

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 271

Introduced by Hilgers, 21.

Read first time January 11, 2017

Committee: Transportation and Telecommunications

- 1 A BILL FOR AN ACT relating to the Department of Roads; to amend sections
2 39-891, 39-893, 39-1301, 39-1302, 39-1309, and 39-1320, Reissue
3 Revised Statutes of Nebraska; to authorize the Department of Roads
4 to assume certain responsibilities under federal environmental laws;
5 to provide for a limited waiver of the state's sovereign immunity;
6 to provide for rules and regulations; to harmonize provisions; and
7 to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 39-891, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 39-891 Recognizing that obstructions on or near the boundary of the
4 State of Nebraska impede commerce and travel between the State of
5 Nebraska and adjoining states, the Legislature hereby declares that
6 bridges over these obstructions are essential to the general welfare of
7 the State of Nebraska.

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

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

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

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

28 To this end, it is the intention of the Legislature to supplement
29 sections 39-1301 to 39-1362 and 39-1393 and section 5 of this act,
30 relating to state highways, in order that the powers and authority of the
31 department relating to the planning, construction, maintenance,

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

3 Acting under the direction of the Director-State Engineer, the
4 department, with the advice of the State Highway Commission and the
5 consent of the Governor, is given the power to enter into agreements with
6 the United States and adjoining states, subject to the limitations
7 imposed by the Constitution and the provisions of the Interstate Bridge
8 Act of 1959.

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

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

26 The Legislature hereby determines and declares that the provisions
27 of the act are necessary for the preservation of the public peace,
28 health, and safety, for the promotion of the general welfare, and as a
29 contribution to the national defense.

30 Sec. 2. Section 39-893, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 39-893 The provisions of the Interstate Bridge Act of 1959 are
2 intended to be cumulative to, and not amendatory of, sections 39-1301 to
3 39-1362 and 39-1393 and section 5 of this act.

4 Sec. 3. Section 39-1301, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 39-1301 Recognizing that safe and efficient highway transportation
7 is a matter of important interest to all of the people in the state, the
8 Legislature hereby determines and declares that an integrated system of
9 highways is essential to the general welfare of the State of Nebraska.

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

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

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

20 In designating the highway system of this state, as provided by
21 sections 39-1301 to 39-1362 and 39-1393 and section 5 of this act, the
22 Legislature places a high degree of trust in the hands of those officials
23 whose duty it shall be, within the limits of available funds, to plan,
24 develop, construct, operate, maintain, and protect the highway facilities
25 of this state, for present as well as for future uses.

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

31 To this end, it is the intent of the Legislature, subject to the

1 limitations of the Constitution and such mandates as the Legislature may
2 impose by the provisions of such sections, to designate the Director-
3 State Engineer and the department, acting under the direction of the
4 Director-State Engineer, as direct custodian of the state highway system,
5 with full authority in all departmental administrative details, in all
6 matters of engineering design, and in all matters having to do with the
7 construction, maintenance, operation, and protection of the state highway
8 system.

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

16 While it is necessary to fix responsibilities for the construction,
17 maintenance, and operation of the several systems of highways, it is
18 intended that the State of Nebraska shall have an integrated system of
19 all roads and streets to provide safe and efficient highway
20 transportation throughout the state. The authority granted in sections
21 39-1301 to 39-1362 and 39-1393 and section 5 of this act to the Director-
22 State Engineer and to the political or governmental subdivisions or
23 public corporations of this state to assist and cooperate with each other
24 is therefor essential.

25 The Legislature hereby determines and declares that such sections
26 are necessary for the preservation of the public peace, health, and
27 safety, for promotion of the general welfare, and as a contribution to
28 the national defense.

29 Sec. 4. Section 39-1302, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 39-1302 For purposes of sections 39-1301 to 39-1393 and section 5 of

1 this act, unless the context otherwise requires:

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

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

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

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

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

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

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

31 (8) Commercial activity shall mean those activities generally

1 recognized as commercial by zoning authorities in this state, and
2 industrial activity shall mean those activities generally recognized as
3 industrial by zoning authorities in this state, except that none of the
4 following shall be considered commercial or industrial:

5 (a) Outdoor advertising structures;

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

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

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

12 (e) Railroad tracks and minor sidings; and

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

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

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

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

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

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

31 (14) Expressway shall mean a divided arterial highway for through

1 traffic with full or partial control of access which may have grade
2 separations at intersections;

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

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

11 (17) Federal-aid primary roads shall mean roads, streets, and
12 highways, whether a part of the state highway system, county road
13 systems, or city streets, which have been designated as federal-aid
14 primary roads by the department and approved by the United States
15 Secretary of Transportation and shown on the maps provided for in section
16 39-1311;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (33) Roadside shall mean the area adjoining the outer edge of the

1 roadway. Extensive areas between the roadways of a divided highway may
2 also be considered roadside;

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

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

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

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

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

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

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

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

26 (42) Unzoned commercial or industrial area for purposes of control
27 of outdoor advertising shall mean all areas within six hundred sixty feet
28 of the nearest edge of the right-of-way of the interstate and federal-aid
29 primary systems which are not zoned by state or local law, regulation, or
30 ordinance and on which there is located one or more permanent structures
31 devoted to a business or industrial activity or on which a commercial or

1 industrial activity is conducted, whether or not a permanent structure is
2 located thereon, the area between such activity and the highway, and the
3 area along the highway extending outward six hundred feet from and beyond
4 each edge of such activity and, in the case of the primary system, may
5 include the unzoned lands on both sides of such road or highway to the
6 extent of the same dimensions if those lands on the opposite side of the
7 highway are not deemed scenic or having aesthetic value as determined by
8 the department. In determining such an area, measurements shall be made
9 from the furthest or outermost edges of the regularly used area of the
10 commercial or industrial activity, structures, normal points of ingress
11 and egress, parking lots, and storage and processing areas constituting
12 an integral part of such commercial or industrial activity;

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

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

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

26 Sec. 5. (1) The department may assume, pursuant to 23 U.S.C. 326,
27 all or part of the responsibilities of the United States Department of
28 Transportation:

29 (a) For determining whether federal-aid design and construction
30 projects are categorically excluded from requirements for environmental
31 assessments or environmental impact statements; and

1 (b) For environmental review, consultation, or other related actions
2 required under any federal law applicable to activities that are
3 classified as categorical exclusions.

4 (2) The department may assume, pursuant to 23 U.S.C. 327, all or
5 part of the responsibilities of the United States Department of
6 Transportation:

7 (a)(i) With respect to one or more highway projects within the
8 state, under the National Environmental Policy Act of 1969, as amended,
9 42 U.S.C. 4321 et seq.; and

10 (ii) For environmental review, consultation, or other action
11 required under any federal environmental law pertaining to the review or
12 approval of a specific project; and

13 (b) With respect to one or more railroad, public transportation, or
14 multimodal projects within the state under the National Environmental
15 Policy Act of 1969, as amended.

16 (3) The department may enter into one or more agreements with the
17 United States Secretary of Transportation, including memoranda of
18 understanding, in furtherance of the assumption by the department of
19 duties under 23 U.S.C. 326 and 327.

20 (4) The State of Nebraska hereby waives its immunity from civil
21 liability, including immunity from suit in federal court under the
22 Eleventh Amendment to the United States Constitution, and consents to the
23 jurisdiction of the federal courts solely for the compliance, discharge,
24 or enforcement of responsibilities assumed by the department pursuant to
25 23 U.S.C. 326 and 327, in accordance with the same procedural and
26 substantive requirements applicable to a suit against a federal agency.
27 This waiver of immunity shall only be valid if:

28 (a) The department executes a memorandum of understanding with the
29 United States Department of Transportation accepting the jurisdiction of
30 the federal courts as required by 23 U.S.C. 326(c) and 327(c);

31 (b) The act or omission that is the subject of the lawsuit arises

1 out of compliance, discharge, or enforcement of responsibilities assumed
2 by the department pursuant to 23 U.S.C. 326 and 327; and

3 (c) The memorandum of understanding is in effect when the act or
4 omission that is the subject of the federal lawsuit occurred.

5 (5) The department may adopt and promulgate rules and regulations to
6 implement this section and may adopt relevant federal environmental
7 standards as the standards for the department.

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

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

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

1 county seat municipalities, and travel to places of statewide interest,
2 (f) the desirability of connecting the state highway system with any
3 state park, any state forest reserve, any state game reserve, the grounds
4 of any state institution, or any recreational, scenic, or historic place
5 owned or operated by the state or federal government, (g) the national
6 defense, and (h) the general welfare of the people of the state.

7 (3) Any highways not designated as a part of the state highway
8 system as provided by sections 39-1301 to 39-1362 and 39-1393 and section
9 5 of this act shall be a part of the county road system, and the title to
10 the right-of-way of such roads shall vest in the counties in which the
11 roads are located.

12 Sec. 7. Section 39-1320, Reissue Revised Statutes of Nebraska, is
13 amended to read:

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

22 (2) State highway purposes, as referred to in subsection (1) of this
23 section or otherwise in sections 39-1301 to 39-1362 and 39-1393 and
24 section 5 of this act, shall include provision for, but shall not be
25 limited to, the following:

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

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

31 (c) Controlled-access facilities, including air, light, view, and

1 frontage and service roads to highways;

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

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

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

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

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

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

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

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

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

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

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

29 (o) The establishment and maintenance of wetlands to replace or to
30 mitigate damage to wetlands affected by highway construction,
31 reconstruction, or maintenance. The replacement lands shall be capable of

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

13 (3) The procedure to condemn property authorized by subsection (1)
14 of this section or elsewhere in sections 39-1301 to 39-1362 and 39-1393
15 and section 5 of this act shall be exercised in the manner set forth in
16 sections 76-704 to 76-724 or as provided by section 39-1323, as the case
17 may be.

18 Sec. 8. Original sections 39-891, 39-893, 39-1301, 39-1302,
19 39-1309, and 39-1320, Reissue Revised Statutes of Nebraska, are repealed.