares that the provisions
7 of the act are necessary for the preservation of the public peace,
8 health, and safety, for the promotion of the general welfare, and as a
9 contribution to the national defense.

10 Sec. 6. Section 39-893, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 39-893 The provisions of the Interstate Bridge Act of 1959 are
13 intended to be cumulative to, and not amendatory of, sections 39-1301 to
14 39-1362 and section 11 of this act.

15 Sec. 7. Section 39-1301, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 39-1301 Recognizing that safe and efficient highway transportation
18 is a matter of important interest to all of the people in the state, the
19 Legislature hereby determines and declares that an integrated system of
20 highways is essential to the general welfare of the State of Nebraska.

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

24 Adequate highways provide for the free flow of traffic, result in
25 low cost of motor vehicle operation, protect the health and safety of the
26 citizens of the state, increase property values, and generally promote
27 economic and social progress of the state.

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

31 In designating the highway system of this state, as provided by

1 sections 39-1301 to 39-1362 and section 11 of this act, the Legislature
2 places a high degree of trust in the hands of those officials whose duty
3 it shall be, within the limits of available funds, to plan, develop,
4 construct, operate, maintain, and protect the highway facilities of this
5 state, for present as well as for future uses.

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

11 To this end, it is the intent of the Legislature, subject to the
12 limitations of the Constitution and such mandates as the Legislature may
13 impose by the provisions of such sections, to designate the Director-
14 State Engineer and the department, acting under the direction of the
15 Director-State Engineer, as direct custodian of the state highway system,
16 with full authority in all departmental administrative details, in all
17 matters of engineering design, and in all matters having to do with the
18 construction, maintenance, operation, and protection of the state highway
19 system.

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

27 While it is necessary to fix responsibilities for the construction,
28 maintenance, and operation of the several systems of highways, it is
29 intended that the State of Nebraska shall have an integrated system of
30 all roads and streets to provide safe and efficient highway
31 transportation throughout the state. The authority granted in such

1 sections 39-1301 to 39-1362 and section 11 of this act to the Director-
2 State Engineer and to the political or governmental subdivisions or
3 public corporations of this state to assist and cooperate with each other
4 is therefor essential.

5 The Legislature hereby determines and declares that such sections
6 are necessary for the preservation of the public peace, health, and
7 safety, for promotion of the general welfare, and as a contribution to
8 the national defense.

9 Sec. 8. Section 39-1302, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 39-1302 For purposes of sections 39-1301 to 39-1392 and section 11
12 of this act, unless the context otherwise requires:

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

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

19 (3) Approach or exit road shall mean any highway or ramp designed
20 and used solely for the purpose of providing ingress or egress to or from
21 an interchange or rest area of a highway. An approach road shall begin at
22 the point where it intersects with any highway not a part of the highway
23 for which such approach road provides access and shall terminate at the
24 point where it merges with an acceleration lane of a highway. An exit
25 road shall begin at the point where it intersects with a deceleration
26 lane of a highway and shall terminate at the point where it intersects
27 any highway not a part of a highway from which the exit road provides
28 egress;

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

31 (5) Beltway shall mean the roads and streets not designated as a

1 part of the state highway system and that are under the primary authority
2 of a county or municipality, if the location of the beltway has been
3 approved by (a) record of decision or finding of no significant impact by
4 the federal highway administration and (b) the applicable local planning
5 authority as a part of the comprehensive plan;

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

10 (7) Channel shall mean a natural or artificial watercourse;

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

16 (a) Outdoor advertising structures;

17 (b) General agricultural, forestry, ranching, grazing, farming, and
18 related activities, including wayside fresh produce stands;

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

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

23 (e) Railroad tracks and minor sidings; and

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

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

29 (10) Controlled-access facility shall mean a highway or street
30 especially designed for through traffic and over, from, or to which
31 owners or occupants of abutting land or other persons have no right or

1 easement or only a controlled right or easement of access, light, air, or
2 view by reason of the fact that their property abuts upon such
3 controlled-access facility or for any other reason. Such highways or
4 streets may be freeways, or they may be parkways;

5 (11) Department shall mean the Department of Roads;

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

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

11 (14) Expressway shall mean a divided arterial highway for through
12 traffic with full or partial control of access which may have grade
13 separations at intersections;

14 (15) Family shall mean two or more persons living together in the
15 same dwelling unit who are related to each other by blood, marriage,
16 adoption, or legal guardianship;

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

22 (17) Federal-aid primary roads shall mean roads, streets, and
23 highways, whether a part of the state highway system, county road
24 systems, or city streets, which have been designated as federal-aid
25 primary roads by the department and approved by the United States
26 Secretary of Transportation and shown on the maps provided for in section
27 39-1311;

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

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

1 (20) Full control of access shall mean that the right of owners or
2 occupants of abutting land or other persons to access or view is fully
3 controlled by public authority having jurisdiction and that such control
4 is exercised to give preference to through traffic by providing access
5 connections with selected public roads only and by prohibiting crossings
6 or intersections at grade or direct private driveway connections;

7 (21) Grade separation shall mean a crossing of two highways at
8 different levels;

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

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

13 (24) Interchange shall mean a grade-separated intersection with one
14 or more turning roadways for travel between any of the highways radiating
15 from and forming part of such intersection;

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

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

22 (27) Parking lane shall mean an auxiliary lane primarily for the
23 parking of vehicles;

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

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

31 (30) Right of access shall mean the rights of ingress and egress to

1 or from a road, street, or highway and the rights of owners or occupants
2 of land abutting a road, street, or highway or other persons to a way or
3 means of approach, light, air, or view;

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

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

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

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

16 (35) Separation structure shall mean that part of any bridge or road
17 which is directly overhead of the roadway of any part of a highway;

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

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

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

30 (39) Structure shall mean anything constructed or erected, the use
31 of which requires permanent location on the ground or attachment to

1 something having a permanent location;

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

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

6 (42) Unzoned commercial or industrial area for purposes of control
7 of outdoor advertising shall mean all areas within six hundred sixty feet
8 of the nearest edge of the right-of-way of the interstate and federal-aid
9 primary systems which are not zoned by state or local law, regulation, or
10 ordinance and on which there is located one or more permanent structures
11 devoted to a business or industrial activity or on which a commercial or
12 industrial activity is conducted, whether or not a permanent structure is
13 located thereon, the area between such activity and the highway, and the
14 area along the highway extending outward six hundred feet from and beyond
15 each edge of such activity and, in the case of the primary system, may
16 include the unzoned lands on both sides of such road or highway to the
17 extent of the same dimensions if those lands on the opposite side of the
18 highway are not deemed scenic or having aesthetic value as determined by
19 the department. In determining such an area, measurements shall be made
20 from the furthest or outermost edges of the regularly used area of the
21 commercial or industrial activity, structures, normal points of ingress
22 and egress, parking lots, and storage and processing areas constituting
23 an integral part of such commercial or industrial activity;

24 (43) Visible, for purposes of section 39-1320, in reference to
25 advertising signs, displays, or devices, shall mean the message or
26 advertising content of such sign, display, or device is capable of being
27 seen without visual aid by a person of normal visual acuity. A sign shall
28 be considered visible even though the message or advertising content may
29 be seen but not read;

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

1 (45) Zoned commercial or industrial areas shall mean those areas
2 within six hundred sixty feet of the nearest edge of the right-of-way of
3 the Highway Beautification Control System defined in section 39-201.01,
4 zoned by state or local zoning authorities for industrial or commercial
5 activities.

6 Sec. 9. Section 39-1309, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 39-1309 (1) The map prepared by the State Highway Commission showing
9 a proposed state highway system in Nebraska, filed with the Clerk of the
10 Legislature and referred to in the resolution filed with the Legislature
11 on February 3, 1955, is hereby adopted by the Legislature as the state
12 highway system on September 18, 1955, except that a highway from
13 Rushville in Sheridan County going south on the most feasible and direct
14 route to the Smith Lake State Recreation Grounds shall be known as state
15 highway 250 and shall be a part of the state highway system.

16 (2) The state highway system may be redesignated, relocated,
17 redetermined, or recreated by the department with the written advice of
18 the State Highway Commission and the consent of the Governor. In
19 redesignating, relocating, redetermining, or recreating the several
20 routes of the state highway system, the following factors, except as
21 provided in section 39-1309.01, shall be considered: (a) The actual or
22 potential traffic volumes and other traffic survey data, (b) the relevant
23 factors of construction, maintenance, right-of-way, and the costs
24 thereof, (c) the safety and convenience of highway users, (d) the
25 relative importance of each highway to existing business, industry,
26 agriculture, enterprise, and recreation and to the development of natural
27 resources, business, industry, agriculture, enterprise, and recreation,
28 (e) the desirability of providing an integrated system to serve
29 interstate travel, principal market centers, principal municipalities,
30 county seat municipalities, and travel to places of statewide interest,
31 (f) the desirability of connecting the state highway system with any

1 state park, any state forest reserve, any state game reserve, the grounds
2 of any state institution, or any recreational, scenic, or historic place
3 owned or operated by the state or federal government, (g) the national
4 defense, and (h) the general welfare of the people of the state.

5 (3) Any highways not designated as a part of the state highway
6 system as provided by sections 39-1301 to 39-1362 and section 11 of this
7 act shall be a part of the county road system, and the title to the
8 right-of-way of such roads shall vest in the counties in which the roads
9 are located.

10 Sec. 10. Section 39-1320, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 39-1320 (1) The Department of Roads is hereby authorized to acquire,
13 either temporarily or permanently, lands, real or personal property or
14 any interests therein, or any easements deemed to be necessary or
15 desirable for present or future state highway purposes by gift,
16 agreement, purchase, exchange, condemnation, or otherwise. Such lands or
17 real property may be acquired in fee simple or in any lesser estate. It
18 is the intention of the Legislature that all property leased or purchased
19 from the owner shall receive a fair price.

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

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

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

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

31 (d) Weighing stations, shops, storage buildings and yards, and road

1 maintenance or construction sites;

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

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

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

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

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

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

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

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

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

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

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

1 Lands may be acquired to establish a large or composite wetlands area,
2 sometimes called a wetlands bank, not larger than an area which is one
3 hundred fifty percent of the lands reasonably expected to be necessary
4 for the mitigation of future impact on wetlands brought about by highway
5 construction, reconstruction, or maintenance during the six-year plan as
6 required by sections 39-2115 to 39-2117, an annual plan under section
7 39-2119, or an annual metropolitan transportation improvement program
8 under section 39-2119.01 in effect upon acquisition of the lands. For
9 purposes of this section, wetlands shall have the definition found in 33
10 C.F.R. 328.3(b).

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

15 Sec. 11. (1) The department shall establish and administer a
16 vegetation control program which may allow permits for the cutting or
17 trimming of vegetation in the vicinity of advertising signs, displays, or
18 devices placed pursuant to section 39-220. A permit issued under this
19 section shall allow the cutting or trimming of vegetation under
20 controlled conditions when such vegetation obstructs or obscures a
21 lawfully placed advertising sign, display, or device. The department may
22 establish criteria for what vegetation may be cut or trimmed. Each permit
23 shall be valid for no more than thirty days and shall only be applicable
24 for one sign, display, or device location.

25 (2) The department may charge a fee in an amount reasonably
26 calculated to defray the cost of administering the vegetation control
27 program and may adjust the fee periodically to ensure continued recovery
28 of administrative costs, except that such fee shall not exceed fifty
29 dollars. The applicant to whom the permit is issued shall furnish the
30 department with a cash deposit or certified check upon a solvent bank or
31 a surety bond in a guaranty company qualified to do business in Nebraska.

1 The deposit, check, or bond shall be in an amount required by the
2 department and shall be furnished on the condition that the sum be
3 forfeited to the state in the event that the conditions of the permit or
4 rules and regulations adopted and promulgated by the department are
5 violated. The applicant for a permit shall sign a release acknowledging
6 that he or she will assume all risk and liability for any accidents and
7 damages that may occur as a result of the work done as the permitholder.
8 The applicant shall provide proof of liability insurance of at least one
9 million dollars. The permitholder shall be responsible for compensating
10 the state for loss or damage to state property, including, but not
11 limited to, intentional vegetation, and for restoring state property to
12 its preexisting condition as determined in the sole discretion of the
13 department. Permits are subject to all state and federal environmental
14 laws, rules, and regulations. Each approved permit shall grant written
15 consent to encroach onto the state's right-of-way pursuant to section
16 39-1359.

17 (3) The department may adopt and promulgate rules and regulations to
18 carry out this section.

19 Sec. 12. Section 46-290, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 46-290 (1)(a) Except as provided in this section and sections
22 46-2,120 to 46-2,130, any person having a permit to appropriate water for
23 beneficial purposes issued pursuant to sections 46-233 to 46-235,
24 46-240.01, 46-241, 46-242, or 46-637 and who desires (i) to transfer the
25 use of such appropriation to a location other than the location specified
26 in the permit, (ii) to change that appropriation to a different type of
27 appropriation as provided in subsection (3) of this section, or (iii) to
28 change the purpose for which the water is to be used under a natural-
29 flow, storage, or storage-use appropriation to a purpose not at that time
30 permitted under the appropriation shall apply for approval of such
31 transfer or change to the Department of Natural Resources.

1 (b) The application for such approval shall contain (i) the number
2 assigned to such appropriation by the department, (ii) the name and
3 address of the present holder of the appropriation, (iii) if applicable,
4 the name and address of the person or entity to whom the appropriation
5 would be transferred or who will be the user of record after a change in
6 the location of use, type of appropriation, or purpose of use under the
7 appropriation, (iv) the legal description of the land to which the
8 appropriation is now appurtenant, (v) the name and address of each holder
9 of a mortgage, trust deed, or other equivalent consensual security
10 interest against the tract or tracts of land to which the appropriation
11 is now appurtenant, (vi) if applicable, the legal description of the land
12 to which the appropriation is proposed to be transferred, (vii) if a
13 transfer is proposed, whether other sources of water are available at the
14 original location of use and whether any provisions have been made to
15 prevent either use of a new source of water at the original location or
16 increased use of water from any existing source at that location, (viii)
17 if applicable, the legal descriptions of the beginning and end of the
18 stream reach to which the appropriation is proposed to be transferred for
19 the purpose of augmenting the flows in that stream reach, (ix) if a
20 proposed transfer is for the purpose of increasing the quantity of water
21 available for use pursuant to another appropriation, the number assigned
22 to such other appropriation by the department, (x) the purpose of the
23 current use, (xi) if a change in purpose of use is proposed, the proposed
24 purpose of use, (xii) if a change in the type of appropriation is
25 proposed, the type of appropriation to which a change is desired, (xiii)
26 if a proposed transfer or change is to be temporary in nature, the
27 duration of the proposed transfer or change, and (xiv) such other
28 information as the department by rule and regulation requires.

29 (2) If a proposed transfer or change is to be temporary in nature, a
30 copy of the proposed agreement between the current appropriator and the
31 person who is to be responsible for use of water under the appropriation

1 while the transfer or change is in effect shall be submitted at the same
2 time as the application.

3 (3) Regardless of whether a transfer or a change in the purpose of
4 use is involved, the following changes in type of appropriation, if found
5 by the Director of Natural Resources to be consistent with section
6 46-294, may be approved subject to the following:

7 (a) A natural-flow appropriation for direct out-of-stream use may be
8 changed to a natural-flow appropriation for aboveground reservoir storage
9 or for intentional underground water storage;

10 (b) A natural-flow appropriation for intentional underground water
11 storage may be changed to a natural-flow appropriation for direct out-of-
12 stream use or for aboveground reservoir storage;

13 (c) A natural-flow appropriation for direct out-of-stream use, for
14 aboveground reservoir storage, or for intentional underground water
15 storage may be changed to an instream appropriation subject to sections
16 46-2,107 to 46-2,119 if the director determines that the resulting
17 instream appropriation would be consistent with subdivisions (2), (3),
18 and (4) of section 46-2,115;

19 (d) A natural-flow appropriation for direct out-of-stream use, for
20 aboveground reservoir storage, or for intentional underground water
21 storage may be changed to an appropriation for induced ground water
22 recharge if the director determines that the resulting appropriation for
23 induced ground water recharge would be consistent with subdivisions (2)
24 (a)(i) and (ii) of section 46-235; ~~and~~

25 (e) An appropriation for the manufacturing of hydropower at a
26 facility located on a natural stream channel may be permanently changed
27 in full to an instream basin-management appropriation to be held jointly
28 by the Game and Parks Commission and any natural resources district or
29 combination of natural resources districts. The beneficial use of such
30 change is to maintain the streamflow for fish, wildlife, and recreation
31 that was available from the manufacturing of hydropower prior to the

1 change. Such changed appropriation may also be utilized by the owners of
2 the appropriation to assist in the implementation of an approved
3 integrated management plan or plans developed pursuant to sections 46-714
4 to 46-718 for each natural resources district within the river basin. Any
5 such change under this section shall be subject to review under sections
6 46-229 to 46-229.06 to ensure that the beneficial uses of the change of
7 use are still being achieved; and

8 (f e) The incidental underground water storage portion, whether or
9 not previously quantified, of a natural-flow or storage-use appropriation
10 may be separated from the direct-use portion of the appropriation and may
11 be changed to a natural-flow or storage-use appropriation for intentional
12 underground water storage at the same location if the historic
13 consumptive use of the direct-use portion of the appropriation is
14 transferred to another location or is terminated, but such a separation
15 and change may be approved only if, after the separation and change, (i)
16 the total permissible diversion under the appropriation will not
17 increase, (ii) the projected consequences of the separation and change
18 are consistent with the provisions of any integrated management plan
19 adopted in accordance with section 46-718 or 46-719 for the geographic
20 area involved, and (iii) if the location of the proposed intentional
21 underground water storage is in a river basin, subbasin, or reach
22 designated as overappropriated in accordance with section 46-713, the
23 integrated management plan for that river basin, subbasin, or reach has
24 gone into effect, and that plan requires that the amount of the
25 intentionally stored water that is consumed after the change will be no
26 greater than the amount of the incidentally stored water that was
27 consumed prior to the change. Approval of a separation and change
28 pursuant to this subdivision (f e) shall not exempt any consumptive use
29 associated with the incidental recharge right from any reduction in water
30 use required by an integrated management plan for a river basin,
31 subbasin, or reach designated as overappropriated in accordance with

1 section 46-713.

2 Whenever any change in type of appropriation is approved pursuant to
3 this subsection and as long as that change remains in effect, the
4 appropriation shall be subject to the statutes, rules, and regulations
5 that apply to the type of appropriation to which the change has been
6 made.

7 (4) The Legislature finds that induced ground water recharge
8 appropriations issued pursuant to sections 46-233 and 46-235 and instream
9 appropriations issued pursuant to section 46-2,115 are specific to the
10 location identified in the appropriation. Neither type of appropriation
11 shall be transferred to a different location, changed to a different type
12 of appropriation, or changed to permit a different purpose of use.

13 (5) In addition to any other purposes for which transfers and
14 changes may be approved, such transfers and changes may be approved if
15 the purpose is (a) to maintain or augment the flow in a specific stream
16 reach for any instream use that the department has determined, through
17 rules and regulations, to be a beneficial use or (b) to increase the
18 frequency that a diversion rate or rate of flow specified in another
19 valid appropriation is achieved.

20 For any transfer or change approved pursuant to subdivision (a) of
21 this subsection, the department shall be provided with a report at least
22 every five years while such transfer or change is in effect. The purpose
23 of such report shall be to indicate whether the beneficial instream use
24 for which the flow is maintained or augmented continues to exist. If the
25 report indicates that it does not or if no report is filed within sixty
26 days after the department's notice to the appropriator that the deadline
27 for filing the report has passed, the department may cancel its approval
28 of the transfer or change and such appropriation shall revert to the same
29 location of use, type of appropriation, and purpose of use as prior to
30 such approval.

31 (6) A quantified or unquantified appropriation for incidental

1 underground water storage may be transferred to a new location along with
2 the direct-use appropriation with which it is recognized if the director
3 finds such transfer to be consistent with section 46-294 and determines
4 that the geologic and other relevant conditions at the new location are
5 such that incidental underground water storage will occur at the new
6 location. The director may request such information from the applicant as
7 is needed to make such determination and may modify any such quantified
8 appropriation for incidental underground water storage, if necessary, to
9 reflect the geologic and other conditions at the new location.

10 (7) Unless an incidental underground water storage appropriation is
11 changed as authorized by subdivision (3)(f e) of this section or is
12 transferred as authorized by subsection (6) of this section or subsection
13 (1) of section 46-291, such appropriation shall be canceled or modified,
14 as appropriate, by the director to reflect any reduction in water that
15 will be stored underground as the result of a transfer or change of the
16 direct-use appropriation with which the incidental underground water
17 storage was recognized prior to the transfer or change.

18 (8) Any appropriation for manufacturing of hydropower changed under
19 subdivision (3)(e) of this section shall maintain the priority date and
20 preference category of the original manufacturing appropriation and shall
21 be subject to condemnation and subordination pursuant to sections 70-668
22 and 70-669. Any person holding a subordination agreement that was
23 established prior to such change of appropriation shall be entitled to
24 enter into a new subordination agreement for terms consistent with the
25 original subordination agreement at no additional cost. Any person having
26 obtained a condemnation award that was established prior to such change
27 of appropriation shall be entitled to the same benefits created by such
28 award, and any obligations created by such award shall become the
29 obligations of the new owner of the appropriation changed under this
30 section.

31 Sec. 13. Section 70-668, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 70-668 In applying the provisions of law relating to the
3 appropriation of water, priority of appropriation shall give the better
4 right as between those using the water for the same purpose, but when the
5 waters of any natural stream are not sufficient for the use of all those
6 desiring to use the same, those using the water for domestic purposes
7 shall have preference over those claiming it for any other purpose. Those
8 using the water for agricultural purposes shall have the preference over
9 those using the same for manufacturing purposes, and those using the
10 water for agricultural purposes shall have the preference over those
11 using the same for power purposes, where turbine or impulse water wheels
12 are installed, or for instream-basin-management purposes.

13 Sec. 14. Section 70-669, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 70-669 No inferior right to the use of the waters of this state
16 shall be acquired by a superior right without just compensation therefor
17 to the inferior user. The just compensation paid to those using water for
18 power purposes shall not be greater than the cost of replacing the power
19 which would be generated in the plant or plants of the power user by the
20 water so acquired. The just compensation to be paid to a holder of an
21 instream-basin-management appropriation that has been changed from a
22 manufacturing of hydropower appropriation pursuant to section 46-290
23 shall be the cost per acre-foot of water subordinated for the hydropower
24 appropriation at the time of approval of the change. The amount of
25 compensation may be adjusted annually, except that any increase shall not
26 exceed the annual change in the Consumer Price Index from the time of
27 approval of the change. If publication of such index is discontinued, a
28 comparable index selected by the Director of Natural Resources shall be
29 used.

30 Sec. 15. Section 72-2007, Revised Statutes Supplement, 2015, is
31 amended to read:

1 72-2007 (1) The Niobrara Council is created. The council membership
2 shall include:

3 (a) A commissioner from each of the county boards of Brown, Cherry,
4 Keya Paha, and Rock counties chosen by the county board of the respective
5 county;

6 (b) A representative of the Middle Niobrara Natural Resources
7 District and the Lower Niobrara Natural Resources District chosen by the
8 board of the respective district;

9 (c) The secretary of the Game and Parks Commission or his or her
10 designee;

11 (d) The regional director for the National Park Service or his or
12 her designee and the regional director for the United States Fish and
13 Wildlife Service or his or designee. The members under this subdivision
14 shall be nonvoting members unless and until the agencies represented by
15 these members formally authorize such members to vote on all matters
16 before the council by notifying the council and the Governor in writing;

17 (e) An individual from each of Brown, Cherry, Keya Paha, and Rock
18 counties who resides in the Niobrara River drainage area and owns land in
19 the Niobrara scenic river corridor chosen by the Governor from a list of
20 at least three individuals, or fewer if there are not at least three
21 qualified individuals, from each county submitted by the county board
22 members on the council;

23 (f) A representative from a recreational business operating within
24 the Niobrara scenic river corridor chosen by the Governor from a list of
25 at least three individuals, or fewer if there are not at least three
26 qualified individuals, submitted by the county board members on the
27 council;

28 (g) A timber industry representative operating within the Niobrara
29 scenic river corridor chosen by the Governor from a list of at least
30 three individuals, or fewer if there are not at least three qualified
31 individuals, submitted by the county board members on the council; and

1 (h) A representative of a recognized, nonprofit environmental,
2 conservation, or wildlife organization chosen by the Governor from a list
3 of at least three individuals, or fewer if there are not at least three
4 qualified individuals, submitted by the county board members on the
5 council.

6 The appointments made pursuant to subdivisions (1)(e) through (h) of
7 this section shall be subject to confirmation by the Legislature. The
8 council members shall hold office for three-year terms and until a
9 successor is appointed and qualified. The council members shall serve at
10 the pleasure of the appointing board or the Governor.

11 (2) The council shall elect a chairperson, a vice-chairperson, a
12 secretary, and a treasurer who shall jointly serve as the executive
13 committee for the council. The council shall meet on a regular basis with
14 a minimum of six meetings per year. Special meetings may be called by any
15 member of the executive committee or at the request of a simple majority
16 of the members of the council.

17 (3) A quorum shall be present at a meeting before any action may be
18 taken by the council. A quorum shall be a majority of the members who are
19 selected and serving and who vote on issues before the council. All
20 actions of the council require a majority vote of the quorum present at
21 any meeting, except that any vote to reject or adopt any zoning
22 regulation or variance under section 72-2010 requires a vote of two-
23 thirds of all the council members who are selected and serving and who
24 vote on issues before the council.

25 (4) Members shall be reimbursed for actual and necessary expenses
26 incurred in carrying out their duties on the council as provided in
27 sections 81-1174 to 81-1177.

28 Sec. 16. Section 72-2008, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 72-2008 The mission of the Niobrara Council is to assist in all
31 aspects of the management of the Niobrara scenic river corridor since

1 portions of the Niobrara River have been designated as a national scenic
2 river under 16 U.S.C. 1274(a)(117), as such section existed on May 24,
3 1991, giving consideration and respect to local and governmental input
4 and private landowner rights, and to maintain and protect the integrity
5 of the resources associated with the Niobrara scenic river corridor. The
6 council shall perform management functions related to the Niobrara scenic
7 river corridor, including, but not limited to, those authorized and
8 delegated to it by the National Park Service. The council may promulgate
9 its own rules and internal policies to carry out the purposes of the
10 Niobrara Scenic River Act. The Game and Parks Commission may provide
11 administrative, budgetary, operational, and programmatic support when
12 requested by the council to carry out its duties. ~~This support shall not~~
13 ~~exceed fifty thousand dollars in any calendar year.~~ In the Niobrara
14 scenic river corridor, the council may hold title to real estate in the
15 name of the council. The council may purchase, accept gifts of, or trade
16 real estate and may obtain conservation easements as provided in the
17 Conservation and Preservation Easements Act. Acquisition of conservation
18 easements outside the boundaries of the Niobrara scenic river corridor
19 shall require the approval of the appropriate governing body as provided
20 in section 76-2,112. On December 1, 2016, and on each December 1
21 thereafter, the council shall electronically submit an annual report to
22 the Clerk of the Legislature and the chairperson of the Natural Resources
23 Committee of the Legislature describing expenditures made pursuant to the
24 Niobrara Scenic River Act.

25 Sec. 17. The Revisor of Statutes shall assign section 11 of this
26 act within sections 39-1359 to 39-1360.

27 Sec. 18. Original sections 2-945.01, 2-958.02, 39-891, 39-893,
28 39-1301, 39-1302, 39-1309, 39-1320, 46-290, 70-668, 70-669, and 72-2008,
29 Reissue Revised Statutes of Nebraska, and section 72-2007, Revised
30 Statutes Supplement, 2015, are repealed.

31 Sec. 19. The following sections are outright repealed: Sections

1 2-967 and 2-968, Revised Statutes Cumulative Supplement, 2014.