

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 913

Introduced by Bostelman, 23.

Read first time January 10, 2022

Committee: Transportation and Telecommunications

- 1 A BILL FOR AN ACT relating to highways; to amend section 39-1337, Reissue
- 2 Revised Statutes of Nebraska, and sections 39-1302 and 39-1320,
- 3 Revised Statutes Cumulative Supplement, 2020; to define terms; to
- 4 change provisions relating to highways and roads; to provide duties;
- 5 to harmonize provisions; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 39-1302, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

3 39-1302 For purposes of sections 39-1301 to 39-1393, unless the
4 context otherwise requires:

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

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

11 (3) Approach or exit road shall mean any highway or ramp designed
12 and used solely for the purpose of providing ingress or egress to or from
13 an interchange or rest area of a highway. An approach road shall begin at
14 the point where it intersects with any highway not a part of the highway
15 for which such approach road provides access and shall terminate at the
16 point where it merges with an acceleration lane of a highway. An exit
17 road shall begin at the point where it intersects with a deceleration
18 lane of a highway and shall terminate at the point where it intersects
19 any highway not a part of a highway from which the exit road provides
20 egress;

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

23 (5) Beltway shall mean the roads and streets not designated as a
24 part of the state highway system and that are under the primary authority
25 of a county or municipality, if the location of the beltway has been
26 approved by (a) record of decision or finding of no significant impact
27 and (b) the applicable local planning authority as a part of the
28 comprehensive plan;

29 (6) Business shall mean any lawful activity conducted primarily for
30 the purchase and resale, manufacture, processing, or marketing of
31 products, commodities, or other personal property or for the sale of

1 services to the public or by a nonprofit corporation;

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

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

8 (a) Outdoor advertising structures;

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

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

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

15 (e) Railroad tracks and minor sidings; and

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

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

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

28 (11) Department shall mean the Department of Transportation;

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

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

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

6 (15) Extreme weather event means a weather event that generates
7 extraordinary costs related to such event for construction,
8 reconstruction, relocation, improvement, or maintenance occurring on or
9 after January 1, 2023, resulting from weather conditions including, but
10 not limited to, snow, rain, drought, flood, storm, extreme heat, or
11 extreme cold;

12 (16) ~~(15)~~ Family shall mean two or more persons living together in
13 the same dwelling unit who are related to each other by blood, marriage,
14 adoption, or legal guardianship;

15 (17) ~~(16)~~ Farm operation shall mean any activity conducted primarily
16 for the production of one or more agricultural products or commodities
17 for sale and home use and customarily producing such products or
18 commodities in sufficient quantity to be capable of contributing
19 materially to the operator's support;

20 (18) ~~(17)~~ Federal-aid primary roads shall mean roads, streets, and
21 highways, whether a part of the state highway system, county road
22 systems, or city streets, which have been designated as federal-aid
23 primary roads by the Nebraska Department of Transportation and approved
24 by the United States Secretary of Transportation and shown on the maps
25 provided for in section 39-1311;

26 (19) ~~(18)~~ Freeway shall mean an expressway with full control of
27 access;

28 (20) ~~(19)~~ Frontage road shall mean a local street or road auxiliary
29 to an arterial highway for service to abutting property and adjacent
30 areas and for control of access;

31 (21) ~~(20)~~ Full control of access shall mean that the right of owners

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

6 (22) ~~(21)~~ Grade separation shall mean a crossing of two highways at
7 different levels;

8 (23) ~~(22)~~ Highway shall mean a road or street, including the entire
9 area within the right-of-way, which has been designated a part of the
10 state highway system;

11 (24) Highway approach means the portion of a county road located
12 within the right-of-way of a highway;

13 (25) ~~(23)~~ Individual shall mean a person who is not a member of a
14 family;

15 (26) ~~(24)~~ Interchange shall mean a grade-separated intersection with
16 one or more turning roadways for travel between any of the highways
17 radiating from and forming part of such intersection;

18 (27) ~~(25)~~ Map shall mean a drawing or other illustration or a series
19 of drawings or illustrations which may be considered together to complete
20 a representation;

21 (28) ~~(26)~~ Mileage shall mean the aggregate distance in miles without
22 counting double mileage where there are one-way or divided roads,
23 streets, or highways;

24 (29) ~~(27)~~ Parking lane shall mean an auxiliary lane primarily for
25 the parking of vehicles;

26 (30) ~~(28)~~ Parkway shall mean an arterial highway for noncommercial
27 traffic, with full or partial control of access, and usually located
28 within a park or a ribbon of park-like development;

29 (31) ~~(29)~~ Relinquish shall mean to surrender all or part of the
30 rights and responsibilities relating to all or part of a fragment,
31 section, or route on the state highway system to a political or

1 governmental subdivision or public corporation of Nebraska;

2 (32) ~~(30)~~ Right of access shall mean the rights of ingress and
3 egress to or from a road, street, or highway and the rights of owners or
4 occupants of land abutting a road, street, or highway or other persons to
5 a way or means of approach, light, air, or view;

6 (33) ~~(31)~~ Right-of-way shall mean land, property, or interest
7 therein, usually in a strip, acquired for or devoted to a road, street,
8 or highway;

9 (34) ~~(32)~~ Road shall mean a public way for the purposes of vehicular
10 travel, including the entire area within the right-of-way. A road
11 designated as part of the state highway system may be called a highway,
12 while a road in an urban area may be called a street;

13 (35) ~~(33)~~ Roadside shall mean the area adjoining the outer edge of
14 the roadway. Extensive areas between the roadways of a divided highway
15 may also be considered roadside;

16 (36) ~~(34)~~ Roadway shall mean the portion of a highway, including
17 shoulders, for vehicular use;

18 (37) ~~(35)~~ Separation structure shall mean that part of any bridge or
19 road which is directly overhead of the roadway of any part of a highway;

20 (38) ~~(36)~~ State highway purposes shall have the meaning set forth in
21 subsection (2) of section 39-1320;

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

30 (40) ~~(38)~~ Street shall mean a public way for the purposes of
31 vehicular travel in a city or village and shall include the entire area

1 within the right-of-way;

2 (41) ~~(39)~~ Structure shall mean anything constructed or erected, the
3 use of which requires permanent location on the ground or attachment to
4 something having a permanent location;

5 (42) ~~(40)~~ Title shall mean the evidence of a person's right to
6 property or the right itself;

7 (43) ~~(41)~~ Traveled way shall mean the portion of the roadway for the
8 movement of vehicles, exclusive of shoulders and auxiliary lanes;

9 (44) ~~(42)~~ Unzoned commercial or industrial area for purposes of
10 control of outdoor advertising shall mean all areas within six hundred
11 sixty feet of the nearest edge of the right-of-way of the interstate and
12 federal-aid primary systems which are not zoned by state or local law,
13 regulation, or ordinance and on which there is located one or more
14 permanent structures devoted to a business or industrial activity or on
15 which a commercial or industrial activity is conducted, whether or not a
16 permanent structure is located thereon, the area between such activity
17 and the highway, and the area along the highway extending outward six
18 hundred feet from and beyond each edge of such activity and, in the case
19 of the primary system, may include the unzoned lands on both sides of
20 such road or highway to the extent of the same dimensions if those lands
21 on the opposite side of the highway are not deemed scenic or having
22 aesthetic value as determined by the department. In determining such an
23 area, measurements shall be made from the furthest or outermost edges of
24 the regularly used area of the commercial or industrial activity,
25 structures, normal points of ingress and egress, parking lots, and
26 storage and processing areas constituting an integral part of such
27 commercial or industrial activity;

28 (45) ~~(43)~~ Visible, for purposes of section 39-1320, in reference to
29 advertising signs, displays, or devices, shall mean the message or
30 advertising content of such sign, display, or device is capable of being
31 seen without visual aid by a person of normal visual acuity. A sign shall

1 be considered visible even though the message or advertising content may
2 be seen but not read;

3 ~~(46)~~ (44) Written instrument shall mean a deed or any other document
4 that states a contract, agreement, gift, or transfer of property; and

5 ~~(47)~~ (45) Zoned commercial or industrial areas shall mean those
6 areas within six hundred sixty feet of the nearest edge of the right-of-
7 way of the Highway Beautification Control System defined in section
8 39-201.01, zoned by state or local zoning authorities for industrial or
9 commercial activities.

10 Sec. 2. Section 39-1320, Revised Statutes Cumulative Supplement,
11 2020, is amended to read:

12 39-1320 (1) The department is hereby authorized to acquire, either
13 temporarily or permanently, lands, real or personal property or any
14 interests therein, or any easements deemed to be necessary or desirable
15 for present or future state highway purposes by gift, agreement,
16 purchase, exchange, condemnation, or otherwise. Such lands or real
17 property may be acquired in fee simple or in any lesser estate. It is the
18 intention of the Legislature that all property leased or purchased from
19 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 39-1393, shall
22 include provision for, but shall not be limited to, the following:

23 (a) The construction, reconstruction, relocation, improvement, and
24 maintenance of the state highway system and highway approaches. The
25 right-of-way for such highways shall be of such width as is deemed
26 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 or
6 program as required by section 39-2115 or an annual plan or program under
7 section 39-2118. For purposes of this section, wetlands shall have the
8 definition found in 33 C.F.R. 328.3(c).

9 (3) The procedure to condemn property authorized by subsection (1)
10 of this section or elsewhere in sections 39-1301 to 39-1362 and 39-1393
11 shall be exercised in the manner set forth in sections 76-704 to 76-724
12 or as provided by section 39-1323, as the case may be.

13 Sec. 3. Section 39-1337, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 39-1337 (1) The construction, maintenance, protection, and control
16 of the state highway system shall be under the authority and
17 responsibility of the department, except as otherwise provided in
18 sections 39-1339 and 39-1372.

19 (2) The construction, reconstruction, relocation, improvement, or
20 maintenance of a highway approach damaged or destroyed due to (a) an
21 extreme weather event or (b) faulty engineering shall be under the
22 authority and responsibility of the department.

23 (3) The relative urgency of proposed improvements on the state
24 highway system and highway approaches shall be determined by a
25 sufficiency rating established by the department, insofar as the use of
26 such a rating is deemed practicable. The sufficiency rating shall
27 include, but not be limited to, the following factors: (a) ~~(1)~~ Surface
28 condition, (b) ~~(2)~~ economic factors, (c) ~~(3)~~ safety, and (d) ~~(4)~~ service.

29 Sec. 4. Original section 39-1337, Reissue Revised Statutes of
30 Nebraska, and sections 39-1302 and 39-1320, Revised Statutes Cumulative
31 Supplement, 2020, are repealed.