Laws Applicable to the Nebraska Department of Transportation

July 2017

Revised Statutes of Nebraska compiled from Unicameral website
http://uniweb.legislature.ne.gov/laws/laws.php
including all changes from 2017 Legislative Session containing:

Chapter 3, Aeronautics

Chapter 39, Highways & Bridges

Chapter 49, Laws, Article 8, Definitions, Construction, and Citation

Chapter 60, Motor Vehicles, Article 6, Nebraska Rules of the Road

Chapter 81, Article 7, Department of Transportation

CHAPTER 3

AERONAUTICS

Article.

Cross References

Records Management Act, see section 84-1220.

Taxation:

Air carriers, see sections 77-1244 to 77-1250.05.
Fuel, sales tax exemption, see section 77-2704.03.
Nonresident purchases of aircraft, sales tax, exemption, see section 77-2704.26.
Retailer of aircraft, use tax, see section 77-2706.01.

ARTICLE 1

GENERAL PROVISIONS

Section

3-101. Terms, defined.

For purposes of the State Aeronautics Act and the laws of this state relating to aeronautics, the following words, terms, and phrases shall have the meanings given in this section, unless otherwise specifically defined or unless another intention clearly appears or the context otherwise requires:

(1) Aeronautics means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants, and accessories, including the repair, packing, and maintenance of parachutes; and the design, establishment, construction, extension, operation,

improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities, and air instruction;

(2) Aircraft means any contrivance now known, hereafter invented, used, or designed for navigation of or flight in the air;

(3) Airport means (a) any area of land or water, except a restricted landing area, which is designed for the landing and takeoff of aircraft, whether or not facilities are provided for the sheltering, servicing, or repairing of aircraft or for receiving or discharging passengers or cargo, (b) all appurtenant areas used or suitable for airport buildings or other airport facilities, and (c) all appurtenant rights-of-way, whether heretofore or hereafter established;

(4) Air navigation facility means any facility, other than one owned or controlled by the federal government, used in, available for use in, or designed for use in aid of air navigation, including airports, restricted landing areas, and any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid or constituting an advantage or convenience to the safe takeoff, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area and any combination of any or all of such facilities;

(5) Air navigation means the operation or navigation of aircraft in the air space over this state or upon any airport or restricted landing area within this state;

(6) Airman means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way and (excepting individuals employed outside the United States, any individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection therewith, and any individual performing inspection or mechanical duties in connection with aircraft owned or operated by him or her) any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances and any individual who serves in the capacity of aircraft dispatcher or air traffic control-tower operator;

(7) Air instruction means the imparting of aeronautical information by any aeronautics instructor or in or by any air school or flying club;

(8) Aeronautics instructor means any individual engaged in giving instruction, or offering to give instruction, in aeronautics, either in flying or ground subjects, or both, for hire or reward, without advertising such occupation, without calling his or her facilities an air school or anything equivalent thereto, and without employing or using other instructors. It does not include any instructor in any public school or university of this state or any institution of higher learning duly accredited and approved for carrying on collegiate work while engaged in his or her duties as such instructor;

(9) Airport protection privileges means easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to insure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation thereof;

(10) Airport hazard means any structure, object of natural growth, or use of land which obstructs the air space required for the flight of aircraft in landing or taking off at any airport or restricted landing area or is otherwise hazardous to such landing or taking off;

(11) Civil aircraft means any aircraft other than a public aircraft;

(12) Commission means the Nebraska Aeronautics Commission;

(13) Director means the Director of Aeronautics;

(14) Division means the Division of Aeronautics of the Department of Transportation;

(15) Flying club means any person, other than an individual, who, neither for profit nor reward, owns, leases, or uses one or more aircraft for the purpose of instruction or pleasure or both;

(16) Location means the general vicinity to be served by a specific airport;

(17) Municipality means any county, city, village, or town of this state and any other political subdivision, public corporation, authority, or district in this state which is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities;

(18) Navigable air space means air space above the minimum altitudes of flight prescribed by the laws of this state or by the rules and regulations adopted and promulgated by the division consistent therewith;

(19) Operation of aircraft or operate aircraft means the use of aircraft for the purpose of air navigation and includes the navigation or piloting of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control, in the capacity of owner, lessee, or otherwise, of the aircraft, shall be deemed to be engaged in the operation of aircraft within the meaning of the statutes of this state;

(20) Privately owned public use airport means any airport owned by a person which is primarily engaged in the business of providing necessary services and facilities for the operation of civil aircraft and which (a) has at least one paved runway, (b) is engaged in the retail sale of aviation gasoline or aviation jet fuel, and (c) possesses facilities for the sheltering, servicing, or repair of aircraft;

(21) Public aircraft means an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any state, territory, or possession of the United States or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes;

(22) Restricted landing area means any area of land, water, or both, which is used or is made available for the landing and takeoff of aircraft, the use of which shall, except in case of emergency, be only as provided from time to time by the commission;

(23) Site means the specific land area to be used as an airport; and

(24) State airway means a route in the navigable air space over and above the lands or waters of this state, designated by the division as a route suitable for air navigation.

Source: Laws 1945, c. 5, § 1, p. 75; Laws 1976, LB 460, § 1; Laws 1993, LB 121, § 82; Laws 1995, LB 609, § 1; Laws 2017, LB 339, § 1.

Operative Date: July 1, 2017

Department of Aeronautics is created by this article. State ex rel. Beck v. Obbink, 172 Neb. 242, 109 N.W.2d 288 (1961).

3-102. Purpose of act.

The purpose of the State Aeronautics Act is to further the public interest and aeronautical progress by (1) providing for the protection and promotion of safety in aeronautics, (2) cooperating in effecting a uniformity of the laws relating to the development and regulation of

aeronautics in the several states, (3) revising existing statutes relative to the development and regulation of aeronautics so as to grant such powers to and impose such duties upon the division in order that the state may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property within such jurisdiction, may assist in the promotion of a statewide system of airports, may cooperate with and assist the political subdivisions of this state and others engaged in aeronautics, and may encourage and develop aeronautics, (4) establishing uniform regulations, consistent with federal regulations and those of other states, in order that those engaged in aeronautics of every character may so engage with the least possible restriction, consistent with the safety and the rights of others, and (5) providing for cooperation with the federal authorities in the development of a national system of civil aviation and for coordination of the aeronautical activities of those authorities and the authorities of this state by assisting in accomplishing the purposes of federal legislation and eliminating costly and unnecessary duplication of functions properly in the province of federal agencies.

Source: Laws 1945, c. 5, § 2, p. 79; Laws 2017, LB 339, § 2.
Operative Date: July 1, 2017

A county should not be able to thwart the strong interest of the state in the promotion of aviation through the medium of its zoning authority. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

Statute creating Department of Aeronautics was enacted for the promotion of safety and for cooperating in effecting uniformity of legislation in the several states consistent with federal regulations. In re Estate of Kinsey, 152 Neb. 95, 40 N.W.2d 526 (1949).

3-103. Division of Aeronautics; director; appointment; qualifications; duties; oath.

(1) The Division of Aeronautics shall be a division of the Department of Transportation.

(2)(a) Until December 31, 2017, the chief administrative officer of the division shall be the director, to be known as the Director of Aeronautics, and shall be appointed by the Governor, subject to confirmation by the Legislature, with due regard to his or her fitness through aeronautical education and by knowledge of and recent practical experience in aeronautics. The director shall devote full time to the performance of his or her official duties and shall not have any pecuniary interest in, stock in, or bonds of any civil aeronautics enterprise. The director shall, before assuming the duties of the office, take and subscribe an oath, such as is required by state officers. The director shall be bonded or insured as required by section 11-201. The director shall receive such compensation as the Governor, with the approval of the commission, shall determine, subject to the provisions of the legislative appropriations bill.

(b) Beginning January 1, 2018, the chief administrative officer of the division shall be the Director of Aeronautics who shall be appointed by and report directly to the Director-State Engineer, subject to confirmation by the Legislature, with due regard to his or her fitness through aeronautical education and by knowledge of and recent practical experience in aeronautics. The director shall devote full time to the performance of his or her official duties and shall not have any pecuniary interest in, stock in, or bonds of any civil aeronautics enterprise. The director shall, before assuming the duties of the office, take and subscribe an oath, such as is required by state officers.

Source: Laws 1945, c. 5, § 3(1), p. 80; Laws 1947, c. 16, § 1, p. 95; Laws 1978, LB 653, § 3; Laws 2004, LB 884, § 2; Laws 2017, LB 339, § 3.

Operative Date: July 1, 2017

Director of Aeronautics has no definite term and is removable at will by Governor. State ex rel. Beck v. Obbink, 172 Neb. 242, 109 N.W.2d 288 (1961).

3-104. Nebraska Aeronautics Commission; created; members, appointment; term; qualification; chairperson; quorum; meetings; compensation; duties.

(1) There is hereby created the Nebraska Aeronautics Commission which shall consist of five members, who shall be appointed by the Governor. The terms of office of the members of the commission initially appointed shall expire on March 1 of the years 1946, 1947, 1948, 1949, and 1950, as designated by the Governor in making the respective appointments. As the terms of members expire, the Governor shall, on or before March 1 of each year, appoint a member of the commission for a term of five years to succeed the member whose term expires. Each member shall serve until the appointment and qualification of his or her successor. In case of a vacancy occurring prior to the expiration of the term of a member, the appointment shall be made only for the remainder of the term. All members of the commission shall be citizens and bona fide residents of the state and, in making such an appointment, the Governor shall take into consideration the interest or training of the appointee in some one or all branches of aviation. The commission shall, in December of each year, select a chairperson for the ensuing year. The Director of Aeronautics shall serve as secretary as set forth in section 3-127. Three members shall constitute a quorum, and no action shall be taken by less than a majority of the commission.

(2) The commission shall meet upon the written call of the chairperson, the director, or any two members of the commission. Regular meetings shall be held at the office of the division but, whenever the convenience of the public or of the parties may be promoted or delay or expense may be prevented, the commission may hold meetings or proceedings at any other place designated by it. All meetings of the commission shall be open to the public. No member shall receive any salary for his or her service, but each shall be reimbursed for actual and necessary expenses incurred by him or her in the performance of his or her duties as provided in sections 81-1174 to 81-1177.

(3)(a) Until December 31, 2017, it shall be the duty of the commission to advise the Governor relative to the appointment of the Director of Aeronautics, and the commission shall report to the Governor whenever it feels that the Director of Aeronautics is not properly fulfilling his or her duties.

(b) Beginning January 1, 2018, the commission shall advise the Director-State Engineer relative to the appointment of the Director of Aeronautics, and the commission shall report to the Director-State Engineer whenever the commission feels that the Director of Aeronautics is not properly fulfilling his or her duties. The commission shall also advise the Governor on the general status and state of aviation in Nebraska.

(c) The commission shall further act in an advisory capacity to the Director of Aeronautics and Director-State Engineer.

(4) The commission shall have, in addition, the following specific duties: (a) To allocate state funds and approve the use of federal funds to be spent for the construction or maintenance of airports; (b) to designate the locations and approve sites of airports; (c) to arrange and authorize

the purchase of aircraft upon behalf of the state; (d) to select and approve pilots to be employed by the state, if any; and (e) to assist the Director of Aeronautics in formulating the regulations and policies to be carried out by the division under the terms of the State Aeronautics Act. The commission may allocate state funds for the promotion of aviation as defined for the purpose of this section by the division by rule and regulation. The director may designate one or more members of the commission to represent the division in conferences with officials of the federal government, of other states, of other agencies or municipalities of this state, or of persons owning privately owned public use airports.

Source: Laws 1945, c. 5, § 3(2), p. 80; Laws 1976, LB 460, § 2; Laws 1981, LB 204, § 12; Laws 1995, LB 609, § 2; Laws 2004, LB 824, § 1; Laws 2017, LB 339, § 4.

Operative Date: July 1, 2017

A county should not be able to thwart the strong interest of the state in the promotion of aviation through the medium of its zoning authority. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

It is the duty of the Nebraska Aeronautics Commission to designate the locations and sites of airports in this state. Stones v. Plattsmouth Airport Authority, 193 Neb. 552, 228 N.W.2d 129 (1975).

3-105. Division; seal; rules and regulations; adopt.

The division shall adopt a seal and adopt and promulgate rules and regulations for its administration. All rules, regulations, and orders of the Department of Aeronautics adopted prior to July 1, 2017, in connection with the powers, duties, and functions transferred to the Division of Aeronautics of the Department of Transportation pursuant to Laws 2017, LB 339, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

Source: Laws 1945, c. 5, § 4, p. 82; Laws 1955, c. 231, § 6, p. 719; Laws 1976, LB 460, § 3; Laws 1981, LB 545, § 3; Laws 2017, LB 339, § 5.

Operative Date: July 1, 2017

Cross References

For promulgation of administrative rules, see Chapter 84, article 9.

Department of Aeronautics has power to adopt rules and regulations in conformity, as nearly as may be, with federal regulations. In re Estate of Kinsey, 152 Neb. 95, 40 N.W.2d 526 (1949).

3-106. Division; aircraft; purchase; use; report; contents.

(1) The division may purchase aircraft for the use of state government and may sell any state aircraft that is not needed or suitable for state uses. State aircraft shall be subject at all times to the written orders of the Governor for use and service in any branch of the state government. The division shall establish an hourly rate for use of a state aircraft by a state official or agency. The hourly rate shall not include an amount to recover the cost of acquisition by purchase, but shall include amounts for items such as variable fuel and oil costs, routine maintenance costs, landing

fees, and preventive maintenance reserves. Such funds shall only be expended for the purposes provided for by this section.

(2) It is the intent of the Legislature that the use of state-owned, chartered, or rented aircraft by the division shall be for the sole purpose of state business. The division shall electronically file with the Clerk of the Legislature a quarterly report on the use of all state-owned, chartered, or rented aircraft by the division that includes the following information for each trip: The name of the agency or other entity traveling; the name of each individual passenger; all purposes of the trip; the destination and intermediate stops; the miles flown; and the duration of the trip.

Source: Laws 1945, c. 5, § 5, p. 82; Laws 2014, LB 1016, § 2; Laws 2017, LB 339, § 6.
Operative Date: July 1, 2017

3-107. Division; general supervision; state funds; expenditure; recovery.

The division shall have general supervision over aeronautics within this state. It is empowered and directed to encourage, foster, and assist in the development of aeronautics in this state and encourage the establishment of airports and other air navigation facilities. No state funds for the acquisition, engineering, construction, improvement, or maintenance of airports shall be expended upon any project or for any work upon any such project which is not done under the supervision of the division. When any airport which has received state grant funds pursuant to the State Aeronautics Act ceases to be an airport or a privately owned public use airport, the division shall, consistent with all other provisions of state and federal law, seek to recover so much of the state funds provided to the airport as it may and shall deposit any such funds so recovered into the Aeronautics Cash Fund.

Source: Laws 1945, c. 5, § 6(1), p. 83; Laws 1995, LB 609, § 3; Laws 2017, LB 339, § 7.
Operative Date: July 1, 2017

A county should not be able to thwart the strong interest of the state in the promotion of aviation through the medium of its zoning authority. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

3-108. Division; cooperate with federal government, political subdivisions, and others engaged in aeronautics; hearings; reports; contents.

The division shall cooperate with and assist the federal government, the political subdivisions of this state, and others engaged in aeronautics or the promotion of aeronautics and seek to coordinate the aeronautical activities of these bodies. To this end, the division is empowered to confer with or to hold joint hearings with any federal aeronautical agency in connection with any matter arising under the State Aeronautics Act, or relating to the sound development of aeronautics, and to avail itself of the cooperation, services, records, and facilities of such federal agencies, as fully as may be practicable, in the administration and enforcement of the act. The division shall reciprocate by furnishing to the federal agencies its cooperation, services, records, and facilities, insofar as may be practicable. The division shall report to the appropriate federal agency all accidents in aeronautics in this state of which it is informed and preserve, protect, and

prevent the removal of the component parts of any aircraft involved in an accident being investigated by it until a federal agency institutes an investigation. The division shall report to the appropriate federal agency all refusals to register federal licenses, certificates, or permits and all revocations of certificates of registration, and the reasons therefor, and all penalties, of which it has knowledge, imposed upon airmen for violations of the laws of this state relating to aeronautics or for violations of the rules, regulations, or orders of the division.

Source: Laws 1945, c. 5, § 6(2), p. 83; Laws 2017, LB 339, § 8.
Operative Date: July 1, 2017

3-109. Division; powers; rules and regulations; applicability to federal government.

The division may (1) perform such acts, (2) issue and amend such orders, (3) adopt and promulgate such reasonable general or special rules, regulations, and procedure, and (4) establish such minimum standards, consistent with the State Aeronautics Act, as it shall deem necessary to carry out the act and to perform its duties under the act as commensurate with and for the purpose of protecting and insuring the general public interest and safety, the safety of persons receiving instruction concerning, or operating, using, or traveling in aircraft, and of persons and property on land or water, and to develop and promote aeronautics in this state. No rule or regulation of the division shall apply to airports or other air navigation facilities owned or controlled by the federal government within this state.

Source: Laws 1945, c. 5, § 6(3), p. 83; Laws 1947, c. 9, § 1; Laws 2017, LB 339, § 9.
Operative Date: July 1, 2017

1947 amendment to this section was unconstitutional. State ex rel. State Railway Commission v. Ramsey, 151 Neb. 333, 37 N.W.2d 502 (1949).

3-110. Rules and regulations; conform to federal regulation.

All rules and regulations adopted and promulgated by the division under the authority of the State Aeronautics Act shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics, the regulations duly promulgated thereunder, and rules and standards issued from time to time pursuant thereto.

Source: Laws 1945, c. 5, § 6(4), p. 84; Laws 2017, LB 339, § 10.
Operative Date: July 1, 2017

Power to adopt rules in conformity with federal regulations already in existence did not involve delegation of power by state to federal government. In re Estate of Kinsey, 152 Neb. 95, 40 N.W.2d 526 (1949).

3-111. Rules and regulations; where kept.

The division shall keep on file with the Secretary of State and at the principal office of the division a copy of all its rules and regulations for public inspection.

Source: Laws 1945, c. 5, § 6(5), p. 84; Laws 1976, LB 460, § 4; Laws 2017, LB 339, § 11.
Operative Date: July 1, 2017

3-112. Division; airways system.

It may designate, design, establish, expand or modify a state airways system which will best serve the interests of the state. It may chart such airways system and arrange for the publication and distribution of such maps, charts, notices and bulletins, relating to such airways, as may be required in the public interest. The system shall be supplementary to and coordinated in design and operation with the federal airways system. It may include all types of air navigation facilities, whether publicly or privately owned; *Provided,* that such facilities conform to federal safety standards.

Source: Laws 1945, c. 5, § 6(6), p. 84.

3-113. Division; engineering and technical services; availability.

The division may, insofar as is reasonably possible, offer its engineering or other technical services, without charge, to any municipality or to any person owning a privately owned public use airport desiring them in connection with the construction, maintenance, or operation or the proposed construction, maintenance, or operation of an airport or restricted landing area.

Source: Laws 1945, c. 5, § 6(7), p. 84; Laws 1995, LB 609, § 4; Laws 2017, LB 339, § 12.
Operative Date: July 1, 2017

3-114. Division; represent state in aeronautical matters.

The division may represent the state in aeronautical matters before federal agencies and other state agencies.

Source: Laws 1945, c. 5, § 6(8), p. 85; Laws 2017, LB 339, § 13.
Operative Date: July 1, 2017

3-115. Actions by or against division; intervention.

The division may participate as party plaintiff or defendant, or as intervenor on behalf of this state, or any municipality or citizen thereof, in any controversy having to do with any claimed

encroachment by the federal government or any foreign state upon any state or individual rights pertaining to aeronautics.

Source: Laws 1945, c. 5, § 6(9), p. 85; Laws 2017, LB 339, § 14.
Operative Date: July 1, 2017

3-116. Enforcement; intergovernmental cooperation.

The division, the director, and every state, county, and municipal officer, charged with the enforcement of state and municipal laws, shall enforce and assist in the enforcement of the State Aeronautics Act, all rules and regulations adopted and promulgated pursuant thereto, and all other laws of this state relating to aeronautics. In the aid of such enforcement, general police powers are hereby conferred upon the director, and such of the officers and employees of the division as may be designated by it, to exercise such powers. The division is further authorized, in the name of this state, to enforce the act and the rules and regulations adopted and promulgated pursuant thereto by injunction in the courts of this state. Municipalities and persons owning privately owned public use airports are authorized to cooperate with the division in the development of aeronautics and aeronautical facilities in this state. The division may use the facilities and services of other agencies of the state to the utmost extent possible and such agencies are authorized and directed to make available such facilities and services.

Source: Laws 1945, c. 5, § 6(10), p. 85; Laws 1995, LB 609, § 5; Laws 2017, LB 339, § 15.
Operative Date: July 1, 2017

3-117. Director; investigations; hearings; oaths; certify official acts; subpoenas; compel attendance of witnesses; violation; penalty.

The director, or any officer or employee of the division designated by it, shall have the power to hold investigations, inquiries, and hearings concerning matters covered by the State Aeronautics Act and orders, rules, and regulations of the division and concerning accidents in aeronautics within this state. All hearings so conducted shall be open to the public. The director, and every officer or employee of the division designated by it to hold any inquiry, investigation, or hearing, shall have power to administer oaths and affirmations, certify to all official acts, issue subpoenas, and compel the attendance and testimony of witnesses and the production of papers, books, and documents. In case of a failure to comply with any subpoena or order issued under the authority of the act, the division or its authorized representative may invoke the aid of any court of this state of general jurisdiction. The court may thereupon order the witness to comply with the requirements of the subpoena or order or to give evidence touching the matter in question. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

Source: Laws 1945, c. 5, § 6(11), p. 85; Laws 2017, LB 339, § 16.
Operative Date: July 1, 2017

3-118. Division; reports of investigations or hearings; evidence; how used.

In order to facilitate the making of investigations by the division, in the interest of public safety and the promotion of aeronautics, the public interest requires, and it is, therefor, provided, that the reports of investigations or hearings, or any part thereof, shall not be admitted in evidence or used for any purpose in any suit, action, or proceeding, growing out of any matter referred to in the investigation, hearing, or report thereof, except in case of criminal or other proceedings instituted on behalf of the division or this state under the State Aeronautics Act and other laws of this state relating to aeronautics, nor shall any member of the commission, the director, or any officer or employee of the division be required to testify to any facts ascertained in, or information gained by reason of, his or her official capacity, or be required to testify as an expert witness in any suit, action, or proceeding involving any aircraft. Subject to the foregoing provisions, the division may, in its discretion, make available to appropriate federal and state agencies information and material developed in the course of its hearings and investigations.

Source: Laws 1945, c. 5, § 6(12), p. 86; Laws 2017, LB 339, § 17.
Operative Date: July 1, 2017

3-119. Division; assist in acquisition, development, operation, or maintenance of airports.

The division may render assistance in the acquisition, development, operation, or maintenance of privately owned public use airports or airports owned, controlled, or operated or to be owned, controlled, or operated by municipalities in this state out of appropriations made by the Legislature for that purpose.

Source: Laws 1945, c. 5, § 6(13), p. 87; Laws 1995, LB 609, § 6; Laws 2017, LB 339, § 18.
Operative Date: July 1, 2017

3-120. Division; contracts; authorized.

The division may enter into any contracts necessary to the execution of the powers granted it by the State Aeronautics Act.

Source: Laws 1945, c. 5, § 6(14), p. 87; Laws 2017, LB 339, § 19.
Operative Date: July 1, 2017

3-121. Division; airway and airport; exclusive right prohibited.

The division shall grant no exclusive right for the use of any airway, airport, restricted landing area, or other air navigation facility under its jurisdiction. This section shall not prevent the making of leases in accordance with other provisions of the State Aeronautics Act.

Source: Laws 1945, c. 5, § 6(15), p. 87; Laws 2017, LB 339, § 20.
Operative Date: July 1, 2017

3-122. Transferred to section 75-202.

3-123. Division; cooperate with federal government; comply with federal laws.

The division is authorized to cooperate with the government of the United States, and any agency or department thereof, in the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities in this state and to comply with the provisions of the laws of the United States and any regulations made thereunder for the expenditure of federal money upon such airports and other navigation facilities.

Source: Laws 1945, c. 5, § 7(1), p. 87; Laws 2017, LB 339, § 21.
Operative Date: July 1, 2017

3-124. Division; acceptance of gifts of money, authorized; terms and conditions.

The division is authorized to accept federal and other money, either public or private, for and on behalf of this state, any municipality, or any person owning a privately owned public use airport, for the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities, whether such work is to be done by the state, by such municipalities, or by any person owning a privately owned public use airport, or jointly, aided by grants of aid from the United States, upon such terms and conditions as are or may be prescribed by the laws of the United States and any regulations thereunder. The division may act as agent of any municipality of this state or any person owning a privately owned public use airport, upon the request of such municipality or person, in accepting such money in its behalf for airports or other air navigation facility purposes, and in contracting for the acquisition, construction, improvement, maintenance, or operation of airports or other air navigation facilities, financed either in whole or in part by federal money, and such person or the governing body of any such municipality is authorized to designate the division as its agent for such purposes and to enter into an agreement with the division prescribing the terms and conditions of such agency in accordance with federal laws, rules, and regulations and with the State Aeronautics Act. Such money as is paid over by the United States Government shall be retained by the state or paid over to the municipalities or persons under such terms and conditions as may be imposed by the United States Government in making such grants.

Source: Laws 1945, c. 5, § 7(2), p. 87; Laws 1995, LB 609, § 7; Laws 2017, LB 339, § 22.
Operative Date: July 1, 2017

3-125. Division; contracts; laws governing.

All contracts for the acquisition, construction, improvement, maintenance, and operation of airports or other air navigation facilities made by the division, either as the agent of this state, as the agent of any municipality, or as the agent of any person owning a privately owned public use airport, shall be made pursuant to the laws of this state governing the making of like contracts. When the acquisition, construction, improvement, maintenance, and operation of any airport, landing strip, or other air navigation facility is financed wholly or partially with federal money, the division, as agent of the state, of any municipality, or of any person owning a privately owned public use airport, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder, notwithstanding any other state law to the contrary.

Source: Laws 1945, c. 5, § 7(3), p. 88; Laws 1995, LB 609, § 8; Laws 2017, LB 339, § 23.
Operative Date: July 1, 2017

3-125.01. Transferred to section 55-181.

3-126. Aeronautics Cash Fund; created; use; investment.

The Aeronautics Cash Fund is created. All money received by the division pursuant to the State Aeronautics Act shall be remitted to the State Treasurer for credit to the fund. The division is authorized, whether acting for this state, as the agent of any of its municipalities, or as the agent of any person owning a privately owned public use airport, or when requested by the United States Government or any agency or department thereof, to disburse such money. Any money in the Aeronautics Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The State Treasurer shall transfer any money in the Department of Aeronautics Cash Fund on July 1, 2017, to the Aeronautics Cash Fund.

Source: Laws 1945, c. 5, § 7(4), p. 88; Laws 1965, c. 17, § 1, p. 150; Laws 1969, c. 584, § 32, p. 2360; Laws 1978, LB 637, § 1; Laws 1995, LB 7, § 25; Laws 1995, LB 609, § 9; Laws 2009, First Spec. Sess., LB 3, § 7; Laws 2017, LB 339, § 24.
Operative Date: July 1, 2017

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

3-127. Director; duties.

The director shall (1) administer the State Aeronautics Act, the rules and regulations adopted and promulgated under the act, orders established under the act, and all other laws of the state relative to aeronautics, (2) attend and serve as secretary, but not vote, at all meetings of the commission, (3) appoint, subject to section 3-104, such experts, field and office assistants, clerks, and other employees as may be required and authorized for the proper discharge of the functions of the division and for whose services funds have been appropriated, (4) be in charge of the offices of the division and responsible for the preparation of reports and collection and dissemination of data and other public information relating to aeronautics, and (5) execute all contracts entered into by the division which are legally authorized and for which funds are appropriated.

Source: Laws 1945, c. 5, § 8, p. 89; Laws 2017, LB 339, § 25.
Operative Date: July 1, 2017

3-128. Division; regulation of airports.

In order to safeguard and promote the general public interest and safety, the safety of persons using or traveling in aircraft and of persons and property on the ground, and the interest of aeronautical progress requiring that airports, restricted landing areas, and air navigation facilities be suitable for the purposes for which they are designed and to carry out the purposes of the State Aeronautics Act, the division may: Recommend airport and restricted landing area sites; license airports, restricted landing areas, or other air navigation facilities; and provide for the renewal and revocation of such licenses in accordance with rules and regulations adopted and promulgated by the division.

Source: Laws 1945, c. 5, § 9(1), p. 89; Laws 1967, c. 12, § 1, p. 98; Laws 1972, LB 285, § 1; Laws 1973, LB 391, § 1; Laws 1973, LB 341, § 1; Laws 1976, LB 460, § 5; Laws 2001, LB 329, § 8; Laws 2017, LB 339, § 26.
Operative Date: July 1, 2017

A county should not be able to thwart the strong interest of the state in the promotion of aviation through the medium of its zoning authority. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

3-129. Aircraft; license, certificate, or permit required.

Except as provided in section 3-130, it shall be unlawful for any person to operate or cause or authorize to be operated any civil aircraft within this state unless such aircraft has an appropriate effective license, certificate, or permit issued by the United States Government.

Source: Laws 1945, c. 5, § 9(2), p. 91; Laws 1973, LB 341, § 2; Laws 2002, LB 446, § 1.

3-129.01. Repealed. Laws 2010, LB 216, § 1.

3-130. License, certificate, or permit; exceptions.

The provisions of section 3-129 shall not apply to:

(1) An aircraft which has been licensed by a foreign country with which the United States has a reciprocal agreement covering the operations of such licensed aircraft;

(2) An airman operating military or public aircraft or any aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operation of such licensed aircraft;

(3) Persons operating model aircraft or to any person piloting an aircraft which is equipped with fully functioning dual controls when a licensed instructor is in full charge of one set of said controls and such flight is solely for instruction or for the demonstration of said aircraft to a bona fide prospective purchaser;

(4) A nonresident operating aircraft in this state who is lawfully entitled to operate aircraft in the state of residence; or

(5) An airman while operating or taking part in the operation of an aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce.

Source: Laws 1945, c. 5, § 9(3), p. 92; Laws 1973, LB 341, § 3.

3-131. License, certificate, permit, or registration; duty to carry, present for inspection, and exhibit.

The federal license, certificate, or permit, and the evidence of registration in this or another state, if any, required for an airman shall be kept in the personal possession of the airman when the airman is operating within this state and must be presented for inspection upon the demand of any passenger, peace officer of this state, authorized official or employee of the division, or official, manager, or person in charge of any airport in this state upon which the airman shall land or the reasonable request of any other person. The federal aircraft license, certificate, or permit required for aircraft must be carried in every aircraft operating in this state at all times and must be conspicuously posted therein where it may readily be seen by passengers or inspectors and must be presented for inspection upon the demand of any passenger, peace officer of this state, authorized official or employee of the division, or official, manager, or person in charge of any airport in this state upon which the airman shall land or the reasonable request of any person.

Source: Laws 1945, c. 5, § 9(4), p. 92; Laws 1973, LB 341, § 4; Laws 2017, LB 339, § 27.
Operative Date: July 1, 2017

3-132. Repealed. Laws 1976, LB 460, § 10.

3-133. Airports; license; requirement; approval of site; operation without license unlawful.

Any proposed airport or restricted landing area shall be first licensed by the division before such airport or area shall be used or operated. Any municipality or person acquiring property for the purpose of constructing or establishing an airport or restricted landing area shall, prior to such acquisition, make application to the division for a certificate of approval of the site selected and the general purpose or purposes for which the property is to be acquired, to insure that the property and its use shall conform to minimum standards of safety and shall serve the public interest. It shall be unlawful for any municipality or officer or employee thereof, or for any person, to operate an airport or restricted landing area for which a license has not been issued by the division.

Source: Laws 1945, c. 5, § 9(6), p. 93; Laws 2002, LB 446, § 2; Laws 2017, LB 339, § 28.
Operative Date: July 1, 2017

A county should not be able to thwart the strong interest of the state in the promotion of aviation through the medium of its zoning authority. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

The Revised Airports Act required the licensing of airports and restricted landing areas except restricted landing areas designed for personal use. Bruns v. City of Seward, 186 Neb. 658, 185 N.W.2d 853 (1971).

3-134. Air navigation facility; certificate of approval; hearing; notice; order; license.

Whenever the division makes an order granting or denying a certificate of approval of an airport or a restricted landing area, or an original license to use or operate an airport, restricted landing area, or other air navigation facility, and the applicant or any interested municipality, within fifteen days after notice of such order has been sent the applicant by registered or certified mail, demands a public hearing, or whenever the division desires to hold a public hearing, before making an order, such a public hearing in relation thereto shall be held in the municipality applying for the certificate of approval or license or, in case the application was made by anyone other than a municipality, at the county seat of the county in which the proposed airport, restricted landing area, or other air navigation facility is proposed to be situated, or the major portion thereof, if located in more than one county, at which hearing all parties in interest and other persons shall have an opportunity to be heard. Notice of the hearing shall be published by the division in a legal newspaper in or of general circulation in the county in which the hearing is to be held, at least twice, the first publication to be at least fifteen days prior to the date of hearing. After a proper and timely demand has been made, the order shall be stayed until after the hearing, when the division may affirm, modify, or reverse it, or make a new order. If no hearing is demanded, the order shall become effective upon the expiration of the time permitted for making a demand. Where a certificate of approval of an airport or restricted landing area has been issued by the division, it may grant a license for its operation and use, and no hearing may be demanded thereon.

Source: Laws 1945, c. 5, § 9(7), p. 94; Laws 1957, c. 242, § 1, p. 816; Laws 2017, LB 339, § 29.
Operative Date: July 1, 2017

3-135. Air navigation facility; certificate of approval; hearing; standards to be considered.

In determining whether to issue a certificate of approval or license for the use or operation of any proposed airport or restricted landing area, the division shall take into consideration (1) its proposed location, size, and layout, (2) the relationship of the proposed airport or restricted landing area to a comprehensive plan for statewide and nationwide development, (3) whether there are safe areas available for expansion purposes, (4) whether the adjoining area is free from obstructions based on a proper glide ratio, (5) the nature of the terrain, (6) the nature of the uses to which the proposed airport or restricted landing area will be put, and (7) the possibilities for future development.

Source: Laws 1945, c. 5, § 9(8), p. 94; Laws 2017, LB 339, § 30.
Operative Date: July 1, 2017

3-136. Certificate of approval; restricted landing area for personal use; exception.

The provisions of sections 3-133 to 3-135 shall not apply to restricted landing areas designed for personal use.

Source: Laws 1945, c. 5, § 9(9), p. 95.

This section specifically exempts from licensing requirements restricted landing areas designed for personal use and therefore the Department of Aeronautics is without authority to issue licenses for such landing areas. Nebraska Public Power Dist. v. Huebner, 202 Neb. 587, 276 N.W.2d 228 (1979).

3-137. Air navigation facility; certificate of approval; revocation, grounds.

The division is empowered to temporarily or permanently revoke any certificate of approval or license issued by it when it shall determine that an airport, restricted landing area, or other navigation facility is not being maintained or used in accordance with the State Aeronautics Act and the rules and regulations lawfully adopted and promulgated pursuant thereto.

Source: Laws 1945, c. 5, § 9(10), p. 95; Laws 2017, LB 339, § 31.
Operative Date: July 1, 2017

3-138. Certificate of approval; federal government; exception.

The provisions of sections 3-133 to 3-136 shall not apply to any airport, restricted landing area or other air navigation facility owned or operated by the federal government within this state.

Source: Laws 1945, c. 5, § 9(11), p. 95.

3-139. Division; certificate of approval, permit, or license; refuse to issue; notice; set forth reasons; inspection of premises.

If the division refuses to (1) issue a certificate of approval of a license or the renewal of a license for an airport, restricted landing area, or other air navigation facility or (2) permit the registration of any license, certificate, or permit, the division shall set forth its reasons therefor and shall state the requirements to be met before such approval will be given, registration permitted, license granted, or order modified or changed. Any order made by the division pursuant to the State Aeronautics Act shall be served upon the interested persons by either registered or certified mail or in person. To carry out the act, the director, officers, and employees of the division and any officers, state or municipal, charged with the duty of enforcing the act may inspect and examine at reasonable hours any premises, and the buildings and other structures thereon, where airports, restricted landing areas, flying clubs, or other air navigation facilities or aeronautical activities are operated or carried on.

Source: Laws 1945, c. 5, § 10(1), p. 95; Laws 1957, c. 242, § 2, p. 817; Laws 1976, LB 460, § 6; Laws 2017, LB 339, § 32.
Operative Date: July 1, 2017

3-140. Appeal; procedure.

Any person aggrieved by an order of the division or by the granting or denial of any license, certificate, or registration may appeal the order or such granting or denial, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1945, c. 5, § 10(2), p. 96; Laws 1988, LB 352, § 8; Laws 2017, LB 339, § 33.
Operative Date: July 1, 2017

Cross References

Administrative Procedure Act, see section 84-920.

3-141. Division; air navigation facilities; acquire by purchase, gift, or condemnation; establish; improve; operate; dispose of property; exception.

The division is authorized and empowered, on behalf of and in the name of this state, within the limitation of available appropriations, to (1) acquire, by purchase, gift, devise, lease, condemnation proceedings, or otherwise, real or personal property for the purpose of establishing and constructing airports, restricted landing areas, and other air navigation facilities, (2) acquire in like manner, own, control, establish, construct, enlarge, improve, maintain, equip, operate, regulate, and police such airports, restricted landing areas, and other air navigation facilities either within or without this state, (3) make, prior to any such acquisition, investigations,

surveys, and plans, (4) erect, install, construct, and maintain at such airports facilities for the servicing of aircraft and for the comfort and accommodation of air travelers, and (5) dispose of any such property, airport, or restricted landing area or any other air navigation facility by sale, lease, or otherwise, in accordance with the laws of this state governing the disposition of other like property of the state. The division may not, however, acquire or take over any airport, restricted landing area, or other air navigation facility owned or controlled by a municipality of this state without the consent of such municipality. The division may erect, equip, operate, and maintain on any airport such buildings and equipment as are necessary and proper to establish, maintain, and conduct such airport and air navigation facilities connected therewith.

Source: Laws 1945, c. 5, § 11(1), p. 96; Laws 2017, LB 339, § 34.
Operative Date: July 1, 2017

3-142. Division; airports; easements; acquire by condemnation.

Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports and restricted landing areas acquired or operated under the State Aeronautics Act, the division may acquire, in the same manner as is provided for the acquisition of property for airport purposes, easements through or other interests in air space over land or water, interest in airport hazards outside the boundaries of the airports or restricted landing areas, and such other airport protection privileges as are necessary to insure safe approaches to the landing areas of the airports and restricted landing areas and the safe and efficient operation thereof. The division may acquire, in the same manner, the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of ingress and egress to or from such airport hazards for the purpose of maintaining and repairing such lights and marks. This authority shall not be so construed as to limit the right, power, or authority of the state or any municipality to zone property adjacent to any airport or restricted landing area pursuant to any law of this state.

Source: Laws 1945, c. 5, § 11(2), p. 97; Laws 2017, LB 339, § 35.
Operative Date: July 1, 2017

3-143. Division; joint activities; authorized.

The division may engage in all activities jointly with the United States, with other states, with municipalities or other agencies of this state, and with persons owning privately owned public use airports.

Source: Laws 1945, c. 5, § 11(3), p. 97; Laws 1995, LB 609, § 10; Laws 2017, LB 339, § 36.
Operative Date: July 1, 2017

3-144. Division; right of eminent domain; procedure.

The division may exercise the right of eminent domain, in the name of the state, for the purpose of acquiring any property which it is authorized to acquire by condemnation. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. The fact that the property so needed has been acquired by the owner under power of eminent domain shall not prevent its acquisition by the division by the exercise of the right of eminent domain conferred in the State Aeronautics Act. The division shall not be precluded from abandoning the condemnation of any such property in any case where possession thereof has not been taken. Nothing in the State Aeronautics Act shall be construed as granting to privately owned public use airports the authority to exercise the power of eminent domain nor shall anything in the State Aeronautics Act be construed as granting to the division or any municipality the authority to exercise the right of eminent domain for the purpose of acquiring lands or easements for the sole use or benefit of privately owned public use airports.

Source: Laws 1945, c. 5, § 11(4), p. 97; Laws 1951, c. 101, § 26, p. 458; Laws 1995, LB 609, § 11; Laws 2017, LB 339, § 37.
Operative Date: July 1, 2017

3-145. Division; airport; lease; sell; supplies.

The division may (1) lease, for a term not exceeding ten years, such airports, other air navigation facilities, or real property acquired or set apart for airport purposes, to private parties, any municipal or state government, the national government, or any department of any such government for operation, (2) lease or assign, for a term not exceeding ten years, to private parties, any municipal or state government, the national government, or any department of any such government for operation or other use consistent with the purposes of the State Aeronautics Act, space, area, improvements, or equipment on such airports, (3) sell any part of such airports, other air navigation facilities, or real property to any municipal or state government, or to the United States or any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto, and (4) confer the privilege or concession of supplying, upon the airports, goods, commodities, things, services, and facilities, so long as in each case in so doing the public is not deprived of its rightful, equal, and uniform use thereof.

Source: Laws 1945, c. 5, § 11(5), p. 98; Laws 2017, LB 339, § 38.
Operative Date: July 1, 2017

3-146. Division; rentals; power to determine; charges; lien; enforce.

The division may determine the charges or rental for the use of any properties and the charges for any service or accommodations under its control and the terms and conditions under which such properties may be used, so long as in all cases the public shall not be deprived of its rightful, equal, and uniform use of such property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used

and the expenses of operation to the state. To enforce the payment of charges, the state shall have a lien which the division may enforce, substantially as is provided by law for liens and the enforcement thereof, for repairs to or the improvement, storage, or care of any personal property.

Source: Laws 1945, c. 5, § 11(6), p. 98; Laws 2017, LB 339, § 39.
Operative Date: July 1, 2017

3-147. Airports; acquisition of land; purpose.

The acquisition of any lands for the purpose of establishing airports or other air navigation facilities; the acquisition of any airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation of airports and other air navigation facilities, whether by the state separately or jointly with any municipality, municipalities, or any person owning a privately owned public use airport; the assistance of this state in any such acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation; and the exercise of any other powers granted to the division are hereby declared to be public and governmental functions exercised for a public purpose and matters of public necessity. Such lands and other property and privileges acquired are declared to be public property.

Source: Laws 1945, c. 5, § 12, p. 99; Laws 1995, LB 609, § 12; Laws 2001, LB 173, § 2; Laws 2017, LB 339, § 40.
Operative Date: July 1, 2017

3-148. Aircraft fuel tax; Aircraft Fuel Tax Fund; created; distribution; terms, defined.

There is hereby imposed a tax of five cents per gallon upon aviation gasoline and a tax of three cents per gallon upon aviation jet fuel purchased for and used in aircraft within the State of Nebraska. Such aircraft tax shall be levied, collected, and refunded in the manner provided in Chapter 66, article 4, with reference to other motor fuel. The State Treasurer shall credit the aircraft tax and fees so collected and remitted to a special fund to be known as the Aircraft Fuel Tax Fund, which fund shall be distributed as provided in this section. The State Treasurer shall make all refunds as provided in sections 3-150 and 3-151 from the fund, and the balance of the aircraft tax shall be credited to the Aeronautics Cash Fund.

For purposes of this section, aviation gasoline means fuel used in aircraft meeting the criteria established for motor vehicle fuel in section 66-482. The terms aviation fuel and aircraft fuel as used in the statutes include both aviation gasoline and aviation jet fuel.

Source: Laws 1945, c. 5, § 13, p. 99; Laws 1947, c. 6, § 1, p. 67; Laws 1965, c. 18, § 1, p. 152; Laws 1965, c. 17, § 2, p. 150; Laws 1965, c. 8, § 8, p. 93; Laws 1985, LB 272, § 1; Laws 1991, LB 627, § 1; Laws 1992, LB 1013, § 1; Laws 2017, LB 339, § 41.
Operative Date: July 1, 2017

3-149. Aircraft fuel tax; collection; violation; penalty.

The suppliers, distributors, wholesalers, and importers defined in Chapter 66, article 4, shall collect the tax as prescribed in section 3-148, keep an account thereof separately from other fuel tax, and remit the tax collected accordingly to the Tax Commissioner. The Tax Commissioner shall remit the tax to the State Treasurer in the same manner as is provided by law for the collection and remittance of motor vehicle fuel tax. No other or different tax shall be imposed for fuel bought for and used in aircraft. Such tax shall be used for the purposes set forth in the State Aeronautics Act. The penalty for violation of the provisions of this section relating to the collection and remittance of the tax shall be the same as set forth for the violation of the law with reference to the motor fuel tax contained in Chapter 66, article 7, and the right of enforcement and the penalties shall be likewise applicable as set forth therein.

Source: Laws 1945, c. 5, § 14, p. 100; Laws 1985, LB 272, § 2; Laws 1991, LB 627, § 2; Laws 1992, LB 1013, § 2; Laws 1994, LB 1160, § 48; Laws 2017, LB 339, § 42.
Operative Date: July 1, 2017

3-150. Aircraft fuel tax; repayment; fuel used for air school purposes.

Any person, firm, partnership, limited liability company, company, agency, corporation, body politic, municipality, or National Guard or reserve officer of the United States Army who buys and uses aircraft fuel meeting the specifications set by the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue, bought for and used only in aircraft in connection with any air school approved by the federal government, on which the tax has been paid or which is chargeable under section 3-148 and who consumes the same for purposes of operating or propelling aircraft used strictly for air school purposes shall be reimbursed the amount of tax so paid in the manner and subject to the conditions provided in this section and section 3-151.

Source: Laws 1945, c. 5, § 15, p. 100; Laws 1976, LB 460, § 7; Laws 1991, LB 627, § 3; Laws 1993, LB 121, § 83.

3-150.01. Repealed. Laws 1985, LB 272, § 4.

3-151. Aircraft fuel tax; repayment; presentation of claims.

All claims for reimbursement shall be made by affidavit in such form and containing such information as the Tax Commissioner shall prescribe. Such claims shall be accompanied by the original invoices of sales and receipts and shall be filed with the commissioner within seven months from the date of purchase or invoice. The commissioner may require such further information as he shall deem necessary for the determination of such claims. He shall transmit all claims approved by him to the Director of Administrative Services, who shall forthwith draw his

warrant against the proceeds of the tax levied under section 3-148 and credited to the Aircraft Fuel Tax Fund in the state treasury upon the presentation of proper vouchers for each claim for reimbursement; and the State Treasurer shall pay such warrants out of money in such fund without specific appropriation.

Source: Laws 1945, c. 5, § 16, p. 100; Laws 1955, c. 6, § 1, p. 66; Laws 1967, c. 13, § 1, p. 101.

3-152. Violations; penalty.

Any person violating any of the provisions of the State Aeronautics Act, or any of the rules, regulations, or orders adopted, promulgated, or issued pursuant thereto, shall be guilty of a Class II misdemeanor.

Source: Laws 1945, c. 5, § 17, p. 101; Laws 1977, LB 40, § 29; Laws 2017, LB 339, § 43.
Operative Date: July 1, 2017

3-153. Repealed. Laws 1963, c. 339, § 1.

3-154. Act, how cited.

Sections 3-101 to 3-164 shall be known and may be cited as the State Aeronautics Act.

Source: Laws 1945, c. 5, § 21, p. 101; Laws 2017, LB 339, § 44.
Operative Date: July 1, 2017

3-155. Real property formerly used as army airfields; disposal; conditions.

(1) The division is hereby authorized and directed to dispose of all real property held by the division and formerly used by the United States as army airfields, and which is not required for airport operational use purposes. The division shall seek approval from the Federal Aviation Administration to dispose of such property. The property may be platted and subdivided into lots or parcels to be sold separately so as to obtain the greatest total sale price.

(2) The division shall dedicate the necessary roads for airport access and shall reserve such easements for access, utilities, drainage, and other purposes as may be necessary or convenient to maintain the airports as operational. The sales may be made subject to such terms, conditions, and restrictions as may be required by the deeds by which such property was conveyed to the State of Nebraska by the Federal Aviation Administration. When approval is received, the division shall have such property appraised by noninterested appraisers qualified to make appraisals based on experience and who have professional status as appraisers of real property. The appraisers shall be selected by the division based on competitive bids received after three weeks' notice of invitation for bids has been published in at least two newspapers of general

circulation throughout the state. The notice shall state that the selection shall be made of the lowest and best qualified bidders and that the division reserves the right to reject any and all bids and to readvertise for further bids.

(3) Each appraiser's report shall contain (a) an opinion as to the fair market value of the lands appraised, showing a segregation of actual land value, elements and basis of damage, and depreciated in place value of buildings and improvements, if any, (b) a report of income derived from the land in recent years, (c) the adaptability of the land, including the most profitable or highest and best use, (d) a report of a personal inspection of the lands appraised, including a detailed description of their physical characteristics and conditions, (e) the general history of the property and its environs, and a statement of the character of the area surrounding the land being appraised, indicating any of the favorable and unfavorable influences, (f) a listing of recent sales of similar property in the area, showing seller, purchaser, date of sale, selling price, acreage involved, buildings and improvements involved, if any, and an estimate of the value of such improvements, and if there is a difference in value between comparable sales and the property appraised, a discussion of the difference in value to be included, (g) a listing of recent offerings for sale of property in the same general area, including the property being appraised, if recently offered, and the prices quoted, if any, (h) a trend of land values in the area and current land or real estate market conditions, (i) the actual valuation of real property in the community, (j) the effective date of valuation, (k) a statement of the qualifications of the appraiser including a statement by the appraiser that he or she has no personal interest, present or prospective, in the land being appraised, and (l) the signature of the appraiser and date of report.

(4) Such property shall be sold to the highest bidder, but in no case shall such property be sold at less than the appraised value. Notice of such sale and time and place where the same will be held shall be given as provided in section 72-258. When the highest bid is less than the appraised value, the sale shall be canceled and except for property leased pursuant to section 3-157 the property shall be offered for sale again within one year after the date of the previous offering.

Source: Laws 1969, c. 23, § 1, p. 199; Laws 1971, LB 165, § 1; Laws 1972, LB 1481, § 1; Laws 1978, LB 637, § 2; Laws 1979, LB 187, § 11; Laws 2017, LB 339, § 45.
Operative Date: July 1, 2017

3-156. Aeronautics Trust Fund; created; real property; proceeds of sale; how used; investment.

The Aeronautics Trust Fund is created. The necessary expenses incurred in the sale of property under section 3-155 shall be paid from the Aeronautics Cash Fund, and the proceeds from the sale of such property shall be credited to the Aeronautics Trust Fund after reimbursement of costs of sale have been made to the Aeronautics Cash Fund. The net proceeds from the disposal of such property shall be used by the division in conformance with any agreements upon which the Federal Aviation Administration conditions its consent to the sale of the aforementioned land and the quit claim deeds (1) filed in the office of the register of deeds of Dodge County on November 17, 1947, and recorded in Deeds Record 89 on page 342 and September 16, 1948, and recorded in Deeds Record 89 on page 578, (2) filed in the office of the register of deeds of Red Willow County on September 16, 1948, in Deeds Record 71 on page 17,

September 14, 1966, in Deeds Record 91 on page 281, and December 17, 1968, in Deeds Record 93 on page 549, (3) filed in the office of the register of deeds of Clay County on November 17, 1947, in Deeds Record 86 on page 561, September 16, 1948, in Deeds Record 87 on page 148, and March 14, 1968, in Deeds Record 95 on page 321, (4) filed in the office of the register of deeds of Fillmore County on September 16, 1948, in Deeds Record 39 on page 229, February 21, 1968, in Deeds Record 25 on page 90, January 26, 1948, in Deeds Record 39 on page 189, September 21, 1948, in Deeds Record 39 on page 236, and February 13, 1968, in Deeds Record 25 on page 83, and (5) filed in the office of the register of deeds of Thayer County on January 31, 1948, in Deeds Record 48 on page 493, September 16, 1948, in Deeds Record 48 on page 581, and December 29, 1967, in Deeds Record 58 on page 531, and the rules and regulations of the Federal Aviation Administration, part 155, adopted December 7, 1962. Any money in the Aeronautics Trust Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The State Treasurer shall transfer any money in the Department of Aeronautics Trust Fund on July 1, 2017, to the Aeronautics Trust Fund.

Source: Laws 1969, c. 23, § 2, p. 200; Laws 1971, LB 165, § 2; Laws 1995, LB 7, § 26; Laws 2017, LB 339, § 46.
Operative Date: July 1, 2017

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

3-157. Division; real property; lease; when; requirements.

The division may lease for a period not exceeding twelve years real property held by the division that has been offered for sale for two consecutive years and has not been sold. The lease shall provide for annual rental payments based on fair rental value. The rental payments shall be deposited in the Aeronautics Cash Fund. The division shall cause reappraisals to be made of the land under lease when it deems it necessary due to changes in buildings or improvements, changes in the land, or for other reasons. The division may, after the expiration of any lease, offer such land for sale by public auction as set forth in section 3-155 or may enter into another lease.

Source: Laws 1978, LB 637, § 3; Laws 1980, LB 896, § 1; Laws 2002, LB 446, § 3; Laws 2017, LB 339, § 47.
Operative Date: July 1, 2017

3-158. Person renting aircraft; insurance information; notice.

Any person who in the ordinary course of his or her business rents an aircraft to another person shall deliver to the renter a written notice stating the nature and extent of insurance coverage provided, if any, for the renter against loss of or damage to the hull of the aircraft or liability arising out of the ownership, maintenance, or use of the aircraft. The notice shall contain

the name of the person giving the notice and shall be in the form prescribed by rule or regulation which the division shall adopt and promulgate.

Source: Laws 1986, LB 781, § 1; Laws 2017, LB 339, § 48.
Operative Date: July 1, 2017

3-159. Authorization to purchase new aircraft; sale of aircraft.

The Executive Board of the Legislative Council pursuant to the authority granted in Laws 2013, LB 194, section 9, commissioned an independent study to enable the Legislature to determine whether the state should purchase or otherwise acquire an aircraft for state purposes and what type of aircraft should be acquired, if any. After completion and review of the study, the Legislature authorized the Department of Aeronautics to purchase a new aircraft in 2014. It is the intent of the Legislature to fund the purchase with General Funds and other funds. The Legislature also directed the department, upon taking possession of a new aircraft, to sell the state's 1982 Piper Cheyenne aircraft, with the proceeds retained for use for preventive maintenance funding for the new aircraft.

Source: Laws 2014, LB 1016, § 1; Laws 2017, LB 339, § 49.
Operative Date: July 1, 2017

3-160. Employees of Department of Aeronautics; transfer to Division of Aeronautics; how treated.

On and after July 1, 2017, positions of employment in the Department of Aeronautics related to the powers, duties, and functions transferred pursuant to Laws 2017, LB 339, are transferred to the Division of Aeronautics of the Department of Transportation. For purposes of the transition, employees of the Department of Aeronautics shall be considered employees of the Department of Transportation and shall retain their rights under the state personnel system or pertinent bargaining agreement, and their service shall be deemed continuous. This section does not grant employees any new rights or benefits not otherwise provided by law or bargaining agreement or preclude the division or the director from exercising any of the prerogatives of management set forth in section 81-1311 or as otherwise provided by law. This section is not an amendment to or substitute for the provisions of any existing bargaining agreements.

Source: Laws 2017, LB 339, § 50.
Operative Date: July 1, 2017

3-161. Reference to Department of Aeronautics in contracts or other documents; how construed; contracts and property; how treated.

On and after July 1, 2017, whenever the Department of Aeronautics is referred to or designated by any contract or other document in connection with the duties and functions

transferred to the Division of Aeronautics of the Department of Transportation pursuant to Laws 2017, LB 339, such reference or designation shall apply to such division. All contracts entered into by the Department of Aeronautics prior to July 1, 2017, in connection with the duties and functions transferred to the division are hereby recognized, with the division succeeding to all rights and obligations under such contracts. Any cash funds, custodial funds, gifts, trusts, grants, and any appropriations of funds from prior fiscal years available to satisfy obligations incurred under such contracts shall be transferred and appropriated to the division for the payments of such obligations. All documents and records transferred, or copies of the same, may be authenticated or certified by the division for all legal purposes.

Source: Laws 2017, LB 339, § 51.
Operative Date: July 1, 2017

3-162. Actions and proceedings; how treated.

No suit, action, or other proceeding, judicial or administrative, lawfully commenced prior to July 1, 2017, or which could have been commenced prior to that date, by or against the Department of Aeronautics, or the director or any employee thereof in such director's or employee's official capacity or in relation to the discharge of his or her official duties, shall abate by reason of the transfer of duties and functions from the Department of Aeronautics to the Division of Aeronautics of the Department of Transportation.

Source: Laws 2017, LB 339, § 52.
Operative Date: July 1, 2017

3-163. Provisions of law; how construed.

On and after July 1, 2017, unless otherwise specified, whenever any provision of law refers to the Department of Aeronautics in connection with duties and functions transferred to the Division of Aeronautics of the Department of Transportation, such law shall be construed as referring to such division.

Source: Laws 2017, LB 339, § 53.
Operative Date: July 1, 2017

3-164. Property of Department of Aeronautics; transfer to Division of Aeronautics; appropriation and salary limit; how treated.

On July 1, 2017, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the Department of Aeronautics pertaining to the duties and functions transferred to the Division of Aeronautics of the Department of Transportation pursuant to Laws 2017, LB 339, shall become the property of such division.

Any appropriation and salary limit provided in any legislative bill enacted by the One Hundred Fifth Legislature, First Session, to Agency No. 17, Department of Aeronautics, in the following program classifications, shall be null and void, and any such amounts are hereby appropriated to Agency No. 27, Department of Transportation: Program No. 26, Administration and Services; Program No. 301, Public Airports; and Program No. 596, State-Owned Aircraft. Any financial obligations of the Department of Aeronautics that remain unpaid as of June 30, 2017, and that are subsequently certified as valid encumbrances to the accounting division of the Department of Administrative Services pursuant to sections 81-138.01 to 81-138.04, shall be paid by the Division of Aeronautics of the Department of Transportation from the unexpended balance of appropriations existing in such program classifications on June 30, 2017.

Source: Laws 2017, LB 339, § 54.
Operative Date: July 1, 2017

ARTICLE 2
AIRPORTS AND LANDING FIELDS

Cross References

Cities and villages, see sections 18-1501 to 18-1509.
Cities of the metropolitan class, see sections 14-107 and 18-1501 to 18-1509.
Overhead lines, cables, and pipelines, construction near airports and landing fields, see sections 75-713 to 75-717.

Section

3-201. Terms, defined.

For the purpose of the Revised Airports Act, unless specifically otherwise provided in the act, the definitions of words, terms, and phrases appearing in the State Aeronautics Act are hereby adopted. The following words, terms, and phrases shall in the Revised Airports Act have the meanings given in this section, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires: (1) Municipality means any county, city, or village of this state or any city airport authority established pursuant to the Cities Airport Authorities Act and (2) airport purposes means and includes airport, restricted landing area, and other air navigation facility purposes.

Source: Laws 1945, c. 34, § 1, p. 156; Laws 1957, c. 9, § 13, p. 125; Laws 2003, LB 5, § 1; Laws 2017, LB 339, § 55.

Operative Date: July 1, 2017

Cross References

Cities Airport Authorities Act, see section 3-514.
For definitions in State Aeronautics Act, see section 3-101.
State Aeronautics Act, see section 3-154.

Municipal airport authorities are authorized to acquire property by condemnation for establishing airports. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

Municipalities were empowered to acquire, establish, construct, improve, operate, and regulate municipal airports. City of Ord v. Biemond, 175 Neb. 333, 122 N.W.2d 6 (1963).

Constitutionality of Revised Airports Act raised but not decided. Brasier v. Cribbett, 166 Neb. 145, 88 N.W.2d 235 (1958).

Under former law municipality was defined as village, city, or county. Spencer v. Village of Wallace, 153 Neb. 536, 45 N.W.2d 473 (1951).

3-201.01. Temporary airports and landing fields; approval; application; purpose of landing area.

Any proposed airport, restricted landing area, or other air navigation facility which will be in existence for less than thirty consecutive days shall first be approved by the Division of Aeronautics of the Department of Transportation before any such airport, landing area, or other facility shall be used or operated. Any municipality or person proposing the use of property for such purpose shall first make application for a temporary permit for the site selected and the general purpose or purposes for which the property will be used, to insure that the property and its use shall conform to minimum standards of safety and shall serve the public interest. Designation of the location and approval of sites for the proposed temporary airports, restricted landing areas, and other air navigation facilities as provided in section 3-104 may be delegated to the division by the Nebraska Aeronautics Commission. The provisions of this section shall not apply to restricted landing areas designated for personal use pursuant to section 3-136.

Source: Laws 1976, LB 460, § 8; Laws 2017, LB 339, § 56.
Operative Date: July 1, 2017

3-202. Municipality; powers.

Every municipality is hereby authorized, through its governing body, to (1) acquire property, real or personal, for the purpose of establishing, constructing, and enlarging airports and other air navigation facilities, (2) acquire, establish, construct, enlarge, improve, maintain, equip, operate, and regulate such airports and other air navigation facilities and structures and other property incidental to their operation, either within or without the territorial limits of such municipality and within or without this state, (3) make, prior to any such acquisition, investigations, surveys, and plans, (4) construct, install, and maintain airport facilities for the servicing of aircraft and for the comfort and accommodation of air travelers and (5) purchase and sell equipment and supplies as an incident to the operation of its airport properties. It may not, however, acquire or take over any airport or other air navigation facility owned or controlled by any other municipality of the state without the consent of such municipality. It may use for airport purposes any available property that is now or may at any time hereafter be owned or controlled by it. Such air navigation facilities as are established on airports shall be supplementary to and coordinated in design and operation with those established and operated by the federal and state governments.

Source: Laws 1945, c. 34, § 2(1), p. 156.

3-203. Municipality; property, territorial or extraterritorial; acquire; right of eminent domain; procedure; effect.

Property needed by a municipality for an airport or restricted landing area, for the enlargement of either, or for other airport purposes may be acquired by purchase, gift, devise, lease, or other means, if such municipality is able to agree with the owners of the property on the terms of such acquisition, and otherwise by condemnation. Full power to exercise the right of eminent domain for such purposes is hereby granted every municipality both within and without its territorial limits. For all property which is to be acquired by a city of the metropolitan class outside of its zoning jurisdiction, approval must be obtained from the county board of the county where the property is located before the right of eminent domain may be exercised. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. The title to real property so acquired shall be in fee simple, absolute, and unqualified in any way. The fact that the property needed has been acquired by the owner under power of eminent domain shall not prevent its acquisition by the municipality by the exercise of the right of eminent domain herein conferred. It shall not be precluded from abandoning the condemnation of any such property in any case where possession thereof has not been taken.

Source: Laws 1945, c. 34, § 2(2), p. 157; Laws 1947, c. 7, § 1, p. 69; Laws 1951, c. 101, § 27, p. 458; Laws 1981, LB 354, § 1.

Cross References

For acquisition of aviation fields by cities and villages through eminent domain, see section 18-1501.

Where but one municipality is involved and charter thereof prescribes procedure for condemnation, that procedure must be followed. Spencer v. Village of Wallace, 153 Neb. 536, 45 N.W.2d 473 (1951).

3-204. Airport hazards; municipality; easements; acquire; right of eminent domain; effect on zoning.

Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports or restricted landing areas acquired or operated under the provisions of sections 3-201 to 3-238 and 18-1502, every municipality is authorized to acquire, in the same manner as is provided for the acquisition of property for airport purposes, easements through or other interests in air spaces over land or water, interests in airport hazards outside the boundaries of the airports or restricted landing areas and such other airport protection privileges as are necessary to insure safe approaches to the landing areas of said airports or restricted landing areas and the safe and efficient operation thereof. It is also hereby authorized to acquire, in the same manner, the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of ingress and egress to or from such airport hazards, for the purpose of maintaining and repairing such lights and marks. This authority shall not be so construed as to limit any right, power or authority to zone property adjacent to airports and restricted landing areas under the provisions of any law of this state.

Source: Laws 1945, c. 34, § 2(3), p. 157.

Airport authority was authorized to acquire by eminent domain an aviation easement. Johnson v. Airport Authority, 173 Neb. 801, 115 N.W.2d 426 (1962).

3-205. Encroachment upon airport protection privileges; unlawful; removal.

It shall be unlawful for anyone to build, rebuild, create, or cause to be built, rebuilt, or created any object, or plant, cause to be planted or permit to grow higher any tree or trees or other vegetation, which shall encroach upon any airport protection privileges acquired pursuant to the provisions of sections 3-202 to 3-204. Any such encroachment is declared to be a public nuisance and may be abated in the manner prescribed by law for the abatement of public nuisances, or the municipality in charge of the airport or restricted landing area for which airport protection privileges have been acquired as in sections 3-202 to 3-204 provided may go upon the land of others and remove any such encroachment without being liable for damages in so doing.

Source: Laws 1945, c. 34, § 2(4), p. 158.

3-206. Acquisition of property; purposes.

(1) The acquisition of any lands for the purpose of establishing airports or other air navigation facilities, (2) the acquisition of airport protection privileges, (3) the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation of airports and other air navigation facilities, and (4) the exercise of any other powers herein granted to municipalities are hereby declared to be public, governmental, and municipal functions exercised for a public purpose and matters of public necessity. Such lands and other property, easements, and privileges acquired and used by such municipalities in the manner and for the purposes enumerated in the Revised Airports Act shall and are hereby declared to be public property.

Source: Laws 1945, c. 34, § 3(1), p. 158; Laws 2001, LB 173, § 3.

The statutes governing airports were not expressly or impliedly repealed by the passage of the 1998 constitutional amendment to Neb. Const. art. VIII, sec. 2, or subsection (1)(a) of section 77-202. Airports owned and operated by municipalities are exempt from taxation. City of York v. York Cty. Bd. of Equal., 266 Neb. 297, 664 N.W.2d 445 (2003).

Declaration of public purpose does not determine whether operation of airport is in a governmental or in a proprietary capacity. Brasier v. Cribbett, 166 Neb. 145, 88 N.W.2d 235 (1958).

3-207. Repealed. Laws 1969, c. 138, § 28.3-208. Acquisition of property; prior acts validated.

Any acquisition of property, within or without the limits of any municipality, for airports and other air navigation facilities, or of airport protection privileges, heretofore made by any such municipality in any manner, together with the conveyance and acceptance thereof, is hereby legalized and made valid and effective.

Source: Laws 1945, c. 34, § 4, p. 159.

3-209. Municipality; acquired property and income; exempt from taxation.

Any property acquired by a municipality pursuant to the provisions of sections 3-201 to 3-238 and 18-1502 shall be exempt from taxation to the same extent as other property used for public purposes. All income received in connection with the operation by a municipality of any airport or other air navigation facility shall also be exempt from taxation.

Source: Laws 1945, c. 34, § 5, p. 159.

3-210. Municipality; costs; paid by appropriation of funds or bonds; cost, defined.

The cost of investigating, surveying, planning, acquiring, establishing, constructing, enlarging or improving or equipping airports and other air navigation facilities, and the sites therefor, including structures and other property incidental to their operation, in accordance with the provisions of sections 3-201 to 3-238 and 18-1502 may be paid for by appropriation of money available therefor, or wholly or partly from the proceeds of bonds of the municipality, as the governing body of the municipality shall determine. The word cost includes awards in condemnation proceedings and rentals where an acquisition is by lease.

Source: Laws 1945, c. 34, § 6(1), p. 159.

3-211. Bonds; issuance; limitation.

Any bonds to be issued by any municipality pursuant to the provisions of sections 3-201 to 3-238 and 18-1502 shall be authorized and issued in the manner and within the limitation, except as herein otherwise provided, prescribed by the laws of this state or the charter of the municipality for the issuance and authorization of bonds thereof for the construction of works of internal improvements.

Source: Laws 1945, c. 34, § 6(2), p. 159.

3-212. Bonds; issuance; prior issues validated; issuance of additional bonds; legal obligations.

In all cases where a municipality has heretofore issued any bonds for the purpose of investigating, surveying, planning, acquiring, establishing, constructing, enlarging, equipping, or improving any airport, or other air navigation facility, or site therefor, or to meet the cost of structures of other property incidental to their operation, whether such airport or other air navigation facility was termed, under the law existing at the time of the issuance of such bonds,

an airport, a landing field, a landing strip, an aviation field, or a flying field, or has incurred any other indebtedness, or entered into any lease or other contract in connection with the acquisition, establishment, construction, ownership, enlargement, control, leasing, equipment, improvement, maintenance, operation, or regulation of any such airport or other air navigation facility, or site therefor, or structure or other property incidental to its operation, the proceedings heretofore taken in all such cases are hereby in all respects validated and confirmed. Any bonds already issued thereunder are validated and made legal obligations of such municipality and such municipality is hereby authorized and empowered, pursuant to such proceedings, to issue further bonds for such purposes up to the limit fixed in the original authorization thereof, without limitation of the general power herein granted to all municipalities in this state, which bonds when issued shall be legal obligations of such municipality according to their terms.

Source: Laws 1945, c. 34, § 6(3), p. 160.

3-213. Municipalities; power to raise funds; use.

The governing bodies having power to appropriate money within the municipalities in this state acquiring, establishing, constructing, enlarging, improving, maintaining, equipping or operating airports and other air navigation facilities under the provisions of sections 3-201 to 3-238 and 18-1502, are hereby authorized to appropriate and cause to be raised by taxation or otherwise in such municipalities, sufficient money to carry out the provisions of sections 3-201 to 3-238 and 18-1502.

Source: Laws 1945, c. 34, § 7(1), p. 160.

3-214. Revenue; disposition; excess.

The revenue obtained from the ownership, control and operation of any such airport or other air navigation facility shall be used, first, to finance the maintenance, improvement and operating expenses thereof and, second, to make payments of interest on and current principal requirements of any outstanding bonds or certificates issued for the acquisition or improvement thereof, and to make payment of interest on any mortgage heretofore made. Revenue in excess of the foregoing requirements may be applied to finance the extension or improvement of the airport or other air navigation facilities.

Source: Laws 1945, c. 34, § 7(2), p. 160.

3-215. Municipality; general powers; rules and regulations; adopt.

In addition to the general power conferred in the Revised Airports Act and section 18-1502 and without limitation thereof, a municipality which has established or may hereafter establish airports, restricted landing areas, or other air navigation facilities, or which has acquired or set

apart or may hereafter acquire or set apart real property for such purpose or purposes, is hereby authorized:

(1) To vest authority for the construction, enlargement, improvement, maintenance, equipment, operation, and regulation thereof in an officer, a board, or a body of such municipality by ordinance or resolution which shall prescribe the powers and duties of such officer, board, or body. The expense of such construction, enlargement, improvement, maintenance, equipment, operation, and regulation shall be a responsibility of the municipality;

(2) To adopt and amend all needful rules, regulations, and ordinances for the management, government, and use of any properties under its control, whether within or without the territorial limits of the municipality; to appoint airport guards or police, with full police powers; to fix by ordinance or resolution, as may be appropriate, penalties for the violation of the rules, regulations, and ordinances, and enforce the penalties in the same manner in which penalties prescribed by other rules, regulations, and ordinances of the municipality are enforced. For purposes of such management, government, and direction of public use, such part of all highways, roads, streets, avenues, boulevards, and territory as adjoins or lies within five hundred feet of the limits of any airport or restricted landing area acquired or maintained under the Revised Airports Act and section 18-1502 shall be under like control and management of the municipality. It may also adopt and enact rules, regulations, and ordinances designed to safeguard the public upon or beyond the limits of private airports or landing strips within such municipality or its police jurisdiction against the perils and hazards of instrumentalities used in aerial navigation. Rules, regulations, and ordinances shall be published as provided by general law or the charter of the municipality for the publication of similar rules, regulations, and ordinances. They must conform to and be consistent with the laws of this state and the rules and regulations of the Division of Aeronautics of the Department of Transportation and shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics and the regulations duly promulgated thereunder and rules and standards issued from time to time pursuant thereto;

(3) To lease for a term not exceeding ten years such airports, other air navigation facilities, or real property acquired or set apart for airport purposes to private parties, any municipal or state government, the national government, or any department of any such government for operation; to lease or assign space, area, improvements, or equipment on such airports for a term not exceeding ten years to private parties, any municipal or state government, the national government, or any department of any such government for operation or use consistent with the purposes of the Revised Airports Act and section 18-1502; to sell any part of such airports, other air navigation facilities, or real property to any municipal or state government, or to the United States or any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto, and to confer the privileges or concessions of supplying upon its airports goods, commodities, things, services, and facilities, so long as, in each case, the public is not thereby deprived of its rightful, equal, and uniform use thereof;

(4) To sell or lease any real or personal property, acquired for airport purposes and belonging to the municipality, which, in the judgment of its governing body, may not be required for aeronautic purposes, in accordance with the laws of this state, or the provisions of the charter of the municipality, governing the sale or leasing of similar municipally owned property. The proceeds of the sale of any property the purchase price of which was obtained by the sale of bonds shall be deposited in the sinking fund from which funds have been authorized to be taken to finance such bonds. In the event all the proceeds of such sale are not needed to pay the

principal of the bonds remaining unpaid, the remainder shall be paid into the general fund of the municipality. The proceeds of sales of property the purchase price of which was paid from appropriations shall be paid into the general fund of the municipality;

(5) To determine the charges or rental for the use of any properties under its control and the charges for any services or accommodations, and the terms and conditions under which such properties may be used, so long as in all cases the public shall not be deprived of its rightful, equal, and uniform use of such property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expense of operation to the municipality. To enforce the payment of charges, the municipality shall have a lien and may enforce it, substantially as is provided by law for liens and the enforcement thereof, for repairs to or the improvement, storage, or care of any personal property; and

(6) To exercise all powers necessarily incidental to the exercise of the general and special powers granted in the Revised Airports Act.

Source: Laws 1945, c. 34, § 8, p. 161; Laws 2017, LB 339, § 57.
Operative Date: July 1, 2017

The Legislature has empowered municipalities to impose use charges for the privilege of using municipal airport facilities. City of Ord v. Biemond, 175 Neb. 333, 122 N.W.2d 6 (1963).

City is given power to enact rules and regulations governing use of airport. Brasier v. Cribbett, 166 Neb. 145, 88 N.W.2d 235 (1958).

3-216. Municipality; accept gifts of money; expend.

A municipality is authorized to accept, receive, and receipt for federal money, and other money, either public or private, for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports and other air navigation facilities, and sites therefor, and to comply with the provisions of the laws of the United States and any rules and regulations made thereunder for the expenditure of federal money upon such airports and other air navigation facilities.

Source: Laws 1945, c. 34, § 9(1), p. 163.

3-217. Repealed. Laws 1947, c. 8, § 2.

3-218. Contracts; laws governing.

All contracts for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports or other air navigation facilities, made by the municipality itself or through the agency of the Division of Aeronautics of the Department of Transportation, shall be made pursuant to the laws of this state governing the making of like contracts, except that where such acquisition, construction, improvement, enlargement, maintenance, equipment, or operation is financed wholly or partly with federal money, the municipality or the division as

its agent may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder.

Source: Laws 1945, c. 34, § 9(3), p. 164; Laws 2017, LB 339, § 58.
Operative Date: July 1, 2017

3-219. Municipality; public waters; powers.

The power herein granted to a municipality to establish and maintain airports shall include the power to establish and maintain such airports in, over and upon any public waters of this state within the limits or jurisdiction of or bordering on the municipality, any submerged land under such public waters, and any artificial or reclaimed land which before the artificial making or reclamation thereof constituted a portion of the submerged land under such public waters, and as well the power to construct and maintain terminal buildings, landing floats, causeways, roadways and bridges for approaches to or connecting with the airport, and landing floats and breakwaters for the protection of any such airport.

Source: Laws 1945, c. 34, § 10(1), p. 164.

3-220. Municipalities; public waters; additional powers.

All the other powers herein granted municipalities with reference to airports on land are granted to them with reference to such airports in, over and upon public waters, submerged land under public waters, and artificial or reclaimed land.

Source: Laws 1945, c. 34, § 10(2), p. 165.

3-221. Joint exercise of powers, authorized; when.

All powers, rights and authority granted to any municipality in sections 3-201 to 3-238 and 18-1502 may be exercised and enjoyed by two or more municipalities, or by this state and one or more municipalities therein, acting jointly, either within or without the territorial limits of either or any of said municipalities and within or without this state, or by this state or any municipality therein, acting jointly with any other state or municipality therein, either within or without this state, if the laws of such other state permit such joint action.

Source: Laws 1945, c. 34, § 11(1), p. 165.

Power to condemn may be exercised jointly by village and county. Spencer v. Village of Wallace, 153 Neb. 536, 45 N.W.2d 473 (1951).

3-222. Municipality; terms, defined.

For purposes of sections 3-221 to 3-232 only, unless another intention clearly appears or the context otherwise requires, this state shall be included in the term municipality, and all the powers conferred upon municipalities in the Revised Airports Act and section 18-1502, if not otherwise conferred by law, are hereby conferred upon this state when acting jointly with any municipality or municipalities. Where reference is made to the governing body of a municipality, that term shall mean, as to the state, the Division of Aeronautics of the Department of Transportation.

Source: Laws 1945, c. 34, § 11(2), p. 165; Laws 2017, LB 339, § 59.
Operative Date: July 1, 2017

State of Nebraska and municipality may act jointly in acquiring airport. Spencer v. Village of Wallace, 153 Neb. 536, 45 N.W.2d 473 (1951).

3-223. Municipality; joint agreements and action; authorized.

Any two or more municipalities may enter into agreements with each other, duly authorized by ordinance or resolution, as may be appropriate, for joint action pursuant to the provisions of sections 3-221 to 3-232. Concurrent action by the governing bodies of the municipalities involved shall constitute joint action.

Source: Laws 1945, c. 34, § 11(3), p. 165.

Two or more municipalities may agree with each other for joint action in establishing airport. Spencer v. Village of Wallace, 153 Neb. 536, 45 N.W.2d 473 (1951).

3-224. Joint agreements; contents.

Each such agreement shall (1) specify its terms, (2) the proportionate interest which each municipality shall have in the property, facilities and privileges involved, (3) the proportion of the preliminary costs, costs of acquisition, establishment, construction, enlargement, improvement and equipment, and of the expenses of maintenance, operation and regulation to be borne by each, (4) make such other provisions as may be necessary to carry out the provisions of sections 3-221 to 3-232, (5) provide for amendments thereof, (6) the conditions and methods of termination and (7) the disposition of all or any part of the property, facilities and privileges jointly owned if said property, facilities and privileges, or any part thereof, shall cease to be used for the purposes herein provided or if the agreement shall be terminated, and for the distribution of the proceeds received upon any such disposition, and of any funds or other property jointly owned and undisposed of, and the assumption or payment of any indebtedness arising from the joint venture which remains unpaid, upon any such disposition or upon a termination of the agreement.

Source: Laws 1945, c. 34, § 11(4), p. 165.

Two or more municipalities may agree for joint ownership and operation of an airport. Spencer v. Village of Wallace, 153 Neb. 536, 45 N.W.2d 473 (1951).

3-225. Joint agreements; board, created; members; terms; compensation.

Municipalities acting jointly as herein authorized shall create a board from the inhabitants of such municipalities for the purpose of acquiring property for, establishing, constructing, enlarging, improving, maintaining, equipping, operating and regulating the airports and other air navigation facilities and airport protection privileges to be jointly acquired, controlled, and operated. Such board shall consist of members to be appointed by the governing body of each municipality involved, the number to be appointed by each to be provided for by the agreement for the joint venture. Each member shall serve for such time and upon such terms as to compensation, if any, as may be provided for in the agreement.

Source: Laws 1945, c. 34, § 11(5), p. 166.

3-226. Board; officers; adopt rules of procedure.

Each such board shall organize, select officers for terms to be fixed by the agreement, and adopt and from time to time amend rules of procedure.

Source: Laws 1945, c. 34, § 11(6), p. 166.

3-227. Board; powers.

Such board may exercise, on behalf of the municipalities acting jointly by which it is appointed, all the powers of each of such municipalities granted by the Revised Airports Act, except as otherwise provided in the act. Real property, airports, restricted landing areas, air protection privileges, or personal property costing in excess of a sum to be fixed by the joint agreement, may be acquired, and condemnation proceedings may be instituted, only by authority of the governing bodies of each of the municipalities involved. The total amount of expenditures to be made by the board for any purpose in any calendar year shall be determined by the municipalities involved by the approval by each on or before the preceding May 1, of a budget for the ensuing fiscal year. Rules and regulations provided for by subdivision (2) of section 3-215 shall become effective only upon approval of each of the appointing governing bodies and the Division of Aeronautics of the Department of Transportation. No real property and no airport, other air navigation facility, or air protection privilege, owned jointly, shall be disposed of by the board, by sale, lease, or otherwise, except by authority of all the appointing governing bodies, but the board may lease space, area, or improvements and grant concessions on airports for aeronautical purposes or purposes incidental thereto, subject to subdivision (3) of section 3-215. This section shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12.

Source: Laws 1945, c. 34, § 11(7), p. 166; Laws 2001, LB 173, § 4; Laws 2017, LB 339, § 60.
Operative Date: July 1, 2017

3-228. Joint agreements; ordinances enacted concurrent with each other; effect; publication.

Each municipality, acting jointly with another, pursuant to the Revised Airports Act, is authorized and empowered to enact, concurrently with the other municipalities involved, such ordinances as are provided for by subdivision (2) of section 3-215, and to fix by such ordinances penalties for the violation thereof. Such ordinances, when so concurrently adopted, shall have the same force and effect within the municipalities and on any property jointly controlled by them or adjacent thereto, whether within or without the territorial limits of either or any of them, as ordinances of each municipality involved, and may be enforced in any one of the municipalities in like manner as are its individual ordinances. The consent of the Division of Aeronautics of the Department of Transportation to any such ordinance, where the state is a party to the joint venture, shall be equivalent to the enactment of the ordinance by a municipality. The publication provided for in subdivision (2) of section 3-215 shall be made in each municipality involved in the manner provided by law or charter for publication of its individual ordinances.

Source: Laws 1945, c. 34, § 11(8), p. 167; Laws 2017, LB 339, § 61.
Operative Date: July 1, 2017

3-229. Joint agreements; condemnation proceedings; property acquired held as tenants in common.

Condemnation proceedings shall be instituted, in the names of the municipalities jointly, and the property acquired shall be held by the municipalities as tenants in common. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1945, c. 34, § 11(9), p. 168; Laws 1951, c. 101, § 28, p. 459.

Condemnation may be instituted by municipalities jointly. Spencer v. Village of Wallace, 153 Neb. 536, 45 N.W.2d 473 (1951).

3-230. Joint agreements; funds; revenue, use.

For the purpose of providing funds for necessary expenditures in carrying out the provisions of sections 3-221 to 3-232, a joint fund shall be created and maintained, into which each of the municipalities involved shall deposit its proportionate share as provided by the joint agreement. Such funds are to be provided by bond issues, tax levies and appropriations made by each municipality in the same manner as though it were acting separately under the authority of sections 3-201 to 3-238 and 18-1502. The revenue obtained from the ownership, control and operation of the airports and other air navigation facilities jointly controlled shall be paid into

such fund, to be expended as provided in section 3-214. Revenue in excess of the cost of maintenance and operating expenses of the joint properties shall be divided as may be provided in the original agreement for the joint venture.

Source: Laws 1945, c. 34, § 11(10), p. 168.

3-231. Joint agreements; funds; disbursed by order of board.

All disbursements from such fund shall be made by order of the board in accordance with such rules and regulations and for such purposes as the appointing governing bodies, acting jointly, shall prescribe.

Source: Laws 1945, c. 34, § 11(11), p. 168.

3-232. Joint agreements; specific performance authorized.

Specific performance of the provisions of any joint agreement entered into as provided for in sections 3-221 to 3-231 may be enforced as against any party thereto by the other party or parties thereto.

Source: Laws 1945, c. 34, § 11(12), p. 168.

3-233. Municipality; assist another municipality; gift; lease; appropriation of money by taxation or bonds.

Whenever the governing body of any municipality determines that the public interest and the interests of the municipality will be served by assisting any other municipality in exercising the powers and authority granted by sections 3-201 to 3-238 and 18-1502, such first-mentioned municipality is expressly authorized and empowered to furnish such assistance by gift, or lease with or without rental, of real property, by the donation, lease with or without rental, or loan, of personal property, and by the appropriation of money, which may be provided for by taxation or the issuance of bonds in the same manner as funds might be provided for the same purposes if the municipality were exercising the powers heretofore granted in its own behalf.

Source: Laws 1945, c. 34, § 12, p. 168.

3-234. Purpose of sections.

The purposes of sections 3-201 to 3-238 and 18-1502 are specifically declared to be county purposes as well as generally public, governmental and municipal.

Source: Laws 1945, c. 34, § 13(1), p. 169.

3-235. Powers granted counties.

The powers herein granted to all municipalities are specifically declared to be granted to counties in this state, any other statute to the contrary notwithstanding.

Source: Laws 1945, c. 34, § 13(2), p. 169.

3-236. Airport and air navigational facility; laws governing; jurisdiction.

Every airport and other air navigation facility controlled and operated by any municipality, or jointly controlled and operated pursuant to the provisions of sections 3-201 to 3-238 and 18-1502, shall, subject to federal and state laws, rules, and regulations, be under the exclusive jurisdiction and control of the municipality or municipalities controlling and operating it and no other municipality in which such airport or air navigation facility shall have any police jurisdiction of the same or any authority to charge or exact any license fees or occupation taxes for the operations thereon. Such municipality or municipalities shall have concurrent jurisdiction over the adjacent territory described in subdivision (2) of section 3-215.

Source: Laws 1945, c. 34, § 14, p. 169.

3-237. Sections, how construed.

Sections 3-201 to 3-238 and 18-1502 shall be so interpreted and construed as to make uniform so far as possible the laws and regulations of this state and other states and of the government of the United States having to do with the subject of aeronautics.

Source: Laws 1945, c. 34, § 16, p. 169.

Uniformity of construction of act is sought. Brasier v. Cribbett, 166 Neb. 145, 88 N.W.2d 235 (1958).

3-238. Act, how cited.

Sections 3-201 to 3-238 and 18-1502 may be cited as the Revised Airports Act.

Source: Laws 1945, c. 34, § 18, p. 170.

Scope and manner of citation of act is set out. Brasier v. Cribbett, 166 Neb. 145, 88 N.W.2d 235 (1958).

3-239. Airport authorities or municipalities; project applications under federal act; approval by division; required; division, act as agent; direct receipt of federal funds; when.

(1) No city airport authority, county airport authority, joint airport authority, or municipality in this state, whether acting alone or jointly with another city airport authority, county airport authority, joint airport authority, or municipality, or with the state, shall submit to any federal agency or department any project application under the provisions of any act of Congress which provides airport planning or airport construction and development funds for the expansion and improvement of the airport system, unless the project and the project application have been first approved by the Division of Aeronautics of the Department of Transportation.

(2) Except as provided in subsection (3) of this section, no city airport authority, county airport authority, joint airport authority, or municipality shall directly accept, receive, receipt for, or disburse any funds granted by the United States under any act of Congress pursuant to subsection (1) of this section, but it shall designate the division as its agent and in its behalf to accept, receive, receipt for, and disburse such funds. Such authorities and municipalities shall enter into an agreement with the division prescribing the terms and conditions of such agency in accordance with federal laws, rules, and regulations, and applicable laws of this state. Such money as is paid by the United States shall be retained by the state or paid over to the city airport authority, county airport authority, joint airport authority, or municipality under such terms and conditions as may be imposed by the United States in making such grant.

(3) Any city airport authority, county airport authority, joint airport authority, or municipality operating a primary airport may directly accept, receive, receipt for, and disburse any funds granted by the United States for the primary airport under the provisions of any act of Congress pursuant to subsection (1) of this section by informing the division, in writing, of its intent to do so. If an airport loses its status as a primary airport before signing a grant agreement with the United States, the airport shall be subject to subsection (2) of this section.

(4) For purposes of this section:

(a) City airport authority means an authority established pursuant to the Cities Airport Authorities Act;

(b) County airport authority means an authority established under sections 3-601 to 3-622;

(c) Joint airport authority means an authority established under the Joint Airport Authorities Act;

(d) Municipality means any county, city, or village of this state and any other political subdivision, public corporation, authority, or district in this state which is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities; and

(e) Primary airport means any airport which:

(i) Receives scheduled passenger air service;

(ii) Has at least ten thousand revenue passenger enplanements or boardings, as officially recorded by the United States, in at least one of the most recent five calendar years for which official numbers are available; and

(iii) Does not receive any funds apportioned by the United States for nonprimary airports.

Source: Laws 1947, c. 8, § 1, p. 70; Laws 1957, c. 9, § 15, p. 126; Laws 1980, LB 925, § 1; Laws 2002, LB 446, § 4; Laws 2017, LB 339, § 62.

Operative Date: July 1, 2017

Cross References

Cities Airport Authorities Act, see section 3-514.
Joint Airport Authorities Act, see section 3-716.

3-240. Extraterritorial airport; terms, defined.

As used in sections 3-240 to 3-244, unless the context otherwise requires:

(1) Airport means any area of land or water which is used or intended for use, for the landing and taking off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

(2) Air navigation facility means any facility, other than one owned and operated by the United States, used in, available for use in, or designed for use in, aid of air navigation, including any structures, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities, or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

(3) Governmental agency means any municipality, city, village, county, public corporation, or other public agency.

Source: Laws 1949, c. 1, § 1, p. 55.

3-241. Extraterritorial airport; state or governmental agency; powers.

This state or any governmental agency of this state having any powers with respect to planning, establishing, acquiring, developing, constructing, enlarging, improving, maintaining, equipping, operating, regulating, or protecting airports or air navigation facilities within this state, may exercise those powers within any state or jurisdiction adjoining this state, subject to the laws of that state or jurisdiction.

Source: Laws 1949, c. 1, § 2, p. 55.

3-242. Extraterritorial airport; adjoining state; powers; right of eminent domain; reciprocity.

Any state adjoining this state or any governmental agency thereof may plan, establish, acquire, develop, construct, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities within this state, subject to the laws of this state applicable to airports and air navigation facilities. The adjoining state or governmental agency shall have the power of eminent domain in this state, if the adjoining state authorizes the exercise of that power therein by this state or any governmental agency thereof having any of the powers mentioned in section 3-241. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1949, c. 1, § 3, p. 56; Laws 1951, c. 101, § 29, p. 459.

3-243. Extraterritorial airport; joint exercise of powers.

The powers granted by sections 3-241 and 3-242 may be exercised jointly by two or more states or governmental agencies, including this state and its governmental agencies, in such combination as may be agreed upon by them.

Source: Laws 1949, c. 1, § 4, p. 56.

3-244. Act, how cited.

Sections 3-240 to 3-244 may be cited as the Extraterritorial Airports Act.

Source: Laws 1949, c. 1, § 5, p. 56.

ARTICLE 3

AIRPORT ZONING

Section

3-301. Terms, defined.

For purposes of the Airport Zoning Act, unless the context otherwise requires:

(1)(a) Airport means an area of land or water that is used or intended to be used for the landing and takeoff of aircraft and includes any related buildings and facilities;

(b) Airport includes only public-use airports with state or federally approved airport layout plans and military airports with military service-approved military layout plans;

(2) Airport hazard means any structure or tree or use of land that penetrates any approach, operation, transition, or turning zone;

(3) Airport hazard area means any area of land or water upon which an airport hazard might be established if not prevented as provided in the act, but such area shall not extend in any direction a distance in excess of the limits provided for approach, operation, transition, and turning zones;

(4) Airport layout plan means a scaled drawing of existing and proposed land, buildings, and facilities necessary for the operation and development of an airport prepared in accordance with state rules and regulations and federal regulations and guidelines;

(5) Approach zone means a zone that extends from the end of each operation zone and is centered along the extended runway centerlines. Approach zone dimensions are as follows:

(a) For an existing or proposed instrument runway:

(i) An approach zone extends ten miles from the operation zone, measured along the extended runway centerline. The approach zone is one thousand feet wide at the end of the zone nearest the runway and expands uniformly to sixteen thousand eight hundred forty feet wide at the farthest end of the zone; and

(ii) The height limit of an approach zone begins at the elevation of the runway end for which it is the approach and rises one foot vertically for every fifty feet horizontally, except that the height limit shall not exceed one hundred fifty feet above the nearest existing or proposed runway end elevation within three miles of the end of the operation zone at that runway end. At three miles from such operation zone, the height limit resumes sloping one foot vertically for every fifty feet horizontally and continues to the ten-mile limit; and

(b) For an existing or proposed visual runway:

(i) An approach zone extends from the operation zone to the limits of the turning zone, measured along the extended runway centerline. The approach zone is five hundred feet wide at the end of the zone nearest the runway and expands uniformly so that at a point on the extended runway centerline three miles from the operation zone, the approach zone is three thousand seven hundred feet wide; and

(ii) The height limit of an approach zone begins at the elevation of the runway end for which it is the approach and rises one foot vertically for every forty feet horizontally, except that the height limit shall not exceed one hundred fifty feet above the nearest existing or proposed runway end elevation within three miles of the end of the operation zone at that runway end;

(6) Electric facility means an overhead electrical line, including poles or other supporting structures, owned or operated by an electric supplier as defined in section 70-1001.01, for the transmission or distribution of electrical power to the electric supplier's customers;

(7) Existing runway means an instrument runway or a visual runway that is paved or made of turf that has been constructed or is under construction;

(8) Instrument runway means an existing runway with precision or nonprecision instrument approaches as developed and published by the Federal Aviation Administration or an existing or proposed runway with future precision or nonprecision instrument approaches reflected on the airport layout plan. After September 6, 2013, an airport shall not designate an existing or proposed runway as an instrument runway if the runway was not previously designated as such without the approval of the airport's governing body after a public hearing on such designation;

(9) Operation zone means a zone that is longitudinally centered on each existing or proposed runway. Operation zone dimensions are as follows:

(a) For existing and proposed paved runways, the operation zone extends two hundred feet beyond the ends of each runway. For existing and proposed turf runways, the operation zone begins and ends at the same points as the runway begins and ends;

(b) For existing and proposed instrument runways, the operation zone is one thousand feet wide, with five hundred feet on either side of the runway centerline. For all other existing and proposed runways, the operation zone is five hundred feet wide, with two hundred fifty feet on either side of the runway centerline; and

(c) The height limit of the operation zone is the same as the height of the runway centerline elevation on an existing or proposed runway or the surface of the ground, whichever is higher;

(10) Person means any individual, firm, partnership, limited liability company, corporation, company, association, joint-stock association, or body politic and includes any trustee, receiver, assignee, or other similar representative thereof;

(11) Political subdivision means any municipality, city, village, or county;

(12) Proposed runway means an instrument runway or a visual runway that has not been constructed and is not under construction but that is depicted on the airport layout plan that has been conditionally or unconditionally approved by, or has been submitted for approval to, the Federal Aviation Administration;

(13) Runway means a defined area at an airport that is prepared for the landing and takeoff of aircraft along its length;

(14) Structure means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission or distribution lines;

(15) Transition zone means a zone that extends outward at a right angle to the runway centerline and upward at a rate of one foot vertically for every seven feet horizontally. The height limit of a transition zone begins at the height limit of the adjacent approach zone or operation zone and ends at a height of one hundred fifty feet above the highest elevation on the existing or proposed runway;

(16) Tree means any object of natural growth;

(17) Turning zone's outer limit means the area located at a distance of three miles as a radius from the corners of the operation zone of each runway and connecting adjacent arcs with tangent

lines, excluding any area within the approach zone, operation zone, or transition zone. The height limit of the turning zone is one hundred fifty feet above the highest elevation on the existing or proposed runway; and

(18) Visual runway means a runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on an airport layout plan approved by the Federal Aviation Administration, a military service-approved military layout plan, or any planning documents submitted to the Federal Aviation Administration by a competent authority.

Source: Laws 1945, c. 233, § 1, p. 682; Laws 1993, LB 121, § 84; Laws 2013, LB 140, § 1.

3-302. Airport hazard; public nuisance; prevention.

(1) It is hereby found that an airport hazard endangers the lives and property of the users of an airport and occupants of land in its vicinity and also, if of the obstruction type, in effect reduces the size of the area available for the landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein.

(2) Accordingly, it is hereby declared that (a) the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question, (b) it is necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented, and (c) the prevention of airport hazards should be accomplished, to the extent legally possible, by the exercise of the police power, without compensation.

(3) It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or property interests therein.

Source: Laws 1945, c. 233, § 2, p. 683; Laws 2013, LB 140, § 2.

3-303. Airport hazard; zoning regulations; modifications and exceptions.

In order to prevent the creation or establishment of airport hazards, every political subdivision that has an airport hazard area within the area of its zoning jurisdiction shall adopt, administer, and enforce, under the police power and in the manner and upon the conditions prescribed in the Airport Zoning Act, airport zoning regulations for such airport hazard area. The regulations shall meet the minimum regulations as prescribed by the Division of Aeronautics of the Department of Transportation and may divide such area into zones and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures may be erected and trees allowed to grow, except that a political subdivision or a joint airport zoning board provided for in section 3-304 may include modifications or exceptions to the airport zoning regulations adopted under the Airport Zoning Act that the political subdivision or joint airport zoning board deems appropriate. Such modifications and exceptions shall not be

considered a conflict for purposes of section 3-306. The authority of a political subdivision to adopt airport zoning regulations shall not be conditional upon prior adoption of a comprehensive development plan or a comprehensive zoning ordinance.

Source: Laws 1945, c. 233, § 3(1), p. 683; Laws 1961, c. 9, § 1, p. 96; Laws 2010, LB 512, § 1; Laws 2013, LB 140, § 3; Laws 2017, LB 339, § 63.
Operative Date: July 1, 2017

3-304. Joint airport zoning board; airport zoning regulation; filing.

If an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located outside of the political subdivision's zoning jurisdiction, the political subdivision owning or controlling the airport and the political subdivision or political subdivisions within whose zoning jurisdiction the airport hazard area or areas are located may, by ordinance or resolution duly adopted, create a joint airport zoning board, which board shall have the same power to adopt, by resolution approved by a majority of the board, airport zoning regulations applicable to an airport hazard area as that vested by section 3-303 in any political subdivision within whose zoning jurisdiction such area is located. Any airport zoning regulation, or any amendment thereto, adopted by a joint airport zoning board shall be filed with the official or administrative agency responsible for the enforcement of zoning regulations in each of the political subdivisions participating in the creation of the joint airport zoning board and shall be enforced as provided in section 3-319.

Source: Laws 1945, c. 233, § 3(2), p. 683; Laws 1961, c. 9, § 2, p. 96; Laws 1984, LB 837, § 1; Laws 2010, LB 512, § 2; Laws 2013, LB 140, § 4.

3-304.01. Joint airport zoning board; members; term.

If a joint airport zoning board is created pursuant to section 3-304, such board shall have two representatives appointed by each political subdivision participating in its creation as members thereof and also a chairperson elected by a majority of the members so appointed. The term of each member shall be four years.

Source: Laws 2013, LB 140, § 5.

3-305. Zoning regulations; comprehensive zoning ordinance.

In the event that a political subdivision has adopted or hereafter adopts a comprehensive zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations applicable to the same area or portion thereof may be incorporated in and made a part of such comprehensive zoning regulations and be administered and enforced in connection therewith.

Source: Laws 1945, c. 233, § 4(1), p. 684.

3-306. Zoning regulations; conflict; stringent limitation or requirement prevails.

In the event of any conflict between any airport zoning regulations adopted under the Airport Zoning Act and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether such other regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

Source: Laws 1945, c. 233, § 4(2), p. 684; Laws 2013, LB 140, § 6.

3-307. Zoning regulations; adoption; notice; hearing.

No airport zoning regulations shall be adopted, amended, or changed under the Airport Zoning Act except by the action of the legislative body of the political subdivision in question, or the joint airport zoning board provided for in section 3-304, after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least ten days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which the airport hazard area is located.

Source: Laws 1945, c. 233, § 5(1), p. 684; Laws 2013, LB 140, § 7.

3-308. Zoning regulations; procedure for adoption; commission; appointment; preliminary report; public hearings; final report.

Prior to the initial zoning of any airport hazard area under the Airport Zoning Act, the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report. The legislative body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of such commission. If a city or county planning commission or a joint or interjurisdictional planning commission already exists, it may be appointed as the airport zoning commission.

Source: Laws 1945, c. 233, § 5(2), p. 685; Laws 2013, LB 140, § 8.

3-309. Zoning regulations; requirements; reasonable.

All airport zoning regulations adopted under the Airport Zoning Act shall be reasonable and not impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of the act. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable. If an airport layout plan has been submitted for approval to the Federal Aviation Administration with a proposed instrument runway depicted thereon and such airport layout plan is conditionally or unconditionally approved without such proposed instrument runway, the political subdivision shall adopt or revise, as necessary, airport zoning regulations to protect any approach zone for a visual runway only.

Source: Laws 1945, c. 233, § 6(1), p. 685; Laws 2013, LB 140, § 9.

3-310. Zoning regulations; nonconforming use; exception.

(1) No airport zoning regulations adopted under the Airport Zoning Act shall require the removal, lowering, or other change or alteration of any existing structure or tree not conforming to the regulations when adopted or amended or otherwise interfere with the continuance of any nonconforming use, except as provided in section 3-311.

(2) Any structure that has not yet been constructed but that has received, prior to August 1, 2013, zoning approval from the political subdivision exercising zoning jurisdiction over such structure may be constructed and shall thereafter be considered an existing structure for purposes of this section.

Source: Laws 1945, c. 233, § 6(2), p. 685; Laws 2013, LB 140, § 10.

3-311. Zoning regulations; new or changed structure; nonconforming use; permit.

(1) Airport zoning regulations adopted under the Airport Zoning Act may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed, altered, or repaired.

(2) Except as provided in subsection (3) of this section for certain electric facilities, all airport zoning regulations adopted under the act shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit authorizing any replacement, alteration, repair, reconstruction, growth, or replanting must be secured from the administrative agency authorized to administer and enforce the regulations. A permit shall be granted under this subsection if the applicant shows that the replacement, alteration, repair, reconstruction, growth, or replanting of the nonconforming structure, tree, or nonconforming use would not result in an increase in height or a greater hazard to air navigation than the condition that existed when the applicable regulation was adopted. For nonconforming structures other than electric facilities, no permit under this

subsection shall be required for repairs necessitated by fire, explosion, act of God, or the common enemy or for repairs which do not involve expenditures exceeding more than sixty percent of the fair market value of the nonconforming structure, so long as the height of the nonconforming structure is not increased over its preexisting height.

(3) An electric supplier owning or operating an electric facility made nonconforming by the adoption of airport zoning regulations under the Airport Zoning Act may, without a permit or other approval by the political subdivision adopting such regulations, repair, reconstruct, or replace such electric facility if the height of such electric facility is not increased over its preexisting height. Any construction, repair, reconstruction, or replacement of an electric facility, the height of which will exceed the preexisting height of such electric facility, shall require a permit from the political subdivision adopting such regulations. The permit shall be granted only upon a showing that the excess height of the electric facility will not establish or create an airport hazard or become a greater hazard to air navigation than the electric facility that previously existed.

Source: Laws 1945, c. 233, § 7(1), p. 685; Laws 2013, LB 140, § 11.

3-312. Zoning regulations; property inconsistent with regulations; variance; allowance; exception.

Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or otherwise use his or her property in a manner inconsistent with the airport zoning regulations adopted under the Airport Zoning Act may apply to the board of adjustment for a variance from the zoning regulations in question. Such variances shall be allowed only if the board of adjustment makes the same findings for the granting of variances generally as set forth in subsection (2) of section 19-910, except that if the applicant demonstrates that the proposed structure or alteration of a structure does not require any modification or revision to any approach or approach procedure as approved or written by the Federal Aviation Administration on either an existing or proposed runway and the applicant provides signed documentation from the Federal Aviation Administration that the proposed structure or alteration of the structure will not require any modification or revision of any airport minimums, such documentation may constitute evidence of undue hardship and the board of adjustment may grant the requested variance without such findings. Any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of the act.

Source: Laws 1945, c. 233, § 7(2), p. 686; Laws 2013, LB 140, § 12.

3-313. Zoning regulations; permit or variance; hazard marking and lighting.

In granting any permit under or variance from any airport zoning regulation adopted under the Airport Zoning Act, the administrative agency or board of adjustment may, if it deems it advisable to effectuate the purposes of the act and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the

political subdivision, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

Source: Laws 1945, c. 233, § 7(3), p. 686; Laws 2013, LB 140, § 13.

3-314. Transferred to section 3-319.01

3-315. Repealed. Laws 2013, LB 140, § 23.

3-316. Repealed. Laws 2013, LB 140, § 23.

3-317. Repealed. Laws 2013, LB 140, § 23.

3-318. Repealed. Laws 2013, LB 140, § 23.

3-319. Zoning regulations; provide for administration and enforcement.

All airport zoning regulations adopted under the Airport Zoning Act shall provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations. In the case of airport zoning regulations adopted by a joint airport zoning board, each of the political subdivisions which participated in the creation of the joint airport zoning board shall create or designate an official or an administrative agency to administer and enforce the airport zoning regulations within its respective zoning jurisdiction. The duties of any official or administrative agency designated pursuant to the act shall include that of reviewing and acting upon all applications for permits under the airport zoning regulations, but such agency shall not have or exercise any of the powers herein delegated to the board of adjustment. In no event shall such official or administrative agency be or include any member of the board of adjustment.

Source: Laws 1945, c. 233, § 9, p. 687; Laws 2013, LB 140, § 14.

3-319.01. Zoning regulations; appeal; hearing; procedure; board; duties.

(1) Any person aggrieved or taxpayer affected by any decision of an administrative agency made in its administration of airport zoning regulations adopted under the Airport Zoning Act, or any governing body of a political subdivision which is of the opinion that a decision of such an administrative agency is an improper application of airport zoning regulations of concern to such

governing body, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

(2) Any appeal taken under this section shall be taken within a reasonable amount of time, as provided by the rules of the board, by filing with the agency from which the appeal is taken and with the board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(3) An appeal shall stay any proceeding in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such cases the proceedings shall not be stayed except by an order of the board after notice to the agency from which the appeal is taken and upon due cause shown.

(4) The board shall fix a reasonable time for the hearing of appeals, give public notice thereof, give due notice to the parties in interest, and decide the appeal within sixty days after the date of filing such appeal. Any party may appear in person or by an agent or attorney at the hearing.

Source: Laws 1945, c. 233, § 8(1), p. 686; R.S.1943, (2012), § 3-314; Laws 2013, LB 140, § 15.

3-320. Zoning regulations; board of adjustment; members; terms; powers.

(1) All airport zoning regulations adopted under the Airport Zoning Act shall provide for a board of adjustment to have and exercise the following powers:

(a) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of the airport zoning regulations;

(b) To hear and decide any special exceptions to the terms of the airport zoning regulations upon which such board may be required to pass under such regulations; and

(c) To hear and decide petitions for variances from the strict application of airport zoning regulations.

(2) A board of adjustment shall consist of five regular members, each to be appointed for a term of three years by the political subdivision or joint airport zoning board adopting the regulations. Any member thereof may be removed by the appointing authority for cause, upon written charges and after a public hearing. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of the administrative agency or to decide in favor of the applicant on any matter upon which the board is required to pass under the airport zoning regulations or to effect any variation in such regulations.

(3) The board of adjustment may, consistent with the Airport Zoning Act, reverse or affirm wholly or partly or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as it deems right and proper under the circumstances.

(4) A board of adjustment, board of zoning appeals, or similar zoning appeals board that exists on September 6, 2013, may be designated as and shall exercise the power of the board of adjustment for airport zoning regulations as required by this section.

Source: Laws 1945, c. 233, § 10(1), p. 688; Laws 2013, LB 140, § 16.

3-321. Repealed. Laws 2013, LB 140, § 23.

3-322. Repealed. Laws 2013, LB 140, § 23.

3-323. Board of adjustment; adopt rules; meetings; oaths; public hearings; record of proceedings.

The board shall adopt rules in accordance with the provisions of the ordinance or resolution by which it was created. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All hearings of the board shall be public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact. It shall also keep records of its examinations and other official actions. Such minutes and records shall immediately be filed in the office of the board and be a public record.

Source: Laws 1945, c. 233, § 10(4), p. 688.

3-324. Board of adjustment; judicial review; petition; grounds.

Any (1) person aggrieved or taxpayer affected by any decision of a board of adjustment, (2) governing body of a political subdivision, or (3) joint airport zoning board, which is of the opinion that a decision of a board of adjustment is arbitrary or capricious, illegal, or unsupported by evidence, may obtain judicial review of such decision by filing a petition in error in the district court of the county in which the structure or tree that is the subject of the decision is located. The filing of and proceeding on the petition in error shall be in accordance with sections 25-1901 to 25-1937.

Source: Laws 1945, c. 233, § 11(1), p. 689; Laws 2013, LB 140, § 17.

3-325. Repealed. Laws 2013, LB 140, § 23.

3-326. Repealed. Laws 2013, LB 140, § 23.

3-327. Repealed. Laws 2013, LB 140, § 23.

3-328. Judicial review; costs.

Costs shall not be allowed against the board of adjustment unless it appears to the court that it acted with gross negligence, in bad faith or with malice in making the decision appealed from.

Source: Laws 1945, c. 233, § 11(5), p. 690.

3-329. Judicial review; effect of decision on other structures.

In any case in which airport zoning regulations adopted under the Airport Zoning Act, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent or to be so onerous in their application to such a structure or parcel of land as to constitute a taking or deprivation of that property in violation of the Constitution of Nebraska or the Constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land.

Source: Laws 1945, c. 233, § 11(6), p. 690; Laws 2013, LB 140, § 18.

3-330. Violation; penalty; injunctions.

Each violation of the Airport Zoning Act or of any regulations, orders, or rulings promulgated or made pursuant to the act shall constitute a Class IV misdemeanor. Each day a violation continues to exist shall constitute a separate offense. In addition, the political subdivision or agency adopting zoning regulations under the act may institute, in any court of competent jurisdiction, an action to prevent, restrain, correct, or abate any violation of (1) the act, (2) airport zoning regulations adopted under the act, or (3) any order or ruling made in connection with the administration or enforcement of the act or such regulations. The court in such proceedings shall adjudge to the plaintiff such relief by way of injunction, which may be mandatory or otherwise, as may be proper under all the facts and circumstances of the case in order to fully effectuate the purposes of the act and of the regulations adopted and orders and rulings made pursuant thereto.

Source: Laws 1945, c. 233, § 12, p. 690; Laws 1977, LB 40, § 30; Laws 2013, LB 140, § 19.

3-331. Acquisition of property interest; purchase; grant; condemnation; procedure.

In any case in which (1) it is desired to remove, lower, or otherwise terminate a nonconforming structure or use, (2) the approach protection necessary cannot, because of

constitutional limitations, be provided by airport zoning regulations under the Airport Zoning Act, or (3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or nonconforming use is located or the political subdivision owning or operating the airport or served by it may acquire by purchase, grant, or condemnation, such air right, aviation easement, or other estate or interest in the property or nonconforming structure or use in question as may be necessary to effectuate the purposes of the act. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1945, c. 233, § 13, p. 691; Laws 1951, c. 101, § 30, p. 460; Laws 2013, LB 140, § 20.

3-332. Division of Aeronautics; municipalities and political subdivisions; assist in planning and developing.

The Division of Aeronautics of the Department of Transportation may aid and assist municipalities and other political subdivisions of the state in planning, developing, and carrying out programs for airport zoning in order to secure uniformity therein as far as possible.

Source: Laws 1945, c. 233, § 16, p. 691; Laws 2017, LB 339, § 64.
Operative Date: July 1, 2017

3-333. Act, how cited.

Sections 3-301 to 3-333 shall be known and may be cited as the Airport Zoning Act.

Source: Laws 1945, c. 233, § 15, p. 691; Laws 2013, LB 140, § 21.

ARTICLE 4

REGULATION OF STRUCTURES

Section

3-401. Obstructions to air navigation; regulation; purpose.

There is hereby recognized, declared, and found (1) to exist, in behalf of the citizens of the United States, a public right of freedom of transit in air commerce through the air space of the State of Nebraska, (2) that any obstruction to air navigation (a) interferes with the public right of freedom of transit in air commerce, (b) endangers the lives and property of those using the air space for travel and transportation by air, and (c) endangers the lives and property of the occupants of land in the State of Nebraska, and (3) that the public health, safety, and welfare require that the erection and maintenance of obstructions to air navigation be regulated and controlled.

Source: Laws 1955, c. 7, § 1, p. 67.

3-402. Terms, defined.

As used in sections 3-401 to 3-409, unless the context otherwise requires:

(1) Structure means any manmade object which is built, constructed, projected, or erected upon, from, and above the surface of the earth, including, but not limited to, towers, antennas, buildings, wires, cables, and chimneys;

(2) Meteorological evaluation tower means an anchored structure, including all guy wires and accessory facilities, on which one or more meteorological instruments are mounted for the purpose of meteorological data collection;

(3) Obstruction means any structure which obstructs the air space required for the flight of aircraft and in the landing and taking off of aircraft at any airport or restricted landing area; and

(4) Person means any public utility, public district, or other governmental division or subdivision or any person, corporation, partnership, or limited liability company.

Source: Laws 1955, c. 7, § 2, p. 68; Laws 1993, LB 121, § 85; Laws 2015, LB 469, § 5.

3-403. Structures; erection, maintenance in excess of one hundred fifty feet; permit required.

It shall be unlawful for any person, firm, or corporation, without having first applied for and obtained a permit in writing from the Division of Aeronautics of the Department of Transportation, to build, erect, or maintain any structure within the State of Nebraska, the height of which exceeds one hundred fifty feet above the surface of the ground at point of installation.

Source: Laws 1955, c. 7, § 3, p. 68; Laws 1963, c. 17, § 1, p. 96; Laws 2017, LB 339, § 65.

Operative Date: July 1, 2017

3-404. Structures; erection, maintenance in excess of one hundred fifty feet; application; form; contents; permit; issuance; considerations.

The application for the permit, required by section 3-403, shall be made in writing on forms prescribed by the Division of Aeronautics of the Department of Transportation and shall contain or be accompanied by details as to the location, construction, height, and dimensions of the proposed structure, the nature of its intended use, and such other information as the Director of Aeronautics may require. Upon the filing of such application, the director shall make an investigation and an aeronautical study of such proposed construction and its effect, if any, upon air navigation, and the health, welfare, and safety of the public. If the director, upon such investigation, shall determine that such proposed structure will not constitute a hazard to air navigation and will not interfere unduly with the public right of freedom of transit in commerce through the air space affected thereby, the director shall issue to the applicant a permit, required by section 3-403, authorizing the erection and construction of such structure, subject to such conditions as to marking and lighting as the division may prescribe by its rules and regulations, authorized by section 3-407. If the director does not so determine, the director shall deny the application. In making such investigation, aeronautical study, and determination, the director shall consider (1) the character of flying operations expected to be conducted in the area concerned, (2) the nature of the terrain, (3) the character of the neighborhood, (4) the uses to which the property concerned is devoted or adaptable, (5) the proximity to existing airports, airways, control areas, and control zones, (6) the height of existing adjacent structures, and (7) all the facts and circumstances existing. The director shall impose only such restrictions or requirements as may be reasonably necessary to effectuate the purposes of sections 3-401 to 3-409.

Source: Laws 1955, c. 7, § 4, p. 68; Laws 2017, LB 339, § 66.
Operative Date: July 1, 2017

3-405. Appeal; procedure.

Any person aggrieved by any action of the Division of Aeronautics of the Department of Transportation in granting or denying a permit under the terms of sections 3-401 to 3-409 may appeal the action, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1955, c. 7, § 5, p. 69; Laws 1988, LB 352, § 9; Laws 2017, LB 339, § 67.
Operative Date: July 1, 2017

Cross References

Administrative Procedure Act, see section 84-920.

3-406. Existing structures; structures erected under authority of federal or state agency; zoning regulations; applicability of sections.

The provisions of sections 3-403 to 3-405 shall not apply to structures hereafter erected under the authority of a license or permit issued by a federal agency or other state agency now having specific statutory jurisdiction over the air space, including authority to prohibit or regulate the height of structures for the promotion of safety in aviation, nor to existing structures. Nothing in sections 3-401 to 3-409 shall be construed to limit or abridge any right, power, or authority to zone property under the provisions of any other law of this state or of the federal government except, that in the event of any conflict between the regulations for height limits of structures, lighting, and marking adopted under the provisions of sections 3-401 to 3-409, and any other regulations applicable to the same area, the more stringent limitation or requirement shall govern and prevail.

Source: Laws 1955, c. 7, § 6, p. 69.

3-407. Structures; lighting; rules and regulations; division adopt.

All structures outside the corporate limits of cities and villages, exceeding a height of two hundred feet above the surface of the ground, and all structures within the corporate limits of cities and villages exceeding a height of five hundred feet shall be marked and lighted in accordance with rules and regulations adopted and promulgated by the Division of Aeronautics of the Department of Transportation. The division may adopt and promulgate rules and regulations for the marking and lighting of such structures in a manner calculated to prevent collisions with such structures by aircraft. It shall be the duty of the persons, firms, and corporations owning, maintaining, or using such structures to provide and maintain such marking and lighting.

Source: Laws 1955, c. 7, § 7, p. 70; Laws 1993, LB 472, § 1; Laws 2017, LB 339, § 68.
Operative Date: July 1, 2017

3-407.01. Meteorological evaluation tower; marking; owner; registration; contents; duties; failure to comply; effect.

(1) A meteorological evaluation tower, the height of which is at least fifty feet above the surface of the ground at point of installation, shall be marked according to subsection (2) of this section. This section applies to a meteorological evaluation tower that is located outside the corporate limits of a city or village.

(2) A meteorological evaluation tower described in subsection (1) of this section shall: (a) Be painted in seven equal-width and alternating bands of aviation orange and white beginning with orange at the top of the tower and ending with orange at the base; (b) have two or more spherical marker balls at least twenty-one inches in diameter that are aviation orange in color and attached to each outer guy wire connected to the tower with the top ball no further than twenty feet from the top wire connection and the remaining ball or balls at or below the midpoint of the tower on

the outer guy wires; and (c) have yellow safety sleeves installed on each outer guy wire extending at least fourteen feet above the anchor point of the guy wire.

(3) The owner of a meteorological evaluation tower subject to this section shall, not less than ten business days prior to erecting the tower, register with the Division of Aeronautics of the Department of Transportation the name and address of the owner, the height and location of the tower, and any other information that the division deems necessary for aviation safety. The owner of a tower subject to this section shall also report the removal of the tower to the division not more than thirty business days after its removal. The division shall make the information received pursuant to this subsection available to the public within five business days.

(4) The owner of a meteorological evaluation tower described in subsection (1) of this section that was erected prior to May 28, 2015, and which is either lighted, marked with balls at least twenty-one inches in diameter, painted, or modified in some other manner so it is recognizable in clear air during daylight hours from a distance of not less than two thousand feet, shall mark the tower as required by subsection (2) of this section within two years after May 28, 2015, or at such time the tower is taken down for maintenance or other purposes, whichever comes first, except that the owner of a tower erected prior to May 28, 2015, which is not lighted, marked, painted, or modified as described in this subsection shall mark such tower as required by subsection (2) of this section within ninety days after May 28, 2015. The registration requirements of subsection (3) of this section shall be performed by the owner of a tower erected prior to May 28, 2015, within fifteen business days after May 28, 2015.

(5) A material failure to comply with the marking and registration requirements of this section shall be admissible as evidence of negligence on the part of an owner of a meteorological evaluation tower in an action in tort for property damage, bodily injury, or death resulting from an aerial collision with such unmarked or unregistered tower.

(6) The division may adopt and promulgate rules and regulations for carrying out the purposes of this section.

Source: Laws 2015, LB 469, § 6; Laws 2017, LB 339, § 69.
Operative Date: July 1, 2017

3-408. Violations; penalty.

Any person, firm, or corporation (1) violating any of the provisions of sections 3-401 to 3-409, (2) submitting false information in the application for a permit, (3) violating any rule or regulation adopted and promulgated by the Division of Aeronautics of the Department of Transportation pursuant to sections 3-401 to 3-409, (4) failing to do and perform any act required by sections 3-401 to 3-409, or (5) violating the terms of any permit issued pursuant to sections 3-401 to 3-409, shall be guilty of a Class III misdemeanor. Each day any violation continues or any structure erected in violation of sections 3-401 to 3-409 shall continue in existence shall constitute a separate offense.

Source: Laws 1955, c. 7, § 8, p. 70; Laws 1977, LB 40, § 31; Laws 2015, LB 469, § 7; Laws 2017, LB 339, § 70.
Operative Date: July 1, 2017

3-409. Structure; violations; injunction; removal.

In addition to the penalties provided for by section 3-408, the erection and maintenance of any structure in violation of sections 3-401 to 3-409 may be enjoined by any court of competent jurisdiction in an action for that purpose commenced by the Division of Aeronautics of the Department of Transportation or any other interested person. The erection of such structure and permitting the same to stand or remain, in violation of sections 3-401 to 3-409, is hereby declared to be a nuisance and the division, or its authorized agent, is authorized to go upon the premises and abate such nuisance by removing such structure after five days' notice to the interested parties, to be served by mail addressed to them at their last-known place of business or residence. The expense incident to the removal of such structure shall be paid by the owners thereof, and if the division removes such structures as provided in this section, the expense incurred by the division may be recovered from the sale of the structure or its salvage material.

Source: Laws 1955, c. 7, § 9, p. 71; Laws 2017, LB 339, § 71.
Operative Date: July 1, 2017

ARTICLE 5

CITY AIRPORT AUTHORITY

Section

3-501. Terms, defined.

As used in the Cities Airport Authorities Act, unless the context otherwise requires:

(1) Authority means an airport authority which shall be a body politic and corporate organized pursuant to section 3-502;

(2) City means any city or village of the State of Nebraska;

(3) Bonds means bonds issued by the authority pursuant to the provisions of the Cities Airport Authorities Act;

(4) Board means the members of the authority;

(5) Mayor and city council means, in the case of a village, the chairperson of the board of trustees and the board of trustees, respectively;

(6) Real property means lands, structures, and interests in land, including lands under water and riparian rights, and any and all things and rights usually included within the term real property, including not only fee simple absolute but also any and all lesser interests, such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property; and

(7) Project means any airport operated by the authority, including all real and personal property, structures, machinery, equipment, and appurtenances or facilities which are part of such airport or used or useful in connection therewith either as ground facilities for the convenience of handling aviation equipment, passengers, and freight or as part of aviation operation, air navigation, and air safety operation.

Source: Laws 1957, c. 9, § 1, p. 110; Laws 2002, LB 446, § 5; Laws 2003, LB 5, § 2.

An airport authority is a body corporate and politic. Bowley v. City of Omaha, 181 Neb. 515, 149 N.W.2d 417 (1967).

The Airport Authority Act sustained as constitutional. Obitz v. Airport Authority of City of Red Cloud, 181 Neb. 410, 149 N.W.2d 105 (1967).

3-502. Airport authority; created; board; members; expenses; delegation of authority; period of corporate existence; jurisdiction.

(1) Any city may create an airport authority to be managed and controlled by a board. The board, when and if appointed, shall have full and exclusive jurisdiction and control over all facilities owned or thereafter acquired by such city for the purpose of aviation operation, air navigation, and air safety operation.

(2) The Cities Airport Authorities Act shall not become operative as to any city unless the mayor and city council in their discretion activate the airport authority by the mayor appointing and the council approving the board members as provided in this section. Each such board shall be a body corporate and politic, constituting a public corporation and an agency of the city for which such board is established.

(3) Each board in cities of the primary, first, and second classes and in villages shall consist of five members to be appointed by the mayor with the approval of the city council to serve until their successors elected pursuant to section 32-547 take office. Members of such board shall be residents of the city for which such authority is created. Any vacancy on such board shall be filled by appointment by the mayor, with the approval of the city council, to serve the unexpired

portion of the term. A member of such board may be removed from office for incompetence, neglect of duty, or malfeasance in office. An action for the removal of such officer may be brought, upon resolution of the city council, in the district court of the county in which such city is located.

(4) Each board in cities of the metropolitan class shall consist of five members who shall be nominated by the mayor and approved by the city council and shall serve for terms of five years. Any vacancy on such board shall be filled by appointment by the mayor, with the approval of the city council, and such appointee shall serve the unexpired portion of the term of the member whose office was vacated. Any member of such board may be removed from office by the mayor, for incompetence, neglect of duty, or malfeasance in office, with the consent and approval of the city council.

(5) The members of the board hereby created shall not be entitled to compensation for their services but shall be entitled to reimbursement of expenses paid or incurred in the performance of the duties imposed upon them by the Cities Airport Authorities Act, to be paid as provided in section 23-1112 for county officers and employees. A majority of the members of the board then in office shall constitute a quorum. The board may delegate to one or more of the members, or to its officers, agents, and employees, such powers and duties as it may deem proper.

(6) The board and its corporate existence shall continue only for a period of twenty years from the date of appointment of the members thereof and thereafter until all its liabilities have been met and its bonds have been paid in full or such liabilities and bonds have otherwise been discharged. When all liabilities incurred by the authority of every kind and character have been met and all its bonds have been paid in full or such liabilities and bonds have otherwise been discharged, all rights and properties of the authority shall pass to and be vested in the city. The authority shall have and retain full and exclusive jurisdiction and control over all projects under its jurisdiction, with the right and duty to charge and collect revenue therefrom, for the benefit of the holders of any of its bonds or other liabilities. Upon the authority's ceasing to exist, all its remaining rights and properties shall pass to and vest in the city.

Source: Laws 1957, c. 9, § 2, p. 111; Laws 1959, c. 12, § 1, p. 120; Laws 1965, c. 19, § 1, p. 153; Laws 1967, c. 14, § 1, p. 102; Laws 1967, c. 15, § 1, p. 106; Laws 1969, c. 25, § 1, p. 218; Laws 1971, LB 164, § 1; Laws 1972, LB 661, § 1; Laws 1977, LB 201, § 1; Laws 1981, LB 204, § 13; Laws 1988, LB 975, § 1; Laws 1994, LB 76, § 461; Laws 2013, LB 87, § 1.

This section gives an airport authority full jurisdiction over all aspects of getting an aircraft and its occupants safely into and out of an airport. Professional Firefighters of Omaha v. City of Omaha, 243 Neb. 166, 498 N.W.2d 325 (1993).

The word airport herein means an airport qualified and licensed for public use. Elliott v. City of Plattsmouth, 187 Neb. 165, 188 N.W.2d 684 (1971).

Under former law the word airport in this section means an airport qualified and licensed for public use. Bruns v. City of Seward, 186 Neb. 658, 185 N.W.2d 853 (1971).

Airport authority's existence dependent upon city which created it and is an agency of that city, existence of airport authority does not prevent parent city from being annexed. Airport Authority of City of Millard v. City of Omaha, 185 Neb. 623, 177 N.W.2d 603 (1970).

3-502.01. Repealed. Laws 1969, c. 25, § 3.

3-502.02. Repealed. Laws 1969, c. 25, § 3.

3-503. Airport authority; acquisition of property; terms; eminent domain; relinquishment; insurance.

(1) Any city creating an authority shall by resolution convey or transfer to it any existing airport or any other property of the city for use in connection with a project, including real and personal property owned or leased by the city and used or useful in connection therewith. In case of real property so conveyed, the title thereto shall remain in the city, but the authority shall have the use and occupancy of such real property for so long as its corporate existence shall continue. In the case of personal property so conveyed, the title shall pass to the authority. Any conveyance of an existing airport shall be subject to any leases or agreements duly and validly made by the city affecting such airports or the property so conveyed, except that any such lease or agreement which is inconsistent with the ability of the authority to issue negotiable bonds may be renegotiated by the authority.

(2) Such city may acquire by purchase or condemnation real property in the name of the city for the projects or for the widening of existing roads, streets, parkways, avenues, or highways, or for new roads, streets, parkways, avenues, or highways to a project, or partly for such purposes and partly for other city purposes, by purchase or condemnation in the manner provided by law for the acquisition of real property by such city, except that if property is to be acquired outside the zoning jurisdiction of the city creating the authority when such city is of the metropolitan class, approval shall be obtained from the county board of the county where the property is located before the right of eminent domain may be exercised. Such city may also close any roads, streets, parkways, avenues, or highways as may be necessary or convenient to facilitate the construction or operation of a project.

(3) Contracts may be entered into between the city and an authority, or between other political subdivisions of the State of Nebraska and such city or authority, or between each and any of them, providing for the conveyance of property to such city or authority for use in connection with a project, and for the closing of streets, roads, parkways, avenues, or highways. The amounts, terms, and conditions of payment if any shall be made by such city or authority in connection with the conveyances. The contracts may also contain covenants by such city or such political subdivision, as to the road, street, parkway, avenue, or highway improvements to be made by such city or such political subdivision. Any city council may authorize such contracts between the city and the authority by resolution, and no other authorization on the part of the city for such contracts shall be necessary. All obligations of the city for the payment of money to an authority incurred in carrying out the Cities Airport Authorities Act shall be included in and provided for by each annual or biennial budget of such city thereafter made until fully discharged. In the case of other political subdivisions of the state, such contracts shall be authorized as provided by law.

(4) An authority operating under the act may acquire real property for a project in the name of the city in which it was established at the cost and expense of the authority by purchase or condemnation pursuant to the laws relating to the condemnation of land by cities and subdivision (4) of section 3-504, except that if property is to be acquired outside the zoning jurisdiction of the city creating the authority when such city is of the metropolitan class, approval shall be

obtained from the county board of the county where the property is located before the right of eminent domain may be exercised. The authority shall have the use and occupancy of such real property so long as its corporate existence shall continue.

(5) In case an authority shall have the use and occupancy of any real property which it shall determine is no longer required for a project then, if such real property was acquired at the cost and expense of the city, the authority shall have the power to surrender its use and occupancy thereof to the city. If such real property was acquired at the cost and expense of the authority, then the authority shall have power to sell, lease, or otherwise dispose of the real property. The authority shall retain the proceeds of sale, rentals, or other money derived from the disposition of such real property for its corporate purposes.

(6) If the authority does not provide insurance coverage for the real property improvements to real property and the real property of which it has the use and occupancy and the city provides insurance coverage for such improvements and property and names the authority as the named insured, the authority shall reimburse the city for purchasing the insurance coverage if reimbursement is requested by the city.

Source: Laws 1957, c. 9, § 3, p. 113; Laws 1973, LB 22, § 1; Laws 1981, LB 354, § 2; Laws 1989, LB 123, § 1; Laws 2000, LB 1116, § 3.

An airport authority acquiring real property must bring an action in the name of the city in which it was established for and on behalf, of the airport authority. Airport Auth. of Village of Greeley v. Dugan, 259 Neb. 860, 612 N.W.2d 913 (2000).

Municipal airport authorities are authorized to acquire property by condemnation for establishing airports. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

3-504. Airport authority; powers.

Any authority established under the Cities Airport Authorities Act shall have power:

(1) To sue and be sued;

(2) To have a seal and alter the same at pleasure;

(3) To acquire, hold, and dispose of personal property for its corporate purposes;

(4) To acquire in the name of the city, by purchase or condemnation, real property or rights or easements therein necessary or convenient for its corporate purposes and, except (a) as may otherwise be provided in the act and (b) that if property is to be acquired outside the zoning jurisdiction of the city when such city is a city of the metropolitan class, approval must be obtained from the county board of the county where the property is located before the right of eminent domain may be exercised, to use the same so long as its corporate existence continues. Such power shall not be exercised by authorities of cities of the primary, first, and second classes and of villages created after September 2, 1973, without further approval until such time as at least three members of the authority have been elected. If the exercise of such power is necessary while three or more appointed members remain on the authority of cities of the primary, first, and second classes and of villages, the appointing body shall approve all proceedings under this subdivision;

(5) To make bylaws for the management and regulation of its affairs and, subject to agreements with bondholders, to make rules and regulations for the use of projects and the establishment and collection of rentals, fees, and all other charges for services or commodities

sold, furnished, or supplied by such authority. Any person violating such rules shall be guilty of a Class III misdemeanor;

(6) With the consent of the city, to use the services of agents, employees, and facilities of the city, for which the authority may reimburse the city a proper proportion of the compensation or cost thereof, and also to use the services of the city attorney as legal advisor to the authority;

(7) To appoint officers, agents, and employees and fix their compensation;

(8) To make contracts, leases, and all other instruments necessary or convenient to the corporate purposes of the authority;

(9) To design, construct, maintain, operate, improve, and reconstruct, so long as its corporate existence continues, such projects as are necessary and convenient to the maintenance and development of aviation services to and for the city in which such authority is established, including landing fields, heliports, hangars, shops, passenger and freight terminals, control towers, and all facilities necessary or convenient in connection with any such project, to contract for the construction, operation, or maintenance of any parts thereof or for services to be performed thereon, and to rent parts thereof and grant concessions thereon, all on such terms and conditions as the authority may determine. This subdivision shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12;

(10) To include in such project, subject to zoning restrictions, space and facilities for any or all of the following: Public recreation; business, trade, or other exhibitions; sporting or athletic events; public meetings; conventions; and all other kinds of assemblages and, in order to obtain additional revenue, space and facilities for business and commercial purposes. Whenever the authority deems it to be in the public interest, the authority may lease any such project or any part or parts thereof or contract for the management and operation thereof or any part or parts thereof. Any such lease or contract may be for such period of years as the authority shall determine. This subdivision shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12;

(11) To charge fees, rentals, and other charges for the use of projects under the jurisdiction of such authority subject to and in accordance with such agreement with bondholders as may be made as hereinafter provided. Subject to contracts with bondholders, all fees, rentals, charges, and other revenue derived from any project shall be applied to the payment of operating, administration, and other necessary expenses of the authority properly chargeable to such project and to the payment of the interest on and principal of bonds or for making sinking-fund payments therefor. Subject to contracts with bondholders, the authority may treat one or more projects as a single enterprise with respect to revenue, expenses, the issuance of bonds, maintenance, operation, or other purposes;

(12) To certify annually to the governing body of the city the amount of tax to be levied for airport purposes which the authority requires under its adopted budget statement to be received from taxation, not to exceed three and five-tenths cents on each one hundred dollars of taxable valuation of all the taxable property in such city subject to section 77-3443. The governing body may levy and collect the taxes so certified at the same time and in the same manner as other taxes are levied and collected, and the proceeds of such taxes when due and as collected shall be set aside and deposited in the special account or accounts in which other revenue of the authority is deposited. An authority in a city of the first or second class or a village shall have power to certify annually to the governing body of such a city or village an additional amount of tax to be levied for airport purposes, not to exceed three and five-tenths cents on each one hundred dollars

of taxable value, to be levied, collected, set aside, and deposited as specified in this subdivision, and if negotiable bonds of the authority are thereafter issued, this power shall continue until such bonds are paid in full. When such additional amount of tax is first certified, the governing body may then require, but not thereafter, approval of the same by a majority vote of the governing body or by a majority vote of the electors voting on the same at a general or special election. The additional levy shall be subject to section 77-3443. The provisions of this subdivision shall not apply to cities of the metropolitan class;

(13) To construct and maintain under, along, over, or across a project, telephone, telegraph, or electric wires and cables, fuel lines, gas mains, water mains, and other mechanical equipment not inconsistent with the appropriate use of such project, to contract for such construction and to lease the right to construct and use the same, or to use the same on such terms for such periods of time and for such consideration as the authority shall determine;

(14) To accept grants, loans, or contributions from the United States, the State of Nebraska, any agency or instrumentality of either of them, or the city in which such authority is established and to expend the proceeds thereof for any corporate purposes;

(15) To incur debt and issue negotiable bonds and to provide for the rights of the holders thereof;

(16) To enter on any lands, waters, and premises for the purposes of making surveys, soundings, and examinations; and

(17) To do all things necessary or convenient to carry out the powers expressly conferred on such authorities by the act.

Source: Laws 1957, c. 9, § 4, p. 115; Laws 1959, c. 12, § 2, p. 122; Laws 1969, c. 26, § 1, p. 225; Laws 1969, c. 145, § 14, p. 677; Laws 1973, LB 22, § 2; Laws 1974, LB 796, § 1; Laws 1977, LB 40, § 32; Laws 1979, LB 187, § 12; Laws 1981, LB 354, § 3; Laws 1992, LB 719A, § 11; Laws 1996, LB 1114, § 18; Laws 1997, LB 269, § 4; Laws 1998, LB 306, § 1; Laws 2001, LB 173, § 5.

An airport authority acquiring real property must bring an action in the name of the city in which it was established for and on behalf of the airport authority. Airport Auth. of Village of Greeley v. Dugan, 259 Neb. 860, 612 N.W.2d 913 (2000).

Municipal airport authorities are authorized to acquire property by condemnation for establishing airports. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

Inclusion of an airport authority budget in general city budget hearing did not meet requirement of public budget hearing, after notice, by airport authority. Willms v. Nebraska City Airport Authority, 193 Neb. 567, 228 N.W.2d 276 (1975).

An airport authority has broad powers to include all facilities necessary or convenient in constructing an airport project. Stones v. Plattsmouth Airport Authority, 193 Neb. 552, 228 N.W.2d 129 (1975).

3-504.01. Airport authority; authority for creation; election not required; supremacy over city charter; validation of proceedings.

Sections 3-501 to 3-514 shall be full authority for the creation of airport authorities by cities, and for the exercise of the powers therein granted to cities and to such authorities, and no action, proceeding or election shall be required prior to the creation of airport authorities hereunder or to authorize the exercise of any of the powers herein granted, any provision of law or of any city charter to the contrary notwithstanding, and the proceedings of the mayor and council of any city

heretofore taken for the creation and establishment of an airport authority are hereby ratified, validated and confirmed.

Source: Laws 1959, c. 12, § 4, p. 126.

3-504.02. Airport authority; cities of primary class; development of commercial aviation; representation in commercial air service hearings; additional tax levy.

An airport authority may, and in cities of the primary class shall, in addition to the powers enumerated in section 3-504, encourage, foster, and promote the development of commercial and general aviation for the city which it serves, and advance the interests of such city in aeronautics and in commercial air transportation and its scheduling. An airport authority in cities of the primary class, under direction of the mayor, shall represent the interests of such city in commercial air service hearings, except that representation in the name of the city shall be only by the consent of such city. In cities of the primary class the city council may establish a fund for the purposes of this section by an annual levy of not to exceed three-tenths of one cent on each one hundred dollars which shall be levied and collected upon the same property and in addition to the levy provided in subdivision (12) of section 3-504. The levy in this section shall be subject to section 77-3443.

Source: Laws 1963, c. 16, § 1, p. 95; Laws 1979, LB 187, § 13; Laws 1997, LB 269, § 5.

3-505. Airport authority; city officers and employees; transfer; retention of privileges; social security and pension plans; continuance of coverage.

Officers and employees of any board or department in or of a city may be transferred to the authority established in the city, and shall be eligible for such transfer and appointment without examination to offices and positions under the authority. Officers or employees of such city, who shall have accepted such transfer and who are at the time of such transfer members or beneficiaries of any existing pension or retirement system, shall continue to have the rights, privileges, obligations, and status with respect to such system or systems as are now prescribed by law. In a city of the metropolitan or of the primary class, the authority may enter into an agreement with the city to provide for the continued coverage of officers and employees of the authority, and for the coverage of such officers and employees not formerly employed by the city, under the city's social security system, pension plan, or retirement plan, and shall pay its proportionate cost of such pension or retirement plan and expense of social security coverage.

Source: Laws 1957, c. 9, § 5, p. 118; Laws 1959, c. 12, § 3, p. 125; Laws 1963, c. 18, § 1, p. 97.

3-506. Airport authority; finances; how handled.

All income, revenue, receipts, profits, and money of an authority from whatever source derived shall be paid either to the treasurer of the city in which such authority is established as ex officio treasurer of the authority who shall not commingle such money with any other money under his or her control or to the person appointed as treasurer of the airport authority in accordance with section 3-506.01. Such money shall be deposited in a separate bank, capital stock financial institution, or qualifying mutual financial institution account or accounts. Such money shall be withdrawn only by check, draft, or order signed by the treasurer on requisition of the chairperson of the authority or of such other person or persons as the authority may authorize to make such requisitions, approved by the board. The chief auditing officer of the city and his or her legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of such authority, including its receipts, disbursements, contracts, leases, sinking funds, and investments and any other matters relating to its financial standing. Notwithstanding the provisions of this section, such authority may contract with the holders of any of its bonds as to collection, custody, securing, investment, and payment of any money of the authority or any money held in trust or otherwise for the payment of bonds or in any way to secure bonds. The authority may carry out any such contract notwithstanding that such contract may be inconsistent with the previous provisions of this section. All banks, capital stock financial institutions, qualifying mutual financial institutions, and trust companies are hereby authorized to give security for such deposits of money of authorities pursuant to the Public Funds Deposit Security Act. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1957, c. 9, § 6, p. 118; Laws 1978, LB 868, § 1; Laws 1989, LB 33, § 3; Laws 1999, LB 396, § 1; Laws 2001, LB 362, § 4.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

3-506.01. Airport authority; treasurer; appointed; bond.

(1) An airport authority may appoint a treasurer.

(2) If a treasurer is appointed by the authority, the treasurer of the city in which such authority is established shall no longer serve as ex officio treasurer of the authority.

(3) If a treasurer is appointed, such treasurer shall furnish bond, in an amount to be determined by the authority, running to the authority conditioned upon the faithful performance of such treasurer's duties.

Source: Laws 1978, LB 868, § 2.

3-507. Airport authority; bonds; general; limited purposes; bond anticipation notes; issuance; powers conferred; personal liability.

(1) An authority shall have the power and is hereby authorized from time to time to issue its negotiable bonds for any corporate purpose in such amounts as may be required to carry out and fully perform the purposes for which such authority is established. Such authorities shall have power, from time to time and whenever refunding is deemed expedient, to issue bonds in amounts sufficient to refund any bonds, including any premiums payable upon the redemption of the bonds to be refunded, by the issuance of new bonds, whether the bonds to be refunded have or have not matured. It may issue bonds partly to refund bonds then outstanding and partly for any other corporate purpose. The refunding bonds may be exchanged for the bonds to be refunded with such cash adjustments as may be agreed or may be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded. All bonds shall be general obligations of the authority issuing the same and shall be payable out of any revenue, income, receipts, profits, or other money of the authority unless the authority expressly provides otherwise in the resolution authorizing issuance in which event the bonds shall be limited obligations of the authority and shall be payable only out of that part of the revenue, income, receipts, profits, or other money of the authority as is specified in such resolution. All bonds issued pursuant to the Cities Airport Authorities Act shall be and are hereby made negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code subject only to any provisions contained in such bonds for the registration of the principal thereof.

(2) All such bonds shall be authorized by a resolution or resolutions of the board and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denominations, be in such form either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment and at such place or places within or without the State of Nebraska, and be subject to such terms of redemption and at such redemption premiums as such resolution or resolutions may provide. The bonds may be sold at public or private sale for such price or prices as the authority shall determine. No proceedings for the issuance of bonds of an authority shall be required other than those required by the act, and the provisions of all other laws and city charters, if any, relative to the terms and conditions for the issuance, payment, redemption, registration, sale, or delivery of bonds of public bodies, corporations, or political subdivisions of this state shall not be applicable to bonds issued by authorities pursuant to the act.

(3) Any resolution or resolutions authorizing any bonds or any issue of bonds of an authority may contain covenants and agreements on the part of the authority to protect and safeguard the security and payment of such bonds, which covenants and agreements shall be a part of the contract with the holders of the bonds thereby authorized, as to:

(a) Pledging all or any part of the revenue, income, receipts, profits, and other money derived by the authority issuing such bonds from the operation, management, or sale of property of any or all such projects of the authority to secure the payment of the bonds or of any issue of the bonds;

(b) The rates, rentals, tolls, charges, license fees, and other fees to be charged by the authority, the amounts to be raised in each year for the services and commodities sold, furnished, or supplied by the authority, and the use and disposition of the revenue of the authority received therefrom;

(c) The setting aside of reserves or sinking funds and the regulation, investment, and disposition thereof;

(d) Limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter issued may be applied and pledging such proceeds to secure the payment of bonds or of any issue of bonds;

(e) Limitations on the issuance of additional bonds of the authority, the terms and conditions upon which such additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

(f) The procedure if any by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(g) Limitations on the amount of money derived from any project to be expended for operating, administrative, or other expenses of the authority; and

(h) Any other matters of like or different character which in any way affect the security or protection of bonds of the authority.

(4) An authority shall have power from time to time to issue bond anticipation notes, referred to as notes in the act, and from time to time to issue renewal notes, such notes in any case to mature not later than thirty months from the date of incurring the indebtedness represented thereby in an amount not exceeding the total estimated cost of the project for which the notes are to be issued including issuance expenses. Payment of such notes shall be made from any money or revenue which the authority may have available for such purpose or from the proceeds of the sale of bonds of the authority, or such notes may be exchanged for a like amount of such bonds. The authority may pledge such money or revenue of the authority, subject to prior pledges thereof, if any, for the payment of such notes and may in addition secure the notes in the same manner as provided for bonds in this section. All notes shall be issued and sold in the same manner as bonds, and any authority shall have power to make contracts for the future sale from time to time of notes on terms and conditions stated in such contracts. The authority shall have power to pay such consideration as it shall deem proper for any commitments to purchase notes in the future. Such notes may also be collaterally secured by pledges and deposits with a bank or trust company, in trust for the payment of such notes, of bonds in an aggregate amount at least equal to the amount of such notes and, in any event, in an amount deemed by the issuing authority sufficient to provide for the payment of the notes in full at the maturity thereof. The authority issuing such notes may provide in the collateral agreement that the notes may be exchanged for bonds held as collateral security for the notes or that the trustee may sell the bonds if the notes are not otherwise paid at maturity and apply the proceeds of such sale to the payment of the notes. The notes may be sold at public or private sale for such price or prices as the authority shall determine.

(5) It is the intention hereof that any pledge of revenue, income, receipts, profits, charges, fees, or other money made by an authority for the payment of bonds shall be valid and binding from the time such pledge is made, that the revenue, income, receipts, profits, charges, fees, and other money so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without the physical delivery thereof or further act, and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(6) Neither the members of a board nor any person executing bonds or notes shall be liable personally thereon or be subject to any personal liability or accountability by reason of the issuance thereof.

(7) An authority shall have power out of any funds available therefor to purchase bonds or notes of such authority. Any bonds so purchased may be held, canceled, or resold by the authority subject to and in accordance with any agreements with bondholders.

Source: Laws 1957, c. 9, § 7, p. 119; Laws 1963, c. 19, § 1, p. 98; Laws 1967, c. 16, § 1, p. 109; Laws 1969, c. 25, § 2, p. 220; Laws 1970, Spec. Sess., c. 5, § 1, p. 17; Laws 1985, LB 307, § 1; Laws 1991, LB 15, § 4.

3-508. Airport authority; bondholders; no impairment of rights or remedies.

The State of Nebraska does covenant and agree with the holders of bonds issued by an authority that the state will not limit or alter the rights hereby vested in an authority to acquire, maintain, construct, reconstruct, and operate projects, to establish and collect such rates, rentals, tolls, charges, license fees, and other fees as may be convenient or necessary to produce sufficient revenue to meet the expense of maintenance and operation of such projects and to fulfill the terms of any agreements made with holders of bonds of the authority. The state will also not in any way impair the rights and remedies of the bondholders until the bonds together with interest thereon and with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged. The provisions of section 3-239 and the Cities Airport Authorities Act and of the proceedings authorizing bonds thereby shall constitute a contract with the holders of the bonds.

Source: Laws 1957, c. 9, § 8, p. 123; Laws 2002, LB 446, § 6; Laws 2003, LB 5, § 3.

Sole purpose of this section to protect sources of income of authority and insure eventual payment of outstanding bonds, purpose served when debts of authority become debts of annexing city. Airport Authority of City of Millard v. City of Omaha, 185 Neb. 623, 177 N.W.2d 603 (1970).

3-509. Airport authority; obligations of authority; limited liability.

The bonds, notes, and other obligations of an authority shall not be a debt of the State of Nebraska or of the city in which such authority is established, and neither the state nor the city shall be liable thereon, nor shall such bonds be payable out of any funds other than funds of the authority issuing same.

Source: Laws 1957, c. 9, § 9, p. 123.

City is not liable for debts or other obligations of airport authority which it creates. Lock v. City of Imperial, 182 Neb. 526, 155 N.W.2d 924 (1968).

Issuance of bonds was not unlawful because of this section. Obitz v. Airport Authority of City of Red Cloud, 181 Neb. 410, 149 N.W.2d 105 (1967).

3-510. Airport authority; bonds; eligibility for investment; use as security.

Bonds of authorities are hereby made securities in which all public officers and bodies of this state, all municipalities and municipal subdivisions, and all other political subdivisions of this state, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, trustees, and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. Such bonds are also hereby made securities which may be deposited with and shall be received by all public officers and bodies of this state, all municipalities and municipal subdivisions, and other political subdivisions of this state for any purpose for which the deposit of bonds or other obligations of this state is now or may hereafter be authorized.

Source: Laws 1957, c. 9, § 10, p. 123.

3-511. Airport authority; declaration of public purpose; exemption of property from taxation.

It is hereby found, determined, and declared that the creation of an authority and the carrying out of its corporate purposes is for the benefit of the people of the State of Nebraska, for the improvement of their welfare and prosperity, and for the promotion of their transportation, and is a public purpose and a matter of statewide concern, and that aviation projects operated by authorities are essential parts of the public transportation system. The State of Nebraska covenants with the holders of such bonds that authorities shall be required to pay no taxes or assessments upon any of the property acquired by them or under their respective jurisdictions, control, possession, or supervision, or upon the activities of authorities in the operation and maintenance of projects, or upon any charges, fees, revenue, or other income received by authorities except motor vehicle fuel and aviation fuel taxes, and that the bonds and notes of authorities and the income therefrom shall at all times be exempt from taxation, except for transfer and estate taxes. This section shall constitute a covenant and agreement with the holders of all bonds and notes issued by authorities. This section shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12.

Source: Laws 1957, c. 9, § 11, p. 124; Laws 2001, LB 173, § 6.

3-512. Repealed. Laws 1969, c. 138, § 28.

3-513. Airport authority; applicability of sections.

Insofar as the provisions of section 3-239 and the Cities Airport Authorities Act are inconsistent with the provisions of any other act or of any city charter, if any, the provisions of section 3-239 and the Cities Airport Authorities Act shall be controlling.

Source: Laws 1957, c. 9, § 14, p. 126; Laws 2002, LB 446, § 7; Laws 2003, LB 5, § 4.

This section is to be read as a type of supremacy clause, nullifying any inconsistent statutory or municipal charter provisions. Professional Firefighters of Omaha v. City of Omaha, 243 Neb. 166, 498 N.W.2d 325 (1993).

3-514. Act, how cited.

Sections 3-501 to 3-514 shall be known and may be cited as the Cities Airport Authorities Act.

Source: Laws 1957, c. 9, § 17, p. 126; Laws 2002, LB 446, § 8.

ARTICLE 6

COUNTY AIRPORT AUTHORITY

Section

3-601. Real property; acquire; improvements; schedule of charges.

Any county may acquire by lease, for a term not to exceed thirty years, purchase, condemnation, or otherwise, the necessary land within or without such county for the purpose of establishing an aviation field and to erect thereon such buildings and make such improvements as may be necessary for the purpose of adapting the field to the use of aerial traffic, and may, from time to time, fix and establish a schedule of charges for the use thereof, which charges shall be used in connection with the maintenance and operation of any such field and the activities thereof. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1969, c. 141, § 1, p. 648.

3-602. Bonds; issuance; terms; election.

For the purpose of acquiring and improving an aviation field, any such county may issue and sell bonds of such county to be designated aviation field bonds, to provide the necessary funds therefor. Such bonds shall become due in not to exceed twenty years from the date of issuance, and shall draw interest, payable semiannually or annually. Such bonds may not be sold for less than par, and in no case without the proposition of issuing the same having first been submitted to the legal electors of such county at a general or special election held therein, and a majority of the votes cast upon the question of issuing such bonds being in favor thereof. The authority to sell such bonds shall not be limited by any other or special provision of law.

Source: Laws 1969, c. 141, § 2, p. 648; Laws 1970, Spec. Sess., c. 5, § 3, p. 79.

3-603. Tax; limitation; use; election.

For the purpose of acquiring and improving such aviation field, such county may, in lieu of issuing and selling bonds, levy an annual tax of not to exceed seven cents on each one hundred dollars of taxable value of all the taxable property within such county subject to section 77-3443. The tax shall not be levied or collected until the proposition of levying the same has first been submitted to the legal electors of such county at a general or special election held therein and received a majority of the votes cast upon the question of levying such tax. Such levy shall be authorized for a term not exceeding ten years, and the proposition submitted to the electors shall specify the number of years for which it is proposed to levy such tax. If funds for such purposes are raised by the levy of tax, no part of the funds so accruing shall be used for any other purpose.

Source: Laws 1969, c. 141, § 3, p. 649; Laws 1979, LB 187, § 14; Laws 1992, LB 719A, § 12; Laws 1996, LB 1114, § 19.

3-604. Real property; acquisition by lease; election unnecessary.

It shall not be necessary, in order to acquire the necessary land for an aviation field by lease, to submit the proposition of such acquisition by lease to the legal voters of such county.

Source: Laws 1969, c. 141, § 4, p. 649.

3-605. Construction; leasing; improvement; maintenance; management; labor; tax; levy.

For the purpose of the construction, leasing, improvement, maintenance, and management of an aviation field and for the payment of persons employed in the performance of labor in connection therewith, any county may, without a vote of the legal electors, levy an annual tax of not to exceed three and five-tenths cents on each one hundred dollars of taxable value of all the taxable property in such county subject to section 77-3443. No part of the funds so levied and collected shall be used for any other purpose.

Source: Laws 1969, c. 141, § 5, p. 649; Laws 1979, LB 187, § 15; Laws 1992, LB 719A, § 13; Laws 1996, LB 1114, § 20.

3-606. Repealed. Laws 2001, LB 173, § 22.

3-607. Airport, landing field, airdrome; location and specifications; approval.

No airport, landing field, or airdrome shall be acquired by any county through the issue and sale of bonds, or the levy of taxes, until the location and specifications thereof shall have been approved by the appropriate department or agency of the United States Government.

Source: Laws 1969, c. 141, § 7, p. 650.

3-608. County board; powers.

The governing body of any county shall have power to make and enforce such resolutions, rules, and regulations as shall lawfully be made for the control and supervision of any airport, landing field, or airdrome acquired, established, or operated by it, and for the control of aircraft and airmen, but such resolutions, rules, and regulations shall not conflict with the rules and regulations for the navigation of aircraft promulgated by the United States Government. This power shall extend to the space above the lands and waters included within the limits of such county, and to the space above any airport, landing field, or airdrome outside its limits.

Source: Laws 1969, c. 141, § 8, p. 650.

3-609. County board; lease; disposal; powers.

The governing body of any county authorized by section 3-601 to acquire an aviation field shall have power to lease or dispose of the same or any portion thereof when the public need will not thereby be injured.

Source: Laws 1969, c. 141, § 9, p. 650.

3-610. Project, defined.

As used in sections 3-611 to 3-621, project shall mean any airport operated by the authority, including all real and personal property, structures, machinery, equipment, and appurtenances or facilities which are part of such airport or used or useful in connection therewith either as ground facilities for the convenience of handling aviation equipment, passengers, and freight, or as part of aviation, air navigation, and air safety operation.

Source: Laws 1969, c. 141, § 10, p. 650.

3-611. Airport authority; creation; authorized; board; powers and duties; members; election; vacancy; removal; expenses; quorum.

In addition to the powers granted by sections 3-601 to 3-609, any county may create an airport authority. Such authority shall be managed and controlled by a board which shall have full and exclusive jurisdiction and control over all facilities owned or thereafter acquired by such county for airport purposes. Each such board shall be a body corporate and politic, constituting a public corporation and an agency of the county for which such board is established. Each board shall consist of five members. The county board creating the authority shall appoint board members to serve until their successors elected pursuant to section 32-548 take office. Members of the board must be residents of the county for which the authority is created. Any vacancy on a board shall be filled by temporary appointment by the county board until a successor can be elected at the next general election. A member of such board may be removed from office for incompetence, neglect of duty, or malfeasance in office. An action for removal of such member may be brought, upon resolution by the county board, in the district court of the county in which the authority is located.

The members of the board shall not be entitled to compensation for their services but shall be entitled to reimbursement of expenses paid or incurred in the performance of the duties imposed upon them by the provisions of sections 3-601 to 3-622 with reimbursement for mileage to be made at the rate provided in section 81-1176. A majority of the members of the board then in office shall constitute a quorum. The board may delegate to one or more of the members, or to its officers, agents, and employees, such powers and duties as it may deem proper. The board and its corporate existence shall continue only for a period of twenty years from the date of appointment of the members thereof and thereafter until all its liabilities have been met and its bonds have been paid in full or such liabilities and bonds have otherwise been discharged. When all liabilities incurred by the authority of every kind and character have been met and all its bonds

have been paid in full or such liabilities and bonds have otherwise been discharged, all rights and properties of the authority shall pass to and be vested in the county. The authority shall have and retain full and exclusive jurisdiction and control over all projects under its jurisdiction, with the right and duty to charge and collect revenue therefrom, for the benefit of the holders of any of its bonds or other liabilities. Upon the authority's ceasing to exist, all its remaining rights and properties shall pass to and vest in the county.

The board may enter into leases for nonaviation purposes for periods longer than the corporate existence of the board for a maximum period of twenty years. Such leases shall be subject to the approval of the county at the time the leases are entered into. At the conclusion of the corporate existence of the board, such leases shall pass to the control of the county.

The board may enter into leases for nonaviation purposes with the State of Nebraska or any political subdivision for land and land improvements. Such leases may be entered into for a maximum of forty years. At the conclusion of the corporate existence of the board, such leases shall pass to the control of the county.

Source: Laws 1969, c. 141, § 11, p. 650; Laws 1976, LB 671, § 1; Laws 1981, LB 204, § 14; Laws 1994, LB 76, § 462; Laws 1996, LB 1011, § 3.

An airport authority has no duty by statute nor common law to provide fire protection for property it leases to another. The Geer Co. v. Hall County Airport Authority, 193 Neb. 17, 225 N.W.2d 32 (1975).

3-612. Property; county; authority; powers and duties.

(1) Any county creating an authority shall by resolution or resolutions, convey or transfer to it any existing airport or any other property of the county for use in connection with a project, including real and personal property owned or leased by the county and used or useful in connection therewith. In case of real property so conveyed, the title thereto shall remain in the county, but the authority shall have the use and occupancy thereof for so long as its corporate existence shall continue. In the case of personal property so conveyed, the title shall pass to the authority. Any conveyance of an existing airport shall be subject to any leases or agreements duly and validly made by the county affecting such airport or the property so conveyed; *Provided,* that any such lease or agreement which is inconsistent with the ability of the authority to issue negotiable bonds may be renegotiated by the authority.

(2) Such county may acquire by purchase or condemnation real property in the name of the county for the projects or for the widening of existing roads, streets, parkways, avenues, or highways, or for new roads, streets, parkways, avenues, or highways to a project, or partly for such purposes and partly for other county purposes, by purchase or condemnation in the manner provided by law for the acquisition of real property by such county. Such county may also close any roads, streets, parkways, avenues, or highways as may be necessary or convenient to facilitate the construction or operation of a project.

(3) Contracts may be entered into between the county and an authority, or between other political subdivisions of the State of Nebraska and such county or authority, or between each and any of them, providing for the conveyance of property to such county or authority for use in connection with a project, and for the closing of streets, roads, parkways, avenues, or highways. The amounts, terms, and conditions of payment if any shall be made by such county or authority in connection with such conveyances. Such contracts may also contain covenants by such

county, or such political subdivision, as to the road, street, parkway, avenue, or highway improvements to be made by such county or such political subdivision. Any county board may authorize such contracts between the county and the authority by resolution, and no other authorization on the part of such county for such contracts shall be necessary. All obligations of such county for the payment of money to an authority incurred in carrying out the provisions of sections 3-601 to 3-622 shall be included in and provided for by each annual budget of such county thereafter made until fully discharged. In the case of other political subdivisions of the state, such contracts shall be authorized as provided by law.

(4) An authority operating under the provisions of sections 3-601 to 3-622 may acquire real property for a project in the name of the county in which it was established at the cost and expense of the authority by purchase or condemnation pursuant to the laws relating to the condemnation of land by counties and subdivision (4) of section 3-613. The authority shall have the use and occupancy of such real property so long as its corporate existence shall continue.

(5) In case an authority shall have the use and occupancy of any real property which it shall determine is no longer required for a project then, if such real property was acquired at the cost and expense of the county, the authority shall have the power to surrender its use and occupancy thereof to the county. If such real property was acquired at the cost and expense of the authority, then the authority shall have power to sell, lease, or otherwise dispose of such real property. Such authority shall retain the proceeds of sale, rentals, or other money derived from the disposition thereof for its corporate purposes.

Source: Laws 1969, c. 141, § 12, p. 652; Laws 1973, LB 22, § 3.

3-613. Authority; powers.

Any authority established under sections 3-601 to 3-622 shall have power:

(1) To sue and be sued;

(2) To have a seal and alter the same at pleasure;

(3) To acquire, hold, and dispose of personal property for its corporate purposes;

(4) To acquire in the name of the county, by purchase or condemnation, real property or rights or easements therein necessary or convenient for its corporate purposes and, except as may otherwise be provided in such sections, to use the same so long as its corporate existence continues. Such power shall not be exercised by authorities created after September 2, 1973, without further approval until such time as three or more members of the authority have been elected. If the exercise of such power is necessary while three or more appointed members remain on the authority, the appointing body shall approve all proceedings under this subdivision;

(5) To make bylaws for the management and regulation of its affairs and, subject to agreements with bondholders, to make rules and regulations for the use of projects and the establishment and collection of rentals, fees, and all other charges for services or commodities sold, furnished, or supplied by such authority. Any person violating such rules shall be guilty of a Class III misdemeanor;

(6) With the consent of the county, to use the services of agents, employees, and facilities of the county, for which the authority may reimburse the county a proper proportion of the

compensation or cost thereof, and also to use the services of the county attorney as legal advisor to the authority;

(7) To appoint officers, agents, and employees and fix their compensation;

(8) To make contracts, leases, and all other instruments necessary or convenient to the corporate purposes of the authority;

(9) To design, construct, maintain, operate, improve, and reconstruct, so long as its corporate existence continues, such projects as are necessary and convenient to the maintenance and development of aviation services to and for the county in which such authority is established, including landing fields, heliports, hangars, shops, passenger and freight terminals, control towers, and all facilities necessary or convenient in connection with any such project, to contract for the construction, operation, or maintenance of any parts thereof or for services to be performed thereon, and to rent parts thereof and grant concessions thereon, all on such terms and conditions as the authority may determine. This subdivision shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12;

(10) To include in such project, subject to zoning restrictions, space and facilities for any or all of the following: Public recreation; business, trade, or other exhibitions; sporting or athletic events; public meetings; conventions; and all other kinds of assemblages and, in order to obtain additional revenue, space and facilities for business and commercial purposes. Whenever the authority deems it to be in the public interest, the authority may lease any such project or any part or parts thereof or contract for the management and operation thereof or any part or parts thereof. Any such lease or contract may be for such period of years as the authority shall determine. This subdivision shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12;

(11) To charge fees, rentals, and other charges for the use of projects under the jurisdiction of such authority subject to and in accordance with such agreement with bondholders as may be made as hereinafter provided. Subject to contracts with bondholders, all fees, rentals, charges, and other revenue derived from any project shall be applied to the payment of operating, administration, and other necessary expenses of the authority properly chargeable to such project and to the payment of the interest on and principal of bonds or for making sinking-fund payments therefor. Subject to contracts with bondholders, the authority may treat one or more projects as a single enterprise with respect to revenue, expenses, the issuance of bonds, maintenance, operation, or other purposes;

(12) To annually request of the county board the amount of tax to be levied for airport purposes subject to section 77-3443, not to exceed three and five-tenths cents on each one hundred dollars of taxable valuation of all the taxable property in such county. Property tax levies for bonds issued by the authority pursuant to section 3-617 are not included in the levy limits established by this subdivision. The governing body shall levy and collect the taxes so requested at the same time and in the same manner as other taxes are levied and collected, and the proceeds of such taxes when due and as collected shall be set aside and deposited in the special account or accounts in which other revenue of the authority is deposited;

(13) To construct and maintain under, along, over, or across a project, telephone, telegraph, or electric wires and cables, fuel lines, gas mains, water mains, and other mechanical equipment not inconsistent with the appropriate use of such project, to contract for such construction and to lease the right to construct and use the same, or to use the same on such terms for such period of time and for such consideration as the authority shall determine;

(14) To accept grants, loans, or contributions from the United States, the State of Nebraska, any agency or instrumentality of either of them, or the county in which such authority is established and to expend the proceeds thereof for any corporate purposes;

(15) To incur debt and issue negotiable bonds and to provide for the rights of the holders thereof;

(16) To enter on any lands, waters, and premises for the purposes of making surveys, soundings, and examinations; and

(17) To do all things necessary or convenient to carry out the powers expressly conferred on such authorities by sections 3-601 to 3-622.

Source: Laws 1969, c. 141, § 13, p. 653; Laws 1973, LB 22, § 4; Laws 1977, LB 40, § 33; Laws 1979, LB 187, § 16; Laws 1992, LB 719A, § 14; Laws 1996, LB 1114, § 21; Laws 1997, LB 269, § 6; Laws 2001, LB 173, § 7; Laws 2016, LB 774, § 1.

An airport authority has no duty by statute nor common law to provide fire protection for property it leases to another. The Geer Co. v. Hall County Airport Authority, 193 Neb. 17, 225 N.W.2d 32 (1975).

3-614. Authority; promote commercial and general aviation.

An airport authority may in addition to the powers enumerated in section 3-613, encourage, foster, and promote the development of commercial and general aviation for the county which it serves, and advance the interests of such county in aeronautics and in commercial air transportation and its scheduling.

Source: Laws 1969, c. 141, § 14, p. 656.

3-615. Officers and employees of county; transfer to authority; effect.

Officers and employees of any board or department in or of a county may be transferred to the authority established in the county, and shall be eligible for such transfer and appointment without examination to offices and positions under the authority. Officers or employees of such county, who shall have accepted such transfer and who are at the time of such transfer members or beneficiaries of any existing pension or retirement system, shall continue to have the rights, privileges, obligations, and status with respect to such system or systems as are now prescribed by law.

Source: Laws 1969, c. 141, § 15, p. 656.

3-616. Funds; deposit; withdrawal; audits; effect on bonds and contracts.

All income, revenue, receipts, profits, and money of an authority from whatever source derived shall be paid to the treasurer of the authority who shall not commingle such money with any other money under his or her control. Such money shall be deposited in a separate bank, capital stock financial institution, or qualifying mutual financial institution account or accounts. Such money shall be withdrawn only by check, draft, or order signed by such treasurer on requisition of the chairperson of the authority or of such other person or persons as the authority may authorize to make such requisitions, approved by the board. The chief auditing officer of the county and his or her legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of such authority, including its receipts, disbursements, contracts, leases, sinking funds, and investments and any other matters relating to its financial standing. Notwithstanding the provisions of this section, such authority may contract with the holders of any of its bonds as to collection, custody, securing, investment, and payment of any money of the authority or any money held in trust or otherwise for the payment of bonds or in any way to secure bonds. The authority may carry out any such contract notwithstanding that such contract may be inconsistent with the previous provisions of this section. All banks, capital stock financial institutions, qualifying mutual financial institutions, and trust companies are hereby authorized to give security for such deposits of money of authorities pursuant to the Public Funds Deposit Security Act. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1969, c. 141, § 16, p. 657; Laws 1988, LB 975, § 2; Laws 1989, LB 33, § 4; Laws 1999, LB 396, § 2; Laws 2001, LB 362, § 5.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

3-617. Authority; bonds; notes; issuance; requirements; terms; effects of pledge; personal liability; repurchase.

(1) An authority shall have the power and is hereby authorized from time to time to issue its negotiable bonds for any corporate purpose in such amounts as may be required to carry out and fully perform the purposes for which such authority is established. Such authorities shall have power, from time to time and whenever refunding is deemed expedient, to issue bonds in amounts sufficient to refund any bonds, including any premiums payable upon the redemption of the bonds to be refunded, by the issuance of new bonds, whether the bonds to be refunded have or have not matured. It may issue bonds partly to refund bonds then outstanding and partly for any other corporate purpose. The refunding bonds may be exchanged for the bonds to be refunded with such cash adjustments as may be agreed, or may be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded. All bonds shall be general obligations of the authority issuing the same and shall be payable out of any revenue, income, receipts, profits, or other money of the authority, unless the authority shall expressly provide otherwise in the resolution authorizing their issuance, in which event the bonds shall be limited

obligations of the authority issuing the same and shall be payable only out of that part of the revenue, income, receipts, profits, or other money of the authority as shall be specified by the authority in such resolution. All bonds issued pursuant to the provisions of sections 3-601 to 3-622 shall be and are hereby made negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, subject only to any provisions contained in such bonds for the registration of the principal thereof.

(2) All such bonds shall be authorized by a resolution or resolutions of the board and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denominations, be in such form either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places within or without the State of Nebraska, and be subject to such terms of redemption and at such redemption premiums as such resolution or resolutions may provide. The bonds may be sold at public or private sale for such price or prices as the authority shall determine. No proceedings for the issuance of bonds of an authority shall be required other than those required by the provisions of sections 3-601 to 3-622, and the provisions of all other laws, if any, relative to the terms and conditions for the issuance, payment, redemption, registration, sale, or delivery of bonds of public bodies, corporations, or political subdivisions of this state shall not be applicable to bonds issued by authorities pursuant to sections 3-601 to 3-622.

(3) Any resolution or resolutions authorizing any bonds or any issue of bonds of an authority may contain covenants and agreements on the part of the authority to protect and safeguard the security and payment of such bonds, which shall be a part of the contract with the holders of the bonds thereby authorized, as to:

(a) Pledging all or any part of the revenue, income, receipts, profits, and other money derived by the authority issuing such bonds from the operation, management, or sale of property of any or all such projects of the authority to secure the payment of the bonds or of any issue of the bonds;

(b) The rates, rentals, tolls, charges, license fees, and other fees to be charged by the authority and the amounts to be raised in each year for the services and commodities sold, furnished, or supplied by the authority, and the use and disposition of the revenue of the authority received therefrom;

(c) The setting aside of reserves or sinking funds and the regulation, investment, and disposition thereof;

(d) Limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter issued may be applied, and pledging such proceeds to secure the payment of bonds, or of any issue of bonds;

(e) Limitations on the issuance of additional bonds of the authority, the terms and conditions upon which such additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

(f) The procedure if any by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(g) Limitations on the amount of money derived from any project to be expended for operating, administrative, or other expenses of the authority; and

(h) Any other matters, of like or different character, which in any way affect the security or protection of bonds of the authority.

(4) An authority shall have power from time to time to issue bond anticipation notes, referred to as notes herein, and from time to time to issue renewal notes, such notes in any case to mature not later than thirty months from the date of incurring the indebtedness represented thereby in an amount not exceeding the total estimated cost of the project for which the notes are to be issued including issuance expenses. Payment of such notes shall be made from any money or revenue which the authority may have available for such purpose or from the proceeds of the sale of bonds of the authority, or such notes may be exchanged for a like amount of such bonds. The authority may pledge such money or revenue of the authority, subject to prior pledges thereof, if any, for the payment of such notes, and may in addition secure the notes in the same manner as herein provided for bonds. All notes shall be issued and sold in the same manner as bonds, and any authority shall have power to make contracts for the future sale from time to time of notes on terms and conditions stated in such contracts, and the authority shall have power to pay such consideration as it shall deem proper for any commitments to purchase notes in the future. Such notes may also be collaterally secured by pledges and deposits with a bank or trust company, in trust for the payment of such notes, of bonds in an aggregate amount at least equal to the amount of such notes and, in any event, in an amount deemed by the issuing authority sufficient to provide for the payment of the notes in full at the maturity thereof. The authority issuing such notes may provide in the collateral agreement that the notes may be exchanged for bonds held as collateral security for the notes, or that the trustee may sell the bonds if the notes are not otherwise paid at maturity, and apply the proceeds of such sale to the payment of the notes. The notes may be sold at public or private sale for such price or prices as the authority shall determine.

(5) It is the intention hereof that any pledge of revenue, income, receipts, profits, charges, fees, or other money made by an authority for the payment of bonds shall be valid and binding from the time such pledge is made, that the revenue, income, receipts, profits, charges, fees, and other money so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without the physical delivery thereof or further act, and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(6) Neither the members of a board nor any person executing bonds or notes shall be liable personally thereon or be subject to any personal liability or accountability by reason of the issuance thereof.

(7) An authority shall have power out of any funds available therefor to purchase bonds or notes of such authority. Any bonds so purchased may be held, canceled, or resold by the authority subject to and in accordance with any agreements with bondholders.

Source: Laws 1969, c. 141, § 17, p. 657; Laws 1971, LB 1, § 1; Laws 1985, LB 307, § 2.

3-618. Bonds; state; not to impair obligations.

The State of Nebraska does covenant and agree with the holders of bonds issued by an authority that the state will not limit or alter the rights hereby vested in an authority to acquire, maintain, construct, reconstruct, and operate projects, to establish and collect such rates, rentals,

tolls, charges, license fees, and other fees as may be convenient or necessary to produce sufficient revenue to meet the expense of maintenance and operation of such projects and to fulfill the terms of any agreements made with holders of bonds of the authority. The state will also not in any way impair the rights and remedies of the bondholders until the bonds together with interest thereon and with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged. The provisions of sections 3-601 to 3-622 and of the proceedings authorizing bonds thereby shall constitute a contract with the holders of such bonds.

Source: Laws 1969, c. 141, § 18, p. 661.

3-619. Bonds, notes, obligations of authority; not debts of State of Nebraska or any county.

The bonds, notes, and other obligations of an authority shall not be a debt of the State of Nebraska or of the county in which such authority is established, and neither the state nor the county shall be liable thereon, nor shall such bonds be payable out of any funds other than funds of the authority issuing the same.

Source: Laws 1969, c. 141, § 19, p. 662.

3-620. Bonds; who may purchase.

Bonds of authorities are hereby made securities in which all public officers and bodies of this state, all municipalities and municipal subdivisions, and all other political subdivisions of this state, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, trustees, and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. Such bonds are also hereby made securities which may be deposited with and shall be received by all public officers and bodies of this state, all municipalities and municipal subdivisions, and other political subdivisions of this state for any purpose for which the deposit of bonds or other obligations of this state is now or may hereafter be authorized.

Source: Laws 1969, c. 141, § 20, p. 662.

3-621. Authorities; public purpose; property; bonds; tax exempt.

It is hereby found, determined, and declared that the creation of an authority and the carrying out of its corporate purposes is for the benefit of the people of the State of Nebraska, for the improvement of their welfare and prosperity, and for the promotion of their transportation, and is

a public purpose and a matter of statewide concern, and that projects operated by authorities are essential parts of the public transportation system. The State of Nebraska covenants with the holders of bonds, issued under the provisions of sections 3-610 to 3-621, that authorities shall be required to pay no taxes or assessments upon any of the property acquired by them or under their respective jurisdictions, control, possession, or supervision, or upon the activities of authorities in the operation and maintenance of projects, or upon any charges, fees, revenue, or other income received by authorities except motor vehicle fuel and aviation fuel taxes, and that the bonds and notes of authorities and the income therefrom shall at all times be exempt from taxation, except for transfer and estate taxes. This section shall constitute a covenant and agreement with the holders of all bonds and notes issued by authorities. This section shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12.

Source: Laws 1969, c. 141, § 21, p. 662; Laws 2001, LB 173, § 8.

3-622. Airport authority; applicability of sections.

Sections 3-610 to 3-621 shall be full authority for the creation of airport authorities by counties, and for the exercise of powers therein granted to counties and to such authorities, and no action, proceeding or election shall be required prior to the creation of such airport authorities other than those provided for in sections 3-610 to 3-621.

Source: Laws 1969, c. 141, § 22, p. 663.

ARTICLE 7

JOINT AIRPORT AUTHORITY

Section

3-701. Terms, defined.

For purposes of the Joint Airport Authorities Act, unless the context otherwise requires:

(1) Authority shall mean a joint airport authority which shall be a body politic and corporate organized pursuant to the act and shall be deemed to embrace the geographical area included within each municipality joining in its organization or thereafter becoming associated therewith as provided in the act;

(2) Political subdivision shall mean any county, city, or village of this state, any airport authority created by any county, city, or village pursuant to law, or any joint airport authority;

(3) Governing body, in the case of a county, shall mean the chairperson and board of commissioners or supervisors thereof, as the case may be, in the case of a city, shall mean the mayor and council thereof, in the case of a village, shall mean the chairperson and board of trustees thereof, and, in the case of an airport authority or a joint airport authority, shall mean the governing board thereof;

(4) Agreement shall mean an agreement entered into pursuant to section 3-702;

(5) Bonds shall mean bonds issued by the joint authority pursuant to the act;

(6) Board shall mean the governing body of the joint authority;

(7) Real property shall mean lands, structures, and interests in land, including lands under water and riparian rights, and any and all things and rights usually included within the term real property, including not only fee simple absolute but also any and all lesser interests, such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property;

(8) Project shall mean any airport leased, constructed, owned, and operated by the joint authority, including all real and personal property, structures, machinery, equipment, and appurtenances or facilities which are part of such airport or used or useful in connection therewith either as ground facilities for the convenience of handling aviation equipment, passengers, and freight or as part of aviation operation, air navigation, and air safety operation;

(9) General election shall mean the statewide general election specified in section 32-403; and

(10) Primary election shall mean the statewide primary election specified in section 32-401.

Source: Laws 1969, c. 24, § 1, p. 202; Laws 1994, LB 76, § 463.

3-702. Joint airport authority; agreement; governed by a board.

Any political subdivision otherwise authorized by law to own or operate an airport is hereby authorized to enter into an agreement with any other municipality or combination of municipalities pursuant to the provisions of the Interlocal Cooperation Act, with respect to the creation of a joint airport authority of the political subdivisions concerned. Such joint authority shall be governed by a five-member board having full and exclusive jurisdiction and control over all facilities specified in such agreement, whether then in existence or to be thereafter acquired, and having to do with aviation, air navigation, and air safety.

Source: Laws 1969, c. 24, § 2, p. 203.

Cross References

Interlocal Cooperation Act, see section 13-801.

3-703. Joint airport authority; agreement; contents; board; members; election; qualifications; vacancies; how filled.

The agreement shall specify, in addition to those things required by section 13-804, (1) the date upon which the initial board is to organize, (2) the geographic boundaries or limits of the districts into which the joint authority shall be divided, of which there may be no more than five, from which the members of the initial board shall be appointed and from which their successors shall be elected, (3) the number of board members to be initially appointed, and thereafter elected, from each district designated pursuant to subdivision (2) of this section, and (4) the method by which the five members of the initial board shall be appointed and the duration of their respective terms of office. The limits of each district may be changed only upon the affirmative vote of a majority of the whole membership of the board. Each member of the board shall be a registered voter and reside within the district from which he or she is appointed or elected. The terms of office of the members of the initial board shall expire at such time as their successors shall have been elected and qualified pursuant to section 32-549. Vacancies on the board, other than those resulting from expiration of a term of office, may be filled by a majority vote of the remaining members of the board. Any member so appointed shall serve until a successor is elected at the next general election to serve the unexpired portion of the term if any.

Source: Laws 1969, c. 24, § 3, p. 203; Laws 1994, LB 76, § 464.

3-704. Repealed. Laws 1994, LB 76, § 615.

3-705. Board; members; expenses; quorum; delegation; term of existence; disposition of rights and properties; jurisdiction.

The members of the board shall not be entitled to compensation for their services, but shall be entitled to reimbursement for expenses paid or incurred in the performance of the duties imposed upon them by the provisions of sections 3-701 to 3-716 with reimbursement to be made in the same manner as provided in section 23-1112 for county officers and employees. A majority of the members of the board then in office shall constitute a quorum. The board may delegate to one or more of its members, or to its officers, agents, and employees, such powers and duties as it may deem proper. The joint authority and its corporate existence shall continue only for a period of thirty years from the date of its initial organization and thereafter until all its liabilities have been met and its bonds have been paid in full or such liabilities and bonds have otherwise been discharged or arrangements for such payment or discharge duly made and provided for. When all liabilities incurred by the joint authority of every kind and character have been met and all its bonds have been paid in full, or such liabilities and bonds have otherwise

been discharged or arrangements for such payment or discharge duly made and provided for, all rights and properties of the joint authority shall pass to and be vested in such public body as the board may deem advisable and in the best public interest, and the board may make such agreements and take such actions as it shall determine upon with respect thereto. Provision for ultimate disposition of the rights and properties of the joint authority may also be set forth in the agreement pursuant to which the joint authority is organized, and any such provisions shall be controlling. The joint authority shall have and retain full and exclusive jurisdiction and control over all projects under its jurisdiction, with the right and duty to charge and collect revenue therefrom, for the benefit of the holders of any of its bonds or other liabilities.

Source: Laws 1969, c. 24, § 5, p. 205; Laws 1981, LB 204, § 15.

3-706. Joint authority; property; control; convey; transfer; title; acquire.

(1) Any political subdivision participating in the creation of a joint authority may, by resolution or resolutions, convey or transfer to it in accordance with the provisions of the agreement, any existing airport or any other property of such political subdivision for use in connection with a project, including real and personal property owned or leased by such political subdivision and used or useful in connection therewith. The title to any such property shall pass to the joint authority. Any conveyance of an existing airport shall be subject to any leases or agreements duly and validly made by the political subdivision affecting such airports or the property so conveyed, but any such lease or agreement which is inconsistent with the ability of the joint authority to issue negotiable bonds may be renegotiated by the authority.

(2) Any county, city, or village participating in the creation of a joint authority may acquire by purchase or condemnation real property in its name for the project or for the widening of existing roads, streets, parkways, avenues, or highways, or for new roads, streets, parkways, avenues, or highways to a project, or partly for such purposes, by purchase or condemnation in the manner provided in sections 76-704 to 76-724. Such county, city, or village may also close any roads, streets, parkways, avenues, or highways as may be necessary or convenient to facilitate the construction or operation of a project.

(3) Contracts may be entered into between any political subdivision and a joint authority, or between other public bodies of the State of Nebraska and such political subdivision or joint authority, or between each and any of them, providing for the conveyance of property to such political subdivision or joint authority for use in connection with a project, and for the closing of streets, roads, parkways, avenues, or highways. The amounts, terms, and conditions of payment, if any, shall be prescribed by such political subdivision or joint authority in connection with such conveyances. Such contracts may also contain covenants by such political subdivision or such public body as to the road, street, parkway, avenue, or highway improvements to be made by such political subdivision or such public body. The governing body of any political subdivision may authorize such contracts between such political subdivision and the joint authority by resolution, and no other authorization on the part of such political subdivision for such contracts shall be necessary. All obligations of any county, city, or village for the payment of money to a joint authority incurred in carrying out the provisions of the Joint Airport Authorities Act shall be included in and provided for by each annual or biennial budget of any county, city, or village

thereafter made until fully discharged. In the case of other public bodies of the state, such contracts shall be authorized as provided by law.

(4) A joint authority operating under the provisions of the Joint Airport Authorities Act may acquire real property for a project in its own name at the cost and expense of the joint authority by purchase or condemnation pursuant to the provisions of sections 76-704 to 76-724 and subdivision (4) of section 3-707. The joint authority shall have the use and occupancy of such real property for so long as its corporate existence shall continue.

(5) If a joint authority shall have the use and occupancy of any real property which it shall determine is no longer required for a project the joint authority shall have power to sell, lease, or otherwise dispose thereof. Such joint authority shall retain the proceeds of sale, rentals, or other money derived from the disposition thereof for its corporate purposes.

Source: Laws 1969, c. 24, § 6, p. 205; Laws 1973, LB 22, § 5; Laws 2000, LB 1116, § 4.

3-707. Joint authority; powers.

Any joint authority established under the Joint Airport Authorities Act shall have power:

(1) To sue and be sued;

(2) To have a seal and alter the same at pleasure;

(3) To acquire, hold, and dispose of personal property for its corporate purposes;

(4) To acquire, by purchase or condemnation, real property or rights or easements therein necessary or convenient for its corporate purposes and, except as may otherwise be provided in the act, to use the same so long as its corporate existence continues. Such power shall not be exercised by authorities created after September 2, 1973, without further approval until such time as three or more members of the authority have been elected. If the exercise of such power is necessary while three or more appointed members remain on the authority, the appointing body shall approve all proceedings under this subdivision;

(5) To make bylaws for the management and regulation of its affairs and, subject to agreements with bondholders, to make rules and regulations for the use of projects and the establishment and collection of rentals, fees, and all other charges for services or commodities sold, furnished, or supplied by such joint authority;

(6) To appoint officers, agents, and employees and fix their compensation;

(7) To make contracts, leases, and all other instruments necessary or convenient to the corporate purposes of the joint authority;

(8) To design, construct, maintain, operate, improve, and reconstruct, so long as its corporate existence continues, such projects as are necessary and convenient to the maintenance and development of aviation services to and for the political subdivisions by which such joint authority was established, including landing fields, heliports, hangars, shops, passenger and freight terminals, control towers, and all facilities necessary or convenient in connection with any such project, to contract for the construction, operation, or maintenance of any parts thereof or for services to be performed thereon, and to rent parts thereof and grant concessions thereon, all on such terms and conditions as the joint authority may determine. This subdivision shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12;

(9) To include in such project, subject to zoning restrictions, space and facilities for any or all of the following: Public recreation; business, trade, or other exhibitions; sporting or athletic events; public meetings; conventions; and all other kinds of assemblages and, in order to obtain additional revenue, space and facilities for business and commercial purposes. Whenever the joint authority deems it to be in the public interest, it may lease any such project or any part or parts thereof or contract for the management and operation thereof or any part or parts thereof. Any such lease or contract may be for such period of years as the joint authority shall determine. This subdivision shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12;

(10) To charge fees, rentals, and other charges for the use of projects under its jurisdiction subject to and in accordance with such agreements with bondholders as may be made as provided in the act. Subject to contracts with bondholders, all fees, rentals, charges, and other revenue derived from any project shall be applied to the payment of operating, administration, and other necessary expenses of the joint authority properly chargeable to such project and to the payment of the interest on and principal of bonds or for making sinking-fund payments therefor. Subject to contracts with bondholders, the joint authority may treat one or more projects as a single enterprise with respect to revenue, expenses, the issuance of bonds, maintenance, operation, or other purposes;

(11) To certify annually to each tax-levying body the amount of tax to be levied for airport purposes subject to section 77-3443, not to exceed three and five-tenths cents on each one hundred dollars of taxable valuation of all of the taxable property therein, to insure that all of the taxable property within each county, city, and village which has become interested in a joint airport authority, directly or indirectly, as set forth in section 3-702, whether at the time of the authority's initial organization or thereafter, becomes subject to taxation for the purposes of such authority. Whenever a city or village so interested in a joint authority is situated within a county which is likewise interested in the same joint authority, the joint authority shall, in order to avoid the possibility of double taxation, certify the tax only to the tax-levying body of the county and shall not certify any tax to the tax-levying body of such city or village. Such tax-levying bodies shall request the county board to levy and collect the taxes so certified at the same time and in the same manner as other taxes of such county, city, or village, as the case may be, are levied and collected, and the proceeds of such taxes as collected shall be set aside and deposited in the special account or accounts in which other revenue of the joint authority is deposited;

(12) To covenant in any resolution or other instrument pursuant to which it issues any of its bonds or other obligations that the joint authority will, for so long as any such bonds or obligations and the interest thereon remain outstanding and unpaid, annually certify to each tax-levying body referred to in subdivision (11) of this section the maximum tax which the joint authority is, at the time of issuing such bonds or other obligations, authorized to so certify and that it will, in the event of any change in the method of assessment, so certify such tax as will raise the same amount in dollars as such maximum tax would have raised at the time such bonds or other obligations were issued;

(13) To pledge for the security of the principal of any bonds or other obligations issued by the joint authority and the interest thereon any revenue derived by the joint authority from taxation;

(14) To construct and maintain under, along, over, or across a project, telephone, telegraph, or electric wires and cables, fuel lines, gas mains, water mains, and other mechanical equipment not inconsistent with the appropriate use of such project, to contract for such construction and to

lease the right to construct and use the same, or to use the same on such terms, for such periods of time, and for such consideration as the joint authority shall determine;

(15) To accept grants, loans, or contributions from the United States, the State of Nebraska, or any agency or instrumentality of either of them and to expend the proceeds thereof for any corporate purposes;

(16) To incur debt and issue negotiable bonds and to provide for the rights of the holders thereof;

(17) To enter on any lands, waters, and premises for the purposes of making surveys, soundings, and examinations; and

(18) To do all things necessary or convenient to carry out the powers expressly conferred by the act.

Source: Laws 1969, c. 24, § 7, p. 207; Laws 1973, LB 22, § 6; Laws 1979, LB 187, § 17; Laws 1992, LB 719A, § 15; Laws 1996, LB 1114, § 22; Laws 2001, LB 173, § 9.

3-708. Joint authority; foster, promote, and develop commercial and general aviation.

A joint airport authority shall, in addition to the powers enumerated in section 3-707, encourage, foster, and promote the development of commercial and general aviation for the area which it serves, and advance the interest of such area in aeronautics and in commercial air transportation and its scheduling. A joint airport authority may represent the interest of such area in commercial air service hearings.

Source: Laws 1969, c. 24, § 8, p. 210.

3-709. Funds; deposit; withdrawals; security; contracts authorized.

All income, revenue, receipts, profits, and money of a joint authority, from whatever source derived, shall be paid to the treasurer of the joint authority who shall not commingle such money with any other money under his or her control. Such money shall be deposited in a separate bank, capital stock financial institution, or qualifying mutual financial institution account or accounts. Such money shall be withdrawn only by check, draft, or order signed by the treasurer on requisition of the chairperson of the joint authority or of such other person or persons as the joint authority may authorize to make such requisitions, approved by the board. Notwithstanding the provisions of this section, such joint authority may contract with the holders of any of its bonds as to collection, custody, securing, investment, and payment of any money of the joint authority or any money held in trust or otherwise for the payment of bonds or in any way to secure bonds. The joint authority may carry out any such contract notwithstanding that such contract may be inconsistent with the previous provisions of this section. All banks, capital stock financial institutions, qualifying mutual financial institutions, and trust companies are hereby authorized to give security for such deposits of money of joint authorities pursuant to the Public Funds Deposit Security Act. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1969, c. 24, § 9, p. 211; Laws 1989, LB 33, § 5; Laws 1999, LB 396, § 3; Laws 2001, LB 362, § 6.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

3-710. Bonds; notes; issuance; requirements; terms; effects of pledge; personal liability; repurchase.

(1) A joint authority may from time to time issue its negotiable bonds for any corporate purpose in such amounts as may be required to carry out and fully perform the purposes for which such joint authority is established. Such authority may, from time to time and whenever refunding is deemed expedient, issue bonds in amounts sufficient to refund any bonds, including any premiums payable upon the redemption of the bonds to be refunded, by the issuance of new bonds, whether the bonds to be refunded have or have not matured. It may issue bonds partly to refund bonds then outstanding and partly for any other corporate purpose. The refunding bonds may be exchanged for the bonds to be refunded with such cash adjustments as may be agreed, or may be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded. All bonds shall be general obligations of the joint authority issuing the same and shall be payable out of any revenue, income, receipts, profits, or other money of the joint authority, unless the joint authority shall expressly provide otherwise in the resolution authorizing their issuance, in which event the bonds shall be limited obligations of the joint authority issuing the same and shall be payable only out of that part of the revenue, income, receipts, profits, or other money of the joint authority as shall be specified by the joint authority in such resolution. All bonds and appurtenant interest coupons, if any, issued pursuant to the provisions of sections 3-701 to 3-716 shall be and are hereby made negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, subject only to any provisions contained in such bonds for the registration of the principal and interest thereof.

(2) All such bonds shall be authorized by resolution or resolutions of the board and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denominations, be in such form either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places within or without this state, and be subject to such terms of redemption and at such redemption premiums as such resolution or resolutions may provide. The bonds may be sold at public or private sale for such price or prices as the joint authority shall determine. No proceedings for the issuance of bonds of a joint authority shall be required other than those required by the provisions of sections 3-701 to 3-716, and the provisions of all other laws and city charters, if any, relative to the terms and conditions for the issuance, payment, redemption, registration, sale, or delivery of bonds of public bodies, corporations, or political subdivisions of this state shall not be applicable to bonds issued by joint airport authorities pursuant to sections 3-701 to 3-716.

(3) Any resolution or resolutions authorizing any bonds or any issue of bonds of a joint authority may contain covenants and agreements on the part of the joint authority to protect and safeguard the security and payment of such bonds, which shall be a part of the contract with the holders of the bonds thereby authorized, as to:

(a) Pledging all or any part of the revenue, income, receipts, profits, and other money derived by the joint authority issuing such bonds from the operation, management, or sale of property of

any or all such projects of the joint authority to secure the payment of the bonds or of any issue of the bonds;

(b) The rates, rentals, tolls, charges, license fees, and other fees to be charged by the joint authority and the amounts to be raised in each year for the services and commodities sold, furnished, or supplied by the joint authority, and the use and disposition of the revenue of the joint authority received therefrom;

(c) The setting aside of reserves or sinking funds and the regulation, investment, and disposition thereof;

(d) Limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter issued may be applied, and pledging such proceeds to secure the payment of bonds or of any issue of bonds;

(e) Limitations on the issuance of additional bonds of the joint authority, the terms and conditions upon which such additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

(f) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(g) Limitations on the amount of money derived from any project to be expended for operating, administrative, or other expenses of the joint authority; and

(h) Any other matters, of like or different character, which in any way affect the security or protection of bonds of the joint authority.

(4) A joint authority may from time to time issue bond anticipation notes, referred to in this subsection as notes, and from time to time issue renewal notes, such notes in any case to mature not later than thirty months from the date of incurring the indebtedness represented thereby in an amount not exceeding the total estimated cost of the project for which the notes are to be issued including issuance expenses. Payment of such notes shall be made from any money or revenue which the joint authority may have available for such purpose or from the proceeds of the sale of bonds of the joint authority, or such notes may be exchanged for a like amount of such bonds. The authority may pledge such money or revenue of the joint authority, subject to prior pledges thereof, if any, for the payment of such notes, and may in addition secure the notes in the same manner as provided for bonds. All notes shall be issued and sold in the same manner as bonds, and any joint authority may make contracts for the future sale from time to time of notes on terms and conditions stated in such contracts, and pay such consideration as it shall deem proper for any commitments to purchase notes in the future. Such notes may also be collaterally secured by pledges and deposits with a bank or trust company, in trust for the payment of such notes, of bonds in an aggregate amount at least equal to the amount of such notes and, in any event, in an amount deemed by the issuing joint authority sufficient to provide for the payment of the notes in full at the maturity thereof. The joint authority issuing such notes may provide in the collateral agreement that the notes may be exchanged for bonds held as collateral security for the notes, or that the trustee may sell the bonds if the notes are not otherwise paid at maturity, and apply the proceeds of such sale to the payment of the notes. The notes may be sold at public or private sale for such price or prices as the authority shall determine.

(5) It is the intention of sections 3-701 to 3-716 that any pledge of revenue, income, receipts, profits, charges, fees, or other money made by a joint authority for the payment of bonds shall be valid and binding from the time such pledge is made, that the revenue, income, receipts, profits, charges, fees, and other money so pledged and thereafter received by the joint authority shall

immediately be subject to the lien of such pledge without the physical delivery thereof or further act, and that the lien of any such pledge shall be valid and binding as against all parties having subsequently arising claims of any kind in tort, contract, or otherwise against the joint authority irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(6) Neither the members of a board nor any person executing bonds or notes shall be liable personally thereon or be subject to any personal liability or accountability by reason of the issuance thereof.

(7) A joint authority may, out of any funds available therefor, purchase bonds or notes of such joint authority. Any bonds so purchased may be held, canceled, or resold by the joint authority subject to and in accordance with any agreements with bondholders.

Source: Laws 1969, c. 24, § 10, p. 211; Laws 1970, Spec. Sess., c. 5, § 2, p. 75; Laws 1985, LB 307, § 3.

3-711. Bonds; state; not to impair obligations.

The State of Nebraska does hereby covenant and agree with the holders of bonds issued by a joint authority that the state will not limit or alter the rights hereby vested in a joint authority to acquire, maintain, construct, reconstruct, and operate projects, to establish and collect such rates, rentals, tolls, charges, license fees, and other fees as may be convenient or necessary to produce sufficient revenue to meet the expense of maintenance and operation of such projects and to fulfill the terms of any agreements made with the holders of bonds of the joint authority. The state will also not in any way impair the rights and remedies of the bondholders until the bonds together with interest thereon and with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders are fully met and discharged. The provisions of sections 3-701 to 3-716 and of the proceedings authorizing bonds thereby shall constitute a contract with the holders of such bonds.

Source: Laws 1969, c. 24, § 11, p. 215.

3-712. Bonds; not debt of State of Nebraska or political subdivision.

The bonds, notes, and other obligations of a joint authority shall not be a debt of the State of Nebraska or of the political subdivisions creating or otherwise interested in such joint authority, and neither the state nor any such political subdivision shall be liable thereon, nor shall such bonds be payable out of any funds other than funds of the joint authority issuing the same.

Source: Laws 1969, c. 24, § 12, p. 216.

3-713. Bonds; who may purchase.

Bonds of joint airport authorities are hereby made securities in which all public officers and bodies of this state, all municipal subdivisions and all other political subdivisions of this state, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, trustees, and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. Such bonds are also hereby made securities which may be deposited with and shall be received by all public officers and bodies of this state, all municipalities and municipal subdivisions, and other political subdivisions of this state for any purpose for which the deposit of bonds or other obligations of this state is now or may hereafter be authorized.

Source: Laws 1969, c. 24, § 13, p. 216.

3-714. Joint authority; public purpose; property; bonds; tax exempt.

It is hereby found, determined, and declared that the creation of a joint authority and the carrying out of its corporate purposes is for the benefit of the people of the State of Nebraska, for the improvement of their welfare and prosperity, and for the promotion of their transportation, and is a public purpose and a matter of statewide concern, that aviation projects operated by joint authorities are essential parts of the public transportation system. The State of Nebraska covenants with the holders of such bonds that joint authorities shall be required to pay no taxes or assessments upon any of the property acquired by them or under their respective jurisdictions, control, possession, or supervision to the extent such property is used for a public purpose, or upon the activities of joint authorities in the operation and maintenance of projects, or upon any charges, fees, revenue, or other income received by authorities except motor vehicle fuel and aviation fuel taxes, and that the bonds and notes of joint authorities and the income therefrom shall at all times be exempt from taxation, except for transfer and estate taxes. This section shall constitute a covenant and agreement with the holders of all bonds and notes issued by authorities.

Source: Laws 1969, c. 24, § 14, p. 216; Laws 2001, LB 173, § 10.

3-715. Sections, how construed.

Insofar as the provisions of sections 3-701 to 3-716 are inconsistent with the provisions of any other act or of any city charter, if any, the provisions of sections 3-701 to 3-716 shall be controlling.

Source: Laws 1969, c. 24, § 15, p. 217.

3-716. Act, how cited.

Sections 3-701 to 3-716 may be cited as the Joint Airport Authorities Act.

Source: Laws 1969, c. 24, § 16, p. 217.

ARTICLE 8

NEBRASKA STATE AIRLINE AUTHORITY

Section

3-801. Repealed. Laws 2013, LB 78, § 23.

3-802. Repealed. Laws 2013, LB 78, § 23.

3-803. Repealed. Laws 2013, LB 78, § 23.

3-804. Repealed. Laws 2013, LB 78, § 23.

3-805. Repealed. Laws 2013, LB 78, § 23.

3-806. Repealed. Laws 2012, LB 782, § 253.

CHAPTER 39

HIGHWAYS AND BRIDGES

Article.

(c) Rural Road Improvement District. 39-1638 to 39-1655.

17. County Roads. Land Acquisition, Establishment, Alteration, Survey, Relocation, Vacation, and Abandonment.
    (a) Land Acquisition. 39-1701 to 39-1703.
    (b) Establishment, Alteration, and Survey. 39-1704 to 39-1721.
    (c) Vacation and Abandonment. 39-1722 to 39-1731.
18. County Roads. Maintenance. 39-1801 to 39-1820.
19. County Roads. Road Finances. 39-1901 to 39-1914.
20. County Road Classification. 39-2001 to 39-2003.
21. Functional Classification. 39-2101 to 39-2125.
22. Nebraska Highway Bonds. 39-2201 to 39-2226.
23. County Highway and City Street Superintendents Act. 39-2301 to 39-2311.
24. Highway Allocation Fund. 39-2401 to 39-2403.
25. Distribution to Political Subdivisions.
    (a) Roads. 39-2501 to 39-2510.
    (b) Streets. 39-2511 to 39-2520.
26. Junkyards. 39-2601 to 39-2612.
27. Build Nebraska Act. 39-2701 to 39-2705.
28. Transportation Innovation Act. 39-2801 to 39-2824.

ARTICLE 1

GENERAL HIGHWAY PROVISIONS

Section

39-101. Terms, defined.

For purposes of Chapter 39, unless the context otherwise requires:

(1) Alley means a highway intended to provide access to the rear or side of lots or buildings and not intended for the purpose of through vehicular traffic;

(2) Divided highway means a highway with separated roadways for traffic in opposite directions;

(3) Highway means the entire width between the boundary limits of any street, road, avenue, boulevard, or way which is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel;

(4) Intersection means the area embraced within the prolongation or connection of the lateral curb lines or, if there are no lateral curb lines, the lateral boundary lines of the roadways of two or more highways which join one another at, or approximately at, right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict. When a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection. The junction of an alley with a highway shall not constitute an intersection;

(5) Mail means to deposit in the United States mail properly addressed and with postage prepaid;

(6) Maintenance means the act, operation, or continuous process of repair, reconstruction, or preservation of the whole or any part of any highway, including surface, shoulders, roadsides, traffic control devices, structures, waterways, and drainage facilities, for the purpose of keeping it at or near or improving upon its original standard of usefulness and safety;

(7) Motor vehicle means every self-propelled land vehicle, not operated upon rails, except mopeds as defined in section 60-637, self-propelled chairs used by persons who are disabled, electric personal assistive mobility devices as defined in section 60-618.02, and bicycles as defined in section 60-611;

(8) Park or parking means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers;

(9) Pedestrian means any person afoot;

(10) Right-of-way means the right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other;

(11) Roadway means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. If a highway includes two or more separate roadways, the term roadway refers to any such roadway separately but not to all such roadways collectively;

(12) Shoulder means that part of the highway contiguous to the roadway and designed for the accommodation of stopped vehicles, for emergency use, and for lateral support of the base and surface courses of the roadway;

(13) Sidewalk means that portion of a highway between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use by pedestrians;

(14) Traffic means pedestrians, ridden or herded animals, and vehicles and other conveyances either singly or together while using any highway for purposes of travel; and

(15) Vehicle means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved solely by human power, devices used exclusively upon stationary rails or tracks, electric personal assistive mobility devices as defined in section 60-618.02, and bicycles as defined in section 60-611.

Source: Laws 1993, LB 370, 16; Laws 2002, LB 1105, § 436; Laws 2015, LB 95, § 2.

The standard for determining whether a vehicle is "approaching" is whether or not the vehicle poses an immediate hazard; that is, whether the circumstances are such that there is a danger of collision if one vehicle does not grant precedence to the other. Springer v. Bohling, 259 Neb. 71, 607 N.W.2d 836 (2000).

The right-of-way does not include a right to encroach upon that half of the highway upon which cars coming from the opposite direction are entitled to travel. Generally, an unexcused vehicular encroachment on another's lane of traffic, such as driving to the left of the middle of a roadway, prevents acquisition of a right-of-way and precludes the unlawful encroachment from becoming a favored position in movement of traffic. Krul v. Harless, 222 Neb. 313, 383 N.W.2d 744 (1986).

A hospital driveway which is privately maintained and subject to use by patients, visitors, and others having legitimate business at the hospital is not a "highway," within the meaning of this section and, therefore, the rules of the road as set forth in sections 39-601 to 39-6,122 (now sections 60-601 to 60-6,377) do not apply to its use. However, common law applicable to users of public ways does apply. Bassinger v. Agnew, 206 Neb. 1, 290 N.W.2d 793 (1980).

Vehicle on the right has the favored position but does not have an absolute right to proceed regardless of the circumstances. Crink v. Northern Nat. Gas Co., 200 Neb. 460, 263 N.W.2d 857 (1978).

Intersection right-of-way is a qualified, not absolute, right to proceed, exercising due care, in a lawful manner in preference to an opposing vehicle. Reese v. Mayer, 198 Neb. 499, 253 N.W.2d 317 (1977).

Sidewalk is portion of street between curb lines, or lateral lines of roadway and adjacent property lines, intended for use by pedestrians. Therkildsen v. Gottsch, 194 Neb. 729, 235 N.W.2d 622 (1975).

Where highway includes two roadways thirty feet apart, each crossing thereof is a separate intersection. Therkildsen v. Gottsch, 194 Neb. 729, 235 N.W.2d 622 (1975).

39-102. Rules and regulations; promulgated by Department of Transportation to promote public safety.

In order to promote public safety, to preserve and protect state highways, and to prevent immoderate and destructive use of state highways, the Department of Transportation may formulate, adopt, and promulgate rules and regulations in regard to the use of and travel upon the state highways consistent with Chapter 39 and the Nebraska Rules of the Road. Such rules and regulations may include specifications, standards, limitations, conditions, requirements, definitions, enumerations, descriptions, procedures, prohibitions, restrictions, instructions, controls, guidelines, and classifications relative to the following:

(1) The issuance or denial of special permits for the travel of vehicles or objects exceeding statutory size and weight capacities upon the highways as authorized by section 60-6,298;

(2) Qualification and prequalification of contractors, including, but not limited to, maximum and minimum qualifications, ratings, classifications, classes of contractors or classes of work, or both, and procedures to be followed;

(3) The setting of special load restrictions as provided in Chapter 39 and the Nebraska Rules of the Road;

(4) The placing, location, occupancy, erection, construction, or maintenance, upon any highway or area within the right-of-way, of any pole line, pipeline, or other utility located above, on, or under the level of the ground in such area;

(5) Protection and preservation of trees, shrubbery, plantings, buildings, structures, and all other things located upon any highway or any portion of the right-of-way of any highway by the department;

(6) Applications for the location of, and location of, private driveways, commercial approach roads, facilities, things, or appurtenances upon the right-of-way of state highways, including, but not limited to, procedures for applications for permits therefor and standards for the issuance or denial of such permits, based on highway traffic safety, and the foregoing may include reapplication for permits and applications for permits for existing facilities, and in any event, issuance of permits may also be conditioned upon approval of the design of such facilities;

(7) Outdoor advertising signs, displays, and devices in areas where the department is authorized by law to exercise such controls; and

(8) The Grade Crossing Protection Fund provided for in section 74-1317, including, but not limited to, authority for application, procedures on application, effect of application, procedures for and effect of granting such applications, and standards and specifications governing the type of control thereunder.

This section shall not amend or derogate any other grant of power or authority to the department to make or promulgate rules and regulations but shall be additional and supplementary thereto.

Source: Laws 1973, LB 45, § 99; Laws 1985, LB 395, § 1; R.S.1943, (1988), § 39-699; Laws 1993, LB 370, § 17; Laws 2017, LB 339, § 83.

Operative Date: July 1, 2017

Cross References

Nebraska Rules of the Road, see section 60-601.

39-103. Department of Transportation; rules and regulations; violation; penalty.

Any person who operates a vehicle upon any highway in violation of the rules and regulations of the Department of Transportation governing the use of state highways shall be guilty of a Class III misdemeanor.

Source: Laws 1967, c. 235, § 4, p. 633; R.R.S.1943, § 39-7,134.01; Laws 1977, LB 41, § 17; R.S.1943, (1988), § 39-699.01; Laws 1993, LB 370, § 18; Laws 2017, LB 339, § 84.

Operative Date: July 1, 2017

ARTICLE 2

SIGNS

Cross References

Outdoor advertising signs:
Removal, see sections 69-1701 and 69-1702.
Rules and regulations, see section 39-102.
Tourist-oriented directional sign panels, see sections 39-207 to 39-211.

Section

39-201. Repealed. Laws 1995, LB 264, § 37.

39-201.01. Terms, defined.

For purposes of sections 39-202 to 39-226:

(1) Highway Beautification Control System means the National System of Interstate and Defense Highways, the system of federal-aid primary roads as they existed on June 1, 1991, any additional highway or road which is designated as a part of the National Highway System under the federal Intermodal Surface Transportation Efficiency Act, and scenic byways. A map of the Highway Beautification Control System shall be maintained as provided in section 39-1311;

(2) Scenic byway means a road, highway, or connecting link designated as a scenic byway pursuant to section 39-217. A map of the scenic byways shall be maintained as provided in section 39-1311; and

(3) Visible, in reference to advertising signs, displays, or devices, means the message or advertising content of such sign, display, or device is capable of being seen without visual aid by a person of normal visual acuity. A sign is considered visible even though the message or advertising content can be seen but not read.

Source: Laws 1995, LB 264, § 1.

39-202. Advertising signs, displays, or devices; visible from highway; prohibited; exceptions; permitted signs enumerated.

(1) Except as provided in sections 39-202 to 39-205, 39-215, 39-216, and 39-220, the erection or maintenance of any advertising sign, display, or device beyond six hundred sixty feet of the right-of-way of the National System of Interstate and Defense Highways and visible from the main-traveled way of such highway system is prohibited.

(2) The following signs shall be permitted:

(a) Directional and official signs to include, but not be limited to, signs and notices pertaining to natural wonders, scenic attractions, and historical attractions. Such signs shall comply with standards and criteria established by regulations of the Department of Transportation as promulgated from time to time;

(b) Signs, displays, and devices advertising the sale or lease of property upon which such media are located;

(c) Signs, displays, and devices advertising activities conducted on the property on which such media are located; and

(d) Signs in existence in accordance with sections 39-212 to 39-222, to include landmark signs, signs on farm structures, markers, and plaques of historical or artistic significance.

(3) For purposes of this section, visible shall mean the message or advertising content of an advertising sign, display, or device is capable of being seen without visual aid by a person of normal visual acuity. A sign shall be considered visible even though the message or advertising content may be seen but not read.

Source: Laws 1975, LB 213, § 1; R.S.1943, (1988), § 39-618.02; Laws 1993, LB 370, § 20; Laws 1995, LB 264, § 2; Laws 2017, LB 339, § 85.

Operative Date: July 1, 2017

39-203. Advertising sign; compensation upon removal; Department of Transportation; make expenditures; when.

Just compensation shall be paid upon the removal of any advertising sign, display, or device lawfully erected or in existence prior to May 27, 1975, and not conforming to the provisions of sections 39-202 to 39-205, 39-215, 39-216, and 39-220 except as otherwise authorized by such sections. The Department of Transportation shall not be required to expend any funds under the provisions of such sections unless and until federal-aid matching funds are made available for this purpose.

Source: Laws 1975, LB 213, § 3; R.S.1943, (1988), § 39-618.04; Laws 1993, LB 370, § 21; Laws 1995, LB 264, § 3; Laws 2017, LB 339, § 86.

Operative Date: July 1, 2017

39-204. Informational signs; erection; conform with rules and regulations; minimum service requirements.

(1) Signs, displays, and devices giving specific information of interest to the traveling public shall be erected by or at the direction of the Department of Transportation and maintained within the right-of-way at appropriate distances from interchanges on the National System of Interstate and Defense Highways and from roads of the state primary system as shall conform with the rules and regulations adopted and promulgated by the department to carry out this section and section 39-205. Such rules and regulations shall be consistent with national standards

promulgated from time to time by the appropriate authority of the federal government pursuant to 23 U.S.C. 131(f).

(2) For purposes of this section, specific information of interest to the traveling public shall mean only information about camping, lodging, food, attractions, and motor fuel and associated services, including trade names.

(3) The minimum service that is required to be available for each type of service shall include:

(a) Motor fuel services including:

(i) Vehicle services, which shall include fuel, oil, and water;

(ii) Restroom facilities and drinking water;

(iii) Continuous operation of such services for at least sixteen hours per day, seven days per week, for freeways and expressways and continuous operation of such services for at least twelve hours per day, seven days per week, for conventional roads; and

(iv) Telephone services;

(b) Attraction services including:

(i) An attraction of regional significance with the primary purpose of providing amusement, historical, cultural, or leisure activity to the public;

(ii) Restroom facilities and drinking water; and

(iii) Adequate parking accommodations;

(c) Food services including:

(i) Licensing or approval of such services, when required;

(ii) Continuous operation of such services to serve at least two meals per day, six days per week;

(iii) Modern sanitary facilities; and

(iv) Telephone services;

(d) Lodging services including:

(i) Licensing or approval of such services, when required;

(ii) Adequate sleeping accommodations; and

(iii) Telephone services; and

(e) Camping services including:

(i) Licensing or approval of such services, when required;

(ii) Adequate parking accommodations; and

(iii) Modern sanitary facilities and drinking water.

Source: Laws 1975, LB 213, § 9; Laws 1987, LB 741, § 1; R.S.1943, (1988), § 39-634.01; Laws 1993, LB 370, § 22; Laws 2010, LB 926, § 1; Laws 2017, LB 339, § 87.

Operative Date: July 1, 2017

39-205. Informational signs; business signs; posted by department; costs and fees; disposition; notice of available space.

(1) Applicants for business signs shall furnish business signs to the Department of Transportation and shall pay to the department an annual fee for posting each business sign and

the actual cost of material for, fabrication of, and erecting the specific information sign panels where specific information sign panels have not been installed.

(2) Upon receipt of the business signs and the annual fee, the department shall post or cause to be posted the business signs where specific information sign panels have been installed. The applicant shall not be required to remove any advertising device to qualify for a business sign except any advertising device which was unlawfully erected or in violation of section 39-202, 39-203, 39-204, 39-205, 39-206, 39-215, 39-216, or 39-220, any rule or regulation of the department, or any federal rule or regulation relating to informational signs. The specific information sign panels and business signs shall conform to the requirements of the Federal Beautification Act and the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6,118.

(3) All revenue received for the posting or erecting of business signs or specific information sign panels pursuant to this section shall be deposited in the Highway Cash Fund, except that any revenue received from the annual fee and for posting or erecting such signs in excess of the state's costs shall be deposited in the General Fund.

(4) For purposes of this section, unless the context otherwise requires:

(a) Business sign means a sign displaying a commercial brand, symbol, trademark, or name, or combination thereof, designating a motorist service. Business signs shall be mounted on a rectangular information panel; and

(b) Specific information sign panel means a rectangular sign panel with:

(i) The word gas, food, attraction, lodging, or camping;

(ii) Directional information; and

(iii) One or more business signs.

(5) The department shall provide notice of space available for business signs on any specific information sign panel at least ninety days prior to accepting or approving the posting of any business sign.

Source: Laws 1975, LB 213, § 10; Laws 1987, LB 741, § 2; R.S.1943, (1988), § 39-634.02; Laws 1993, LB 370, § 23; Laws 1995, LB 264, § 4; Laws 2010, LB 926, § 2; Laws 2017, LB 339, § 88.

Operative Date: July 1, 2017

39-206. Informational signs; erection; conditions; fee.

It is the intent of sections 39-204 and 39-205 to allow the erection of specific information sign panels on the right-of-way of the state highways under the following conditions:

(1) No state funds shall be used for the erection, maintenance, or servicing of such signs;

(2) Such signs shall be erected in accordance with federal standards and the rules and regulations adopted and promulgated by the Department of Transportation;

(3) Such signs may be erected by the department or by a contractor selected through the competitive bidding process; and

(4) The department shall charge an annual fee in an amount equal to the fair market rental value of the sign site and any other cost to the state associated with the erection, maintenance, or servicing of specific information sign panels. If such sign is erected by a contractor, the annual fee shall be limited to the fair market rental value of the sign site.

Source: **L**aws 1987, LB 741, § 3; R.S.1943, (1988), § 39-634.03; Laws 1993, LB 370, § 24; Laws 2017, LB 339, § 89.

Operative Date: July 1, 2017

39-207. Tourist-oriented directional sign panels; erection and maintenance.

Tourist-oriented directional sign panels shall be erected and maintained by or at the direction of the Department of Transportation within the right-of-way of rural highways which are part of the state highway system to provide tourist-oriented information to the traveling public in accordance with sections 39-207 to 39-211.

For purposes of such sections:

(1) Rural highways means (a) all public highways and roads outside the limits of an incorporated municipality exclusive of freeways and interchanges on expressways and (b) all public highways and roads within incorporated municipalities having a population of forty thousand inhabitants or less as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census exclusive of freeways and interchanges on expressways. Expressway, freeway, and interchange are used in this subdivision as they are defined in section 39-1302; and

(2) Sign panel means one or more individual signs mounted as an assembly on the same supports.

Source: Laws 1993, LB 108, § 1; Laws 1995, LB 112, § 1; Laws 2017, LB 113, § 39; Laws 2017, LB 339, § 90.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 113, section 39, with LB 339, section 90, to reflect all amendments.

Note: Changes made by LB 339 became operative July 1, 2017. Changes made by LB 113 became effective August 24, 2017.

39-208. Sign panels; erection; conditions; fee; disposition.

(1) The Department of Transportation shall erect tourist-oriented directional sign panels on the right-of-way of the rural highways pursuant to section 39-207 under the following conditions:

(a) No state funds shall be used for the erection, maintenance, or servicing of the sign panels;

(b) The sign panels shall be erected in accordance with federal standards and the rules and regulations adopted and promulgated by the department;

(c) The sign panels may be erected by the department or by a contractor selected by the department through the competitive negotiation process;

(d) No more than three sign panels shall be installed on the approach to an intersection; and

(e) The department shall charge an annual fee in an amount equal to the fair market rental value of the sign panel site and any other cost to the state associated with the erection, maintenance, or servicing of tourist-oriented directional sign panels. If the sign panel is erected

by a contractor, the annual fee to the department shall be limited to the fair market rental value of the sign panel site.

(2) All revenue received for the posting or erecting of tourist-oriented directional sign panels pursuant to this section shall be deposited in the Highway Cash Fund, except that any revenue received from the annual fee and for posting or erecting such sign panels in excess of the state's costs shall be deposited in the General Fund.

Source: Laws 1993, LB 108, § 2; Laws 2017, LB 339, § 91.
Operative Date: July 1, 2017

39-209. Sign panels; types; restrictions.

Tourist-oriented directional sign panels shall include, but not be limited to, sign panels giving directions to recreational, historical, cultural, educational, or entertainment activities or a unique or unusual commercial or nonprofit activity. Nationally, regionally, or locally known commercial symbols, brands, or trademarks may be used when applicable. To be a qualified activity pursuant to this section, the major portion of income derived from the activity or visitors to the activity during the normal season of the activity shall be from motorists not residing in the immediate area of the activity. The sign panels shall be rectangular in shape and have a white legend and border on a blue background.

Tourist-oriented directional sign panels shall contain no more than four individual signs, have no more than two lines of legend per individual sign, and have a separate directional arrow and the distance to each qualifying activity. The legend shall be limited to the identification of the qualifying activity and the directional information. The sign panel shall not include promotional advertising.

Source: Laws 1993, LB 108, § 3.

39-210. Sign panels; qualification of activities; minimum requirements; violation; effect.

To qualify to appear on a tourist-oriented directional sign panel, an activity shall be licensed and approved by the state and local agencies if required by law and be open to the public at least eight hours per day, five days per week, including Saturdays or Sundays, during the normal season of the activity, except that if the activity is a winery, the winery shall be open at least twenty hours per week. The activity, before qualifying to appear on a sign panel, shall provide to the Department of Transportation assurance of its conformity with all applicable laws relating to discrimination based on race, creed, color, sex, national origin, ancestry, political affiliation, or religion. If the activity violates any of such laws, it shall lose its eligibility to appear on a tourist-oriented directional sign panel. In addition, the qualifying activity shall be required to remove any advertising device which was unlawfully erected or which is in violation of section 39-202, 39-203, 39-204, 39-205, 39-206, 39-215, 39-216, or 39-220, any rule or regulation of the department, or any federal rule or regulation relating to tourist-oriented directional sign panels. The tourist-oriented directional sign panels shall conform to the requirements of the Federal

Beautification Act and the Manual on Uniform Traffic Control Devices as adopted pursuant to section 60-6,118.

Source: Laws 1993, LB 108, § 4; Laws 1995, LB 264, § 5; Laws 2010, LB 926, § 3; Laws 2017, LB 339, § 92.
Operative Date: July 1, 2017

39-211. Sign panels; rules and regulations.

The Department of Transportation shall adopt and promulgate rules and regulations deemed necessary by the department to carry out sections 39-207 to 39-211.

Source: Laws 1993, LB 108, § 5; Laws 2017, LB 339, § 93.
Operative Date: July 1, 2017

39-212. Acquisition of interest in property; control of advertising outside of right-of-way; compensation; removal; costs; payment by department.

(1) The Department of Transportation may acquire the interest in real or personal property necessary to exercise the power authorized by subdivision (2)(m) of section 39-1320 and to pay just compensation upon removal of the following outdoor advertising signs, displays, and devices, as well as just compensation for the disconnection and removal of electrical service to the same:

(a) Those lawfully erected or in existence prior to March 27, 1972, and not conforming to the provisions of sections 39-212 to 39-222 except as otherwise authorized by such sections; and

(b) Those lawfully erected after March 27, 1972, which become nonconforming after being erected.

(2) Such compensation for removal of such signs, displays, and devices is authorized to be paid only for the following:

(a) The taking from the owner of such sign, display, or device or of all right, title, leasehold, and interest in connection with such sign, display, or device, or both; and

(b) The taking from the owner of the real property on which the sign, display, or device is located of the right to erect and maintain such signs, displays, and devices thereon.

(3) In all instances where signs, displays, or devices which are served electrically are taken under subdivision (2)(a) of this section, the department shall pay just compensation to the supplier of electricity for supportable costs of disconnection and removal of such service to the nearest distribution line or, in the event such sign, display, or device is relocated, just compensation for removal of such service to the point of relocation.

Except for expenditures for the removal of nonconforming signs erected between April 16, 1982, and May 27, 1983, the department shall not be required to expend any funds under sections 39-212 to 39-222 and 39-1320 unless and until federal-aid matching funds are made available for this purpose.

Source: Laws 1961, c. 195, § 2, p. 596; Laws 1972, LB 1181, § 4; Laws 1974, LB 490, § 1; Laws 1979, LB 322, § 12; Laws 1981, LB 545, § 7; Laws 1983, LB 120, § 3; Laws 1994, LB 848, § 1; R.S.Supp.,1994, § 39-1320.01; Laws 1995, LB 264, § 6; Laws 2017, LB 339, § 94.

Operative Date: July 1, 2017

An injunction may properly be entered to require compliance with the statute making it unlawful to erect or maintain advertising signs along highways prior to determination of whether there is a right to damages resulting from application of the statute. State v. Mayhew Products Corp., 204 Neb. 266, 281 N.W.2d 783 (1979).

Sections 39-1320 to 39-1320.11 constitute a reasonable and valid exercise of the police power which bears a substantial relation to the public health, safety, and general welfare, and are constitutional. State v. Mayhew Products Corp., 204 Neb. 266, 281 N.W.2d 783 (1979).

Control of advertising within six hundred sixty feet of edge of right-of-way may be acquired by eminent domain. State v. Day, 181 Neb. 308, 147 N.W.2d 919 (1967).

Right to control advertising outside of right-of-way of highway may be acquired by eminent domain. Fulmer v. State, 178 Neb. 20, 131 N.W.2d 657 (1964). (Opinion withdrawn, 178 Neb. 664, 134 N.W.2d 798 (1965).)

39-213. Control of advertising outside of right-of-way; agreements authorized; commercial and industrial zones; provisions.

(1) In order that this state may qualify for the payments authorized in 23 U.S.C. 131(c) and (e), and to comply with the provisions of 23 U.S.C. 131 as revised and amended on October 22, 1965, by Public Law 89-285, the Nebraska Department of Transportation, for and in the name of the State of Nebraska, is authorized to enter into an agreement, or agreements, with the Secretary of Transportation of the United States, which agreement or agreements shall include provisions for regulation and control of the erection and maintenance of advertising signs, displays, and other advertising devices and may include, among other things, provisions for preservation of natural beauty, prevention of erosion, landscaping, reforestation, development of viewpoints for scenic attractions that are accessible to the public without charge, and the erection of markers, signs, or plaques, and development of areas in appreciation of sites of historical significance.

(2) It is the intention of the Legislature that the state shall be and is hereby empowered and directed to continue to qualify for and accept bonus payments pursuant to 23 U.S.C. 131(j) and subsequent amendments as amended in the Federal Aid Highway Acts of 1968 and 1970 for controlling outdoor advertising within the area adjacent to and within six hundred sixty feet of the edge of the right-of-way of the National System of Interstate and Defense Highways constructed upon any part of the right-of-way the entire width of which is acquired subsequent to July 1, 1956, and, to this end, to continue any agreements with, and make any new agreements with the Secretary of Transportation, to accomplish the same. Such agreement or agreements shall also provide for excluding from application of the national standards segments of the National System of Interstate and Defense Highways which traverse commercial or industrial zones within the boundaries of incorporated municipalities as they existed on September 21, 1959, wherein the use of real property adjacent to the National System of Interstate and Defense Highways is subject to municipal regulation or control, or which traverse other areas where the land use, as of September 21, 1959, is clearly established by state law as industrial or commercial.

(3) It is also the intention of the Legislature that the state shall comply with 23 U.S.C. 131, as revised and amended on October 22, 1965, by Public Law 89-285, in order that the state not be

penalized by the provisions of subsection (b) thereof, and that the Nebraska Department of Transportation shall be and is hereby empowered and directed to make rules and regulations in accord with the agreement between the Nebraska Department of Transportation and the United States Department of Transportation dated October 29, 1968.

Source: Laws 1961, c. 195, § 3, p. 596; Laws 1963, c. 236, § 1, p. 726; Laws 1972, LB 1058, § 11; Laws 1972, LB 1181, § 5; R.S.1943, (1993), § 39-1320.02; Laws 1995, LB 264, § 7; Laws 2017, LB 339, § 95.

Operative Date: July 1, 2017

An injunction may properly be entered to require compliance with the statute making it unlawful to erect or maintain advertising signs along highways prior to determination of whether there is a right to damages resulting from application of the statute. State v. Mayhew Products Corp., 204 Neb. 266, 281 N.W.2d 783 (1979).

Sections 39-1320 to 39-1320.11 constitute a reasonable and valid exercise of the police power which bears a substantial relation to the public health, safety, and general welfare, and are constitutional. State v. Mayhew Products Corp., 204 Neb. 266, 281 N.W.2d 783 (1979).

39-214. Control of advertising outside of right-of-way; adoption of rules and regulations by Department of Transportation; minimum requirements.

Whenever advertising rights are acquired by the Department of Transportation pursuant to subdivision (2)(m) of section 39-1320 or an agreement has been entered into as authorized by section 39-213, it shall be the duty of the department to adopt and promulgate reasonable rules and regulations for the control of outdoor advertising within the area specified in such subdivision, which rules and regulations shall have as their minimum requirements the provisions of 23 U.S.C. 131 and regulations adopted pursuant thereto, as amended on March 27, 1972.

Source: Laws 1961, c. 195, § 4, p. 597; Laws 1972, LB 1181, § 6; R.S.1943, (1993), § 39-1320.03; Laws 1995, LB 264, § 8; Laws 2017, LB 339, § 96.

Operative Date: July 1, 2017

An injunction may properly be entered to require compliance with the statute making it unlawful to erect or maintain advertising signs along highways prior to determination of whether there is a right to damages resulting from application of the statute. State v. Mayhew Products Corp., 204 Neb. 266, 281 N.W.2d 783 (1979).

Sections 39-1320 to 39-1320.11 constitute a reasonable and valid exercise of the police power which bears a substantial relation to the public health, safety, and general welfare and are constitutional. State v. Mayhew Products Corp., 204 Neb. 266, 281 N.W.2d 783 (1979).

Description of easement sought to be acquired was sufficient. State v. Day, 181 Neb. 308, 147 N.W.2d 919 (1967).

39-215. Prohibition of advertising visible from main-traveled way; other signs permitted; where; criteria listed.

(1) Except as provided in sections 39-212 to 39-222, the erection or maintenance of any advertising sign, display, or device which is visible from the main-traveled way of the Highway

Beautification Control System is prohibited. On-premise signs, directional and official signs, and notices as defined and controlled in the department's rules and regulations shall be permitted.

(2) Other signs controlled in accordance with the federal-state agreement shall be permitted, if conforming to sections 39-212 to 39-222, in the following areas:

(a) All zoned commercial or industrial areas within the boundaries of incorporated municipalities, as those boundaries existed on September 21, 1959, and all other areas where the land use as of September 21, 1959, was clearly established by law or ordinance as industrial or commercial in which outdoor advertising signs, displays, and devices may be visible from the main-traveled way of the National System of Interstate and Defense Highways, except that no such signs, displays, or devices shall be permitted in areas in which advertising control easements have been acquired;

(b) All zoned and unzoned commercial and industrial areas in which outdoor advertising signs, displays, and devices may be visible from the main-traveled way of those portions of the National System of Interstate and Defense Highways constructed upon right-of-way, any part of the width of which was acquired on or before July 1, 1956, except that no such signs, displays, or devices shall be permitted in areas in which advertising control easements have been acquired;

(c) All zoned and unzoned commercial and industrial areas in which outdoor advertising signs, displays, and devices may be visible from the main-traveled way of all portions of the Highway Beautification Control System other than the National System of Interstate and Defense Highways within the State of Nebraska, except that no such signs, displays, or devices shall be permitted in areas in which advertising control easements have been acquired. No signs shall be allowed in such areas along scenic byways except those permitted under section 39-218; and

(d) All signs, displays, or devices beyond six hundred sixty feet of the edge of the right-of-way of the Highway Beautification Control System and outside of urban areas which are visible from the main-traveled way are prohibited except those which are authorized to be erected by the Federal-Aid Highway Acts of 1965, 1970, and 1974 and those signs whose advertising message is only visible from a secondary road or street but not visible from the main-traveled way of the Highway Beautification Control System.

(3) In the areas described in subsection (2) of this section, advertising signs, displays, and devices shall be allowed to be erected in accordance with the following criteria:

(a) Whenever a bona fide state, county, or local zoning authority has made a determination of customary use, as to size, lighting, and spacing, such determination may be accepted in lieu of criteria established by regulation in the zoned commercial and industrial areas described in subsection (2) of this section within the geographical jurisdiction of such authority unless conflicting with laws not contained in this section or with the rules and regulations of the department; and

(b) In all other areas described in subsection (2) of this section, the following criteria shall apply:

(i) On-premise signs as defined and controlled in the department's rules and regulations shall be permitted;

(ii) Those signs referred to as being permitted in the October 1968 federal-state agreement shall be permitted when in conformity with the rules and regulations of the department;

(iii) Within the areas in which, according to sections 39-212 to 39-222, advertising signs will be permitted, such signs shall conform to standards and criteria as to height, width, spacing, and lighting as set forth in the rules and regulations of the department;

(iv) Nothing contained in such sections shall be construed to allow any person or persons, except the department, to erect signs within the right-of-way of any portion of the state highway system or, except the county, to erect official signs within the right-of-way of any portion of the county road system;

(v) Nothing contained in such sections shall be construed to prevent the department from acquiring easements for the control of outdoor advertising;

(vi) Nothing contained in such sections shall be construed to require the removal of signs in zoned and unzoned commercial and industrial areas, lawfully in existence on March 27, 1972, which signs may under such sections remain and continue in place even if nonconforming; and

(vii) The powers conferred by such sections are supplementary and additional powers, and nothing contained in such sections shall be deemed amendatory or in derogation of any other grant of power or authority to the department.

Source: Laws 1972, LB 1181, § 7; Laws 1975, LB 213, § 6; Laws 1983, LB 120, § 4; Laws 1994, LB 848, § 2; R.S.Supp.,1994, § 39-1320.06; Laws 1995, LB 264, § 9.

The change of the face of a sign to an electronic format did not constitute the erection of a new sign under this section. State, Dept. of Roads v. World Diversified, Inc., 254 Neb. 307, 576 N.W.2d 198 (1998).

This section does not violate article III, section 18, of the Nebraska Constitution. The classification of on-premises signs and off-premises signs is a reasonable method of controlling the number of signs along the Interstate and bears a rational relationship to the goal of public health and safety, and to the legislative intent that the state comply with federal regulations concerning highway advertising. State v. Popco, Inc., 247 Neb. 440, 528 N.W.2d 281 (1995).

The portion of this statute prohibiting the "erection or maintenance of any advertising sign, display, or device which is visible from the main-traveled way of the National System of Interstate and Defense Highways and the system of federal-aid primary roads of the State of Nebraska" is unconstitutionally vague. State v. Houtwed, 211 Neb. 681, 320 N.W.2d 97 (1982).

This section is unconstitutionally vague and therefore unenforceable in that it fails to provide any standards by which to calculate the meaning of the term "visible". Neither landowner or lessee nor the enforcing agency of the state can act upon such wording with the certainty otherwise required by the due process notion of fair notice of conduct which is proscribed. State v. Mayhew Products Corp., 211 Neb. 300, 318 N.W.2d 280 (1982).

An injunction may properly be entered to require compliance with the statute making it unlawful to erect or maintain advertising signs along highways prior to determination of whether there is a right to damages resulting from application of the statute. State v. Mayhew Products Corp., 204 Neb. 266, 281 N.W.2d 783 (1979).

Sections 39-1320 to 39-1320.11 constitute a reasonable and valid exercise of the police power which bears a substantial relation to the public health, safety, and general welfare, and are constitutional. State v. Mayhew Products Corp., 204 Neb. 266, 281 N.W.2d 783 (1979).

39-216. Control of advertising visible from main-traveled way; unlawful; when permitted; written lease and permit from Department of Transportation.

It shall be unlawful for any person to place or cause to be placed any advertising sign, display, or device which is visible from the main-traveled way of the Highway Beautification Control System or upon land not owned by such person, without first procuring a written lease from the owner of such land and a permit from the Department of Transportation authorizing such display or device to be erected as permitted by the advertising laws, rules, and regulations of this state.

Source: Laws 1972, LB 1181, § 8; Laws 1975, LB 213, § 7; R.S.1943, (1993), § 39-1320.07; Laws 1995, LB 264, § 10; Laws 2017, LB 339, § 97.
Operative Date: July 1, 2017

An injunction may properly be entered to require compliance with the statute making it unlawful to erect or maintain advertising signs along highways prior to determination of whether there is a right to damages resulting from application of the statute. State v. Mayhew Products Corp., 204 Neb. 266, 281 N.W.2d 783 (1979).

Sections 39-1320 to 39-1320.11 constitute a reasonable and valid exercise of the police power which bears a substantial relation to the public health, safety, and general welfare, and are constitutional. State v. Mayhew Products Corp., 204 Neb. 266, 281 N.W.2d 783 (1979).

39-217. Scenic byway designations.

(1) The Department of Transportation may designate portions of the state highway system as a scenic byway when the highway corridor possesses unusual, exceptional, or distinctive scenic, historic, recreational, cultural, or archeological features. The department shall adopt and promulgate rules and regulations establishing the procedure and criteria to be utilized in making scenic byway designations.

(2) Any portion of a highway designated as a scenic byway which is located within the limits of any incorporated municipality shall not be designated as part of the scenic byway, except when such route possesses intrinsic scenic, historic, recreational, cultural, or archeological features which support designation of the route as a scenic byway.

Source: Laws 1995, LB 264, § 11; Laws 2017, LB 339, § 98.
Operative Date: July 1, 2017

39-218. Scenic byways; prohibition of signs visible from main-traveled way; exceptions.

No sign shall be erected which is visible from the main-traveled way of any scenic byway except (1) directional and official signs to include, but not be limited to, signs and notices pertaining to natural wonders, scenic attractions, and historical attractions, (2) signs, displays, and devices advertising the sale or lease of property upon which such media are located, and (3) signs, displays, and devices advertising activities conducted on the property on which such media are located. Signs which are allowed shall comply with the standards and criteria established by rules and regulations of the Department of Transportation.

Source: Laws 1995, LB 264, § 12; Laws 2017, LB 339, § 99.
Operative Date: July 1, 2017

39-219. Control of advertising outside of right-of-way; erected prior to March 27, 1972; effect.

Outdoor advertising signs, displays, and devices erected prior to March 27, 1972, may continue in zoned or unzoned commercial or industrial areas, notwithstanding the fact that such

outdoor advertising signs, displays, and devices do not comply with standards and criteria established by sections 39-212 to 39-222 or rules and regulations of the Department of Transportation.

Source: Laws 1972, LB 1181, § 9; Laws 1994, LB 848, § 3; R.S.Supp.,1994, § 39-1320.08; Laws 1995, LB 264, § 13; Laws 2017, LB 339, § 100.

Operative Date: July 1, 2017

An injunction may properly be entered to require compliance with the statute making it unlawful to erect or maintain advertising signs along highways prior to determination of whether there is a right to damages resulting from application of the statute. State v. Mayhew Products Corp., 204 Neb. 266, 281 N.W.2d 783 (1979).

Sections 39-1320 to 39-1320.11 constitute a reasonable and valid exercise of the police power which bears a substantial relation to the public health, safety, and general welfare, and are constitutional. State v. Mayhew Products Corp., 204 Neb. 266, 281 N.W.2d 783 (1979).

39-220. Control of advertising visible from main-traveled way; permit; fee; rules and regulations; exceptions.

The Department of Transportation may at its discretion require permits for advertising signs, displays, or devices which are placed or allowed to exist along or upon any interstate or primary highway or at any point visible from the main-traveled way, except for signs located within an area of fifty feet of any commercial or industrial building on the premises. Such permits shall be renewed biennially. Each sign shall bear on the side facing the highway the permit number in a readily observable place for inspection purposes from the highway right-of-way. The department is authorized to charge a fee to be not less than twenty-five cents or not to exceed fifteen dollars for each permit and renewal permit for each individual sign. The department shall promulgate rules and regulations establishing, and from time to time adjusting, the annual fees for the permits to cover the costs of administering sections 39-212 to 39-226 and may by rule and regulation provide exceptions from the payment of fees for signs advertising eleemosynary or nonprofit public service activities, signs designating historical sites, and farm and ranch directional signs. The department may revoke the permit for noncompliance reasons and remove the sign if, after thirty days' notification to the sign owner, the sign remains in noncompliance. Printed sale bills not exceeding two hundred sixteen square inches in size shall not require a permit if otherwise conforming.

Source: Laws 1972, LB 1181, § 10; Laws 1974, LB 490, § 2; Laws 1975, LB 213, § 8; R.S.1943, (1993), § 39-1320.09; Laws 1995, LB 264, § 14; Laws 2017, LB 339, § 101.

Operative Date: July 1, 2017

An injunction may properly be entered to require compliance with the statute making it unlawful to erect or maintain advertising signs along highways prior to determination of whether there is a right to damages resulting from application of the statute. State v. Mayhew Products Corp., 204 Neb. 266, 281 N.W.2d 783 (1979).

Sections 39-1320 to 39-1320.11 constitute a reasonable and valid exercise of the police power which bears a substantial relation to the public health, safety, and general welfare, and are constitutional. State v. Mayhew Products Corp., 204 Neb. 266, 281 N.W.2d 783 (1979).

39-221. Control of advertising outside of right-of-way; compliance; damages; violations; penalty.

Any person, firm, company, or corporation violating any of the provisions of sections 39-212 to 39-222 shall be guilty of a Class V misdemeanor. In addition to any other available remedies, the Director-State Engineer, for the Department of Transportation and in the name of the State of Nebraska, may apply to the district court having jurisdiction for an injunction to force compliance with any of the provisions of such sections or rules and regulations promulgated thereunder. When any person, firm, company, or corporation deems its property rights have been adversely affected by the application of the provisions of such sections, such person, firm, company, or corporation shall have the right to have damages ascertained and determined pursuant to Chapter 76, article 7.

Source: Laws 1972, LB 1181, § 11; Laws 1974, LB 490, § 3; Laws 1977, LB 40, § 211; Laws 1994, LB 848, § 4; R.S.Supp.,1993, § 39-1320.10; Laws 1995, LB 264, § 15; Laws 2017, LB 339, § 102.

Operative Date: July 1, 2017

An injunction may properly be entered to require compliance with the statute making it unlawful to erect or maintain advertising signs along highways prior to determination of whether there is a right to damages resulting from application of the statute. State v. Mayhew Products Corp., 204 Neb. 266, 281 N.W.2d 783 (1979).

Sections 39-1320 to 39-1320.11 constitute a reasonable and valid exercise of the police power which bears a substantial relation to the public health, safety, and general welfare, and are constitutional. State v. Mayhew Products Corp., 204 Neb. 266, 281 N.W.2d 783 (1979).

39-222. Control of advertising outside of right-of-way; eminent domain; authorized.

Sections 39-212 to 39-221 shall not be construed to prevent the Department of Transportation from (1) exercising the power of eminent domain to accomplish the removal of any sign or signs or (2) acquiring any interest in real or personal property necessary to exercise the powers authorized by such sections whether within or without zoned or unzoned commercial or industrial areas.

Source: Laws 1972, LB 1181, § 12; Laws 1994, LB 848, § 5; R.S.Supp.,1994, § 39-1320.11; Laws 1995, LB 264, § 16; Laws 2017, LB 339, § 103.

Operative Date: July 1, 2017

An injunction may properly be entered to require compliance with the statute making it unlawful to erect or maintain advertising signs along highways prior to determination of whether there is a right to damages resulting from application of the statute. State v. Mayhew Products Corp., 204 Neb. 266, 281 N.W.2d 783 (1979).

Sections 39-1320 to 39-1320.11 constitute a reasonable and valid exercise of the police power which bears a substantial relation to the public health, safety, and general welfare, and are constitutional. State v. Mayhew Products Corp., 204 Neb. 266, 281 N.W.2d 783 (1979).

39-223. Governmental or quasi-governmental agency; removal of signs, displays, or devices along Highway Beautification Control System; exemption; petition.

Any community, board of county commissioners, municipality, county, city, a specific region or area of the state, or other governmental or quasi-governmental agency which is part of a specific economic area located along the Highway Beautification Control System of the State of Nebraska may petition the Department of Transportation for an exemption from mandatory removal of any legal, nonconforming directional signs, displays, or devices as defined by 23 U.S.C. 131(o), which signs, displays, or devices were in existence on May 5, 1976. The petitioning agency shall supply such documents as are supportive of its petition for exemption.

The Department of Transportation is hereby authorized to seek the exemptions authorized by 23 U.S.C. 131(o) in accordance with the federal regulations promulgated thereunder, 23 C.F.R., part 750, subpart E, if the petitioning agency shall supply the necessary documents to justify such exemptions.

Source: Laws 1978, LB 534, § 1; R.S.1943, (1993), § 39-1320.12; Laws 1995, LB 264, § 17; Laws 2017, LB 339, § 104.
Operative Date: July 1, 2017

39-224. Department of Transportation; retention of signs, displays, or devices; request.

Upon receipt of a petition under section 39-223, the Nebraska Department of Transportation shall make request of the United States Department of Transportation for permission to retain the directional signs, displays, or devices which provide information for the specific economic area responsible for the petition.

Source: Laws 1978, LB 534, § 2; R.S.1943, (1993), § 39-1320.13; Laws 1995, LB 264, § 18; Laws 2017, LB 339, § 105.
Operative Date: July 1, 2017

39-225. Department of Transportation; removal of nonconforming signs; program.

The Department of Transportation shall adopt future programs to assure that removal of directional signs, displays, or devices, providing directional information about goods and services in the interest of the traveling public, not otherwise exempted by economic hardship, be deferred until all other nonconforming signs, on a statewide basis, are removed.

Source: Laws 1978, LB 534, § 3; R.S.1943, (1993), § 39-1320.14; Laws 1995, LB 264, § 19; Laws 2017, LB 339, § 106.
Operative Date: July 1, 2017

39-226. Exemption, how construed.

The exemption provided by sections 39-223 to 39-225 shall be in addition to the exemption provided by section 39-219.

Source: Laws 1978, LB 534, § 4; R.S.1943, (1993), § 39-1320.15; Laws 1995, LB 264, § 20.

ARTICLE 3

MISCELLANEOUS PENALTY PROVISIONS

Section

39-301. Roads; injuring or obstructing; penalties; exceptions.

Any person who injures or obstructs a public road by felling a tree or trees in, upon, or across the same, by placing or leaving any other obstruction thereon, by encroaching upon the same with any fence, by plowing or digging any ditch or other opening thereon, by diverting water onto or across such road so as to saturate, wash, or impair the maintenance, construction, or passability of such public road, or by allowing water to accumulate on the roadway or traveled surface of the road or who leaves the cutting of any hedge thereupon for more than five days shall, upon conviction thereof, be guilty of a Class V misdemeanor and, in case of placing any obstruction on the road, be charged an additional sum of not exceeding three dollars per day for every day he or she allows such obstruction to remain after being ordered to remove the same by the road overseer or other officer in charge of road work in the area where such obstruction is located, complaint to be made by any person feeling aggrieved.

This section shall not apply to any person who lawfully fells any tree for use and will immediately remove the same out of the road nor to any person through whose land a public road may pass who desires to drain such land and gives due notice of such intention to the road overseer or other officer in charge of road work nor when damage has been caused by a mechanical malfunction of any irrigation equipment, when a sprinkler irrigation system had been

set so that under normal weather conditions no water would have been placed upon the right-of-way of any road, when the county board grants permission for the landowner to divert water from one area to another along a county highway right-of-way, or when a municipality has granted permission along or across the right-of-way under its jurisdiction, except that if damage has been caused by a mechanical malfunction of irrigation equipment more than two times in one calendar year, the penalty provided in this section shall apply.

Any officer in charge of road work, after having given reasonable notice to the owners of the obstruction or person so obstructing or plowing or digging ditches upon such road, may remove any such fence or other obstruction, fill up any such ditch or excavation, and recover the necessary cost of such removal from such owner or other person obstructing such road, to be collected by such officer in an action in county court.

Any public roads which have not been worked and which have not been used or traveled by the public for the last fifteen years may be fenced by the owners of adjoining lands if written permission is first obtained from the county board of commissioners or supervisors and if adequate means of ingress and egress are provided by suitable gates.

Source: Laws 1879, § 69, p. 135; R.S.1913, § 3027; C.S.1922, § 2778; C.S.1929, § 39-1009; Laws 1941, c. 75, § 1, p. 311; C.S.Supp.,1941, § 39-1009; R.S.1943, § 39-703; Laws 1959, c. 181, § 6, p. 655; Laws 1972, LB 1032, § 246; Laws 1975, LB 85, § 1; Laws 1978, LB 748, § 53; Laws 1984, LB 968, § 1; R.S.1943, (1988), § 39-703; Laws 1993, LB 370, § 25.

Contractor on county highway work, who negligently leaves holes unfilled, is liable for automobilist's death, even though latter was unlicensed. Pratt v. Western Bridge & Constr. Co., 116 Neb. 553, 218 N.W. 397 (1928).

39-302. Roads; sprinkler irrigation system; restrictions; violations; penalty.

A sprinkler irrigation system which due to location or design diverts, or is capable of diverting, water onto or across a public road so as to saturate, wash, or impair the maintenance, construction, or passability of such public road or allows water to accumulate on the roadway or traveled surface of the public road shall be equipped with a device which will automatically shut off the endgun of the irrigation system causing such diversion or accumulation of water. Any person who fails to comply with this section shall, upon conviction thereof, be guilty of a Class IV misdemeanor, except that section 39-301 shall be controlling with respect to mechanical malfunctions and normal weather conditions.

Source: Laws 1981, LB 24, § 1; R.S.1943, (1988), § 39-703.01; Laws 1993, LB 370, § 26.

39-303. Sidewalks, bridges; injuring or obstructing; penalty.

Any person who purposely destroys or injures any sidewalk, public or private bridge, culvert, or causeway, removes any of the timber or plank thereof, or obstructs the same shall be guilty of a Class V misdemeanor and shall be liable for all damages occasioned thereby and all necessary costs of rebuilding or repairing the same.

Source: Laws 1879, § 70, p. 136; R.S.1913, § 3028; C.S.1922, § 2779; C.S.1929, § 39-1010; R.S.1943, § 39-704; R.S.1943, (1988), § 39-704; Laws 1993, LB 370, § 27.

Cross References

Destruction of private, public, or toll bridge, penalty, see section 39-806.

39-304. Injuries to roads, bridges, gates, milestones; penalty.

Any person who willfully and maliciously injures any lawful public road in this state or any bridge, gate, milestone, or other fixture on any such road shall, for every such offense, be guilty of a Class V misdemeanor and be liable to any party injured in double damages.

Source: G.S.1873, c. 58, § 103, p. 744; R.S.1913, § 3041; C.S.1922, § 2792; C.S.1929, § 39-1027; R.S.1943, § 39-715; R.S.1943, (1988), § 39-715; Laws 1993, LB 370, § 28.

Cross References

Destruction of private, public, or toll bridge, penalty, see section 39-806.

39-305. Plowing up road; penalty.

Any person who plows up or upon any public highway without the consent or direction of the road overseer or the officer in charge of road work in the area where such road is located shall be guilty of a Class V misdemeanor.

Source: Laws 1899, c. 58, §§ 1, 2, p. 285; R.S.1913, § 3032; C.S.1922, § 2783; C.S.1929, § 39-1018; R.S.1943, § 39-706; Laws 1959, c. 181, § 7, p. 656; R.S.1943, (1988), § 39-706; Laws 1993, LB 370, § 29.

39-306. Plowing up road; road overseer; duty to file complaint; violation; penalty.

It is hereby made the duty of the road overseer or other officer in charge of road work in the area where such road is located to make complaint to the county attorney of any violation of section 39-305. Any willful neglect of this duty by a road overseer or other such officer shall be considered a Class V misdemeanor.

Source: Laws 1899, c. 58, § 3, p. 285; R.S.1913, § 3033; C.S.1922, § 2784; C.S.1929, § 39-1019; R.S.1943, § 39-707; Laws 1959, c. 181, § 8, p. 657; Laws 1977, LB 41, § 36; R.S.1943, (1988), § 39-707; Laws 1993, LB 370, § 30.

39-307. Barbed wire fence along highway without guards; penalty.

Any person who builds a barbed wire fence across or in any plain traveled road or track in common use, either public or private, without first putting up sufficient guards to prevent either human or beast from running into the fence shall be guilty of a Class V misdemeanor and shall be liable for all damages that may accrue to the party damaged by reason of such barbed wire fence.

Source: Laws 1885, c. 77, §§ 1, 2, p. 317; R.S.1913, § 3031; C.S.1922, § 2782; C.S.1929, § 39-1017; R.S.1943, § 39-705; R.S.1943, (1988), § 39-705; Laws 1993, LB 370, § 31.

Obstruction of road by barbed wire fence is negligence and renders person placing it there liable for injury, in absence of contributory negligence. Vanderveer v. Moran, 79 Neb. 431, 112 N.W. 581 (1907).

Information for violation of section must allege that road was in common use. Gilbert v. State, 78 Neb. 636, 111 N.W. 377 (1907).

Liability for injury to stock by fence in road is discussed. Floaten v. Ferrell, 24 Neb. 347, 38 N.W. 732 (1888).

39-308. Removal of traffic hazards; determined by Department of Transportation and local authority; violation; penalty.

It shall be the duty of the owner of real property to remove from such property any tree, plant, shrub, or other obstruction, or part thereof, which, by obstructing the view of any driver, constitutes a traffic hazard. When the Department of Transportation or any local authority determines upon the basis of engineering and traffic investigation that such a traffic hazard exists, it shall notify the owner and order that the hazard be removed within ten days. Failure of the owner to remove such traffic hazard within ten days shall constitute a Class V misdemeanor, and every day such owner fails to remove it shall be a separate offense.

Source: Laws 1973, LB 45, § 101; R.S.1943, (1988), § 39-6,101; Laws 1993, LB 370, § 32; Laws 2017, LB 339, § 107.

Operative Date: July 1, 2017

39-309. Sidewalks, trees, hedge fence bordering public roads; when lawful; removal by county board.

It shall be lawful for the owner or occupants of land bordering upon any public road to build sidewalks not to exceed six feet in width, to plant shade and ornamental trees along and in such road at a distance not exceeding one-tenth of the legal width of a road from its margin, and to erect and maintain a fence as long as it is actually necessary for the purpose of raising a hedge on the margin a distance of six feet from and within such marginal lines, except that when, in the opinion of the county board, the hedge fence, trees, or undergrowth on any county road interferes with the use of the right-of-way for road purposes or presents a hazard to the traveling public, the county board may, in its discretion, remove, or cause to be removed, at county expense, the hedge fence, trees, or undergrowth from the road right-of-way.

Source: Laws 1879, § 71, p. 136; R.S.1913, § 3029; C.S.1922, § 2780; C.S.1929, § 39-1011; R.S.1943, § 39-717; Laws 1953, c. 132, § 1, p. 412; R.S.1943, (1988), § 39-717; Laws 1993, LB 370, § 33.

39-310. Depositing materials on roads or ditches; penalties.

Any person who deposits any wood, stone, or other kind of material on any part of any lawful public road in this state, inside of the ditches of such road, or outside of the ditches but so near thereto as to cause the banks thereof to break into the same, causes the accumulation of rubbish, or causes any kind of obstruction, shall be guilty of (1) a Class III misdemeanor for the first offense, (2) a Class II misdemeanor for the second offense, and (3) a Class I misdemeanor for the third or subsequent offense.

Source: G.S.1873, c. 58, § 107, p. 744; R.S.1913, § 3042; Laws 1919, c. 98, § 1, p. 249; C.S.1922, § 2793; C.S.1929, § 39-1028; R.S.1943, § 39-716; R.S.1943, (1988), § 39-6,190; Laws 1993, LB 370, § 34; Laws 1994, LB 570, § 2; Laws 1997, LB 495, § 4.

Complaint charging that defendant obstructed a public road by placing posts and logs therein stated an offense under this section. Lydick v. State, 61 Neb. 309, 85 N.W. 70 (1901).

39-311. Rubbish on highways; prohibited; signs; enforcement; violation; penalties.

(1) No person shall throw or deposit upon any highway:

(a) Any glass bottle, glass, nails, tacks, wire, cans, or other substance likely to injure any person or animal or damage any vehicle upon such highway; or

(b) Any burning material.

(2) Any person who deposits or permits to be deposited upon any highway any destructive or injurious material shall immediately remove such or cause it to be removed.

(3) Any person who removes a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance deposited on the highway from such vehicle.

(4) The Department of Transportation or a local authority as defined in section 60-628 may procure and place at reasonable intervals on the side of highways under its respective jurisdiction appropriate signs showing the penalty for violating this section. Such signs shall be of such size and design as to be easily read by persons on such highways, but the absence of such a sign shall not excuse a violation of this section.

(5) It shall be the duty of all Nebraska State Patrol officers, conservation officers, sheriffs, deputy sheriffs, and other law enforcement officers to enforce this section and to make prompt investigation of any violations of this section reported by any person.

(6) Any person who violates any provision of this section shall be guilty of (a) a Class III misdemeanor for the first offense, (b) a Class II misdemeanor for the second offense, and (c) a Class I misdemeanor for the third or subsequent offense.

Source: Laws 1973, LB 45, § 83; Laws 1988, LB 1030, § 40; R.S.1943, (1988), § 39-683; Laws 1993, LB 370, § 35; Laws 1994, LB 570, § 3; Laws 1997, LB 495, § 5; Laws 1998, LB 922, § 403; Laws 2017, LB 339, § 108.

Operative Date: July 1, 2017

Cross References

Littering, penalty, see section 28-523.

39-312. Camping; permitted; where; violation; penalty.

It shall be unlawful to camp on any state or county public highway, roadside area, park, or other property acquired for highway or roadside park purposes except at such places as are designated campsites by the Department of Transportation or the county or other legal entity of government owning or controlling such places. This provision shall not apply to lands originally acquired for highway purposes which have been transferred or leased to the Game and Parks Commission or a natural resources district or to other lands owned or controlled by the Game and Parks Commission where camping shall be controlled by the provisions of section 37-305 or by a natural resources district where camping shall be controlled by the provisions of section 2-3292.

For purposes of this section, camping means temporary lodging out of doors and presupposes the occupancy of a shelter designed or used for such purposes, such as a sleeping bag, tent, trailer, station wagon, pickup camper, camper-bus, or other vehicle, and the use of camping equipment and camper means an occupant of any such shelter.

Any person who camps on any state or county public highway, roadside area, park, or other property acquired for highway or roadside park purposes, which has not been properly designated as a campsite, or any person who violates any lawfully promulgated rules or regulations properly posted to regulate camping at designated campsites shall be guilty of a Class V misdemeanor and shall be ordered to pay any amount as determined by the court which may be necessary to reimburse the department or the county for the expense of repairing any damage to such campsite resulting from such violation.

Source: Laws 1969, c. 306, § 1, p. 1097; Laws 1977, LB 41, § 37; Laws 1984, LB 861, § 18; R.S.1943, (1988), § 39-712.01; Laws 1993, LB 370, § 36; Laws 1998, LB 922, § 404; Laws 2017, LB 339, § 109.

Operative Date: July 1, 2017

Establishment of a public road upon satisfaction of statutory requirements is a ministerial duty within the power of the county board. Burton v. Annett, 215 Neb. 788, 341 N.W.2d 318 (1983).

39-313. Hunting, trapping, or molesting predatory animal on or from freeway; prohibited, exception; violation; penalty.

No person shall hunt, trap, or molest any predatory animal on or upon any portion of a freeway or approach or exit thereto except at locations designated for such purpose. No person shall shoot from the roadway onto or across the land of any farmer or landowner or kill, attempt

to kill, or retrieve any wildlife or game on such land prior to receiving permission from such farmer or landowner. Any person who violates this section shall be guilty of a Class V misdemeanor.

Source: Laws 1973, LB 45, § 85; Laws 1974, LB 699, § 1; R.S.1943, (1988), § 39-685; Laws 1993, LB 370, § 37.

Cross References

Shooting from highway prohibited, see section 37-513.

ARTICLE 4

ROADS IN COUNTIES UNDER TOWNSHIP ORGANIZATION

Sections repealed in 1957.
(See bound volumes of statutes or refer to the Nebraska Legislature website, uniweb.legislature.ne.gov)

ARTICLE 5

COUNTY HIGHWAY COMMISSIONER

Sections repealed in 1957.
(See bound volumes of statutes or refer to the Nebraska Legislature website, uniweb.legislature.ne.gov)

ARTICLE 6

NEBRASKA RULES OF THE ROAD

Sections transferred to Chapter 60 or repealed on various dates.
(See bound volumes of statutes or refer to the Nebraska Legislature website, uniweb.legislature.ne.gov)

ARTICLE 7

REGULATIONS GOVERNING THE USE OF PUBLIC ROADS

Sections transferred or repealed on various dates.
See bound volumes of statutes or refer to the Nebraska Legislature website, uniweb.legislature.ne.gov.

ARTICLE 8

BRIDGES

Cross References

Constitutional provisions:
Special legislation prohibited, see Article III, section 18, Constitution of Nebraska.
Bridge construction, safety regulations, see section 48-425.
County bridges:
County board action to recover for damages to, see section 23-124.
Emergency repairs, see section 23-338.
Irrigation ditches, bridges across, see sections 46-251 and 46-255.
Railroad bridges, lien for labor or materials, see sections 52-115 to 52-117.
Subways and viaducts, see sections 18-601 to 18-636.

(a) MISCELLANEOUS PROVISIONS

Section
39-801. Repealed. Laws 1996, LB 1114, § 75.
39-802. County special emergency bridge levy; collection; disbursement.
39-803. City or village bridge; vehicle exceeding maximum weight; claim or damages not allowed.
39-803.01. Repealed. Laws 1976, LB 678, § 1.
39-803.02. Repealed. Laws 1976, LB 678, § 1.
39-803.03. Repealed. Laws 1976, LB 678, § 1.
39-803.04. Repealed. Laws 1976, LB 678, § 1.
39-803.05. Repealed. Laws 1976, LB 678, § 1.
39-803.06. Repealed. Laws 1976, LB 678, § 1.
39-804. Bridges in cities and villages; construction and repair by counties.
39-805. Bridge over irrigation or drainage ditch; construction and maintenance; cost; how paid.
39-806. Destroying bridge or landmark; penalty.
39-807. Signs or advertising on bridges or culverts; when unlawful.
39-808. Signs or advertising on bridges or culverts; violation; penalty.
39-809. Bridge, culvert, or highway construction; flood damages; liability of county or township; limitation.

(b) CONTRACTS FOR CONSTRUCTION AND REPAIR OF BRIDGES

39-810. Bridges; culverts; construction and repair; road improvements; contracts; letting; procedures.
39-811. Bridges; construction and repair; materials used; itemized statement; bridge record.
39-812. Bridge construction; yearly contracts; when made; when authorized; terms.
39-813. Bridge construction; yearly contracts; concrete substructures; terms.
39-814. Bridge construction; yearly contracts; metal substructures; terms.

(c) BRIDGES IN OR NEAR TWO OR MORE COUNTIES

(d) DEFECTIVE BRIDGES

(e) BOUNDARY BRIDGES

(f) TOLL BRIDGES

39-845.01. Repealed. Laws 1959, c. 175, § 34.
39-845.02. Repealed. Laws 1959, c. 175, § 34.
39-845.03. Repealed. Laws 1959, c. 175, § 34.
39-845.04. Repealed. Laws 1959, c. 175, § 34.

(g) STATE AID BRIDGES

39-846. State Aid Bridge Fund; created; use; investment.
39-847. State aid for bridges; application for replacement; costs; priorities; plans and specifications; contracts; maintenance.
39-847.01. State Aid Bridge Fund; State Treasurer; transfer funds to.
39-848. Repealed. Laws 1976, LB 724, § 11.
39-849. Repealed. Laws 1976, LB 724, § 11.
39-850. Repealed. Laws 1976, LB 724, § 11.
39-851. Repealed. Laws 1976, LB 724, § 11.
39-852. Repealed. Laws 1976, LB 724, § 11.
39-853. Repealed. Laws 1973, LB 87, § 4.
39-854. Repealed. Laws 1976, LB 724, § 11.

(h) INTERSTATE COUNTY BRIDGES

39-855. County, defined; interstate bridge across boundary stream; authority to build.
39-856. Interstate county bridges; revenue bonds; issuance; tolls; disbursement; federal aid; powers of county.
39-857. Interstate county bridges; franchise previously acquired; validation.
39-858. Interstate county bridges; permit previously acquired; validation.
39-859. Interstate county bridges; property previously acquired; validation.
39-860. Interstate county bridges; revenue bonds; interest; issuance; terms; form.
39-861. Interstate county bridges; revenue bonds; negotiability; tax exempt; legal investments and security.
39-862. Interstate county bridges; revenue bonds; registration; sale; proceeds; deposit; disbursement.
39-863. Interstate county bridges; revenue bonds; retirement; cancellation; temporary bonds.
39-864. Interstate county bridges; revenue bonds; trust agreement authorized; terms.
39-865. Interstate county bridges; revenue bonds; election; when dispensed with.
39-866. Interstate county bridges; revenue bonds; mortgage security authorized.
39-867. Interstate county bridges; revenue refunding bonds authorized; limitations; conditions.
39-868. Bridge commission; creation; general powers.
39-869. Bridge commission; members; term of office; qualification; oath; officers; expenses; compensation.
39-870. Bridge commission; powers; bylaws; regulations; assistants; compensation; records.
39-871. Bridge commission; powers granted; how exercised.
39-872. County; powers; supplementary.
39-873. County; powers; how exercised.
39-874. County; powers; vote of electors not required.
39-875. County; acquisition of property in adjoining state.
39-876. Invalid contracts not validated.

(i) INTERSTATE BRIDGE ACT

39-877. Repealed. Laws 1959, c. 175, § 34.
39-878. Repealed. Laws 1959, c. 175, § 34.
39-879. Repealed. Laws 1959, c. 175, § 34.
39-880. Repealed. Laws 1959, c. 175, § 34.
39-881. Repealed. Laws 1959, c. 175, § 34.
39-882. Repealed. Laws 1959, c. 175, § 34.
39-883. Repealed. Laws 1959, c. 175, § 34.

(j) STATE BRIDGE COMMISSION

(k) INTERSTATE BRIDGE ACT OF 1959

(a) MISCELLANEOUS PROVISIONS

39-801. Repealed. Laws 1996, LB 1114, § 75.

39-802. County special emergency bridge levy; collection; disbursement.

The funds arising from the special emergency bridge levy shall be collected in the same manner as the funds arising from the county general levy. The county treasurer shall keep a separate account of such funds and shall deposit them the same as county general funds are required to be deposited. Such special emergency bridge fund shall be at the disposal of the county board to be used by the board for the construction or repair of bridges whenever in the judgment of the board an emergency has arisen warranting the use of the same.

Source: Laws 1909, c. 32, § 2, p. 214; R.S.1913, § 3002; C.S.1922, § 2754; C.S.1929, § 39-840; R.S.1943, § 39-802.

39-803. City or village bridge; vehicle exceeding maximum weight; claim or damages not allowed.

Any person owning, operating, or traveling in any vehicle which exceeds the maximum weight carrying capacity or load limit conspicuously posted or attached to any bridge within the jurisdiction or under the administration or control of any city or village shall not have a claim against or recover damages from such city or village for any claim or injury arising out of the vehicle being upon or crossing such bridge.

Source: Laws 1990, LB 1077, § 1.

39-803.01. Repealed. Laws 1976, LB 678, § 1.

39-803.02. Repealed. Laws 1976, LB 678, § 1.

39-803.03. Repealed. Laws 1976, LB 678, § 1.

39-803.04. Repealed. Laws 1976, LB 678, § 1.

39-803.05. Repealed. Laws 1976, LB 678, § 1.

39-803.06. Repealed. Laws 1976, LB 678, § 1.

39-804. Bridges in cities and villages; construction and repair by counties.

The county board may, in its discretion, whenever there is sufficient money on hand in the county road fund, build or repair any bridge or bridges within the limits of any incorporated city or village in its county.

Source: Laws 1879, § 58, p. 133; R.S.1913, § 2975; C.S.1922, § 2733; C.S.1929, § 39-820; R.S.1943, § 39-804.

39-805. Bridge over irrigation or drainage ditch; construction and maintenance; cost; how paid.

Whenever any public highway within this state shall cross or be crossed by any ditch or channel of any public drainage or irrigation district, it shall be the duty of the governing board of the drainage or irrigation district and the governing board of the county or municipal corporation involved to negotiate and agree for the building and maintenance of bridges and approaches thereto on such terms as shall be equitable, all things considered, between such drainage or irrigation district and such county or municipality. If such boards for any reason shall fail to agree with reference to such matter, it shall be the duty of the drainage or irrigation district to build the necessary bridges and approaches, and restore the highway in question to its former state as nearly as may be as it was laid out prior to the construction of the ditch or channel in question, and it shall be the duty of the county or municipal corporation involved to maintain the bridges and approaches. Where more than seventy-five percent of the water passing through any such ditch or channel is used by any person, firm, or corporation for purposes other than irrigation or drainage, it shall be the duty of such person, firm, or corporation, so using such seventy-five percent or more of such water, to build and maintain solely at the expense of such person, firm, or corporation, all such bridges and approaches thereto. Any bridge that may be built by any drainage or irrigation district or by any person, firm, or corporation under the provisions of this section shall be constructed under the supervision of the Department of Transportation, if on a state highway, and under the supervision of the county board or governing body of a municipality, if under the jurisdiction of such board or governing body of such municipality.

Source: Laws 1913, c. 172, § 1, p. 524; R.S.1913, § 2983; C.S.1922, § 2734; Laws 1929, c. 172, § 1, p. 586; C.S.1929, § 39-821; R.S.1943, § 39-805; Laws 2017, LB 339, § 110.

Operative Date: July 1, 2017

Cross References

Irrigation ditches, bridges across, see sections 46-251 and 46-255.

This section is in conflict with common law and must be strictly construed. Platte Valley P. P. & I. Dist. v. County of Lincoln, 163 Neb. 196, 79 N.W.2d 61 (1956).

County was obligated to maintain bridge across drainage ditch. Henneberg v. County of Burt, 160 Neb. 250, 69 N.W.2d 920 (1955).

When a highway is crossed by a drainage ditch, it is the duty of drainage district to build necessary bridges and approaches thereto under supervision of county board, after which it becomes the duty of the county to maintain the same. Ritter v. Drainage Dist. No. 1, 148 Neb. 873, 29 N.W.2d 782 (1947).

This section makes it the duty of the governing board of any irrigation or drainage district to build and maintain, under the supervision of the county board or the governing body of the municipality, all bridges and approaches necessitated by the crossing of a public highway. Wright v. Loup River Public Power Dist., 133 Neb. 715, 277 N.W. 53 (1938).

Where irrigation canal was established long prior to establishment of highway, owners of canal cannot be compelled to construct or maintain a bridge. Nine Mile Irr. Dist. v. State, 118 Neb. 522, 225 N.W. 679 (1929); State ex rel. Keith County v. Western Irr. Dist. Ditch Co., 116 Neb. 736, 219 N.W. 11 (1928).

County board, notified that drainage district proposes to construct bridges over its ditches on county roads under board's supervision, which fails to take action but permits district to proceed, is estopped to complain. State ex rel. County of Burt v. Burt-Washington Drainage Dist., 103 Neb. 763, 174 N.W. 316 (1919).

39-806. Destroying bridge or landmark; penalty.

If any person shall knowingly, willfully, and maliciously demolish, cut down or destroy any private, public or toll bridge, cut, fell, deface, alter, remove or destroy any landmark, corner or bearing tree, witness trench and pits or witness pits, properly established, the person so offending shall be guilty of a Class III misdemeanor.

Source: G.S.1873, §§ 58, 99, p. 743; R.S.1913, § 3003; Laws 1915, c. 59, § 1, p. 153; C.S.1922, § 2755; C.S.1929, § 39-841; R.S.1943, § 39-806; Laws 1977, LB 40, § 208.

Cross References

Damaging or obstructing bridge, penalties, see sections 39-303 and 39-304.

39-807. Signs or advertising on bridges or culverts; when unlawful.

It is hereby declared unlawful for any person or persons whether for himself, herself, or themselves or as the agent, servant, or employee of any firm, association, corporation, partnership, or limited liability company to post, paste, paint, tack, fasten or otherwise secure to any bridge or culvert in the State of Nebraska, any bills, billboards, signs, posters, advertisements, or banners of any matter or description whatsoever, whether of paper, metal, wood, or other composition. Nothing in this section shall be construed to prohibit road markers designating a particular highway being painted on bridges and culverts.

Source: Laws 1917, c. 186, § 1, p. 424; C.S.1922, § 2756; C.S.1929, § 39-842; R.S.1943, § 39-807; Laws 1993, LB 121, § 208.

39-808. Signs or advertising on bridges or culverts; violation; penalty.

If any person or persons, whether for himself, herself, or themselves or as the agent, servant, or employee of any firm, association, corporation, partnership, or limited liability company violates section 39-807, such person or persons shall be guilty of a Class V misdemeanor.

Source: Laws 1917, c. 186, § 2, p. 424; C.S.1922, § 2757; C.S.1929, § 39-843; R.S.1943, § 39-808; Laws 1977, LB 40, § 209; Laws 1993, LB 121, § 209.

39-809. Bridge, culvert, or highway construction; flood damages; liability of county or township; limitation.

If any special damage happens to the property of any person, firm or corporation from the accumulation of water due to the construction or repair of any bridge, culvert or highway, which

the county or township is liable to construct or keep in repair, through the fault, neglect or oversight of the board of county commissioners or supervisors, township board, road overseer or other officer in charge of road work, such person, firm or corporation may recover in an action against the county or township so repairing or constructing such bridge, culvert or highway. If the damage occurs in consequence of the construction of any bridge, culvert or highway, erected and maintained by two or more counties or townships, the action can be brought against one of the counties or townships, or all of the counties and townships liable for the erection and for the repair of the same; and damages and costs shall be paid by the counties or townships in proportion as they are liable for the repairs; *Provided,* the procedure for bringing claims and suits under this section shall be the same as for claims and suits under sections 13-901 to 13-926.

Source: Laws 1921, c. 290, § 1, p. 940; C.S.1922, § 2747; C.S.1929, § 39-833; R.S.1943, § 39-809; Laws 1959, c. 181, § 9, p. 657; Laws 1969, c. 138, § 25, p. 636.

Section does not apply to unlawful diversion of surface waters flowing in natural watercourse. Purdy v. County of Madison, 156 Neb. 212, 55 N.W.2d 617 (1952).

County is liable for crop damage from overflow caused by heavy rain and insufficient passageway under bridge. Croft v. Scotts Bluff County, 121 Neb. 343, 237 N.W. 149 (1931).

County is liable for elevating highway grade across flood channel of natural stream without providing for drainage. Clark v. Cedar County, 118 Neb. 465, 225 N.W. 235 (1929).

(b) CONTRACTS FOR CONSTRUCTION AND REPAIR OF BRIDGES

39-810. Bridges; culverts; construction and repair; road improvements; contracts; letting; procedures.

(1)(a) The county board of each county may erect and repair all bridges and approaches thereto and build all culverts and make improvements on roads, including the purchase of gravel for roads, and stockpile any materials to be used for such purposes, the cost and expense of which shall for no project exceed one hundred thousand dollars.

(b) All contracts for the erection or repair of bridges and approaches thereto or for the building of culverts and improvements on roads, the cost and expense of which shall exceed one hundred thousand dollars, shall be let by the county board to the lowest responsible bidder.

(c) All contracts for materials for repairing, erecting, and constructing bridges and approaches thereto or culverts or for the purchase of gravel for roads, the cost and expense of which exceed twenty thousand dollars, shall be let to the lowest responsible bidder, but the board may reject any and all bids submitted for such materials.

(d) Upon rejection of any bid or bids by the board of such a county, such board shall have power and authority to purchase materials to repair, erect, or construct the bridges of such county, approaches thereto, or culverts or to purchase gravel for roads.

(e) All contracts for bridge erection or repair, approaches thereto, culverts, or road improvements in excess of twenty thousand dollars shall require individual cost-accounting records on each individual project. The total costs of each such separate project shall be included in the annual reports to the Board of Public Roads Classifications and Standards as required by section 39-2120.

(2)(a) Except as otherwise provided in subdivision (b) of this subsection, all bids for the letting of contracts shall be deposited with the county clerk of such a county, opened by him or her in the presence of the county board, and filed in such clerk's office.

(b) In a county with a population of more than one hundred fifty thousand inhabitants with a purchasing agent under section 23-3105, the bids shall be opened as directed pursuant to section 23-3111.

Source: Laws 1905, c. 126, § 1, p. 540; Laws 1911, c. 111, § 1, p. 391; R.S.1913, § 2956; C.S.1922, § 2714; C.S.1929, § 39-801; Laws 1931, c. 84, § 1, p. 222; C.S.Supp.,1941, § 39-801; R.S.1943, § 39-810; Laws 1955, c. 159, § 1, p. 462; Laws 1969, c. 328, § 1, p. 1173; Laws 1975, LB 115, § 1; Laws 1988, LB 429, § 1; Laws 2013, LB 623, § 1; Laws 2017, LB 86, § 1.

Effective Date: August 24, 2017

Cross References

Authority of board to purchase materials, other provisions, see sections 39-818, 39-824, and 39-826.

Separate contracts for the purchase of gravel which do not exceed the statutory limits under section 39-1406 (now repealed) and this section do not require advertising for bids. State ex rel. Schuler v. Board of County Commissioners, 210 Neb. 594, 316 N.W.2d 302 (1982).

Where statute does not avoid the obligation of contract made contrary to its terms, recovery in quantum meruit may be allowed. Capital Bridge Co. v. County of Saunders, 164 Neb. 304, 83 N.W.2d 18 (1957).

Ordinary resurfacing of public gravel highways amounts to repair and does not constitute an improvement under this section. Cheney v. County Board of Supervisors of Buffalo County, 123 Neb. 624, 243 N.W. 881 (1932).

Cost of culverts are chargeable to county bridge fund. Central Bridge & Constr. Co. v. Saunders County, 106 Neb. 484, 184 N.W. 220 (1921).

Paving contract bid, failing to specify time of performance, is insufficient to support award of contract. Root v. Douglas County, 105 Neb. 262, 180 N.W. 46 (1920).

This section has no application to repair of bridges across irrigation ditches. Dawson County v. Dawson County Irr. Co., 104 Neb. 137, 176 N.W. 78 (1920); Dawson County Irr. Co. v. Dawson County, 103 Neb. 692, 173 N.W. 696 (1919).

Board has no authority to let annual contracts for repairing bridges. Levy of current year cannot be taken into account until made. Clark v. Lancaster County, 69 Neb. 717, 96 N.W. 593 (1903).

Recovery can be had where one furnishes labor and material in good faith without express contract. Cass County v. Sarpy County, 66 Neb. 473, 92 N.W. 635 (1902), 97 N.W. 352 (1903).

39-811. Bridges; construction and repair; materials used; itemized statement; bridge record.

The records of each county board pertaining to such improvements shall be kept in a separate book provided for that purpose. The book shall be kept indexed up to date. A complete record of each bridge repaired or constructed by the county shall be kept in the book as hereinafter provided. (1) The date of construction or repair must be given. (2) The bridge repaired or constructed must be located by giving its distance and direction from the nearest section corner, stating which section corner, naming the section and township in which the section is located. (3) There must be recorded an itemized statement of all material used, giving the amount, kind, quality, and price of material and date furnished, which statement must be sworn to by the person or persons furnishing the same, and an itemized statement of all work and labor performed,

giving the number of days, the dates, and the price per day, which statement must be sworn to by the person or persons performing such work. The original statements for material and labor shall be filed away by the county clerk, and it shall be designated in the record where they are filed; *Provided,* such record shall be kept by the county engineer in counties having such officer. (4) An itemized statement of all material used in construction of approaches and culverts, and of all material used in improvements on roads, and all labor performed, must be signed and sworn to by the party or parties furnishing the material and the party or parties performing the labor; and the record of such improvements shall be kept in the same manner as is herein provided in repairing or constructing bridges by the county. (5) A similar record of all bridges or improvements made by contract shall be kept in such book.

Source: Laws 1905, c. 126, § 1, p. 540; Laws 1911, c. 111, § 1, p. 391; R.S.1913, § 2956; C.S.1922, § 2714; C.S.1929, § 39-801; Laws 1931, c. 84, § 1, p. 222; C.S.Supp.,1941, § 39-801; R.S.1943, § 39-811.

To justify removal of county officer for failure to comply with this section, action must be shown to have been prompted by evil intent or notice, or without sufficient grounds to believe that he was properly performing his duty. Hiatt v. Tomlinson, 100 Neb. 51, 158 N.W. 383 (1916).

Person crossing bridge or highway has right to expect bridge to be reasonably safe. Central City v. Marquis, 75 Neb. 233, 106 N.W. 221 (1905).

County should provide bridge adequate for what may be anticipated as requisite for accommodation of public, in bridge's locality. Seyfer v. Otoe County, 66 Neb. 566, 92 N.W. 756 (1902).

Increase over contract price cannot be enforced if contracted for without bids. Townsend v. Holt County, 40 Neb. 852, 59 N.W. 381 (1894).

39-812. Bridge construction; yearly contracts; when made; when authorized; terms.

The county board of each county in the state shall have power and is hereby authorized to make annual contracts, which contracts may be made after July 1 of any year and cover the fiscal year of the county, for the construction and erection of the superstructure, the substructure and approaches of all bridges, and for furnishing the materials in connection with the same, to be built within their respective counties for the period of one year, at a specified sum per lineal foot for the superstructure of all such bridges; at a specified sum per lineal foot for the superstructure of all such approaches; at a specified sum per lineal foot for all piling used in the substructure of all bridges and approaches; and at a specified sum per foot, board measure, for all caps, sway braces, and other wood materials used in the substructure of such bridges and approaches.

Source: Laws 1905, c. 126, § 2, p. 540; R.S.1913, § 2957; C.S.1922, § 2715; C.S.1929, § 39-802; R.S.1943, § 39-812; Laws 1947, c. 150, § 1, p. 415.

Cross References

Superstructure and substructure, defined, see section 39-816.

Board cannot let contract for building bridges for a period longer or less than one year. New contract to take effect before expiration of old one is void. Whedon v. Lancaster County, 80 Neb. 682, 114 N.W. 1102 (1908).

39-813. Bridge construction; yearly contracts; concrete substructures; terms.

In the event the substructure of such bridges or approaches is built wholly or in part of stone, brick, cement or concrete, the contract for the portion of the substructure to be built of such material shall be let at a specified sum per cubic foot in place.

Source: Laws 1905, c. 126, § 3, p. 540; R.S.1913, § 2958; C.S.1922, § 2716; C.S.1929, § 39-803; R.S.1943, § 39-813.

39-814. Bridge construction; yearly contracts; metal substructures; terms.

In the event the substructure of such bridges or approaches is wholly or in part of iron, steel or other metal, the contract for the portion of the substructure to be built of iron, steel or other metal shall be let at a specified sum per lineal foot for tubing, and at a specified sum per pound for all other metal in place.

Source: Laws 1905, c. 126, § 4, p. 540; R.S.1913, § 2959; C.S.1922, § 2717; C.S.1929, § 39-804; R.S.1943, § 39-814.

39-815. Bridge repairs; yearly contracts; terms.

The county board shall have the power and is hereby authorized to make yearly contracts for repairing all bridges and approaches to bridges which are required to be built, repaired, and maintained by the county, at a specified sum per unit quantity in place.

Source: Laws 1905, c. 126, § 5, p. 540; R.S.1913, § 2960; C.S.1922, § 2718; C.S.1929, § 39-805; R.S.1943, § 39-815.

This section is not applicable to repairing of bridges across irrigation ditches. Dawson County v. Dawson County Irr. Co., 104 Neb. 137, 176 N.W. 78 (1920); Dawson County Irr. Co. v. Dawson County, 103 Neb. 692, 173 N.W. 696 (1919).

39-816. Superstructure, substructure, unit quantity in place, defined.

The word superstructure as used in sections 39-812 to 39-815 and 39-820, is hereby defined to mean all that part of a bridge or an approach thereto directly above and resting upon the stone or concrete abutments or piers, iron tubings, pile caps or other similar supports. The word substructure, as used in said sections, is hereby defined to mean all that portion of a bridge or approach thereto directly under and upon which rests the superstructure. The term unit quantity in place, as used in said sections, shall mean cubic feet of stone, cement, brick or concrete; lineal feet of piling; feet of lumber, board measure; lineal feet of tubing; and pounds of all other metal when properly placed in the bridge, approach or culverts according to the terms of the contract.

Source: Laws 1905, c. 126, §§ 6, 7, 8, p. 541; R.S.1913, §§ 2961, 2962, 2963; C.S.1922, §§ 2719, 2720, 2721; C.S.1929, §§ 39-806, 39-807, 39-808; R.S.1943, § 39-816.

39-817. Bridge construction contracts; advertisement for bids; contents; bids; certified checks or cash deposits required.

Before any contract shall be let as aforesaid, the county board shall cause to be published three consecutive weeks, in a newspaper printed and of general circulation in the county or, if there is no newspaper printed in the county, in a newspaper of general circulation in the county, an advertisement inviting contractors to compete for such work. Such notice shall state the general character of the work, the number and kind of bridges required to be built, their proposed location as nearly as can be estimated and determined, the time within which and the place where such bids must be presented, and the time and place of opening such bids. No bids shall be considered unless accompanied by a certified check or cash, the amount of which is to be determined by the county board. All such checks shall be made payable to the county clerk of the county, to be forfeited to the county in case the bidder refuses to enter into a contract with the county, if the same is awarded to him.

Source: Laws 1905, c. 126, § 9, p. 541; R.S.1913, § 2964; C.S.1922, § 2722; C.S.1929, § 39-809; R.S.1943, § 39-817; Laws 1953, c. 136, § 1, p. 424.

When two counties unite in contract to repair boundary bridge, it is not necessary to publish advertisement in both counties. Standard Bridge Co. v. Kearney County, 95 Neb. 455, 145 N.W. 986 (1914).

39-818. Bridge construction contracts; bidding blanks; infringement on patent rights; bids; acceptance or rejection; construction by county.

The county board shall require bidders to bid upon plans and specifications on bidding blanks prepared by the Director-State Engineer or such other officer who may have charge of such matters in this state, to be furnished by Director-State Engineer free of charge, which shall be adopted by the county board; *Provided,* if the county board should adopt plans and specifications which infringe on any patent right granted under and by virtue of the laws of the United States, the county board shall endorse on the plans and specifications the name of the owner of such patent right or the name of the party entitled to receive royalties therefor, and the amount of royalties received by the owner or party entitled thereto; and the board may accept the lowest responsible bid and award the contract accordingly or reject any and all bids submitted for such work. Upon the rejection of any bid or bids by the board, it shall have the power and authority to purchase the necessary bridge material and employ the necessary labor to construct and repair bridges to be built by the county within one year; the purpose being that the county board shall be vested with power and authority to purchase the necessary material and employ the necessary labor, to construct and repair the bridges of the county within one year; *Provided, however,* nothing herein contained shall prevent any person or corporation from submitting to the Director-State Engineer plans and specifications for his consideration.

Source: Laws 1905, c. 126, § 10, p. 542; Laws 1913, c. 88, § 1, p. 230; R.S.1913, § 2965; C.S.1922, § 2723; C.S.1929, § 39-810; R.S.1943, § 39-818.

Cross References

Authority to build and repair bridges, other provisions, see sections 39-810, 39-824, and 39-826.

39-819. Bridge construction contracts; plans and specifications; uniformity required; contents; inspection of work by Director-State Engineer.

The county board shall not let or enter into any contract or contracts for the erection of any bridge, the estimated cost of which bridge shall exceed the sum of five hundred dollars, except upon uniform plans and specifications and bidding blanks prepared by the Director-State Engineer, or such other officers who may have charge of such matters in this state, which plans shall be drawn to scale and shall show the outline of the bridge or bridges as it or they will appear when completed. The plans and specifications shall also show at least one cross-sectional view of each. They shall show the name, number, size, grade, dimensions, mixture or other quality of all work and material to be used in the construction of the bridge or bridges. It shall be the duty of the Director-State Engineer or such other officer who may have charge of such matters in this state, to inspect and check the completed work when called upon so to do by the county board, or by the written request of five resident freeholders of the county.

Source: Laws 1905, c. 126, § 11, p. 542; Laws 1913, c. 88, § 1, p. 231; R.S.1913, § 2966; C.S.1922, § 2724; C.S.1929, § 39-811; R.S.1943, § 39-819.

39-820. Bridge and culvert construction contracts; separate bids required on each type; yearly contracts; letting; conditions.

All bidders for the erection and repair of bridges and approaches thereto and for the building of culverts and improvements on roads, when the cost of such erection, repair, building, or improvement shall exceed one hundred dollars, shall be required to bid separately on each different kind and class of bridge with approaches thereto and on each culvert or improvement on roads. The lowest and best bidder on each kind or class of bridges, culverts, or improvements shall be awarded a contract for the same or all bids on the same shall be rejected. The term bridge shall be understood to include both superstructure, substructure, and approaches as herein defined. All bridges constructed entirely of wood shall be considered as constituting a single class, and each different length or style of metal or combination bridge shall constitute a separate class. The county board shall award the contract for building all the same kind and class of bridges, approaches, and culverts that may be required during the year to the lowest and best bidder on such bridges, approaches, and culverts, the object of this section being to give the county board full power to disregard blanket or collective bids. The lowest and best bidder shall enter into a bond with good and sufficient surety or furnish an irrevocable letter of credit, a certified check upon a solvent bank, or a performance bond in a guaranty company qualified to do business in Nebraska in accordance with the provisions of section 39-825.

Source: Laws 1905, c. 126, § 13, p. 543; R.S.1913, § 2967; C.S.1922, § 2725; C.S.1929, § 39-812; R.S.1943, § 39-820; Laws 1987, LB 211, § 5.

Cross References

Superstructure and substructure, defined, see section 39-816.

39-821. Bridge and culvert construction contracts; plans, specifications, and estimates; preparation; approval; printed copies furnished to counties.

The Director-State Engineer, or such other officer who may have charge of such matters in this state, shall prepare plans, specifications, and estimates of the cost of construction, which shall be uniform throughout the state, and strain sheets and estimates of cost of all such standard pattern bridges, the estimated cost of which will exceed five hundred dollars each, as are best adapted to the requirements of the several counties; *Provided,* such plans, specifications, and estimates shall be based upon proper and sufficient data which shall be furnished to the secretary of the county board; and the Director-State Engineer shall supply the several counties with the number of prints of plans and strain sheets and printed copies of specifications, ordered by said counties, free of charge, and he shall retain all drawings in his office to be turned over to his successor.

Source: Laws 1905, c. 126, § 14, p. 543; Laws 1913, c. 88, § 1, p. 232; R.S.1913, § 2968; Laws 1921, c. 286, § 1, p. 934; C.S.1922, § 2726; C.S.1929, § 39-813; R.S.1943, § 39-821.

39-822. Bridge and culvert construction contracts; plans, specifications, and estimates furnished to bidders; statement of construction done.

The county board shall keep in the office of the county clerk of the county a sufficient supply of the prints of the plans and the printed copies of the specifications and estimates of the cost of construction mentioned in section 39-821, to be furnished by the Director-State Engineer for distribution to prospective bidders and taxpayers of the county. No contract shall be entered into under the provisions of sections 39-810 to 39-826 for the construction or erection of any bridge or bridges unless, for the period of thirty days immediately preceding the time of entering into such contract, there shall have been available for distribution by the county clerk such plans and specifications. The county boards of the several counties shall prepare and transmit to the Department of Transportation a statement accompanied by the plans and specifications, showing the cost of all bridges built in their counties under the provisions of such sections, and state therein whether they were built under a contract or by the county.

Source: Laws 1905, c. 126, § 15, p. 544; Laws 1913, c. 88, § 1, p. 232; R.S.1913, § 2969; Laws 1921, c. 286, § 2, p. 934; C.S.1922, § 2727; C.S.1929, § 39-814; R.S.1943, § 39-822; Laws 2017, LB 339, § 111.

Operative Date: July 1, 2017

39-823. Bridge and culvert construction; plans and specifications; duplicate copies; filing with county clerk.

The county board shall also file duplicate copies of all plans and specifications adopted by them under the provisions of sections 39-810 to 39-826, in the office of the county clerk, who shall keep the same with the records of his office, to be turned over to his successor in office.

Source: Laws 1905, c. 126, § 16, p. 544; Laws 1913, c. 88, § 1, p. 232; R.S.1913, § 2970; C.S.1922, § 2728; C.S.1929, § 39-815; R.S.1943, § 39-823.

39-824. Bridge construction; cost; limitation on expenditures.

Bridges shall not be built if the aggregate cost thereof shall exceed a sum greater than the amount of money on hand in the bridge fund derived from the levy of previous years, plus eighty-five percent of the levy of the current year, together with the amount of money in the district road fund in the district where such work is to be performed.

Source: Laws 1905, c. 126, § 17, p. 545; R.S.1913, § 2971; Laws 1919, c. 26, § 1, p. 92; C.S.1922, § 2729; C.S.1929, § 39-816; R.S.1943, § 39-824.

Cross References

Authority to build or repair bridges, other provisions, see sections 39-810, 39-818, and 39-826. **District road fund,** see section 39-1905.

Provision that county boards may levy special tax to pay indebtedness arising under certain bridge contracts is mandatory, but not in excess of limit of levy for county purposes. State ex rel. Millsap v. Stoddard, 108 Neb. 712, 189 N.W. 299 (1922); Beadle v. Sanders, 104 Neb. 427, 177 N.W. 789 (1920).

Bridge construction in anticipation of levy is valid and a culvert is a bridge within meaning of proviso. Central Bridge & Constr. Co. v. Saunders County, 106 Neb. 484, 184 N.W. 220 (1921).

39-825. Bridge construction; contract; bond or other surety.

(1) Except as provided in subsection (2) of this section, every bidder, before entering on work pursuant to contract, shall give bond to the county with at least two good and sufficient sureties, who shall be residents of the state, and one of whom shall be a resident of the county, in any sum not less than one thousand dollars, and in such additional amount as the county board may require, which bond shall be approved by the county board and shall be conditioned for the faithful execution of the contract. The county board may accept or may require a surety bond in like amount and conditioned the same as the personal bond prescribed in this section.

(2) If a contract, the provisions of which are limited to the purchase of supplies or materials, is entered into pursuant to this section and if the amount of the contract is fifty thousand dollars or less, the bidder shall furnish the county with an irrevocable letter of credit, a certified check upon a solvent bank, or a performance bond in a guaranty company qualified to do business in Nebraska, as prescribed by and in an amount determined by the county board, conditioned for the faithful performance of such contract.

Source: Laws 1905, c. 126, § 18, p. 545; R.S.1913, § 2972; C.S.1922, § 2730; C.S.1929, § 39-817; R.S.1943, § 39-825; Laws 1987, LB 211, § 6.

39-826. Bridges and culverts; emergency repairs.

If any bridge, bridges, approach, approaches, culvert or culverts, may need immediate repairs on account of the same having broken down, or on account of high water, or fire, or if for other cause an emergency shall exist, the county board shall have the power to declare that the public good requires immediate action to prevent inconvenience and damage, and may proceed to enter into a contract under the provisions of sections 39-810 to 39-826 for such bridge, bridges, approach or approaches, culvert or culverts, or may buy material and hire labor and repair any such bridges, approaches or culverts.

Source: Laws 1905, c. 126, § 19, p. 545; R.S.1913, § 2973; C.S.1922, § 2731; C.S.1929, § 39-818; R.S.1943, § 39-826.

Where emergency existed, as shown by record, county board is not required to advertise for bidders. Standard Bridge Co. v. Kearney County, 95 Neb. 744, 146 N.W. 943 (1914).

39-826.01. Proposed bridge or culvert; dam in lieu of; how determined.

The Department of Transportation or the county board shall, prior to the design or construction of a new bridge or culvert in a new or existing highway or road within its jurisdiction, notify in writing, by first-class mail, the natural resources district in which such bridge or culvert will be located. The natural resources district shall, pursuant to section 39-826.02, determine whether it would be beneficial to the district to have a dam constructed in lieu of the proposed bridge or culvert. If the district shall determine that a dam would be more beneficial, the department or the county board and the natural resources district shall jointly determine the feasibility of constructing a dam to support the road in lieu of a bridge or culvert. If the department or the county board and the natural resources district cannot agree regarding the feasibility of a dam, the decision of the department, in the case of the state highway system, or the county board, in the case of the county road system, shall be controlling.

Source: Laws 1979, LB 213, § 1; Laws 2017, LB 339, § 112.
Operative Date: July 1, 2017

39-826.02. Proposed bridge or culvert; natural resources district; dam; feasibility study.

If a natural resources district shall receive notice of a proposed bridge or culvert pursuant to section 39-826.01, the district shall make a study to determine whether it would be practicable to construct a dam at or near the proposed site which could be used to support a highway or road. In making the study, such district shall consider the benefit which would be derived and the feasibility of such a dam. After it has made its determination, the natural resources district shall notify the Department of Transportation or the county board and shall, if the district favors such

a dam, assist in the joint feasibility study and provide any other assistance which may be required.

Source: Laws 1979, LB 213, § 2; Laws 2017, LB 339, § 113.
Operative Date: July 1, 2017

(c) BRIDGES IN OR NEAR TWO OR MORE COUNTIES

39-827. Bridges in or near two or more counties; construction and repair; cost; division.

Bridges over streams which divide counties, bridges over streams on roads on county lines, and bridges over streams near county lines, in which both counties are equally interested, shall be built and repaired at the equal expense of such counties.

Source: Laws 1879, § 87, p. 142; R.S.1913, § 2988; C.S.1922, § 2739; C.S.1929, § 39-825; R.S.1943, § 39-827.

1. Liability of counties
2. Notice
3. Mandamus to compel repairs
4. Miscellaneous

1. Liability of counties

County is liable for one-half of cost of bridge entirely washed away, including approaches, grading, etc., essential to proper construction, although previously notified only that repairing was necessary. Keya Paha County v. Brown County, 99 Neb. 305, 156 N.W. 507 (1916); Brown County v. Keya Paha County, 88 Neb. 117, 129 N.W. 250 (1910).

Liability of counties, separated by stream, in absence of contract, is fixed by statute existing at time of repairs. Buffalo County v. Kearney County, 95 Neb. 439, 145 N.W. 985 (1914).

Liability of adjoining counties for repairs depends upon statute in force when repairs are made and liability incurred. Buffalo County v. Hull, 93 Neb. 586, 141 N.W. 154 (1913).

A county may be required to contribute toward the repair of a bridge abutting in such county although it is located mainly within the territorial jurisdiction of an adjoining county. Dodge County v. Saunders County, 70 Neb. 442, 97 N.W. 617 (1903).

One county cannot build or repair bridge and enforce contribution from another, in the absence of special agreement to build, or refusal to enter into contract for repairs. Saline County v. Gage County, 66 Neb. 839, 92 N.W. 1050 (1902), 97 N.W. 583 (1903).

2. Notice

Notice to repair does not fix liability for building new bridge. Colfax County v. Butler County, 83 Neb. 803, 120 N.W. 444 (1909).

Notice must be specific. Buffalo County v. Kearney County, 83 Neb. 550, 120 N.W. 171 (1909); Dodge County v. Saunders County, 77 Neb. 787, 110 N.W. 756 (1906).

3. Mandamus to compel repairs

Where there are not sufficient funds to repair all bridges, court will not by mandamus control discretion of county board to determine what bridges will be repaired. State ex rel. Ellis v. Switzer, 79 Neb. 78, 112 N.W. 297 (1907).

Mandamus does not lie unless notice was given to other county. State ex rel. Sumption v. Smith, 77 Neb. 1, 108 N.W. 173 (1906).

Mandamus lies to compel board to contribute to repairs of county bridge when notice is given according to law. Iske v. State, 72 Neb. 278, 100 N.W. 315 (1904).

4. Miscellaneous

Word stream is used in general sense, and applies to rivers and smaller running watercourses. Dawson County v. Phelps County, 94 Neb. 112, 142 N.W. 697 (1916).

Needful repairs does not include new steel repairs. Platte County v. Butler County, 91 Neb. 132, 135 N.W. 439 (1912).

A stream, as used in this section, includes rivers and smaller courses of running water. Dodge County v. Saunders County, 70 Neb. 451, 100 N.W. 934 (1903).

39-828. Bridges in or near two or more counties; joint contracts for construction or repair; failure of county to join; separate maintenance of bridges.

For the purpose of building or keeping in repair such bridge or bridges, it shall be lawful for the county boards of such adjoining counties to enter into joint contracts. Such contracts may be enforced in law or equity against them jointly, the same as if entered into by individuals, and they may be proceeded against jointly, by any parties interested in such bridge or bridges, for any neglect of duty in reference to such bridge or bridges or for any damages growing out of such neglect. If either of such counties shall refuse to enter into contracts to carry out the provisions of this section for the repair of any such bridge or bridges, it shall be lawful for the other said counties to enter into such contract for all needful repairs and recover by suit from the county so in default such proportion of the cost of making such repairs as it ought to pay, not exceeding one-half of the full amount so expended. Whenever two or more counties have entered into a joint contract whereby one county assumes the responsibility for the separate maintenance and repair of the bridges upon specified portions of public roads upon or across county lines, it shall be the duty of the county agreeing to maintain and keep in repair any such bridge to promptly erect and maintain adequate barriers to prevent accidents, whenever the condition of any such bridge or the approaches thereto is dangerous to public travel, and to diligently proceed with the repair thereof. The performance of such duty by a county agreeing to maintain and keep in repair such bridge may be enforced by mandamus by any other county or counties which are parties to the contract.

Source: Laws 1879, § 88, p. 142; Laws 1881, c. 77, § 1, p. 329; Laws 1899, c. 57, § 1, p. 284; R.S.1913, § 2989; C.S.1922, § 2740; C.S.1929, § 39-826; Laws 1943, c. 101, § 1, p. 341; R.S.1943, § 39-828.

One county cannot compel another to contribute to cost of state aid bridge over boundary line stream between counties unless statutory notice has been given to other county. Buffalo County v. Phelps County, 129 Neb. 268, 261 N.W. 360 (1935).

County board has power to ratify contract made on its behalf by a member, and to authorize the member to execute it. Standard Bridge Co. v. Kearney County, 95 Neb. 455, 145 N.W. 986 (1914).

Approaches are part of the bridge. Brown County v. Keya Paha County, 88 Neb. 117, 129 N.W. 250 (1910).

County cannot collect one-half of cost for new bridge under notice to repair. Colfax County v. Butler County, 83 Neb. 803, 120 N.W. 444 (1909).

The words recovery by suit include a suit instituted by an appeal from the disallowance of a claim by a county board. Cass County v. Sarpy County, 83 Neb. 435, 119 N.W. 685 (1909).

It is duty of board, when notified, to join in contract. Iske v. State, 72 Neb. 278, 100 N.W. 315 (1904).

Taxpayer cannot defeat contract by appeal. Saline County v. Gage County, 66 Neb. 839, 92 N.W. 1050 (1902), 97 N.W. 583 (1903).

County repairing must proceed according to law. Cass County v. Sarpy County, 66 Neb. 473, 92 N.W. 635 (1902), 97 N.W. 352 (1903).

Counties are both bound, even in absence of contract to repair, if proper notice is given. Cass County v. Sarpy County, 63 Neb. 813, 89 N.W. 291 (1902).

39-829. Bridges in or near two or more counties; joint contracts; enforcement; procedure.

If the county board of either of such counties, after reasonable notice in writing from the county board of any other such county, shall neglect or refuse to build or repair any such bridge, when any contract or agreement has been made in regard to the same, it shall be lawful for the board so giving notice to build or repair the same, and to recover, by suit, one-half, or such amount as shall have been agreed upon, of the expense of so building or repairing such bridge, with cost of suit and interest from the time of the completion thereof, from the county so neglecting or refusing.

Source: Laws 1879, § 89, p. 142; R.S.1913, § 2990; C.S.1922, § 2741; C.S.1929, § 39-827; R.S.1943, § 39-829.

In order to recover part of cost of bridge over a stream that forms boundary between counties, notice must be given of intention to construct. Buffalo County v. Phelps County, 129 Neb. 268, 261 N.W. 360 (1935).

39-830. Bridges in or near two or more counties; joint contracts; judgment; board members individually liable, when.

Any judgment so recovered against the county board of either of such counties shall be a charge on such county, unless the jury shall in their verdict certify that the neglect or refusal of such board was willful or malicious, in which case only the members of such board shall be personally liable for such judgment; and the same may be enforced against them in their personal and individual capacity, and upon their official bonds.

Source: Laws 1879, § 90, p. 142; R.S.1913, § 2991; C.S.1922, § 2742; C.S.1929, § 39-828; R.S.1943, § 39-830.

(d) DEFECTIVE BRIDGES

39-831. Defective bridge; notice to county board.

Whenever any highway or bridge in any county shall be out of repair, or unsafe for travel, any three citizens or taxpayers of the state may notify the member of the county board of the district within which such road or bridge is situated, in writing, setting forth a description of the road or bridge and the defects therein.

Source: Laws 1889, c. 7, § 1, p. 77; R.S.1913, § 2992; C.S.1922, § 2743; C.S.1929, § 39-829; R.S.1943, § 39-831.

Repairs contemplated by this section are such as may be made at once and without considerable cost. State ex rel. Heil v. Jakubowski, 151 Neb. 471, 38 N.W.2d 26 (1949).

39-832. Defective bridge; repairs; when made.

It shall then be the duty of such member of the county board, within twenty-four hours after service of such notice, to commence to make suitable repairs to such highway or bridge, and to place it in a safe condition for travel.

Source: Laws 1889, c. 7, § 2, p. 77; R.S.1913, § 2993; C.S.1922, § 2744; C.S.1929, § 39-830; R.S.1943, § 39-832.

Mandamus will not lie to compel rebuilding of bridge when funds are exhausted. State ex rel. Heil v. Jakubowski, 151 Neb. 471, 38 N.W.2d 26 (1949).

Duty may be enforced by mandamus. State ex rel. Enerson v. County Commissioners of Boone County, 102 Neb. 199, 166 N.W. 554 (1918).

Party crossing bridge on public road, without notice of its dangerous condition, has right to assume that it is safe for people of various occupations of locality. Kovarik v. Saline County, 86 Neb. 440, 125 N.W. 1082 (1910).

This section refers to such repairs as can be made immediately. State ex rel. Sumption v. Smith, 77 Neb. 1, 108 N.W. 173 (1906).

Precinct bridge becomes part of public road and county must repair on notice. State ex rel. Pankonin v. County Commissioners of Cass, 58 Neb. 244, 78 N.W. 494 (1899); Dutton v. State ex rel. Pankonin, 42 Neb. 804, 60 N.W. 1042 (1894).

County is liable even without notice of unsafe condition of bridge. Raasch v. Dodge County, 43 Neb. 508, 61 N.W. 725 (1895).

39-833. Defective bridge on county or township line; notice; procedure.

If the road or bridge shall be on the line between two counties, then the members of the county boards of the respective districts, within which such road or bridge is located, of the respective counties, shall be served with such notice, or if it be on the line between two townships, in counties under township organization, then the supervisors of both townships in which the road or bridge is situated shall be notified in like manner.

Source: Laws 1889, c. 7, § 3, p. 77; R.S.1913, § 2994; C.S.1922, § 2745; C.S.1929, § 39-831; R.S.1943, § 39-833.

Where mandamus is brought to compel building of county line bridge, notice must be given to both counties and both joined in action. State ex rel. Sumption v. Smith, 77 Neb. 1, 108 N.W. 173 (1906).

39-834. Transferred to section 23-2410.

(e) BOUNDARY BRIDGES

39-835. Boundary bridge; construction bonds authorized.

Any county, township, precinct, city or village in the State of Nebraska may issue bonds to construct or to aid in the construction of a highway bridge across any boundary river of the state.

Source: Laws 1895, c. 45, § 1, p. 187; R.S.1913, § 2996; C.S.1922, § 2748; C.S.1929, § 39-834; R.S.1943, § 39-835.

County may issue bonds to construct or aid in the construction of a highway wagon bridge across a boundary stream. Ahern v. Richardson County, 127 Neb. 659, 256 N.W. 515 (1934).

39-836. Boundary bridge; bonds; election; limitation on amount.

The question of issuing bonds shall first be submitted to the qualified electors of the county, township, precinct, city, or village either at a special election called for that purpose or at a general election as provided in sections 39-837 to 39-841. If a majority of the votes cast at such election are in favor of the proposition to issue bonds, then such county, township, precinct, city, or village, as the case may be, shall issue its bonds in such amounts as specified in the notices of election, not exceeding three and five-tenths percent of the taxable valuation of such county, township, precinct, city, or village as shown by the last assessment prior to the vote authorizing the issuance of such bonds.

Source: Laws 1895, c. 45, § 2, p. 187; R.S.1913, § 2997; C.S.1922, § 2749; C.S.1929, § 39-835; R.S.1943, § 39-836; Laws 1971, LB 534, § 27; Laws 1979, LB 187, § 155; Laws 1992, LB 719A, § 137.

Power of county to issue bonds is purely statutory and must be exercised in manner prescribed. Ahern v. Richardson County, 127 Neb. 659, 256 N.W. 515 (1934).

39-837. Boundary bridge; bonds; petition for special election; bond for expenses.

Whenever a petition, setting forth the amount of bonds asked to be voted, when the same shall become due, the rate of interest the bonds shall bear, whether payable annually or semiannually, and if to aid in the construction of a bridge, the name of the person, firm or corporation to whom the bonds are to be donated, the amount of work to be done on such bridge before the bonds shall be delivered, and signed by not less than twenty freeholders of the county, township, precinct, city or village, which is to issue the bonds, shall be presented to the county board of the county which is to issue the bonds, or the county in which is located the township or precinct which is to issue the bonds, or the city council of the city which is to issue the bonds, or to the trustees of the village which is to issue the bonds, the county board, the city council or the village trustees shall, upon the petitioners' giving bond, to be approved by them, conditioned for

the payment of the expenses of a special election in the event the proposition to be submitted shall not receive the requisite number of votes for its adoption, give notice and call a special election in the county, township, precinct, city or village.

Source: Laws 1895, c. 45, § 3, p. 188; R.S.1913, § 2998; C.S.1922, § 2750; C.S.1929, § 39-836; R.S.1943, § 39-837; Laws 1969, c. 51, § 103, p. 337.

39-838. Boundary bridge; bonds; special election; notice; conduct.

The notice required by section 39-837 shall contain the conditions upon which bonds are to be issued and which are required by section 39-837 to be set forth in the petition, and shall be published for at least thirty days prior to such election in some newspaper published in such county, township, precinct, city or village, if any newspaper is published therein; and if no newspaper is published therein, such notice shall be published by posting notice at the courthouse door in the county and in every voting precinct in the county. In case of a township, precinct, city or village election, such notice, where there is no newspaper published therein, shall be published by posting the notice in at least four public places in each township, precinct, city or village for at least thirty days next preceding the day of holding such election. The election in all other respects shall be governed by and conform to the laws regulating general elections.

Source: Laws 1895, c. 45, § 3, p. 188; R.S.1913, § 2998; C.S.1922, § 2750; C.S.1929, § 39-836; R.S.1943, § 39-838.

39-839. Boundary bridge; bonds; submission at general election.

Upon request of the petitioners mentioned in section 39-837, the proposition to issue bonds may be submitted at the next general election after the presentation of the petition, upon giving notice as provided by section 39-838, in which case the petitioners shall not be required to execute any bond for the payment of the expenses of the election as provided by section 39-837.

Source: Laws 1895, c. 45, § 3, p. 189; R.S.1913, § 2998; C.S.1922, § 2750; C.S.1929, § 39-836; R.S.1943, § 39-839.

39-840. Boundary bridge; bonds; election; form of ballot.

At any election held pursuant to section 39-838 or 39-839, the ballot used shall be substantially in the following form:

Shall (here enter name of county, township, precinct, city or village it is proposed it is proposed shall vote bonds) issue bonds in the sum of (here insert the amount) dollars, to construct or aid in the construction of, as the case may be, a highway bridge (and if to aid in the construction, insert the name of the persons, firm or corporation to whom said bonds are to be donated) and to levy a tax for payment of the principal and interest.

Yes ….. No …..

Source: Laws 1895, c. 45, § 3, p. 189; R.S.1913, § 2998; C.S.1922, § 2750; C.S.1929, § 39-836; R.S.1943, § 39-840.

39-841. Boundary bridge; bonds; election result recorded; issuance; delivery.

If at any election held pursuant to section 39-838 or 39-839 the proposition to issue bonds receives the requisite number of votes for its adoption as provided in section 39-836, the county board, city council, or board of village trustees shall cause the petition, the notice of election, and the result of the vote to be recorded in the proper records of the county, city, or village. Thereupon such bonds shall be prepared and issued in accordance with the petition and notice of election and shall be signed and executed by the officers by law authorized to sign and execute bonds issued by a county, township, precinct, or village. The bonds when issued by the county board of any county shall be registered in the office of the county clerk of such county; and when issued by a city or village, they shall be registered in the office of the clerk of such city or village. After being so registered, the bonds shall be delivered to the person, firm, or corporation named in the petition upon their compliance with the terms and conditions upon which the bonds were voted.

Source: Laws 1895, c. 45, § 4, p. 189; R.S.1913, § 2999; C.S.1922, § 2751; C.S.1929, § 39-837; R.S.1943, § 39-841; Laws 1969, c. 317, § 8, p. 1148; Laws 2001, LB 420, § 27.

39-842. Boundary bridge; bonds; annual tax levy; sinking fund.

The proper officers charged with the duty of levying taxes for the county, township, precinct, city or village voting such bonds shall, each year, until the bonds voted under the authority of sections 39-835 to 39-841 are paid, levy upon the taxable property in the county, township, precinct, city or village issuing the bonds, a tax sufficient to pay the interest on such bonds as they mature, and to provide for a sinking fund for the redemption of the bonds at their maturity.

Source: Laws 1895, c. 45, § 5, p. 190; R.S.1913, § 3000; C.S.1922, § 2752; C.S.1929, § 39-838; R.S.1943, § 39-842.

39-842.01. Boundary bridge; consent for purchase, operation, and maintenance; counties, cities, and towns of an adjoining state; not exempt from taxation.

Consent of the State of Nebraska is hereby given to counties, cities and towns of any adjoining state to purchase, operate and maintain bridges extending across a stream which, at the point of crossing, is on a boundary line of the State of Nebraska, and a right-of-way to give access to such bridge from the highway system of this state; *Provided,* that the consent herein granted shall not be construed to exempt any property acquired hereunder from taxation.

Source: Laws 1945, c. 96, § 1, p. 320.

(f) TOLL BRIDGES

39-843. Repealed. Laws 1947, c. 179, § 6.

39-844. Repealed. Laws 1947, c. 179, § 6.

39-845. Repealed. Laws 1947, c. 179, § 6.

39-845.01. Repealed. Laws 1959, c. 175, § 34.

39-845.02. Repealed. Laws 1959, c. 175, § 34.

39-845.03. Repealed. Laws 1959, c. 175, § 34.

39-845.04. Repealed. Laws 1959, c. 175, § 34.

(g) STATE AID BRIDGES

39-846. State Aid Bridge Fund; created; use; investment.

In order to expedite the replacement of deficient bridges, the State Aid Bridge Fund is hereby created to provide assistance to counties for replacement of bridges. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1919, c. 190, tit. VII, art. III, § 1, p. 815; C.S.1922, § 8356; C.S.1929, § 39-1501; R.S.1943, § 39-846; Laws 1973, LB 87, § 1; Laws 1995, LB 7, § 35.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

Right of contribution from state for portion of cost of bridge was limited by appropriation for state aid bridge fund. Scotts Bluff County v. State, 133 Neb. 508, 276 N.W. 185 (1937).

One county cannot compel another to contribute to cost of state aid bridge over boundary line stream between the two counties unless notice has been given to other county of intention to build bridge and opportunity given to participate in its construction. Buffalo County v. Phelps County, 129 Neb. 268, 261 N.W. 360 (1935).

39-847. State aid for bridges; application for replacement; costs; priorities; plans and specifications; contracts; maintenance.

(1) Any county board may apply, in writing, to the Department of Transportation for state aid in the replacement of any bridge under the jurisdiction of such board. The application shall contain a description of the bridge, with a preliminary estimate of the cost of replacement thereof, and a certified copy of the resolution of such board, pledging such county to furnish fifty percent of the cost of replacement of such bridge. The county's share of replacement cost may be from any source except the State Aid Bridge Fund, except that where there is any bridge which is the responsibility of two counties, either county may make application to the department and, if the application is approved by the department, such county and the department may replace such bridge and recover, by suit, one-half of the county's cost of such bridge from the county failing or refusing to join in such application. All requests for bridge replacement under sections 39-846 to 39-847.01 shall be forwarded by the department to the Board of Public Roads Classifications and Standards. Such board shall establish priorities for bridge replacement based on critical needs. The board shall, in June and December of each year, consider such applications and establish priorities for a period of time consistent with sections 39-2115 to 39-2119. The board shall return the applications to the department with the established priorities.

(2) The plans and specifications for each bridge shall be furnished by the department and replacement shall be under the supervision of the department and the county board.

(3) Any contract for the replacement of any such bridge shall be made by the department consistent with procedures for contracts for state highways and federal-aid secondary roads.

(4) After the replacement of any such bridge and the acceptance thereof by the department, any county having jurisdiction over it shall have sole responsibility for maintenance.

Source: Laws 1911, c. 112, § 2, p. 393; R.S.1913, § 2977; Laws 1919, c. 190, tit. VII, art. III, § 2, p. 815; Laws 1921, c. 260, § 1, p. 875; C.S.1922, § 8357; Laws 1923, c. 157, § 1, p. 382; Laws 1923, c. 156, § 1, p. 381; C.S.1929, § 39-1502; R.S.1943, § 39-847; Laws 1953, c. 287, § 61, p. 966; Laws 1973, LB 87, § 2; Laws 2017, LB 339, § 114.

Operative Date: July 1, 2017

Levy under this section was not authorized. State ex rel. Heil v. Jakubowski, 151 Neb. 471, 38 N.W.2d 26 (1949).

Every contract is made with reference to and subject to existing laws, and no right of contribution can exist based on nonperformance by the state of a contract which it was prohibited from making. Scotts Bluff County v. State, 133 Neb. 508, 276 N.W. 185 (1937).

State and county are jointly and severally liable for damages caused by construction of bridge as joint enterprise. Nine Mile Irr. Dist. v. State, 118 Neb. 522, 225 N.W. 679 (1929).

39-847.01. State Aid Bridge Fund; State Treasurer; transfer funds to.

The State Treasurer shall transfer monthly thirty-two thousand dollars from the share of the Department of Transportation of the Highway Trust Fund and thirty-two thousand dollars from the counties' share of the Highway Trust Fund which is allocated to bridges to the State Aid Bridge Fund.

Source: Laws 1973, LB 87, § 3; Laws 1986, LB 599, § 4; Laws 2017, LB 339, § 115.
Operative Date: July 1, 2017

Cross References

Highway Trust Fund, see section 39-2215.

39-848. Repealed. Laws 1976, LB 724, § 11.

39-849. Repealed. Laws 1976, LB 724, § 11.

39-850. Repealed. Laws 1976, LB 724, § 11.

39-851. Repealed. Laws 1976, LB 724, § 11.

39-852. Repealed. Laws 1976, LB 724, § 11.

39-853. Repealed. Laws 1973, LB 87, § 4.

39-854. Repealed. Laws 1976, LB 724, § 11.

(h) INTERSTATE COUNTY BRIDGES

39-855. County, defined; interstate bridge across boundary stream; authority to build.

Whenever used in sections 39-855 to 39-876, the word county or counties shall be construed to include municipal corporations as well and to include any commission or authority which may be established in any county or counties; and whenever the governing body of any county is specifically directed or empowered to perform a given act or function it shall be deemed a grant or direction for the corresponding governing body of a city or village, or any commission or authority which may be established within any county or counties, as the case may be, to do likewise. Any county in the State of Nebraska may build or construct or aid in the construction or complete construction of any highway, wagon, vehicle or automobile bridge within the State of Nebraska and any adjoining state across any river, navigable or nonnavigable stream, forming a boundary line between any county within the State of Nebraska and any other state of the United States.

Source: Laws 1935, c. 87, § 1, p. 278; Laws 1941, c. 78, § 1, p. 314; C.S.Supp.,1941, § 39-2101; R.S.1943, § 39-855.

Purchase by counties of interstate bridges already built is authorized. Hansen v. Dakota County, 135 Neb. 582, 283 N.W. 217 (1939).

Power of county to issue bonds is purely statutory and must be exercised in manner prescribed by statute. Ahern v. Richardson County, 127 Neb. 659, 256 N.W. 515 (1934).

39-856. Interstate county bridges; revenue bonds; issuance; tolls; disbursement; federal aid; powers of county.

Any county in the State of Nebraska may issue revenue bonds to construct or to aid in the construction, or complete the construction of any highway, wagon, vehicle, or automobile bridge within the State of Nebraska and any adjoining state across any river, navigable or nonnavigable stream, forming a boundary line between any county within the State of Nebraska and any other state of the United States, which revenue bonds shall be payable solely from the revenue and funds from such bridge and as to which, as shall be recited therein, the county shall incur no indebtedness of any kind or nature, and to support which the county shall not pledge its credit nor its taxing power nor any part thereof. As a part of the cost of any such bridge, the county may include (1) the costs of any river structures approved by the special engineer for the project and with the approval of any required state or federal agency having jurisdiction thereof, and (2) the costs of, or assist in the payment of the costs of, any approach structures or roads not over ten miles from the actual bridge structure. Any such county may levy, collect, and distribute tolls and use the same in payment of the principal and interest on such revenue bonds and for the maintenance, repair, and operation of any such bridge. It may accept gifts and grants of money from the United States Government or any corporation or agency created, designed, or established by the United States, and may enter into contracts with the United States or such corporations or agencies, and do everything necessary thereto, and to construct or aid in the construction or to complete the construction of any such bridge or bridges.

Source: Laws 1935, c. 87, § 2, p. 279; C.S.Supp.,1941, § 39-2102; R.S.1943, § 39-856; Laws 1951, c. 121, § 1, p. 533.

39-857. Interstate county bridges; franchise previously acquired; validation.

If any such county, prior to May 21, 1935, has acquired, purchased or received an assignment by gift or otherwise of a franchise or authority of the United States Government to build any highway, wagon, vehicle or automobile bridge within the State of Nebraska and any adjoining state, across any river, navigable or nonnavigable stream, forming a boundary line between any county within the State of Nebraska and any other state of the United States, if in every other way regular in form, the same shall be and is hereby declared legal and valid and binding on the county, and of the same force and effect as if authority had been theretofore directly conferred on the county.

Source: Laws 1935, c. 87, § 3, p. 279; C.S.Supp.,1941, § 39-2103; R.S.1943, § 39-857.

39-858. Interstate county bridges; permit previously acquired; validation.

If any such county prior to May 21, 1935, has acquired, purchased, or received an assignment by gift or otherwise, a permit issued and granted by the United States Government or any corporation or agency created, designated, or established by the United States Government to construct any highway, wagon, vehicle or automobile bridge within the State of Nebraska, and

any adjoining state, across any river, navigable or nonnavigable stream, forming a boundary line between any county within the State of Nebraska and any other state of the United States, if in every other way regular in form, same shall be and hereby is declared legal and binding on the county, and of the same force and effect as if such permit had been theretofore directly granted by the United States Government to such county upon its application.

Source: Laws 1935, c. 87, § 4, p. 280; C.S.Supp.,1941, § 39-2104; R.S.1943, § 39-858.

39-859. Interstate county bridges; property previously acquired; validation.

If any such county prior to May 21, 1935, has acquired, purchased, or received an assignment by gift or otherwise, any existing highway, wagon, vehicle or automobile bridge or viaduct including approaches and avenues, rights-of-way or easements, or avenues to approaches, necessary real and personal property incident thereto, special privileges and leases in connection with construction of any bridges within the State of Nebraska and any adjoining state and across any river, navigable or nonnavigable stream, forming a boundary line between any county within the State of Nebraska and any other state of the United States, if in every other way regular in form, the same shall be and is hereby declared legal and valid and the property of the county and of the same force and effect as if such property had been theretofore directly acquired by the county.

Source: Laws 1935, c. 87, § 5, p. 280; C.S.Supp.,1941, § 39-2105; R.S.1943, § 39-859.

39-860. Interstate county bridges; revenue bonds; interest; issuance; terms; form.

Any county in the State of Nebraska is authorized to provide funds for the purposes of section 39-856 and for the purpose of providing interest on such bonds during construction, and for a period not to exceed two years after completion of any bridge, by the issuance of revenue bonds of such counties, the principal and interest of which shall be payable solely from the special funds herein provided for, and as to which, as shall be recited therein, the county shall not incur any indebtedness of any kind or nature, and the county shall not pledge its credit, its taxing power, or any part thereof to support or pay the same. Such revenue bonds shall bear interest payable semiannually, shall mature in not more than forty years from their date or dates, and may be redeemable at the option of the county as provided by law. The governing body of the county shall provide the form of such bonds, including coupons to be attached thereto to evidence interest payments. The bonds shall be signed by the chairman of the board of county commissioners of the county, and countersigned and registered by the county clerk under the seal of the county. The coupons shall bear the facsimile signatures of the chairman and county clerk. Such governing body shall fix the denomination or denominations of such bonds and the place of the payment of the principal and interest thereon, which may be at the office of the county treasurer or any bank or trust company in the State of Nebraska or in New York City, New York.

Source: Laws 1935, c. 87, § 7, p. 281; Laws 1941, c. 78, § 2, p. 315; C.S.Supp.,1941, § 39-2107; R.S.1943, § 39-860; Laws 1947, c. 15, § 16, p. 91; Laws 1951, c. 121, § 2, p. 534; Laws 1955, c. 162, § 1, p. 466; Laws 1969, c. 51, § 104, p. 337.

39-861. Interstate county bridges; revenue bonds; negotiability; tax exempt; legal investments and security.

All bonds authorized by section 39-860 shall be and shall have and are declared to have all the qualities and incidents of negotiable instruments under the provisions of article 3, Uniform Commercial Code, without, however, constituting the revenue bonds, herein authorized, an indebtedness of the county issuing the same. Such bonds shall be exempt from all taxation, state and municipal. Such bonds shall be legal investments of banks, savings banks, and trust companies, of trustees and of the trustees of the sinking fund of municipalities and counties, and shall be acceptable as security for the deposit of public money in the same manner and to the same extent as any other negotiable bonds of any county of the State of Nebraska.

Source: Laws 1935, c. 87, § 7, p. 281; Laws 1941, c. 78, § 2, p. 316; C.S.Supp.,1941, § 39-2107; R.S.1943, § 39-861; Laws 1972, LB 1058, § 9.

39-862. Interstate county bridges; revenue bonds; registration; sale; proceeds; deposit; disbursement.

The governing body of the county may provide for the registration of such bonds in the name of the owner as to the principal alone or as to both principal and interest. Such bonds must be sold in such a manner as the governing body of the county may determine to be for the best interests of the county, taking into consideration the financial responsibility of the purchaser and the terms and conditions of the purchase, and the availability of the proceeds of the bonds when required for payment of the costs. The proceeds of such bonds shall be deposited with such depositories as the governing body of the county shall approve, shall be secured in such manner and to such extent as the governing body of the county shall require, and shall be used solely for the payment of the costs of the bridge and costs incident thereto.

Source: Laws 1935, c. 87, § 7, p. 282; Laws 1941, c. 78, § 2, p. 316; C.S.Supp.,1941, § 39-2107; R.S.1943, § 39-862.

39-863. Interstate county bridges; revenue bonds; retirement; cancellation; temporary bonds.

The governing body of the county shall have the right to purchase for retirement and cancellation any of such bonds that may be outstanding at the market price, but not exceeding one hundred five and accrued interest, nor exceeding the price, if any, at which the same shall in the same year be redeemable. All bonds redeemed or purchased out of the funds provided by the sale of bridge bonds, shall forthwith be canceled and shall not again be issued. Prior to the

preparation of definitive bonds, the governing body of the county may under like restrictions issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the latter.

Source: Laws 1935, c. 87, § 7, p. 282; Laws 1941, c. 78, § 2, p. 316; C.S.Supp.,1941, § 39-2107; R.S.1943, § 39-863.

39-864. Interstate county bridges; revenue bonds; trust agreement authorized; terms.

The governing body of the county may enter into an agreement with any competent bank or trust company as trustee for the holders of such bonds, setting forth the duties of the county in respect to the construction, maintenance and operation, and insurance of any such bridge, the conservation and application of all funds, the insurance of money on hand or on deposit, the rights and remedies of the trustee and the holders of such bonds, and restricting the individual right of action of bondholders as is customary in trust agreements respecting bonds of corporations. The trust agreement may contain such provisions for protecting and enforcing the rights and remedies of the trustee and approval by the original bond purchasers of the appointment of consulting engineers and of the security given by the bridge contractors and by any bank or trust company in which the proceeds of bonds or bridge tolls shall be deposited, and may provide that no contract for construction or purchase shall be made without the approval of the consulting engineers. The trust agreement may further contain provisions and covenants that all or any deposited money shall be secured as may be therein provided, by surety company bonds or otherwise, except as therein provided, or shall be regulated as therein provided, and that insurance upon the bridge and all property connected therewith, and also use and occupancy insurance, shall be carried to the extent and under the conditions therein provided.

Source: Laws 1935, c. 87, § 7, p. 282; Laws 1941, c. 78, § 2, p. 316; C.S.Supp.,1941, § 39-2107; R.S.1943, § 39-864.

39-865. Interstate county bridges; revenue bonds; election; when dispensed with.

No election and no vote of electors shall be required upon the question of acquiring or constructing any bridges or issuing revenue bonds as authorized by section 39-860, for the acquisition or construction of any bridge, if the governing body of the county shall determine by vote of a majority of its members to dispense with such election or vote of electors as to such question.

Source: Laws 1935, c. 87, § 7, p. 283; Laws 1941, c. 78, § 2, p. 317; C.S.Supp., 1941, § 39-2107; R.S.1943, § 39-865.

39-866. Interstate county bridges; revenue bonds; mortgage security authorized.

The bonds authorized by section 39-860 may, at the option of the governing body of such county, be supported by mortgage or by deed of trust covering such bridge or bridges.

Source: Laws 1935, c. 87, § 7, p. 283; Laws 1941, c. 78, § 2, p. 317; C.S.Supp.,1941, § 39-2107; R.S.1943, § 39-866.

39-867. Interstate county bridges; revenue refunding bonds authorized; limitations; conditions.

The governing body of any county is authorized to provide by resolution for the issuance of bridge revenue refunding bonds of such county for the purpose of refunding any bridge revenue bonds or any other indebtedness of said bridge of the county which were issued before April 22, 1941, or may be issued under the provisions of sections 39-860 to 39-866, and amendments thereto, and may be outstanding. The issuance of such bridge revenue refunding bonds, the maturities, and other details thereof, the rights of the holders thereof, and the duties of the county in respect to the same, shall be governed by the provisions of said sections, insofar as the same may be applicable, and by the following provisions: (1) That no bridge revenue refunding bonds shall be delivered in an amount exceeding the amount necessary to provide funds sufficient for refunding the principal amount of outstanding bridge revenue bonds and accrued interest thereon, together with an amount required to produce the sum necessary to provide the redemption premium on any outstanding bonds to be refunded and any expenses incidental thereto; and (2) the rates of tolls, to be charged for the use of the bridge or bridges acquired from the proceeds of the bridge revenue bonds to be refunded, shall be so fixed and adjusted as to provide a fund sufficient to pay the interest on and the principal of such bridge revenue refunding bonds as the same shall become due, and to provide an additional fund to pay the cost of maintaining, repairing, and operating such bridge or bridges. Any such tolls shall be continued until such bridge revenue refunding bonds and the interest thereon shall be paid, or provision made for their payment.

Source: Laws 1941, c. 78, § 2, p. 317; C.S.Supp.,1941, § 39-2107; R.S.1943, § 39-867; Laws 1955, c. 162, § 2, p. 467.

39-868. Bridge commission; creation; general powers.

Through the exercise of the powers conferred by sections 39-855 to 39-872, the governing body of any county, city, or village may by resolution create a bridge commission. Upon the passage of such resolution, the governing body of such county shall appoint three, four, or five persons who shall constitute the bridge commission of such county. The bridge commission shall be a public body corporate and politic and a political subdivision of the State of Nebraska. The bridge commission shall have the power to contract, to sue and be sued, and to adopt a seal and alter the same at pleasure, but shall not have power to pledge the credit or taxing power of the county.

Source: Laws 1941, c. 78, § 2, p. 318; C.S.Supp.,1941, § 39-2107; R.S.1943, § 39-868; Laws 1986, LB 640, § 1; Laws 2003, LB 607, § 2.

39-869. Bridge commission; members; term of office; qualification; oath; officers; expenses; compensation.

(1) The bridge commission shall consist of not less than three nor more than five persons of well-known and successful business qualifications. The commissioners shall immediately enter upon their duties, and three of the commissioners shall hold office until the expiration of two, four, and six years, respectively, from the date or dates of their appointments. If more than three commissioners are appointed, the fourth commissioner shall hold office until the expiration of four years from the date of his or her appointment, and the fifth commissioner, if any, shall hold office until the expiration of six years from the date of his or her appointment. The term of each commissioner shall be designated by the governing body of the county. Except for the initial appointees, commissioners shall be appointed for terms of six years. Any person appointed to fill a vacancy shall serve only for the unexpired term. Before entering upon their duties, the commissioners shall take, subscribe, and file an oath of office as required by law.

(2) Such bridge commission shall elect a chairperson and vice-chairperson from its members and a secretary-treasurer who need not be a member of such commission. Each member of the commission shall serve without compensation but shall be paid his or her actual expenses while engaged in performing the duties of such office, with mileage to be computed at the rate provided in section 81-1176, and fees on a per diem basis which shall not exceed thirty-five dollars a day for each meeting attended on the specific call of the chairperson, except that they shall not be paid for more than three meetings per month. The commission shall fix the compensation of the secretary-treasurer in its discretion, but if the secretary-treasurer is a member of the commission, he or she shall receive compensation as secretary-treasurer and shall not receive his or her per diem compensation for attending meetings.

Source: Laws 1941, c. 78, § 2, p. 318; C.S.Supp.,1941, § 39-2107; R.S.1943, § 39-869; Laws 1945, c. 94, § 1, p. 317; Laws 1953, c. 137, § 1, p. 425; Laws 1963, c. 234, § 1, p. 723; Laws 1971, LB 459, § 1; Laws 1981, LB 204, § 58; Laws 1986, LB 640, § 2; Laws 1996, LB 1011, § 23.

39-870. Bridge commission; powers; bylaws; regulations; assistants; compensation; records.

The commission shall have power to establish bylaws, rules and regulations for its own government, and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under sections 39-868 to 39-870. The commission may employ engineering, architectural and construction experts and inspectors, and attorneys, and such other employees as may be necessary in its opinion, and fix their compensation, all of whom shall do such work as the commission shall direct. All salaries and compensation shall be obligations against and paid solely from funds provided under the authority of sections 39-855 to 39-876. The office, records, books and accounts of the bridge

commission shall always be maintained in the county which the commission represents. Such commission may be charged by the governing body of the county with the purchase of existing bridges, the construction of new bridges or the operation, maintenance, repair, renewal, reconstruction, replacement, extension or enlargement of existing bridges, or bridges hereafter constructed or purchased.

Source: Laws 1941, c. 78, § 2, p. 319; C.S.Supp.,1941, § 39-2107; R.S.1943, § 39-870.

39-871. Bridge commission; powers granted; how exercised.

Any commission may exercise the powers granted in sections 39-868 to 39-870 in the method provided in sections 39-860 to 39-870, or in any other method, in whole or in part, as provided in said sections.

Source: Laws 1941, c. 78, § 2, p. 319; C.S.Supp.,1941, § 39-2107; R.S.1943, § 39-871.

39-872. County; powers; supplementary.

The powers conferred in sections 39-860 to 39-870 are to be exercised without any restriction or limitation, and these powers are supplementary and additional to powers which have been or may hereafter be conferred upon any county, and are not a limitation to or in any way a restriction upon such county. The powers granted in said sections are in nowise a limitation upon, and the county is specifically authorized to put into effect any right or power which may be necessary for the proper conduct of its authority.

Source: Laws 1941, c. 78, § 2, p. 319; C.S.Supp.,1941, § 39-2107; R.S.1943, § 39-872.

39-873. County; powers; how exercised.

Any power granted to a county in Nebraska by sections 39-855 to 39-876 may be exercised by the county independently or in cooperation with or in aid of similar action by any other county or city in Nebraska, or any county or city in an adjoining state, or in cooperation with the State of Nebraska or any adjoining state or states, or the government of the United States.

Source: Laws 1935, c. 87, § 8, p. 283; C.S.Supp.,1941, § 39-2108; R.S.1943, § 39-873.

39-874. County; powers; vote of electors not required.

In exercising any or all of the powers granted to the county in sections 39-855 to 39-876, the governing body of the county may act, and no vote of the electors of the county shall be required.

Source: Laws 1935, c. 87, § 9, p. 283; C.S.Supp.,1941, § 39-2109; R.S.1943, § 39-874.

39-875. County; acquisition of property in adjoining state.

Any county in Nebraska, in exercising any of the powers granted to any county by sections 39-855 to 39-876, is authorized and empowered to acquire by gift, purchase or otherwise, any real estate or personal property located in an adjoining state, for the purpose of building, constructing or completing the construction of such bridge.

Source: Laws 1935, c. 87, § 12, p. 284; C.S.Supp.,1941, § 39-2111; R.S.1943, § 39-875.

39-876. Invalid contracts not validated.

Nothing in sections 39-855 to 39-875 shall be construed to validate or to attempt to validate any contract which has been held to be invalid by the county.

Source: Laws 1935, c. 87, § 13, p. 284; C.S.Supp.,1941, § 39-2112; R.S.1943, § 39-876.

39-877. Repealed. Laws 1959, c. 175, § 34.

39-878. Repealed. Laws 1959, c. 175, § 34.

39-879. Repealed. Laws 1959, c. 175, § 34.

39-880. Repealed. Laws 1959, c. 175, § 34.

39-881. Repealed. Laws 1959, c. 175, § 34.

39-882. Repealed. Laws 1959, c. 175, § 34.

39-883. Repealed. Laws 1959, c. 175, § 34.

39-884. Repealed. Laws 1959, c. 175, § 34.

39-885. Repealed. Laws 1959, c. 175, § 34.

(j) STATE BRIDGE COMMISSION

39-886. Repealed. Laws 1959, c. 175, § 34.

39-887. Repealed. Laws 1959, c. 175, § 34.

39-888. Repealed. Laws 1959, c. 175, § 34.

39-889. Repealed. Laws 1959, c. 175, § 34.

39-890. Repealed. Laws 1959, c. 175, § 34.

(k) INTERSTATE BRIDGE ACT OF 1959

39-891. Interstate bridges; declaration of purpose.

Recognizing that obstructions on or near the boundary of the State of Nebraska impede commerce and travel between the State of Nebraska and adjoining states, the Legislature hereby declares that bridges over these obstructions are essential to the general welfare of the State of Nebraska.

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

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

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

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

To this end, it is the intention of the Legislature to supplement sections 39-1301 to 39-1362 and 39-1393, relating to state highways, in order that the powers and authority of the department relating to the planning, construction, maintenance, acquisition, and operation of interstate bridges upon the state highway system may be clarified within a single act.

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

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

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

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

Source: Laws 1959, c. 175, § 1, p. 630; Laws 1993, LB 15, § 1; Laws 2016, LB 1038, § 5; Laws 2017, LB 271, § 1.

Effective Date: August 24, 2017

39-892. Interstate bridges; terms, defined.

For purposes of the Interstate Bridge Act of 1959, unless the context otherwise requires:

(1) Approach shall mean that portion of any interstate bridge which allows the highway access to the bridge structure. It shall be measured along the centerline of the highway from the end of the bridge structure to the nearest right-of-way line of the closest street or road where traffic may leave the highway to avoid crossing the bridge, but in no event shall such approach exceed a distance of one mile. The term shall be construed to include all embankments, fills, grades, supports, drainage facilities, and appurtenances necessary therefor;

(2) Appurtenances shall include, but not be limited to, sidewalks, storm sewers, guardrails, handrails, steps, curb or grate inlets, fire plugs, retaining walls, lighting fixtures, and all other items of a similar nature which the department deems necessary for the proper operation of any interstate bridge or for the safety and convenience of the traveling public;

(3) Boundary line bridge shall mean any bridge upon which no toll, fee, or other consideration is charged for passage thereon and which connects the state highway systems of the State of Nebraska and an adjoining state in the same manner as an interstate bridge. Such bridges shall be composed of right-of-way, bridge structure, approaches, and road in the same manner as an interstate bridge but shall be distinguished from an interstate bridge in that no part of such bridge shall be a part of the state highway system, the title to such bridge being vested in a person other than the State of Nebraska, or the State of Nebraska and an adjoining state jointly. Any boundary line bridge purchased or acquired by the department, or the department and an adjoining state jointly, and added to the state highway system shall be deemed an interstate bridge;

(4) Boundary line toll bridge shall mean any boundary line bridge upon which a fee, toll, or other consideration is charged traffic for the use thereof. Any boundary line toll bridge purchased or acquired by the department, or by the department and an adjoining state jointly, and added to the state highway system shall be deemed an interstate bridge;

(5) Bridge structure shall mean the superstructure and substructure of any interstate bridge having a span of not less than twenty feet between undercopings of extreme end abutments, or extreme ends of openings of multiple boxes, when measured along the centerline of the highway thereon, and shall be construed to include the supports therefor and all appurtenances deemed necessary by the department;

(6) Construction shall mean the erection, fabrication, or alteration of the whole or any part of any interstate bridge. For purposes of this subdivision, alteration shall be construed to be the performance of construction by which the form or design of any interstate bridge is changed or modified;

(7) Department shall mean the Department of Transportation;

(8) Emergency shall include, but not be limited to, acts of God, invasion, enemy attack, war, flood, fire, storm, traffic accidents, or other actions of similar nature which usually occur suddenly and cause, or threaten to cause, damage requiring immediate attention;

(9) Expressway shall be defined in the manner provided by section 39-1302;

(10) Freeway shall be defined in the manner provided by section 39-1302;

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

(12) Interstate bridge shall mean the right-of-way, approaches, bridge structure, and highway necessary to form a passageway for highway traffic over the boundary line of the State of Nebraska from a point within the State of Nebraska to a point within an adjoining state for the purpose of spanning any obstruction or obstructions which would otherwise hinder the free and safe flow of traffic between such points, such bridge being a part of the state highway system with title vested in the State of Nebraska or in the State of Nebraska and an adjoining state jointly;

(13) Interstate bridge purposes shall include, but not be limited to, the applicable provisions of subdivisions (2)(a) through (l) of section 39-1320;

(14) Maintenance shall mean the act, operation, or continuous process of repair, reconstruction, or preservation of the whole or any part of any interstate bridge for the purpose of keeping it at or near its original standard of usefulness and shall include the performance of traffic services for the safety and convenience of the traveling public. For purposes of this subdivision, reconstruction shall be construed to be the repairing or replacing of any part of any interstate bridge without changing or modifying the form or design of such bridge;

(15) Person shall include bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations;

(16) Right-of-way shall mean land, property, or interest therein, usually in a strip, acquired for or devoted to an interstate bridge;

(17) State highway system shall mean the highways within the State of Nebraska as shown on the map provided for in section 39-1311 and as defined by section 39-1302;

(18) Street shall be defined in the manner provided by section 39-1302;

(19) Title shall mean the evidence of right to property or the right itself; and

(20) Traffic services shall mean the operation of an interstate bridge facility, and the services incidental thereto, to provide for the safe and convenient flow of traffic over such bridge. Such services shall include, but not be limited to, erection of snow fence, snow and ice removal, painting, repairing, and replacing signs, guardrails, traffic signals, lighting standards, pavement stripes and markings, adding conventional traffic control devices, furnishing power for road lighting and traffic control devices, and replacement of parts.

Source: Laws 1959, c. 175, § 2, p. 631; Laws 1993, LB 121, § 210; Laws 1993, LB 370, § 38; Laws 2017, LB 339, § 116.

Operative Date: July 1, 2017

39-893. Act; applicability.

The provisions of the Interstate Bridge Act of 1959 are intended to be cumulative to, and not amendatory of, sections 39-1301 to 39-1362 and 39-1393.

Source: Laws 1959, c. 175, § 3, p. 635; Laws 1993, LB 15, § 2; Laws 2016, LB 1038, § 6; Laws 2017, LB 271, § 2.
Effective Date: August 24, 2017

39-894. Interstate bridges; application of sections; restrictions.

The provisions of sections 39-891 to 39-8,122 shall apply to all interstate bridges on the state highway system, including interstate bridges upon the National System of Interstate and Defense Highways built with funds of the United States appropriated in an amount exceeding fifty percent of the cost thereof. The provisions of sections 39-891 to 39-8,122 shall not be applicable to any boundary line bridge or boundary line toll bridge, and shall in no manner affect any law of the State of Nebraska concerning such bridges; *Provided,* that such bridges may be purchased or acquired by the department in the manner provided by the provisions of sections 39-8,116 to 39-8,118.

Source: Laws 1959, c. 175, § 4, p. 635.

39-895. Interstate bridges; agreements with adjoining states and the United States.

All agreements made between the department and an adjoining state under the authority of sections 39-891 to 39-8,122 shall be made by the department in the name of the State of Nebraska, with the advice of the State Highway Commission and the consent of the Governor. Any provision of sections 39-891 to 39-8,122 which authorizes the department to enter into an agreement with an adjoining state shall also be deemed to grant the department the necessary authority to carry out the provisions of any such agreement. In addition:

(1) Any agreement made between the department and an authorized agency, bureau, commission, department, or officer of the states of Colorado, Iowa, Kansas, Missouri, South Dakota, or Wyoming shall be construed to be an agreement with an adjoining state;

(2) Any provision of sections 39-891 to 39-8,122 authorizing agreements between the department and an adjoining state shall be deemed to authorize the inclusion of the United States to the whole or any part of such agreement whenever the department and the adjoining state deem such inclusion either necessary or desirable; and

(3) Any agreement made by the department and an adjoining state with an authorized agency, bureau, commission, department, or officer of the federal government shall be construed to be an agreement with the United States.

Source: Laws 1959, c. 175, § 5, p. 635.

39-896. Interstate bridges; funds; how derived; acquisition of property.

(1) The funds necessary to carry out the provisions of sections 39-891 to 39-8,122 shall be derived from the revenue provided to the department by law, from funds of the United States accepted by the department for use pursuant to the provisions of sections 39-891 to 39-8,122, and from gifts or donations made to the department for use pursuant to sections 39-891 to 39-8,122.

(2) The department shall have the power and authority to accept any funds from the United States which are available to the department for use pursuant to the provisions of sections 39-891 to 39-8,122, and the department may enter into such agreements or contracts with the United States as shall be necessary for the acceptance of such funds; *Provided,* that any such agreement or contract shall not be contrary to the laws of this state.

(3) The department is hereby authorized to acquire, by gift, either temporarily or permanently, lands, real or personal property or any interests therein, or any easements deemed to be necessary or desirable for present or future interstate bridge purposes.

Source: Laws 1959, c. 175, § 6, p. 636.

39-897. Interstate bridges; interstate agreements; division of costs.

Except as otherwise provided by sections 39-898 and 39-8,110, any agreement made between the department and an adjoining state pursuant to the provisions of sections 39-891 to 39-8,122 shall provide that all costs incurred under such agreement shall be shared by the department and the adjoining state in proportion to the percentage of the bridge structure which is located, or which will be located, within each state.

Source: Laws 1959, c. 175, § 7, p. 636.

39-898. Interstate bridges; location studies; agreements with adjoining states; division of costs.

The department shall have the power and authority to enter into agreements with an adjoining state to determine the location of interstate bridges, or the relocation of any part thereof; *Provided,* that any such agreement shall provide that the costs incurred by the department and the adjoining state in pursuance of the agreement shall be shared equally by the department and the adjoining state.

Source: Laws 1959, c. 175, § 8, p. 637.

39-899. Interstate bridges; design and preliminary engineering studies; agreements with adjoining states.

The department shall have the power and authority to enter into agreements with an adjoining state to accomplish such design and preliminary engineering studies as may be deemed necessary prior to the construction of, or any construction upon, an interstate bridge. Such agreements may provide that such design and preliminary engineering studies may be accomplished by consulting engineers contracted for such purpose, or by any other means deemed suitable by the department and the adjoining state after joint consultation.

Source: Laws 1959, c. 175, § 9, p. 637.

39-8,100. Interstate bridges; acquisition of property; responsibilities.

The department and the adjoining state concerned shall be separately responsible within their respective states for the temporary or permanent acquisition of the land, real or personal property, or any easement or interest therein, which may be necessary or desirable for interstate bridge purposes.

Source: Laws 1959, c. 175, § 10, p. 637.

39-8,101. Interstate bridges; acquisition and disposal of property; power of department.

The department shall have the power and authority to acquire any land, real or personal property, or any easement or interest therein, which may be necessary or desirable for interstate bridge purposes, and to sell, convey, and dispose of the same, if it shall no longer be needed, in the same manner provided for state highways by subsection (3) of section 39-1320 and sections 39-1321 to 39-1323, 39-1325, and 39-1326; *Provided,* that the acquisition by the department, through purchase, condemnation, or gift, of any part of any boundary line bridge or boundary line toll bridge, and the land, real or personal property, or any easement or interest therein, necessary thereto, shall be accomplished in the manner provided by sections 39-8,116 to 39-8,118.

Source: Laws 1959, c. 175, § 11, p. 637.

39-8,102. Interstate bridges; department; authority to enter upon property; damages.

In addition to the authority granted to the department by section 39-1324, the department shall have the power and authority to enter upon any property for the purpose of conducting location or design and preliminary engineering studies. Such entry shall not be considered as a legal trespass and damages shall not be recoverable upon that account alone. Any actual or demonstrable damages to the premises caused by such entry may be recovered by the property owner in the manner provided by section 39-1324.

Source: Laws 1959, c. 175, § 12, p. 638.

39-8,103. Interstate bridges; department; construction and maintenance.

The department shall be responsible for the construction and maintenance of that portion of any interstate bridge located within the State of Nebraska, and shall have the power and authority to enter into agreements with an adjoining state for the joint construction or maintenance of the whole of any such bridge, as authorized by section 39-8,107.

Source: Laws 1959, c. 175, § 13, p. 638.

39-8,104. Interstate bridges; method of construction and maintenance.

In the absence of an agreement between the department and an adjoining state to the contrary, the department may accomplish any construction or maintenance upon that portion of any interstate bridge which is located within the State of Nebraska by any of the following methods which, in the opinion of the department, shall be to the best interests of the State of Nebraska in regard to economy, ease of operation, and traffic control: (1) Utilization of its own personnel, material, and equipment; (2) utilization of its own personnel, and rental, lease, or purchase of the necessary equipment and material; (3) letting contracts for such construction or maintenance to any person qualified; or (4) utilization of any combination of such methods; *Provided,* that all construction or maintenance done by the department which involves the use of funds of both the State of Nebraska and the United States shall be let by contract in the manner provided by the provisions of section 39-8,105.

Source: Laws 1959, c. 175, § 14, p. 638.

39-8,105. Interstate bridges; construction and maintenance; contracts; letting; procedure.

All contracts let by the department for construction or maintenance upon any interstate bridge, except contracts for emergency maintenance, whether let pursuant to an agreement between the department and an adjoining state, or otherwise, shall be let in the same manner and under the same conditions provided by sections 39-1348 to 39-1354.

Source: Laws 1959, c. 175, § 15, p. 639.

39-8,106. Interstate bridges; construction and maintenance; bidders; bond.

Any agreement made between the department and an adjoining state which authorizes the letting of construction or maintenance contracts by either the department or the adjoining state shall require the person to whom the contract is to be awarded to furnish bond, with good and sufficient sureties approved by the department, in an amount at least equal to the interests of the

State of Nebraska in the contract price, conditioned upon the faithful fulfillment of the contract. In the absence of any such agreement between the department and an adjoining state, such bond shall be required of all persons awarded contracts by the department for construction or maintenance to be performed wholly within the State of Nebraska.

Source: Laws 1959, c. 175, § 16, p. 639.

39-8,107. Interstate bridges; construction and maintenance; agreements with adjoining states.

The department shall have the power and authority to enter into agreements with an adjoining state respecting the construction or maintenance of the whole or any part of any interstate bridge between the State of Nebraska and the adjoining state. In addition to the provisions required by sections 39-8,106 and 39-8,108, such agreements may make provision for, but shall not be limited to:

(1) The types of construction and maintenance to be performed, including the construction and maintenance of any movable spans, sections, or parts of such bridges, and maintenance of an emergency nature;

(2) The times and places at which such construction or maintenance shall be accomplished;

(3) Whether such construction or maintenance may be contracted to any person, and under what conditions;

(4) Which state shall perform, or let the necessary contracts for, such construction or maintenance; and

(5) The manner and method of accomplishing any reimbursement which shall be necessary between the department and the adjoining state.

Source: Laws 1959, c. 175, § 17, p. 639.

39-8,108. Interstate bridges; construction contracts; limitations.

Any agreement made between the department and an adjoining state making provision for the manner and method of construction of interstate bridges shall provide that the department shall not let any contract of construction involving construction within both the State of Nebraska and an adjoining state, nor authorize the adjoining state to let any such contract which will bind the department or the State of Nebraska in any manner, until:

(1) The adjoining state has, by appropriate action through the proper authority, appropriated, allocated, or otherwise provided the necessary funds to pay the costs of that portion of such construction to be accomplished within the adjoining state, and bound itself to use such funds in the payment of such costs; and

(2) The adjoining state has acquired the land, real or personal property, or interest therein, which may be necessary before construction can proceed.

Source: Laws 1959, c. 175, § 18, p. 640.

39-8,109. Interstate bridges; department; funds; reimbursement.

The funds available to the department under the provisions of sections 39-891 to 39-8,122 may be used by the department in support of any interstate bridge construction or maintenance agreement; *Provided,* that such agreement shall contain provisions which insure that the state performing construction or maintenance, or letting construction or maintenance contracts, pursuant to the agreement shall be reimbursed by the nonperforming state in a percentage of the total construction or maintenance costs equal to the proportion of the agreed construction or maintenance area within the nonperforming state.

Source: Laws 1959, c. 175, § 19, p. 640.

39-8,110. Interstate bridges; movable spans; agreement; payment.

Whenever any interstate bridge has spans, sections, or parts which are required to be movable by the laws, regulations, or codes of the United States, the department shall have the power and authority to enter into agreements with the adjoining state concerned respecting the operation and maintenance of such spans, sections, or parts. Such agreement may be included as a part of any agreement made for the construction or maintenance of interstate bridges, as provided by section 39-8,107, but the costs for the operation and maintenance of such spans, sections, or parts shall be considered separately from other construction and maintenance costs and shall be shared equally by the department and the adjoining state concerned.

Source: Laws 1959, c. 175, § 20, p. 640.

39-8,111. Interstate bridges; closing for construction or maintenance.

The department shall have the power and authority to enter into agreements with the adjoining state concerned to determine the manner in which the whole or any part of any interstate bridge may be closed to traffic for purposes of construction or maintenance. Any such agreement shall determine the party or parties which shall have the authority to close the whole or any part of such bridges, and shall contain provisions not inconsistent with sections 39-891 to 39-8,122. In the absence of such an agreement, the department may close that portion of any interstate bridge located within the State of Nebraska under the authority of section 39-1345.

Source: Laws 1959, c. 175, § 21, p. 641.

39-8,112. Interstate bridges; closing; notice.

Before the whole or any part of any interstate bridge shall be closed, either pursuant to an agreement between the department and an adjoining state or otherwise, the party closing such bridge shall notify in writing the proper authorities of the department, the adjoining state, and, as

may be necessary, the political or governmental subdivisions of the State of Nebraska and the adjoining state directly concerned, of the intent to close the bridge, the area of the bridge which will be closed, the date and time of such closing, the approximate amount of time such area will be closed, and the route of any detours established; *Provided,* that such notice shall not be required when the whole or any part of an interstate bridge is closed for emergency maintenance under the authority of section 39-8,115.

Source: Laws 1959, c. 175, § 22, p. 641.

39-8,113. Interstate bridges; closing; barricades; detours.

After giving the notice required by section 39-8,112, the party authorized to close the whole or any part of any interstate bridge shall, before closing any part of such bridge, erect suitable barricades and make provision for any necessary detours in the manner provided by sections 39-1345 to 39-1347.

Source: Laws 1959, c. 175, § 23, p. 641.

39-8,114. Interstate bridges; closing; barricades; assumption of risk.

The barricades, fences, or other enclosures erected upon any interstate bridge shall serve as notice to the public that the area closed is unsafe for travel and that any person entering such area, without the permission or consent of the party authorized to close such area, shall do so at his own risk.

Source: Laws 1959, c. 175, § 24, p. 642.

39-8,115. Interstate bridges; department; emergency maintenance; barricade danger area; contract; bond.

Whenever, in the opinion of the department, an emergency or unusual condition exists requiring immediate attention in order to insure the passage or safe flow of traffic over or upon that portion of any interstate bridge located within the State of Nebraska, the department may close such portion of any such bridge to any or all traffic in order to perform the maintenance necessary thereon. Upon ascertaining the need for emergency maintenance, the department shall mark and post the danger area for the protection of the public and, within twenty-four hours thereafter, shall barricade the danger area and provide any detour necessary in compliance with section 39-8,113. The department may provide any part of the personnel, equipment, and material necessary to perform such emergency maintenance or may contract with any person who, in the opinion of the department, is capable of successfully performing the maintenance necessary; *Provided,* that the department shall not contract such emergency maintenance to any person incapable of furnishing the department with a bond with good and sufficient sureties approved by the department, in an amount at least equal to the contract price, conditioned upon

the faithful fulfillment of the contract. If any agreement between the department and an adjoining state for the maintenance of interstate bridges has made provision for emergency maintenance, as authorized by section 39-8,107, such maintenance and the payment therefor shall be completed in accordance with the agreement.

Source: Laws 1959, c. 175, § 25, p. 642.

39-8,116. Interstate bridges; boundary line or boundary line toll bridges; department; power to purchase.

In order that any boundary line bridge or boundary line toll bridge may be added to the highway systems of the State of Nebraska and an adjoining state, the department shall have the power and authority to enter into agreements with an adjoining state to determine the manner and method of purchasing any such bridge, and the land, real or personal property, or any easement or interest necessary thereto, through the joint action of the department and the adjoining state, from the person holding title thereto. Such agreements may provide for any reasonable means of purchase and acceptance of title by the department and the adjoining state not in conflict with the laws of the State of Nebraska and the adjoining state; *Provided,* that no such agreement shall authorize, nor be construed to authorize, (1) the department to purchase the whole of any boundary line bridge or boundary line toll bridge, and the land, real or personal property, or easement or interest necessary thereto, nor (2) to complete any contract for the purchase of that portion of any such bridge, and the land, real or personal property, or easement or interest necessary thereto, located within the State of Nebraska which is not conditioned in performance upon the adjoining state completing a binding contract for purchase of that portion of such bridge, and the land, real or personal property, or easement or interest necessary thereto, located within the adjoining state with the person holding title thereto.

Source: Laws 1959, c. 175, § 26, p. 642.

39-8,117. Interstate bridges; boundary line or boundary line toll bridge; acquisition; agreement with adjoining state; power of eminent domain.

The department shall have the power and authority to enter into agreements with an adjoining state to determine the manner and method of acquiring, through the joint action of the department and the adjoining state, any boundary line bridge or boundary line toll bridge, and the land, real or personal property, or any easement or interest necessary thereto, by condemnation whenever the department and the adjoining state have failed to agree upon terms of purchase for any such bridge, and the land, real or personal property, or any easement or interest necessary thereto, with the person holding title thereto. Any such agreement may be incorporated as a provision of the purchase agreement authorized by section 39-8,116, or may be entered as a distinct and separate agreement between the department and the adjoining state. Such agreements may provide for the acquisition of such bridges, and the land, real or personal property, or easement or interest necessary thereto, by any lawful means of condemnation, and may include provision for, but shall not be limited to, the following:

(1) The election by the department and the adjoining state to institute a single joint proceeding to condemn any boundary line bridge or boundary line toll bridge, and any land, real or personal property, or easement or interest necessary thereto, as an entirety within a proper jurisdiction within either the State of Nebraska or the adjoining state, such proceeding to be conducted subject to the laws and procedure of the selected state and jurisdiction. If such proceeding be instituted within the State of Nebraska, it shall be conducted subject to sections 76-704 to 76-724;

(2) The election by the department and the adjoining state to institute a single joint proceeding to condemn any boundary line bridge or boundary line toll bridge, and any land, real or personal property, or easement or interest necessary thereto, as an entirety in a proper court of the United States, such proceeding to be conducted subject to the laws and rules of procedure specified for such an action in such court of the United States; or

(3) The election by the department and the adjoining state to present a petition to the United States stating that the department and the adjoining state are unable to satisfactorily institute condemnation proceedings against any boundary line bridge or boundary line toll bridge, and the land, real or personal property, or easement or interest necessary thereto, that such bridge and property are desired as additions to the highway systems of the State of Nebraska and the adjoining state, that sufficient funds are available to pay the costs of condemnation and acquisition of such bridge, and that the department and the adjoining state request the United States to institute condemnation proceedings to acquire such bridge and property under the laws of the United States for transfer to the department and the adjoining state; *Provided,* that no such agreement shall authorize, nor be construed to authorize, the department to institute such condemnation proceedings as will result in the department holding title to such bridge and property in the entirety, if such proceedings be successful.

Source: Laws 1959, c. 175, § 27, p. 643.

39-8,118. Interstate bridges; boundary line or boundary line toll bridge; department; gift; power to accept; conditions.

The department shall have the power and authority to accept title to and responsibility for the maintenance of that portion of any boundary line bridge or boundary line toll bridge, and the land, real or personal property, or easement or interest necessary thereto, located within the State of Nebraska whenever that portion of any such bridge may be offered to the State of Nebraska free of costs and indebtedness by the person holding title thereto; *Provided,* that any such acceptance given by the department shall be conditioned upon the adjoining state holding or acquiring title to that portion of such bridge, and the land, real or personal property, or easement or interest necessary thereto, located within the adjoining state from the person holding title thereto.

Source: Laws 1959, c. 175, § 28, p. 645.

39-8,119. Interstate bridges; regulation of transmission and pipe lines.

The department shall have the power and authority to enter into agreements with an adjoining state for the purpose of regulating the passage of transmission and pipe lines upon and across interstate bridges. Such agreements may provide that the department and the adjoining state, jointly, may establish all reasonable rules and regulations necessary to prevent such lines from interfering with any interstate bridge or the safe flow of traffic upon such bridge; *Provided,* that such rules and regulations shall not authorize the passage of any transmission or pipe line across or upon any interstate bridge in violation of the law of the State of Nebraska or of the adjoining state, or of any law, code, rule, or regulation of the United States. Nothing contained within this section shall be construed to limit, change, alter, or invalidate the provisions of any prior existing contract to which the department or the State of Nebraska is a party.

Source: Laws 1959, c. 175, § 29, p. 645.

39-8,120. Interstate bridges; department; rules and regulations; adopt.

The department shall have the power and authority to adopt and amend all rules and regulations necessary to carry out the provisions of sections 39-891 to 39-8,122; *Provided,* that such rules and regulations shall not violate any law of the State of Nebraska, or any law, code, rule, or regulation of the United States, pertaining to or affecting interstate bridges.

Source: Laws 1959, c. 175, § 30, p. 645.

39-8,121. Interstate bridges; free of toll.

All interstate bridges, or portions thereof, constructed, purchased, acquired, or maintained by the department shall be free of tolls.

Source: Laws 1959, c. 175, § 31, p. 646.

39-8,122. Act, how cited.

Sections 39-891 to 39-8,122 shall be known and cited as The Interstate Bridge Act of 1959.

Source: Laws 1959, c. 175, § 33, p. 646.

ARTICLE 9

FERRIES

Section
39-901. Repealed. Laws 1980, LB 741, § 1.
39-902. Repealed. Laws 1980, LB 741, § 1.
39-903. Repealed. Laws 1980, LB 741, § 1.
39-904. Repealed. Laws 1980, LB 741, § 1.
39-905. Repealed. Laws 1980, LB 741, § 1.
39-906. Repealed. Laws 1980, LB 741, § 1.
39-907. Repealed. Laws 1980, LB 741, § 1.
39-908. Repealed. Laws 1980, LB 741, § 1.
39-909. Repealed. Laws 1980, LB 741, § 1.
39-910. Repealed. Laws 1980, LB 741, § 1.
39-911. Repealed. Laws 1980, LB 741, § 1.
39-912. Repealed. Laws 1980, LB 741, § 1.

ARTICLE 10

RURAL MAIL ROUTES

Section
39-1001. Repealed. Laws 1996, LB 1114, § 75.
39-1002. Repealed. Laws 1996, LB 1114, § 75.
39-1003. Repealed. Laws 1996, LB 1114, § 75.
39-1004. Repealed. Laws 1996, LB 1114, § 75.
39-1005. Repealed. Laws 1996, LB 1114, § 75.
39-1006. Repealed. Laws 1996, LB 1114, § 75.
39-1007. Repealed. Laws 1967, c. 236, § 1.
39-1008. Repealed. Laws 1996, LB 1114, § 75.

39-1009. Repealed. Laws 1996, LB 1114, § 75.

39-1010. Mailboxes; location; violation; duty of Department of Transportation.

(1) Except as otherwise provided in this subsection, all mailboxes shall be placed such that no part of the mailbox extends beyond the shoulder line of any highway and the mailbox support shall be placed a minimum of one foot outside the shoulder line of any gravel-surfaced highway, and of any hard-surfaced highway having a shoulder width of six feet or more as measured from the edge of the hard surfacing. Along hard-surfaced highways having a shoulder width of less than six feet, the Department of Transportation shall, on new construction or reconstruction, where feasible, provide a shoulder width of not less than six feet, or provide for a minimum clear traffic lane of ten feet in width at mailbox turnouts. On highways built before October 9, 1961, having a shoulder width of less than six feet, the department may, where feasible and deemed advisable, provide a shoulder width of not less than six feet or provide for minimum clear traffic

lane of ten feet in width at mailbox turnouts. For a hard-surfaced highway having either a mailbox turnout or a hard-surfaced shoulder width of eight feet or more, the mailbox shall be placed such that no part of the mailbox extends beyond the outside edge of the mailbox turnout or hard-surfaced portion of the shoulder and the mailbox support shall be placed a minimum of one foot outside the outside edge of the mailbox turnout or hard-surfaced portion of the shoulder.

(2) It shall be the duty of the department to notify the owner of all mailboxes in violation of the provisions of this section, and the department may remove such mailboxes if the owner fails or refuses to remove the same after a reasonable time after he or she is notified of such violations.

Source: Laws 1961, c. 194, § 1, p. 593; Laws 2014, LB 757, § 1; Laws 2017, LB 339, § 117.
Operative Date: July 1, 2017

39-1011. Mailboxes; Department of Transportation; turnouts; provide.

The Department of Transportation shall provide and maintain gravel, crushed-rock, or hard-surface turnouts for delivery of mail to all mailboxes placed on the highway rights-of-way to conform with section 39-1010.

Source: Laws 1961, c. 194, § 2, p. 593; Laws 2017, LB 339, § 118.
Operative Date: July 1, 2017

39-1012. Mailboxes; violations; penalty.

Any person who violates the provisions of section 39-1010 shall be guilty of a Class V misdemeanor.

Source: Laws 1961, c. 194, § 3, p. 594; Laws 1977, LB 40, § 210.

ARTICLE 11

STATE HIGHWAY COMMISSION

Section

39-1101. State Highway Commission; creation; members.

There is hereby created in the Department of Transportation a State Highway Commission which shall consist of eight members to be appointed by the Governor with the consent of a majority of all the members of the Legislature. One member shall at all times be appointed from each of the eight districts designated in section 39-1102. Each member of the commission shall be (1) a citizen of the United States, (2) not less than thirty years of age, and (3) a bona fide resident of the State of Nebraska and of the district from which he or she is appointed for at least three years immediately preceding his or her appointment. Not more than four members shall be of the same political party. The Director-State Engineer shall be an ex officio member of the commission who shall vote in case of a tie.

Source: Laws 1953, c. 334, § 1, p. 1095; Laws 1955, c. 163, § 1, p. 468; Laws 1987, LB 161, § 1; Laws 2017, LB 339, § 119.
Operative Date: July 1, 2017

39-1102. State Highway Commission; districts.

The designation and limits of the eight districts from which members of the State Highway Commission are to be appointed shall be as follows:

(1) District No. 1. The counties of Butler, Saunders, Seward, Saline, Nemaha, Lancaster, Gage, Pawnee, Richardson, Johnson, Jefferson, Otoe, and Cass except for a portion north of a line beginning at the intersection of Interstate Highway 80 and the Platte River and proceeding southeasterly to the section corner of the northeast corner of section 21, township 11, north, range 11, east, which is also the junction of Nebraska State Highway 1 and Nebraska State Highway 50; thence southeasterly to the southeast corner of section 14, township 10, north, range 13, east, which is also the junction of U.S. Highway 34 and U.S. Highway 75; thence on a line east to the Missouri River;

(2) District No. 2. The counties of Dodge, Washington, Douglas, and Sarpy and that portion of Cass County which is not within District No. 1;

(3) District No. 3. The counties of Knox, Antelope, Cedar, Dixon, Dakota, Thurston, Wayne, Madison, Stanton, Cuming, Burt, Colfax, Platte, Boone, and Pierce;

(4) District No. 4. The counties of Nance, Thayer, Valley, Greeley, Sherman, Howard, Merrick, Polk, Buffalo, Hall, Hamilton, York, Adams, Clay, Fillmore, Webster, and Nuckolls;

(5) District No. 5. The counties of Sioux, Dawes, Box Butte, Sheridan, Scotts Bluff, Banner, Kimball, Morrill, Cheyenne, Garden, and Deuel;

(6) District No. 6. The counties of Custer, Grant, Hooker, Thomas, Arthur, McPherson, Blaine, Dawson, Logan, Keith, and Lincoln;

(7) District No. 7. The counties of Chase, Perkins, Dundy, Hayes, Hitchcock, Frontier, Kearney, Red Willow, Gosper, Furnas, Phelps, Harlan, and Franklin; and

(8) District No. 8. The counties of Cherry, Brown, Keya Paha, Rock, Loup, Garfield, Wheeler, Holt, and Boyd.

Source: Laws 1953, c. 334, § 2, p. 1095; Laws 1987, LB 161, § 2; Laws 1991, LB 5, § 1.

39-1103. Members; term of office.

(1) Within thirty days after September 14, 1953, the Governor shall appoint the initial members of the State Highway Commission who shall hold office for the following periods of time from September 14, 1953: (a) Two members for a period of two years; (b) two members for a period of four years; and (c) three members for a period of six years. One additional member shall be appointed for a term of six years beginning September 14, 1987. Each succeeding member of the commission shall be appointed for a term of six years, except members appointed to fill vacancies whose tenure shall be the unexpired term for which they shall be appointed. If the Legislature is not in session when members of the commission are appointed by the Governor, such members shall take office and act as recess appointees until the next meeting of the Legislature.

(2) Any member serving on the State Highway Commission on August 30, 1987, shall continue to serve until his or her term expires, but in the event the county in which he or she is residing is transferred to a different district upon August 30, 1987, such member shall complete his or her term in the new district in which such county is located pursuant to section 39-1102.

Source: Laws 1953, c. 334, § 3, p. 1096; Laws 1987, LB 161, § 3.

39-1104. Members; removal; procedure.

Members of the State Highway Commission may be removed by the Governor for inefficiency, neglect of duty, or misconduct in office, but only after delivering to the member a copy of the charges and affording him an opportunity of being publicly heard in person or by counsel in his own defense, upon not less than ten days' notice. Such hearing shall be held before the Governor. If such member shall be removed, the Governor shall file in the office of the Secretary of State a complete statement of all the charges made against such member and the findings of the Governor thereon, together with a complete record of the proceedings.

Source: Laws 1953, c. 334, § 4, p. 1096.

39-1105. Members; oath of office.

Each commissioner and every officer under the State Highway Commission, before entering upon the duties of his office, shall subscribe and take the constitutional oath of office, which shall be filed in the office of the Secretary of State.

Source: Laws 1953, c. 334, § 5, p. 1097.

39-1106. Members; chairperson; per diem; expenses.

The members of the State Highway Commission shall meet in January of each year and shall elect a chairperson of the commission from their members. Each member of the commission shall be paid the sum of twenty dollars per day while actually engaged in the business of the commission, but not in excess of twenty-four hundred dollars per annum. The members of the commission shall be paid their mileage, and their expenses while away from home attending to the business of the commission as provided in sections 81-1174 to 81-1177 for state employees.

Source: Laws 1953, c. 334, § 6, p. 1097; Laws 1981, LB 204, § 59.

39-1107. Secretary of commission; employ.

The State Highway Commission, subject to the approval of the Governor, shall employ a person who shall act as secretary of the commission.

Source: Laws 1953, c. 334, § 7, p. 1097; Laws 1955, c. 163, § 2, p. 469.

39-1108. State Highway Commission; meetings; quorum; minutes; open to public.

Regular meetings of the State Highway Commission shall be held upon call of the chairperson, but not less than six times per year. Special meetings may be held upon call of the chairperson or pursuant to a call signed by three other members, of which the chairperson shall have three days' written notice.

All regular meetings shall be held in suitable offices to be provided in Lincoln unless a majority of the members deem it necessary to hold a regular meeting at another location within this state. Members of the commission may participate by telephone conference call or videoconference as long as the chairperson or vice-chairperson conducts the meeting in an open forum where the public is able to participate by attendance at the scheduled meeting.

Five members of the commission constitute a quorum for the transaction of business. Every act of a majority of the members of the commission shall be deemed to be the act of the commission.

All meetings shall be open to the public and shall be conducted in accordance with the Open Meetings Act.

The minutes of the meetings shall show the action of the commission on matters presented. The minutes shall be open to public inspection.

Source: Laws 1953, c. 334, § 8, p. 1097; Laws 1971, LB 101, § 1; Laws 1981, LB 544, § 4; Laws 1987, LB 161, § 4; Laws 2003, LB 101, § 1; Laws 2004, LB 821, § 11.

Cross References

Open Meetings Act, see section 84-1407.

39-1109. Repealed. Laws 1987, LB 161, § 5.

39-1110. State Highway Commission; powers and duties.

(1) It shall be the duty of the State Highway Commission:

(a) To conduct studies and investigations and to act in an advisory capacity to the Director-State Engineer in the establishment of broad policies for carrying out the duties and responsibilities of the Department of Transportation;

(b) To advise the public regarding the policies, conditions, and activities of the department;

(c) To hold hearings, make investigations, studies, and inspections, and do all other things necessary to carry out the duties imposed upon it by law;

(d) To advance information and advice conducive to providing adequate and safe highways in the state;

(e) When called upon by the Governor, to advise him or her relative to the appointment of the Director-State Engineer; and

(f) To submit to the Governor its written advice regarding the feasibility of each relinquishment or abandonment of a fragment of a route, section of a route, or a route on the state highway system proposed by the department. The chairperson of the commission shall designate one or more of the members of the commission, prior to submitting such advice, to personally inspect the fragment of a route, section of a route, or a route to be relinquished or abandoned, who shall take into consideration the following factors: Cost to the state for maintenance, estimated cost to the state for future improvements, whether traffic service provided is primarily local or otherwise, whether other facilities provide comparable service, and the relationship to an integrated state highway system. The department shall furnish to the commission all needed assistance in making its inspection and study. If the commission, after making such inspection and study, shall fail to reach a decision as to whether or not the fragment of a route, section of a route, or a route should be relinquished or abandoned, it may hold a public hearing on such proposed relinquishment or abandonment. The commission shall give a written notice of the time and place of such hearing, not less than two weeks prior to the time of the hearing, to the political or governmental subdivisions or public corporations wherein such portion of the state highway system is proposed to be relinquished or abandoned. The commission shall submit to the Governor, within two weeks after such hearing, its written advice upon such proposed relinquishment or abandonment.

(2) All funds rendered available by law to the department, including funds already collected for such purposes, may be used by the State Highway Commission in administering and effecting such purposes, to be paid upon approval by the Director-State Engineer.

(3) All data and information of the department shall be available to the State Highway Commission.

(4) The State Highway Commission may issue bonds under the Nebraska Highway Bond Act.

Source: Laws 1953, c. 334, § 10, p. 1098; Laws 1955, c. 163, § 3, p. 469; Laws 2000, LB 1135, § 4; Laws 2017, LB 339, § 120.

Operative Date: July 1, 2017

Cross References

Nebraska Highway Bond Act, see section 39-2222.

39-1111. State Highway Commission; quarterly report; contents; file with Governor; file with Clerk of the Legislature.

The State Highway Commission shall file with the Governor each quarter a report fully and accurately showing conditions existing in the state with reference to the state's highway building and as to construction and maintenance work. Such reports shall further contain an itemized statement of all expenditures and the purposes for such expenditures since the last report submitted to the Governor. Each of such reports shall further contain an itemized budget of all proposed expenditures for the ensuing quarter. A copy of such report shall be filed electronically with the Clerk of the Legislature and be made available to the public. Each member of the Legislature shall receive an electronic copy of such report by making a request for it to the secretary of the commission.

Source: Laws 1953, c. 334, § 11, p. 1099; Laws 1979, LB 322, § 11; Laws 2012, LB 782, § 39.

ARTICLE 12

TURNPIKE AUTHORITY

Section
39-1201. Repealed. Laws 1955, c. 164, § 1.
39-1202. Repealed. Laws 1955, c. 164, § 1.
39-1203. Repealed. Laws 1955, c. 164, § 1.
39-1204. Repealed. Laws 1955, c. 164, § 1.
39-1205. Repealed. Laws 1955, c. 164, § 1.
39-1206. Repealed. Laws 1955, c. 164, § 1.
39-1207. Repealed. Laws 1955, c. 164, § 1.
39-1208. Repealed. Laws 1955, c. 164, § 1.
39-1209. Repealed. Laws 1955, c. 164, § 1.
39-1210. Repealed. Laws 1955, c. 164, § 1.
39-1211. Repealed. Laws 1955, c. 164, § 1.
39-1212. Repealed. Laws 1955, c. 164, § 1.
39-1213. Repealed. Laws 1955, c. 164, § 1.
39-1214. Repealed. Laws 1955, c. 164, § 1.
39-1215. Repealed. Laws 1955, c. 164, § 1.
39-1216. Repealed. Laws 1955, c. 164, § 1.
39-1217. Repealed. Laws 1955, c. 164, § 1.
39-1218. Repealed. Laws 1955, c. 164, § 1.
39-1219. Repealed. Laws 1955, c. 164, § 1.

ARTICLE 13

STATE HIGHWAYS

(a) INTENT, DEFINITIONS, AND RULES

(b) INTERGOVERNMENTAL RELATIONS

(c) DESIGNATION OF SYSTEM

(d) PLANNING AND RESEARCH

(e) LAND ACQUISITION

(f) CONTROL OF ACCESS

(g) CONSTRUCTION AND MAINTENANCE

(h) CONTRACTS

(a) INTENT, DEFINITIONS, AND RULES

39-1301. State highways; declaration of legislative intent.

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

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

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

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

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

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

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

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

While it is necessary to fix responsibilities for the construction, maintenance, and operation of the several systems of highways, it is intended that the State of Nebraska shall have an integrated system of all roads and streets to provide safe and efficient highway transportation

throughout the state. The authority granted in sections 39-1301 to 39-1362 and 39-1393 to the Director-State Engineer and to the political or governmental subdivisions or public corporations of this state to assist and cooperate with each other is therefor essential.

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

Source: Laws 1955, c. 148, § 1, p. 414; Laws 1993, LB 15, § 3; Laws 2016, LB 1038, § 7; Laws 2017, LB 271, § 3.

Effective Date: August 24, 2017

This section declares the policy of the state with respect to state highways. Vap v. City of McCook, 178 Neb. 844, 136 N.W.2d 220 (1965).

Legislative declaration of intent is entitled to consideration in construing act. Hammer v. Department of Roads, 175 Neb. 178, 120 N.W.2d 909 (1963).

Constitutionality of act raised but not decided. Haynes v. Anderson, 163 Neb. 50, 77 N.W.2d 674 (1956).

39-1302. Terms, defined.

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

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

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

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

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

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

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

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

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

(a) Outdoor advertising structures;

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

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

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

(e) Railroad tracks and minor sidings; and

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

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

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

(11) Department shall mean the Department of Transportation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Source: Laws 1955, c. 148, § 2, p. 415; Laws 1969, c. 329, § 1, p. 1174; Laws 1972, LB 1181, § 1; Laws 1975, LB 213, § 4; Laws 1983, LB 120, § 2; Laws 1993, LB 15, § 4; Laws 1993, LB 121, § 211; Laws 1993, LB 370, § 39; Laws 1995, LB 264, § 21; Laws 2005, LB 639, § 1; Laws 2016, LB 1038, § 8; Laws 2017, LB 271, § 4; Laws 2017, LB 339, § 121.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 271, section 4, with LB 339, section 121, to reflect all amendments.

Note: Changes made by LB 339 became operative July 1, 2017. Changes made by LB 271 became effective August 24, 2017.

Legislature gave to the Department of Roads complete administration of the state highway system. Vap v. City of McCook, 178 Neb. 844, 136 N.W.2d 220 (1965).

Term highway was not used in the sense of highway designated as a part of the state highway system. School Dist. No. 228 v. State Board of Education, 164 Neb. 148, 82 N.W.2d 8 (1957).

39-1303. Repealed. Laws 1967, c. 235, § 5.

(b) INTERGOVERNMENTAL RELATIONS

39-1304. State highways; federal aid; state assents.

The legislative assent required by section 1 of the Act of Congress approved July 11, 1916, Public Law 156, entitled An Act to provide that the United States shall aid the states in the construction of rural post roads, and for other purposes, is hereby given. The Legislature likewise

assents to the Congressional Federal Aid Acts, Federal Highway Acts, and Federal Aid Highway Acts approved subsequent to July 11, 1916. In the absence of contrary legislative action regarding the assent hereby given, the Legislature shall be deemed to have given a continuing assent to subsequent acts, rules, and regulations which either amend or supplement the above-mentioned acts or otherwise provide funds for the same or similar purposes.

Source: Laws 1955, c. 148, § 4, p. 419.

39-1304.01. State highways; federal aid; further assent.

The Legislature hereby reaffirms its continuing assent to the federal acts set forth in section 39-1304.

Source: Laws 1957, c. 171, § 1, p. 592.

39-1304.02. State highways; federal aid; relocation of public utilities; cost; limitation.

Whenever any utility facility which now is, or hereafter may be, located in, over, along, or under any highway or urban extension thereof which is a part of the National System of Interstate and Defense Highways as defined in the Federal Aid Highway Act of 1956, and qualifying for federal aid thereunder, or any highway which at any time was on or designated as a part of the National System of Interstate and Defense Highways but has been removed for any reason, is required to be altered, changed, moved, or relocated for the construction of any federal-aid highway project, the cost of such alteration, change, moving, or relocation, and the expense of acquiring lands or any rights and interests in land or any other rights acquired to accomplish such alteration, change, moving, or relocation, shall be paid by the state as a part of the expense of such federally aided projects except when such payment to the utility would violate a legal contract between the utility and the state, or between the utility and a county, city, or village of the state, under the express terms of which contract the utility specifically agrees to pay or assume such costs of alteration, change, moving, or relocation. The cost of the alteration, change, moving, or relocation, and the expense of acquiring lands or any rights and interests in land or any other rights required to accomplish such alteration, change, moving, or relocation of a utility facility located in, over, along, or under any highway which at any time was on or designated as a part of the National System of Interstate and Defense Highways but has been removed for any reason shall not be paid by the state on or after July 1, 1993, and the total amount paid from May 5, 1983, until July 1, 1993, including any federal-aid funds, shall not exceed five million dollars. For the purpose of this section, the term cost of relocation shall include the entire amount paid by such utility properly attributable to such alteration, change, moving, or relocation after deducting therefrom any increase in value of the new facility and any salvage value derived from the old facility.

Source: Laws 1957, c. 171, § 2, p. 592; Laws 1983, LB 96, § 1.

39-1304.03. State highways; federal aid; further assent.

The Legislature hereby reaffirms its continuing assent to the federal acts set forth in section 39-1304, and amendments thereto.

Source: Laws 1961, c. 181, § 1, p. 534.

39-1305. Federal aid; cooperation with federal government; agreements authorized.

The department shall have the authority to make all contracts and do all things necessary to cooperate with the United States Government in matters relating to the cooperative construction or improvement of the state highway system, or any road or street of any political or governmental subdivision or any public corporation of this state, or of any road necessary to be constructed for national defense, national forests and scenic purposes, for which federal funds or aid are secured and for maintenance of roads constructed for the United States Government. Such contracts or acts shall be carried out in the manner required by the provisions of the acts of Congress and the rules and regulations made by an agent of the United States in pursuance of such acts.

Source: Laws 1955, c. 148, § 5, p. 419; Laws 1965, c. 221, § 1, p. 643.

39-1305.01. Projects for which federal funds are available; department; powers and duties.

The department may plan, design, construct, maintain, or otherwise undertake projects for which federal funds are available as a National Highway System project under 23 U.S.C. 103(i), as a Surface Transportation Program project under 23 U.S.C. 133(b), or as a Public Lands Highways Program project under 23 U.S.C. 204(h). The department may expend state funds to enable the state to participate in the benefits to be secured from these federal program funds. In accordance with the department's authority set out in sections 39-1306, 39-1307, and 39-1308, the department may assist any state agency, the Nebraska State Historical Society, the Game and Parks Commission, the University of Nebraska, any political or governmental subdivision, or any public corporation of this state in soliciting and expending federal funds under the federal acts listed in this section.

Source: Laws 1993, LB 15, § 5.

39-1306. Federal aid; political subdivisions; department; agreements; unused funds; allocation.

Any political or governmental subdivision or any public corporation of this state shall have the authority to enter into agreements with the federal government through or with the department to enable them to participate in all the benefits to be secured from federal-aid funds, or funds made available from the federal government to be used on roads and streets. The

department may negotiate and enter into agreements with the federal government, or any of its constituted agencies, and take all steps and proceedings necessary in order to secure such benefits for such political or governmental subdivisions or public corporations.

Source: Laws 1955, c. 148, § 6, p. 420; Laws 1967, c. 237, § 1, p. 635; Laws 1969, c. 330, § 1, p. 1185.

First class city could contract with Department of Roads to prohibit parking on designated street within city. Vap v. City of McCook, 178 Neb. 844, 136 N.W.2d 220 (1965).

39-1306.01. Federal aid; political subdivisions; department; unused funds; allocation.

Unused funds shall be made available by the department to other political or governmental subdivisions or public corporations for an additional period of six months. The department shall likewise make available unused funds from allotments which have been made prior to December 25, 1969. The department shall separately classify all unused funds referred to in section 39-1306 from their sources on the basis of the type of political or governmental subdivision or public corporation to which they were allotted. It is the intent of the Legislature that such funds which were allotted to counties and were unused be made available to other counties, and that such funds which were allotted to cities and villages and were unused be made available to other cities and villages. The funds in each classification shall be made available by the department to other subdivisions which have utilized all of the federal funds available to them, and shall be subject to the same conditions as apply to funds received under section 39-1306. Such funds shall be reallocated upon application therefor by the subdivisions.

Source: Laws 1967, c. 237, § 2, p. 635; Laws 1969, c. 330, § 3, p. 1185; Laws 2017, LB 339, § 122.
Operative Date: July 1, 2017

39-1306.02. Federal aid; political subdivisions; allotment; department; duration; notice.

When any political or governmental subdivision or any public corporation of this state has an allotment of federal-aid funds made available to it by the federal government, the department shall give notice to the political or governmental subdivision of the amount of such funds the department has allotted to it, and, that the duration of the allotment to the political or governmental subdivision or public corporation is for not less than an eighteen-month period, which notice shall state the last date of such allotment to the subdivision or political corporation. The department shall give notice a second time six months before the last date of such allotment of the impending six months expiration of the allotment and of the amount of funds remaining.

Source: Laws 1969, c. 330, § 2, p. 1185; Laws 2017, LB 339, § 123.
Operative Date: July 1, 2017

39-1306.03. United States Department of Transportation; department assume responsibilities; agreements authorized; waiver of immunity; department; powers and duties.

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

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

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

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

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

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

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

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

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

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

(b) The act or omission that is the subject of the lawsuit arises out of compliance, discharge, or enforcement of responsibilities assumed by the department pursuant to 23 U.S.C. 326 and 327; and

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

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

Source: Laws 2017, LB 271, § 5.
Effective Date: August 24, 2017

39-1307. Department; political subdivisions; highways, roads, streets; constructing, maintaining, improving, financing; agreements.

The department, on behalf of the state, and any political or governmental subdivision or public corporation of this state shall have the authority to enter into agreements with each other respecting the planning, designating, financing, establishing, constructing, improving, maintaining, using, altering, relocating, regulating, or vacating of highways, roads, streets, connecting links, rights-of-way, including but not limited to, canals, ditches, or power, telephone, water, gas, sewer and other service lines owned by such political or governmental subdivision or public corporation. Such agreements may, in the discretion of the parties, include provision for indemnification of, or sharing of, any liability of the parties for future damages occurring to other persons or property and which may arise under the terms of the contract authorized by this section.

The department, on behalf of the state, and any political or governmental subdivision or public corporation of this state shall have the authority to enter into agreements with each other whereby the department purchases from any such entity the federal-aid transportation funds made available to such entity. Such funds may be purchased at a discount rate determined by the department to be in its best interest. Such agreements shall provide that the funds obtained from such sale by the political or governmental subdivision or public corporation be expended for cost of construction, reconstruction, maintenance, and repair of public highways, streets, roads, or bridges and facilities, appurtenances, and structures deemed necessary in connection therewith. All entities which sell federal-aid transportation funds to the department shall provide proof to the department that the proceeds of the sale were expended for the described purposes. The manner in which the proof shall be provided and the time at which proof shall be made shall be in the discretion of the department and shall be set forth in the agreement.

When the installation, repair, or modification of an electric generating facility necessitates increased use of a street or road the department may (1) temporarily or permanently provide for the construction and maintenance of such street or road, (2) cooperate with the county or township to maintain such street or road, or (3) designate the street or road as part of the state highway system as provided in section 39-1309. The department shall consider whether improving or maintaining the street or road will benefit the general public, the present condition of the street or road, and the actual or potential traffic volume of such street or road.

Source: Laws 1955, c. 148, § 7, p. 420; Laws 1967, c. 238, § 1, p. 636; Laws 1981, LB 14, § 1; Laws 2011, LB 98, § 1.

A first class city may contract with the state through the Department of Roads to prohibit parking on a street which forms a connecting link in the state highway system. Vap v. City of McCook, 178 Neb. 844, 136 N.W.2d 220 (1965).

39-1308. Department; political subdivisions; advisory capacity; planning, locating, constructing, maintaining; highways, roads, streets.

The department shall have the authority to act in an advisory capacity, upon request, to any political or governmental subdivision or public corporation of this state in matters pertaining to the planning, locating, constructing, and maintaining of roads, highways, and streets and other

related matters. The department, in such instances, may provide services and may cooperate with such subdivisions and corporations on such terms as may be mutually agreed upon.

Source: Laws 1955, c. 148, § 8, p. 420.

(c) DESIGNATION OF SYSTEM

39-1309. State highway system; designation; redesignation; factors.

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

(2) The state highway system may be redesignated, relocated, redetermined, or recreated by the department with the written advice of the State Highway Commission and the consent of the Governor. In redesignating, relocating, redetermining, or recreating the several routes of the state highway system, the following factors, except as provided in section 39-1309.01, shall be considered: (a) The actual or potential traffic volumes and other traffic survey data, (b) the relevant factors of construction, maintenance, right-of-way, and the costs thereof, (c) the safety and convenience of highway users, (d) the relative importance of each highway to existing business, industry, agriculture, enterprise, and recreation and to the development of natural resources, business, industry, agriculture, enterprise, and recreation, (e) the desirability of providing an integrated system to serve interstate travel, principal market centers, principal municipalities, county seat municipalities, and travel to places of statewide interest, (f) the desirability of connecting the state highway system with any state park, any state forest reserve, any state game reserve, the grounds of any state institution, or any recreational, scenic, or historic place owned or operated by the state or federal government, (g) the national defense, and (h) the general welfare of the people of the state.

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

Source: Laws 1955, c. 148, § 9, p. 420; Laws 1959, c. 176, § 1, p. 647; Laws 1981, LB 285, § 5; Laws 1993, LB 15, § 6; Laws 2016, LB 1038, § 9; Laws 2017, LB 271, § 6.

Effective Date: August 24, 2017

39-1309.01. Temporary detour designated part of state highway system; Director-State Engineer; powers; duties.

The Director-State Engineer may waive the consideration of factors pursuant to section 39-1309 before a county road used as a temporary detour for the state highway system is designated

as part of such state highway system. The director may designate a county road as part of the state highway system over which the department shall have responsibility, as soon as such road is deemed a temporary detour for the state highway system.

If such county road remains a detour road for the state highway system one year after it was initially designated a detour road, the Director-State Engineer shall consider the factors in section 39-1309 to determine whether such road shall continue as part of the state highway system. Upon a determination by the director that such road shall no longer be part of the state highway system, the director shall provide notice of such fact to the county board or the county's governing body having primary authority for such road.

Source: Laws 1981, LB 285, § 4.

39-1310. Repealed. Laws 1976, LB 724, § 11.

39-1311. State highway system; department; maintain current map; contents; corridor location; map; notice; beltway; duties.

(1) The department at all times shall maintain a current map of the state, which shall show all the roads, highways, and connecting links which have been designated, located, created, or constituted as part of the state highway system, including all corridors. All changes in designation or location of highways constituting the state highway system, or additions thereto, shall be indicated upon the map. The department shall also maintain six separate and additional maps. These maps shall include (a) the roads, highways, and streets designated as federal-aid primary roads as of March 27, 1972, (b) the National System of Interstate and Defense Highways, (c) the roads designated as the federal-aid primary system as it existed on June 1, 1991, (d) the National Highway System, (e) the Highway Beautification Control System as defined in section 39-201.01, and (f) scenic byways as defined in section 39-201.01. The National Highway System is the system designated as such under the federal Intermodal Surface Transportation Efficiency Act. The maps shall be available at all times for public inspection at the offices of the Director-State Engineer and shall be filed with the Legislature of the State of Nebraska each biennium.

(2) Whenever the department has received a corridor location approval for a proposed state highway or proposed beltway to be located in any county or municipality, it shall prepare a map of such corridor sufficient to show the location of such corridor on each parcel of land to be traversed. If the county or municipality in which such corridor is located does not have a requirement for the review and approval of a preliminary subdivision plat or a requirement that a building permit be obtained prior to commencement of a structure, the department shall send notice of the approval of such corridor by certified mail to the owner of each parcel traversed by the corridor at the address shown for such owner on the county tax records. Such notice shall advise the owner of the requirement of sections 39-1311 to 39-1311.05 for preliminary subdivision plats and for building permits.

(3) For any beltway proposed under sections 39-1311 to 39-1311.05, the duties of the department shall be assumed by the county or municipality that received approval for the beltway project.

Source: Laws 1955, c. 148, § 11, p. 422; Laws 1972, LB 1181, § 2; Laws 1974, LB 805, § 1; Laws 1995, LB 264, § 22; Laws 2003, LB 187, § 7; Laws 2005, LB 639, § 2; Laws 2017, LB 339, § 124.

Operative Date: July 1, 2017

39-1311.01. Corridor map; copy; transmit.

The department shall transmit a copy of the map required by subsection (2) of section 39-1311 to the officer responsible for review of preliminary subdivision plats and to the officer responsible for issuance of building permits or, if subdivision plats or building permits are not required in the county or municipality, to the county clerk of the county in which the corridor is located.

Source: Laws 1974, LB 805, § 2; Laws 2003, LB 187, § 8.

39-1311.02. Corridor; review of preliminary subdivision plat; building permit; required.

(1) A review of a preliminary subdivision plat shall be required for all proposals to subdivide land or to make public or private improvements on all land within an approved corridor.

(2) A building permit shall be required for all structures within an approved corridor if the actual cost of the structure exceeds one thousand dollars. Structures include, but are not limited to, any construction or improvement to land such as public or private streets, sidewalks, and utilities; golf course tee boxes, fairways, or greens; drainage facilities; storm water detention areas; mitigation sites; green space; landscaped areas; or other similar uses. Any application for a building permit shall include a plat drawn by a person licensed as a professional engineer or architect under the Engineers and Architects Regulation Act or registered as a land surveyor as provided in the Land Surveyors Regulation Act showing the location of all existing and proposed structures in the area subject to corridor protection.

Source: Laws 1974, LB 805, § 3; Laws 2003, LB 187, § 9; Laws 2015, LB 138, § 4.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.
Land Surveyors Regulation Act, see section 81-8,108.01.

39-1311.03. Corridor; proposed subdivision plat; building permit; notice; statement of intent; issuance.

(1) Upon the filing of a request for a review of a proposed subdivision plat on a parcel located within a corridor, the officer responsible for reviewing subdivision plats or, if the review

of a subdivision plat is required only by virtue of sections 39-1311 to 39-1311.05, the county clerk shall give the department notice of the filing of a request for a review of a preliminary subdivision plat. The officer responsible for review of subdivision plats shall not approve or forward for approval a subdivision plat for a period of sixty days from the date of mailing notice of the filing of the request with the department unless the department waives in writing the time period. Within the sixty-day period, the department may if it wishes file with such officer a statement of intent to negotiate with the owner of the land involved. Upon the filing of such statement of intent, the department shall be allowed six months for negotiations with the landowner. At the end of such six-month period, if the landowner has not withdrawn his or her request for review of a subdivision plat, the officer responsible for review of subdivision plats shall proceed with consideration of such preliminary plat if it meets all other applicable codes, ordinances, and laws.

(2) Upon the filing of a request for a building permit on a parcel located within a corridor, the officer responsible for issuance of building permits or, if a building permit is required only by virtue of sections 39-1311 to 39-1311.05, the county clerk shall give the department notice of the filing of the request for a building permit. The officer responsible for issuance of building permits shall not issue a permit for a period of sixty days from the date of mailing notice of the filing of the request with the department unless the department waives in writing the time period. Within the sixty-day period, the department may if it wishes file with such officer a statement of intent to negotiate with the owner of the land involved. Upon the filing of such statement of intent, the department shall be allowed six months for negotiations with the landowner. At the end of such six-month period, if the landowner has not withdrawn his or her application for a permit, it shall be issued if it meets all other applicable codes, ordinances, and laws.

Source: Laws 1974, LB 805, § 4; Laws 2003, LB 187, § 10.

39-1311.04. Corridor; building permit; subdivision plat; county clerk; issuance or approval; when.

When an officer is not now authorized to issue building permits, the county clerk shall be authorized to review and approve subdivision plats or issue building permits required by the provisions of sections 39-1311 to 39-1311.05.

Source: Laws 1974, LB 805, § 5; Laws 2003, LB 187, § 11.

39-1311.05. Sections; no condition precedent to acquisition of rights-of-way.

Nothing in sections 39-1311 to 39-1311.05 shall be deemed a condition precedent to the acquisition of rights-of-way by purchase or by eminent domain.

Source: Laws 1974, LB 805, § 6.

39-1312. Repealed. Laws 1976, LB 724, § 11.

39-1313. State highways; abandonment; relinquishment; hearing.

The department shall have the authority, with the advice of the State Highway Commission and the consent of the Governor, to relinquish or abandon fragments of routes, sections of routes, or routes on the state highway system; *Provided,* that abandonment or relinquishment is accomplished in accordance with and subject to the provisions of sections 39-1314 and 39-1315. Prior to offering its advice to the Governor, the State Highway Commission shall extend an opportunity for a public hearing to the political or governmental subdivisions or public corporations wherein any portion of the state highway system is to be abandoned or relinquished.

Source: Laws 1955, c. 148, § 13, p. 423.

39-1314. State highways; relinquishment; abandonment; fragment or section; offer to political subdivision; procedure.

No fragment or section of a route nor any route on the state highway system shall be abandoned without first offering to relinquish such fragment, section, or route to the political or governmental subdivisions or public corporations wherein any portion of the state highway system is to be abandoned. The department shall offer to relinquish such fragment, section, or route by written notification to such political or governmental subdivisions or public corporations of the department's offer to relinquish. Such offer to relinquish may be conditional or subject to the reservation of any right which the department deems necessary. Four months after sending the notice of offer to relinquish, the department may proceed to abandon such fragment, section, or route on the state highway system unless a petition from a notified political or governmental subdivision or public corporation has been filed with the department, prior to abandonment, setting forth that the political or governmental subdivision or public corporation desires to maintain such fragment, section, route, or portion thereof. The department may reject any petition which does not accept the conditions or reservations specified in the department's offer to relinquish. Any petition which is accepted by the department, together with a written instrument describing the proposed relinquishment, shall be placed upon public record in the department. Such written instrument shall bear the department seal and shall be dated and subscribed by the Director-State Engineer and state upon what conditions, if any, the relinquishment shall be qualified. Such written instrument shall be certified by the department and be recorded in the office of the register of deeds of the county where the portion of the state highway system is being relinquished. No fee shall be charged for such recording. After such recording, the fragment, section, route, or portion relinquished will be the responsibility of such political or governmental subdivision or public corporation.

Source: Laws 1955, c. 148, § 14, p. 423.

39-1315. State highways; abandonment; written instrument; filing.

Before any fragment, section, or route on the state highway system shall be abandoned, the department shall place upon public record in the department a written instrument describing the proposed abandonment. Such written instrument shall bear the department seal and shall be dated and subscribed by the Director-State Engineer and state upon what conditions, if any, the abandonment shall be qualified and particularly whether or not the title or right-of-way to any abandoned fragment or section shall be sold, revert to private ownership, or remain in the public. Such written instrument shall be certified by the department and be recorded in the office of the register of deeds of each county wherein any portion of the state highway system is being abandoned. No fee shall be charged for such recording. On such recording, the abandonment is complete.

Source: Laws 1955, c. 148, § 15, p. 424.

39-1315.01. State highways; removal from state highway system; conditions.

No road or highway shall be removed from the state highway system until a minimum of three years after such road or highway has been improved with a surface of concrete, asphalt, or material of similar quality, covering at least two traffic lanes, and then only after a determination that traffic along such road or highway is insufficient to justify retention of it as part of the state highway system. The provisions of this section shall not be construed to apply to (1) the relocation of a road or highway pursuant to subsection (2) of section 39-1309, (2) temporary detours or detours designated pursuant to section 39-1309.01, or (3) roads which are removed from the state highway system and added to a county road system or municipal street system pursuant to a contract or agreement between the department and the affected county or municipality. Such a contract or agreement shall not be canceled or amended unless agreed to by all parties to such contract or agreement.

Source: Laws 1969, c. 307, § 1, p. 1098; Laws 1981, LB 285, § 6; Laws 1993, LB 62, § 1.

(d) PLANNING AND RESEARCH

39-1316. State highway system; establishment, construction, maintenance; plans and specifications.

The department shall be responsible for the preparation and adoption of plans and specifications for the establishment, construction, and maintenance of the state highway system. Such plans and specifications may be amended, from time to time, as the department deems advisable. Such plans and specifications should conform, as closely as practicable, to those adopted by the American Association of State Highway Officials.

Source: Laws 1955, c. 148, § 16, p. 424.

39-1317. State highways; surveys and research.

The department shall have the authority to make investigations and to collect and analyze all relevant data relating to (1) road planning studies, (2) traffic problems, (3) financial conditions, and (4) problems relating to state, county, township, municipal, federal, and all other public roads in the state, except any toll facilities. The department also shall have the authority to collect, analyze, and interpret all relevant data concerning the use, construction, improvement, and maintenance of roads, the practices and methods of road organization and development, and such other information, data, and statistics as are deemed necessary. The department may cooperate with the bureau of public roads, federal agencies, research organizations, or political or governmental subdivisions or public corporations of this state and may enter into agreements with other states to carry on research and test projects pertaining to road purposes.

Source: Laws 1955, c. 148, § 17, p. 424.

39-1318. Inspection and testing of materials.

The department shall have the authority to make tests, do research, to inspect and test all materials, supplies, equipment, and machinery used for state purposes or projects involving federal funds, and to develop methods and procedures for this purpose.

Source: Laws 1955, c. 148, § 18, p. 425.

39-1319. Testing laboratory; purpose.

The department shall have the authority to maintain and develop a testing laboratory to carry out the requirements of the provisions of section 39-1318.

Source: Laws 1955, c. 148, § 19, p. 425.

(e) LAND ACQUISITION

39-1320. State highway purposes; acquisition of property; eminent domain; purposes enumerated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Source: Laws 1955, c. 148, § 20, p. 425; Laws 1961, c. 195, § 1, p. 594; Laws 1969, c. 329, § 2, p. 1178; Laws 1972, LB 1181, § 3; Laws 1975, LB 213, § 5; Laws 1992, LB 899, § 1; Laws 1992, LB 1241, § 3; Laws 1993, LB 15, § 7; Laws 1995, LB 264, § 23; Laws 2007, LB 277, § 1; Laws 2016, LB 1038, § 10; Laws 2017, LB 271, § 7; Laws 2017, LB 339, § 125.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 271, section 7, with LB 339, section 125, to reflect all amendments.

Note: Changes made by LB 339 became operative July 1, 2017. Changes made by LB 271 became effective August 24, 2017.

Cross References

Advertising and informational signs along highways and roads, see sections 39-201.01 to 39-226.
Outdoor advertising signs, displays, and devices, rules and regulations of the Department of Transportation, see section 39-102.
Outdoor advertising signs, removal, see sections 69-1701 and 69-1702.

An injunction may properly be entered to require compliance with the statute making it unlawful to erect or maintain advertising signs along highways prior to determination of whether there is a right to damages resulting from application of the statute. State v. Mayhew Products Corp., 204 Neb. 266, 281 N.W.2d 783 (1979).

Sections 39-1320 to 39-1320.11 constitute a reasonable and valid exercise of the police power which bears a substantial relation to the public health, safety, and general welfare and are constitutional. State v. Mayhew Products Corp., 204 Neb. 266, 281 N.W.2d 783 (1979).

Advertising easement is required to be taken within six hundred sixty feet of edge of the right-of-way. State v. Day, 181 Neb. 308, 147 N.W.2d 919 (1967).

Highway beautification is a highway purpose. State v. Merritt Brothers Sand & Gravel Co., 180 Neb. 660, 144 N.W.2d 180 (1966).

Acquisition of permanent easement for the control of advertising was treated as an exercise of the power of eminent domain. Wolfe v. State, 179 Neb. 189, 137 N.W.2d 721 (1965).

The taking of control of outside advertising is compensable under this section. Mathis v. State, 178 Neb. 701, 135 N.W.2d 17 (1965).

Case is disposed of in Supreme Court upon theory adopted by both parties that proceedings were instituted to acquire a permanent easement. Fulmer v. State, 178 Neb. 664, 134 N.W.2d 798 (1965).

Control of outside advertising within specified distance of highway was expressly conferred. Fulmer v. State, 178 Neb. 20, 131 N.W.2d 657 (1964). (Opinion withdrawn, 178 Neb. 664, 134 N.W.2d 798 (1965).)

Injunction granted without prejudice to department to proceed under this section to condemn land for drainage ditch at right angle to highway. Heppe v. State, 162 Neb. 403, 76 N.W.2d 255 (1956).

39-1320.01. Transferred to section 39-212.

39-1320.02. Transferred to section 39-213.

39-1320.03. Transferred to section 39-214.

39-1320.04. Repealed. Laws 1963, c. 224, § 4.

39-1320.05. Repealed. Laws 1963, c. 224, § 4.

39-1320.06. Transferred to section 39-215.

39-1320.07. Transferred to section 39-216.

39-1320.08. Transferred to section 39-219.

39-1320.09. Transferred to section 39-220.

39-1320.10. Transferred to section 39-221.

39-1320.11. Transferred to section 39-222.

39-1320.12. Transferred to section 39-223.

39-1320.13. Transferred to section 39-224.

39-1320.14. Transferred to section 39-225.

39-1320.15. Transferred to section 39-226.

39-1321. State highway purposes; acquisition of additional property; purpose; method; acquisition of landlocked property.

In connection with the acquisition of lands, property or interests therein for state highway purposes, the department may, in its discretion, acquire, by any lawful means except through the exercise of eminent domain, an entire lot, block, or tract of land or property if, by so doing, the interests of the public will be best served, even though said entire lot, block, or tract is not immediately needed for state highway purposes. Without limiting the same hereby, this may be done where uneconomic remnants of land would be left the original owner or where severance or consequential damages to a remainder make the acquisition of the entire parcel more economical to the state; *Provided,* that when any such property or land is left without access to a road, and the cost of acquisition of such landlocked property or land through the exercise of eminent domain would be more economical to the state than the cost of providing a means of reasonable ingress to or egress from the property or land, the state may, in its discretion, acquire such landlocked property or land thereof by eminent domain.

Source: Laws 1955, c. 148, § 21, p. 427; Laws 1961, c. 181, § 6, p. 538.

39-1321.01. Repealed. Laws 1971, LB 190, § 13.

39-1321.02. Repealed. Laws 1971, LB 190, § 13.

39-1321.03. Repealed. Laws 1971, LB 190, § 13.

39-1321.04. Repealed. Laws 1971, LB 190, § 13.

39-1321.05. Repealed. Laws 1971, LB 190, § 13.

39-1321.06. Repealed. Laws 1971, LB 190, § 13.

39-1321.07. Repealed. Laws 1971, LB 190, § 13.

39-1321.08. Repealed. Laws 1971, LB 190, § 13.

39-1321.09. Repealed. Laws 1971, LB 190, § 13.

39-1321.10. Repealed. Laws 1971, LB 190, § 13.

39-1322. Acquisition of additional property; buildings; exchange or replacement of property.

The department may acquire additional real property by gift, agreement, purchase, exchange, or condemnation if such additional real property is needed for the purpose of moving and establishing thereon buildings, structures, or other appurtenances which are situated on real property required by the department for highway purposes. When found to be in the public interest, the department is authorized to provide replacement real property, either lands or facilities, or both, for property in public ownership acquired as a result of a highway or highway-related project which will provide equivalent utility, for that acquired for the project. The department shall have authority to make agreements for the exchange of property, to make allowances for differences in the value of the properties being exchanged, and to move or pay the cost of moving buildings, structures, or other appurtenances.

Source: Laws 1955, c. 148, § 22, p. 427; Laws 1979, LB 568, § 1.

39-1323. Lands of state; acquisition; purpose; consent of Governor required; procedure.

The department may acquire land, as provided for by sections 72-224.02 and 72-224.03, whenever such land is necessary to construct, reconstruct, improve, relocate, and maintain the state highway system and to provide adequate drainage for and access facilities to such highways. The acquisition may be of educational land or any lands owned, occupied, or controlled by any state institution, board, agency, or commission. Prior to taking any land for any of the above purposes, a certificate that the taking of such land is in the public interest, must be obtained from the Governor and from the department and be filed in the office of the Department of Administrative Services. Written notice of the intent to acquire land of any state institution, board, agency, or commission shall be given to such institution, board, agency, or commission, ten days before the filing of the certificate with the department. Whenever the land taken is educational land which is under the control of any separate agency or board of the State of Nebraska, the damages assessed in the condemnation shall be paid to the Board of Educational Lands and Funds and the agency or board shall then have a claim against the State of Nebraska for the amount so paid.

Source: Laws 1955, c. 148, § 23, p. 427; Laws 1969, c. 317, § 9, p. 1149.

39-1323.01. Lands acquired for highway purposes; lease, rental, or permit for use; authorization; proprietary purposes permitted; disposition of rental funds; conditions, covenants, exceptions, reservations.

The Nebraska Department of Transportation, subject to the approval of the Governor, and the United States Department of Transportation if such department has a financial interest, is authorized to lease, rent, or permit for use, any area, or land and the buildings thereon, which

area or land was acquired for highway purposes. The Director-State Engineer, for the Nebraska Department of Transportation, and in the name of the State of Nebraska, may execute all leases, permits, and other instruments necessary to accomplish the foregoing. Such instruments may contain any conditions, covenants, exceptions, and reservations which the department deems to be in the public interest, including, but not limited to, the provision that upon notice that such property is needed for highway purposes the use and occupancy thereof shall cease. If so leased, rented, or permitted to be used by a municipality, the property may be used for such governmental or proprietary purpose as the governing body of the municipality shall determine, and such governing body may let the property to bid by private operators for proprietary uses. All money received as rent shall be deposited in the state treasury and by the State Treasurer placed in the Highway Cash Fund, subject to reimbursement, if requested, to the United States Department of Transportation for its proportionate financial contribution.

Source: Laws 1961, c. 354, § 1, p. 1114; Laws 1965, c. 222, § 1, p. 644; Laws 1969, c. 331, § 1, p. 1186; Laws 1969, c. 584, § 41, p. 2368; Laws 1986, LB 599, § 5; Laws 2017, LB 339, § 126.

Operative Date: July 1, 2017

39-1324. Surveys; authority to enter land; damages.

The department shall have authority to enter upon any property to make surveys, examinations, investigations, and tests, and to acquire other necessary and relevant data in contemplation of (1) establishing the location of a road, street, or highway, (2) acquiring land, property, and road building materials, or (3) performing other operations incident to highway construction, reconstruction, or maintenance. Entry upon any property, pursuant to this section, shall not be considered to be a legal trespass and no damages shall be recoverable on that account alone. In case of any actual or demonstrable damages to the premises, the department shall pay the owner of the premises the amount of the damages. Upon the failure of the landowner and the department to agree upon the amount of damages, the landowner, in addition to any other available remedy, may file a petition as provided for in section 76-705.

Source: Laws 1955, c. 148, § 24, p. 428.

Department of Roads has authority to enter upon any property to make surveys. State v. Merritt Brothers Sand & Gravel Co., 180 Neb. 660, 144 N.W.2d 180 (1966).

39-1325. Real property; power of department to sell and convey excess.

The department shall have the authority to sell and convey, with the approval of the Governor, any part of or any interest in real property held by the department which is no longer deemed necessary or desirable for highway purposes. The sale or conveyance of such real property shall be in such manner as will best serve the interests of the state and will most adequately conserve highway funds.

Source: Laws 1955, c. 148, § 25, p. 428.

39-1326. Real property; sale, deed; bill of sale; execution; conditions; disposition of proceeds.

The Director-State Engineer, for the department, and in the name of the State of Nebraska, may execute, acknowledge, seal, and deliver all deeds, bills of sale, and other instruments necessary and proper to carry out the sale and exchange of real property. Such deeds, bills of sale, and other instruments shall have affixed thereto the seal of the department. The deeds, bills of sale, and other instruments may contain any conditions, covenants, exceptions, and reservations which the department deems are in the public interest or may convey title in fee simple absolute. All money received from the sale of such property shall be deposited in the state treasury and credited to the Highway Cash Fund.

Source: Laws 1955, c. 148, § 26, p. 429; Laws 1986, LB 599, § 6.

(f) CONTROL OF ACCESS

39-1327. State highways; access rights; acquisition; damages.

The department, with the advice of the State Highway Commission and the consent of the Governor, shall designate and establish controlled-access facilities. Upon such consent, the department (1) is authorized to designate and establish controlled-access facilities, (2) may design, construct, maintain, improve, alter, and vacate such facilities, and (3) may regulate, restrict, or prohibit access to such facilities so as to best serve the traffic for which such facilities are intended. The department may provide for the elimination of intersections at grade with existing roads, streets, or highways, if the public interest shall be served thereby, and no road, street, or highway shall be opened into or connected with such facilities without the consent of the department. An existing road, street, or highway may be included within such facilities or such facilities may include new or additional roads, streets, or highways. In order to carry out the purposes of this section, the department may acquire, in public or private property, such rights of access as are deemed necessary, including but not necessarily limited to air, light, view, egress, and ingress. Such acquisitions may be by gift, devise, purchase, agreement, adverse possession, prescription, condemnation, or otherwise and may be in fee simple absolute or in any lesser estate or interest. The department may make provision to mitigate damages caused by such acquisitions, terms, and conditions regarding the abandonment or reverter of such acquisitions, and any other provisions or conditions that are desirable for the needs of the department and the general welfare of the public.

Source: Laws 1955, c. 148, § 27, p. 429.

Specific right of the state to control access to a state highway is granted by this section. Hammer v. Department of Roads, 175 Neb. 178, 120 N.W.2d 909 (1963).

39-1328. State highways; frontage roads; abutting owners, egress and ingress.

The department is authorized to designate, establish, design, construct, maintain, vacate, alter, improve, and regulate frontage roads within the boundaries of any present or hereafter acquired right-of-way and to exercise the same jurisdiction over such frontage roads as is authorized over controlled-access facilities. Such frontage roads may be connected to or separated from the controlled-access facilities at such places as the department shall determine to be consistent with public safety. Upon the construction of any frontage road, any right of access between the controlled-access facility and property abutting or adjacent to such frontage road shall terminate and ingress and egress shall be provided to the frontage road at such places as will afford reasonable and safe connections.

Source: Laws 1955, c. 148, § 28, p. 430.

Right to condemn permanent easement for control of advertising signs is conferred. Fulmer v. State, 178 Neb. 20, 131 N.W.2d 657 (1964). (Opinion withdrawn, 178 Neb. 664, 134 N.W.2d 798 (1965).)

Landowner was entitled to damages for loss of direct access to highway. Balog v. State, 177 Neb. 826, 131 N.W.2d 402 (1964).

39-1328.01. State highways; frontage roads; request by municipality, county, or property owners; right-of-way acquired by purchase or lease; department; maintenance.

Whenever a highway not a freeway, which formerly traversed the corporate limits of a municipality of not more than five thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, is relocated and is made a controlled-access facility, and the department is or is not providing any frontage road as authorized by section 39-1328, near an intersection with a roadway connecting with such municipality, the department shall, when consistent with requirements of traffic safety, and when the cost of drainage structures does not exceed five thousand dollars, and upon the conditions hereinafter set out construct such frontage roads if requested to do so by such municipality, by the county, or by the owners of sixty percent of the property abutting on such relocated highway if such request is made prior to the purchase, lease, or lease with option to purchase of right-of-way by the department. The quadrant of such intersection in which the frontage road or roads shall be located shall be designated by the governing board of such municipality. The department shall at the request of the county or municipality procure the right-of-way for such frontage road by lease or lease-option to buy or in the same manner as though it were for state highway purposes after receiving from the county or municipality reasonable assurance of reimbursement for such right-of-way costs. The responsibility for the maintenance of such frontage road shall be as provided in section 39-1372.

Source: Laws 1965, c. 211, § 1, p. 619; Laws 2017, LB 113, § 40; Laws 2017, LB 339, § 127.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 339, section 127, with LB 113, section 40, to reflect all amendments.

Note: Changes made by LB 339 became operative July 1, 2017. Changes made by LB 113 became effective August 24, 2017.

39-1328.02. State highways; frontage roads; request by municipality, county, or property owners; consent of federal government, when; right-of-way; reimbursement; maintenance.

Whenever a highway not a freeway, which formerly traversed the corporate limits of a municipality, has been relocated since January 1, 1960, and has been made or will be made a controlled-access facility, and the department has not provided any frontage road as authorized by section 39-1328, near an intersection with a roadway connecting with such municipality, the department shall, when consistent with requirements of traffic safety, and when the cost of drainage structures does not exceed five thousand dollars, and upon the conditions hereinafter set out construct such frontage roads if requested to do so by such municipality, the county, or by the owners of sixty percent of the property abutting on such relocated highway within two years after November 18, 1965, or within two years after the highway is made a controlled-access facility. If agreements exist with the federal government requiring its consent to the relinquishment of control of access, the department shall make a bona fide effort to secure such consent, but upon failure to obtain such consent, the frontage road shall not be constructed, or, if conditions are imposed by the federal government, the department shall construct such frontage roads only in accordance with such conditions. The municipality, county, or owners requesting such frontage road shall reimburse the department for any damages which it paid for such control of access and also for payment to the federal government of such sum, if any, demanded by it for the relinquishment of the access control. The quadrant of such intersection in which the frontage road may be located shall be designated by the governing board of such municipality. The department shall at the request of the county or municipality procure the right-of-way for such frontage road in the same manner as though it were for state highway purposes after receiving from the county or municipality reasonable assurance of reimbursement for such right-of-way costs. The responsibility for the maintenance of such frontage road shall be as provided in section 39-1372.

Source: Laws 1965, c. 211, § 2, p. 620; Laws 2017, LB 339, § 128.
Operative Date: July 1, 2017

39-1329. State highways; egress and ingress, when required; department; prescribe access.

The right of reasonable convenient egress and ingress from lands or lots, abutting on an existing highway, street, or road, may not be denied except with the consent of the owners of such lands or lots, or with the condemnation of such right of access to and from such abutting lands or lots. If the construction or reconstruction of any highway, to be paid for in whole or in part with federal or state highway funds, results in the abutment of property on such highway that did not theretofore have direct egress and ingress to it, no rights of direct access shall accrue because of such abutment, but the department may prescribe and define the location of the privilege of access, if any, of properties that then, but not theretofore, abut on such highway.

Source: Laws 1955, c. 148, § 29, p. 430.

There is no right of direct access to a highway constructed upon a new right-of-way where no highway previously existed if the new highway is designated a controlled access facility from the beginning. Morehead v. State, 195 Neb. 31, 236 N.W.2d 623 (1975).

Request for instruction relating to this section properly refused when other instructions impliedly excluded irrelevant items addressed thereby. Thacker v. State, 193 Neb. 817, 229 N.W.2d 197 (1975).

Evidence of the use of federal funds in a state road project is not admissible in an eminent domain proceeding, but its admission in this case was not prejudicial. Y Motel, Inc. v. State, 193 Neb. 526, 227 N.W.2d 869 (1975).

An abutting property owner is entitled to recover damages resulting from the destruction or material impairment by the state of his right of access to an existing highway or street, not to restoration of access. Danish Vennerforning & Old Peoples Home v. State, 191 Neb. 774, 217 N.W.2d 819 (1974).

Where there was no previous access to highway, landowner in eminent domain proceedings acquired no new access rights. Frank v. State, 176 Neb. 759, 127 N.W.2d 300 (1964).

Adjoining landowner cannot be denied reasonable means of egress and ingress. Chaloupka v. State, 176 Neb. 746, 127 N.W.2d 291 (1964).

39-1330. State highways; acquisition of property for right-of-way; department powers; reasonable access required.

In connection with the acquisition of real property for new right-of-way or additional right-of-way for any highway to be constructed, relocated, or reconstructed in either rural or urban areas and paid for in whole or in part with federal or state highway funds, the department may prescribe and define in purchase agreements or condemnation proceedings the location, width, nature, and extent of any right of access that may be permitted between such improved highway and the properties from which such right-of-way or additional right-of-way is acquired, but such prescription and definition shall in no case leave such private properties without a reasonable means of egress and ingress to a road.

Source: Laws 1955, c. 148, § 30, p. 430.

Evidence of the use of federal funds in a state road project is not admissible in an eminent domain proceeding, but its admission in this case was not prejudicial. Y Motel, Inc. v. State, 193 Neb. 526, 227 N.W.2d 869 (1975).

Upon reconstruction of state highway, adjoining landowner cannot be denied reasonable means of egress and ingress. Chaloupka v. State, 176 Neb. 746, 127 N.W.2d 291 (1964).

39-1331. State highways; farm land; severed tracts; access.

Whenever the location, relocation, establishment, construction, or reconstruction of a highway causes the severance of real property, which is being used for farm or other agricultural purposes and title thereto is held under one owner, the department shall make provision for crossing the highway from one tract to the other, or compensation for the severance of the tract shall be paid; *Provided,* that should the tracts at any time cease to be held under one ownership, the right to such road crossing shall automatically terminate. No connecting road crossing shall be used for or in connection with the conduct of any roadside business or enterprise, but shall be available and used solely for passage from one of the severed tracts to the other.

Source: Laws 1955, c. 148, § 31, p. 431.

39-1332. State highways; construction and maintenance of access road; written permit required, when.

No person shall construct, use, or permit to be used on property owned or occupied by such person any private entrance or exit, approach road, facility, thing, or appurtenance upon or connected to a highway right-of-way without first obtaining a written permit from the department; *Provided,* the owner or occupier of property shall not be required to obtain a permit to use or permit to be used in its existing condition any such private entrance or exit, approach road, facility, thing, or appurtenance existing on September 18, 1955, unless the department determines that the safety and general welfare of the public will be better served by such owner or occupier being required to apply for a permit and the department gives written notice to such owner or occupier that application for a permit must be filed with the department within thirty days from receipt of such notice.

Source: Laws 1955, c. 148, § 32, p. 431.

Owner of land had statutory right to continue to use ornamental light posts. State v. Merritt Brothers Sand & Gravel Co., 180 Neb. 660, 144 N.W.2d 180 (1966).

This section permits the Department of Roads to control the type of access to be granted to state highways. Chaloupka v. State, 176 Neb. 746, 127 N.W.2d 291 (1964).

39-1333. State highways; access; department; adopt rules and regulations; issue permits.

The department may adopt reasonable rules and regulations and issue permits for the construction or use of any private entrance or exit, approach road, facility, thing, or appurtenance upon or connected to highway rights-of-way. Such rules and regulations and such permits may include, but need not be limited to, provisions for construction of culverts, requirements as to depth of fills, and requirements for drainage facilities deemed necessary. Such a permit so issued may contain such terms and conditions as, in the judgment of the granting authority, may be in the best interest of the public. All construction under such permits shall be under the supervision of the granting authority and at the expense of the applicant. After completion of the construction of the particular private entrance or exit, approach road, facility, thing, or appurtenance, the same shall be maintained at the expense of the applicant and in accordance with the rules and regulations of the department. Nothing herein contained shall be determined or construed to grant any right for or authorize the construction of a private entrance or exit or approach road upon or connected to any facility, thing, or appurtenance on the right-of-way of any highway or section of highway for which the department has by gift, agreement, or eminent domain acquired the rights of access on a portion thereof.

Source: Laws 1955, c. 148, § 33, p. 432.

Application of this section was properly covered by instructions given by trial court. Chaloupka v. State, 176 Neb. 746, 127 N.W.2d 291 (1964).

39-1334. State highways; access; permit; violation; actions.

The Director-State Engineer, for the department and in the name of the State of Nebraska, may prosecute to final determination any action, suit, or proceeding which in his judgment is necessary for the preservation of public safety, the promotion of the general welfare, and to carry out the provisions of sections 39-1327 to 39-1336. In addition to any other available remedies, the Director-State Engineer may secure an injunction or mandamus (1) to prevent any owner or occupier of property from constructing, using, or permitting to be used a private entrance or exit, approach road, facility, thing, or appurtenance upon or connected to a highway right-of-way without a written permit from the department when a permit is required, (2) to enforce compliance with the conditions of a permit issued by the department to a person for such construction, use, or right to permit such use, and (3) to enforce compliance with the rules and regulations regarding such construction and uses prescribed by the department.

Source: Laws 1955, c. 148, § 34, p. 432.

39-1335. State highways; access; use of adjoining property; permit; rules and regulations; violation; penalty.

Any person who shall construct, use, or permit to be used on property owned or occupied by such person any private entrance or exit, approach road, facility, thing, or appurtenance upon or connected to a highway right-of-way without a permit from the department, when a permit is required, or who shall construct, use, or permit to be used a private entrance or exit, approach road, facility, advertising, advertising signs, displays, or other advertising devices, thing, or appurtenance upon or connected to any highway right-of-way without complying with the rules and regulations prescribed by the department or with the conditions of a permit issued by the department to such person, shall be guilty of a Class III misdemeanor. Each and every day that such violation continues after the department issues written notification to the violator may constitute a separate offense.

Source: Laws 1955, c. 148, § 35, p. 433; Laws 1961, c. 195, § 5, p. 597; Laws 1977, LB 40, § 212.

39-1336. Department; political subdivision; access highways; construction, maintenance, location, vacation; agreement.

The department and the governing bodies of any political or governmental subdivision or any public corporation of this state may enter into agreements with each other respecting the planning, designating, financing, establishing, constructing, improving, maintaining, using, altering, relocating, regulating, or vacating of controlled-access roads except any toll facilities.

Source: Laws 1955, c. 148, § 36, p. 433.

Department of Roads and cities may make agreements with respect to controlled access facilities. Hammer v. Department of Roads, 175 Neb. 178, 120 N.W.2d 909 (1963).

(g) CONSTRUCTION AND MAINTENANCE

39-1337. State highway system; department; construction, maintenance, control; improvement; sufficiency rating.

The construction, maintenance, protection, and control of the state highway system shall be under the authority and responsibility of the department, except as otherwise provided in sections 39-1339 and 39-1372. The relative urgency of proposed improvements on the state highway system shall be determined by a sufficiency rating established by the department, insofar as the use of such a rating is deemed practicable. The sufficiency rating shall include, but not be limited to, the following factors: (1) Surface condition, (2) economic factors, (3) safety, and (4) service.

Source: Laws 1955, c. 148, § 37, p. 433; Laws 1961, c. 184, § 3, p. 565.

39-1338. State highways; drainage; construct, maintain, improve facilities; damages.

The department shall have the authority to construct, maintain, and improve drainage facilities on the state highway system. The department also shall have the authority to make channel changes, control erosion, and provide stream protection or any other control measures beyond the highway right-of-way limits wherever it is deemed necessary in order to protect the highways and drainage facilities from damage. The department shall have the authority to enter upon private or public property for the above purposes. In case of any damage to the premises, the department shall pay the owner of the premises the amount of the damages. Upon the failure of the landowner and the department to agree upon the amount of damages, the landowner, in addition to any other available remedy, may file a petition as provided for in section 76-705.

Source: Laws 1955, c. 148, § 38, p. 434.

39-1339. State highway system; connecting links, defined; duty of department.

Except as provided in section 39-1372, the responsibility of the department for the maintenance of connecting links on the state highway system shall be determined in accordance with the following provisions:

(1) The department shall be liable for the cost of surface maintenance of the traveled way of connecting links, not including the parking lanes thereon, in cities of the metropolitan, primary, and first classes; *Provided,* such connecting links were constructed under the authority of the department and construction costs were paid in whole or in part with county, state or federal-aid funds. The department shall not be responsible for the maintenance of any connecting link or portion thereof which was not built in whole or in part with county, state or federal-aid funds;

(2) The department shall be liable for all of the surface maintenance of the traveled way of connecting links, including parking lanes thereon, in cities of the second class and villages;

Provided, such connecting links were constructed under the authority of the department and construction costs were paid in whole or in part with county, state or federal-aid funds. The department shall not be responsible for the maintenance of any connecting link or portion thereof which was not built with county, state or federal-aid funds;

(3) The responsibility of the department for the maintenance of the connecting links, described in subdivisions (1) and (2) of this section, shall be limited to such things as are caused either by wear and tear of travel on such connecting links or by acts of God. Maintenance shall not be construed to include (a) snow removal, (b) maintenance caused by constructing, placing, replacing, repairing, or servicing water mains, sewers, gas lines, pipes, utility equipment, or other similar things placed beneath, across, or upon the surface of any portion of a connecting link, or (c) repairs or reconstruction going beyond the scope of normal surface maintenance or wear and tear of travel;

(4) The maintenance of structures, on the connecting links described in subdivisions (1) and (2) of this section, shall not be limited to the traveled way but shall include the entire structure; *Provided,* the department shall have no responsibility for the maintenance of appurtenances to such connecting links and the structures thereon, except by special agreement with the city or village in which the connecting link is situated. Appurtenances shall include, but are not limited to, sidewalks, storm sewers, guardrails, handrails, steps, curb or grate inlets, driveways, fire plugs, or retaining walls;

(5) The department shall maintain and keep in repair all public bridges and the approaches thereto when located in cities of the first class and on connecting links which were constructed under the authority of the department and construction costs were paid in whole or in part with state or federal funds;

(6) Nothing contained in this section shall be construed to prevent the department from entering into special agreements with cities or villages regarding the reconstruction and maintenance of connecting links in such cities and villages; and

(7) As used in this section, unless the context otherwise requires, connecting link shall mean a street now designated as a state highway.

Source: Laws 1955, c. 148, § 39, p. 434; Laws 1961, c. 181, § 7, p. 539; Laws 1961, c. 184, § 35, p. 565; Laws 1967, c. 239, § 1, p. 637.

39-1340. State highways; additional width or capacity; political subdivisions; agreement.

The governing body of any political or governmental subdivision or public corporation may enter into a written agreement with the department for the construction of a highway, structure, or appurtenance thereto, of greater width or capacity than would be necessary to accommodate highway traffic, upon any highway or connecting link within its boundaries and may appropriate from any funds available and pay into the Highway Cash Fund such sum or sums of money as may be agreed upon. Nothing contained in this section shall prevent any such governing body from constructing such highway, structure, or appurtenance of greater width or capacity independent of any contract with the department if such construction shall conform to such reasonable standards and regulations as the department may prescribe.

Source: Laws 1955, c. 148, § 40, p. 436; Laws 1986, LB 599, § 7.

39-1341. State highways; additional width; political subdivisions; agreement; payment.

The governing body of any political or governmental subdivision or public corporation may enter into a written agreement with the department for the maintenance of the additional width, as provided for in section 39-1305, by the department and from time to time, in accordance with such agreement, shall appropriate and pay into the Highway Cash Fund such sums of money as may be agreed upon. Nothing contained in this section shall be construed to prevent any political or governmental subdivision or public corporation from maintaining such additional width at its own expense.

Source: Laws 1955, c. 148, § 41, p. 436; Laws 1986, LB 599, § 8.

39-1342. State highways; construction and maintenance of illumination; sidewalks; safety devices.

The department shall have the authority to construct and maintain highway illumination and sidewalks along such parts of the state highway system as are necessary for safety and public welfare. The department may also erect and maintain any other appurtenances to the state highway system which the department deems necessary for safety and public welfare. Appurtenances shall include, but are not limited to, sidewalks, storm sewers, guardrails, handrails, steps, curb or grate inlets, driveways, fire plugs, and retaining walls.

Source: Laws 1955, c. 148, § 42, p. 437.

39-1343. State highway system; department; emergencies; powers.

When, in the opinion of the department, an emergency or unusual condition exists requiring immediate action in order to preserve, continue, open, reopen, or provide for safe conditions on a fragment, portion, or route on the state highway system, the department may make necessary repairs, provide necessary equipment or services, or may contract for such repairs, equipment, or services without calling for competitive bids.

Source: Laws 1955, c. 148, § 43, p. 437.

39-1344. State highways; removal of snow and ice; powers and duties.

The department shall keep the highways, except the connecting links, sufficiently clear of snow and ice so as to be reasonably safe for travel. The department shall have the authority to enter upon private and public property adjacent to any highway and place and maintain thereon snow fences wherever it is deemed necessary in order to prevent snow drifting upon the traveled way of the highway. Such snow fences shall be erected in such a manner as to provide the most

protection to the highway and shall not be placed on such property prior to October 15, nor remain on such property after April 1, without the consent of the property owner. In case of any damage to such property, the department shall pay the amount of such damage to the owner of the property.

Source: Laws 1955, c. 148, § 44, p. 437.

39-1345. State highways; temporarily close; powers and duties.

The department shall have the authority to close temporarily any part or all of a highway. Whenever the department closes such highway or part thereof, the department or its contractor shall erect, at both ends of the portion of the highway so closed, suitable barricades, fences, or other enclosures and shall post signs warning the public that the highway is closed by authority of law. Such barricades, fences, enclosures, and signs shall serve as notice to the public that such highway is unsafe and that anyone entering such closed highway, without the permission or consent of the department, does so at his own peril. The department, if it deems it advisable, may permit the public use of a highway undergoing construction, repair, or maintenance in lieu of a detour route and is authorized to regulate, limit, or control traffic thereon.

Source: Laws 1955, c. 148, § 45, p. 437.

39-1345.01. State highways; public use while under construction, repair, or maintenance; contractor; liability.

Whenever the department, under the authority of section 39-1345, permits the public use of a highway undergoing construction, repair, or maintenance in lieu of a detour route, the contractor shall not be held responsible for damages to those portions of the project upon which the department has permitted public use, when such damages are the result of no proximate act or failure to act on the part of the contractor.

Source: Laws 1969, c. 310, § 1, p. 1114; Laws 2001, LB 489, § 11; Laws 2017, LB 339, § 129.
Operative Date: July 1, 2017

This section exempts contractors from liability for damages caused to public works by the public allowed to travel on the highway under construction, except where the specifications contemplated that the public would travel on the highway during construction. Slagle v. J.P. Theisen & Sons, 251 Neb. 904, 560 N.W.2d 758 (1997).

39-1345.02. State highways; construction; contractor; liability.

A contractor shall not be held responsible, either during construction or after construction is completed, for damages which may result from or be due to inadequate, faulty, or insufficient design, plans, or specifications.

Source: Laws 1969, c. 310, § 2, p. 1115.

This section provides an exception to section 39-1345.01 wherein, if contractors follow specifications provided, but those specifications are inadequate, faulty, or insufficient and so the traveling public still damages public works despite the implementation of the specifications, the contractors will not be liable for the damages to the actual construction project. The definition of damages found in section 39-1345.01 limiting damages to only those caused to an actual construction project also applies to the word "damages" as it appears in this section. Slagle v. J.P. Theisen & Sons, 251 Neb. 904, 560 N.W.2d 759 (1997).

39-1346. State highway system; detours; temporary route part of system.

When (1) any portion of the state highway system is impassable or dangerous to travel, (2) it shall be deemed necessary, because of construction or maintenance work or for other reasons, to suspend all or part of the travel thereon, or (3) it is impracticable to maintain any portion of the state highway system as laid out, the department may route travel over a detour around such portion of the state highway system. Such detour shall temporarily be considered part of the state highway system. The department may create a new temporary road or may use an existing road, highway, or street for a detour.

Source: Laws 1955, c. 148, § 46, p. 438; Laws 1989, LB 21, § 2.

39-1347. County roads; city and village streets; authority to use for detour; duties of department.

Authority is granted to the department to use any road or street as a detour for the state highway system. During the time that said detour is in effect, the same shall in all respects be the responsibility of the department; *Provided,* that such authority and responsibility shall become effective only after due written notice is given to the governing body having primary authority for such road or street. The responsibility of the department shall cease only upon written notice being duly given to such authorities. At the time of the termination of the use of such road or street as a state highway, the same shall be returned to the responsibility of the primary authority in as good condition as it was at the time of said temporary taking for use as a state highway by the department.

Source: Laws 1955, c. 148, § 47, p. 438.

(h) CONTRACTS

39-1348. Construction; plans and specifications; advertisement for bids; failure of publication; effect; powers of department.

Except as otherwise provided in sections 39-2808 to 39-2823, when letting contracts for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances, the department shall solicit bids as follows:

(1) For contracts with an estimated cost, as determined by the department, of greater than one hundred thousand dollars, the department shall advertise for sealed bids for not less than twenty days by publication of a notice thereof once a week for three consecutive weeks in the official county newspaper designated by the county board in the county where the work is to be done and in such additional newspaper or newspapers as may appear necessary to the department in order to give notice of the receiving of bids. Such advertisement shall state the place where the plans and specifications for the work may be inspected and shall designate the time when the bids shall be filed and opened. If through no fault of the department publication of such notice fails to appear in any newspaper or newspapers in the manner provided in this subdivision, the department shall be deemed to have fulfilled the requirements of this subdivision; and

(2) For contracts with an estimated cost, as determined by the department, of one hundred thousand dollars or less, the department, in its sole discretion, shall either:

(a) Follow the procedures given in subdivision (1) of this section; or

(b) Request bids from at least three potential bidders for such work. If the department requests bids under this subdivision, it shall designate a time when the bids shall be opened. The department may award a contract pursuant to this subdivision if it receives at least one responsive bid.

Source: Laws 1955, c. 148, § 48, p. 439; Laws 1961, c. 181, § 8, p. 541; Laws 2015, LB 312, § 1; Laws 2016, LB 960, § 25.

39-1349. Construction contracts; letting; procedure; interest on retained payments; predetermined minimum wages; powers of department.

(1) Except as provided in subsections (3) and (4) of this section, all contracts for the construction, reconstruction, improvement, maintenance, or repair of state highway system roads and bridges and their appurtenances shall be let by the department to the lowest responsible bidder. Bidders on such contracts must be prequalified to bid by the department except as provided in subsection (2) of section 39-1351. The department may reject any or all bids and cause the work to be done as may be directed by the department. If the contractor has furnished the department all required records and reports, the department shall pay to the contractor interest at a rate three percentage points above the average annual Federal Reserve composite prime lending rate for the previous calendar year rounded to the nearest one-tenth of one percent on the amount retained and on the final payment due the contractor beginning sixty days after the work under the contract has been completed as evidenced by the completion date established in the department's letter of tentative acceptance or, when tentative acceptance has not been issued, beginning sixty days after completion of the work and running until the date when payment is tendered to the contractor.

(2) When the department is required by acts of Congress and rules and regulations made by an agent of the United States in pursuance of such acts to predetermine minimum wages to be paid laborers and mechanics employed on highway construction, the Director-State Engineer shall cause minimum rates of wages for such laborers and mechanics to be predetermined and set forth in contracts for such construction. The minimum rates shall be the scale of wages which the Director-State Engineer finds are paid and maintained by at least fifty percent of the contractors in performing highway work contracted with the department unless the Director-State Engineer

further finds that such scale of wages so determined would unnecessarily increase the cost of such highway work to the state, in which event he or she shall reduce such determination to such scale of wages as he or she finds is required to avoid such unnecessary increase in the cost of such highway work.

(3) The department, in its sole discretion, may permit a city or county to let state or federally funded contracts for the construction, reconstruction, improvement, maintenance, or repair of state highways, bridges, and their appurtenances located within the jurisdictional boundaries of such city or county, to the lowest responsible bidder when the work to be let is primarily local in nature and the department determines that it is in the public interest that the contract be let by the city or the county. Bidders on such contracts must be prequalified to bid by the department except as provided in subsection (2) of section 39-1351.

(4) The department, in its sole discretion, may permit a federal agency to let contracts for the construction, reconstruction, improvement, maintenance, or repair of state highways, bridges, and their appurtenances and may permit such federal agency to perform any and all other aspects of the project to which such contract relates, including, but not limited to, preliminary engineering, environmental clearance, final design, and construction engineering, when the department determines that it is in the public interest to do so. Bidders on such contracts must be prequalified to bid by the department except as provided in subsection (2) of section 39-1351.

Source: Laws 1955, c. 148, § 49, p. 439; Laws 1959, c. 177, § 1, p. 648; Laws 1961, c. 197, § 1, p. 599; Laws 1967, c. 240, § 1, p. 640; Laws 1969, c. 332, § 1, p. 1188; Laws 1980, LB 279, § 3; Laws 1993, LB 539, § 1; Laws 2002, LB 491, § 1; Laws 2015, LB 312, § 2.

39-1350. Bids; contracts; department powers; department authorized to act for political subdivision.

The department shall have the authority to act for any political or governmental subdivision or public corporation of this state for the purpose of taking bids or letting contracts for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances. The department, while so acting, may take such bids and let such contracts at the offices of the department in Lincoln, Nebraska, or at such other location as designated by the department if the department has the written consent of the political or governmental subdivision or public corporation where the work is to be done.

Source: Laws 1955, c. 148, § 50, p. 439; Laws 1969, c. 333, § 1, p. 1189; Laws 2015, LB 312, § 3; Laws 2017, LB 339, § 130.

Operative Date: July 1, 2017

39-1351. Construction contracts; bidders; qualifications; evaluation by department; powers of department.

(1) Except as provided in subsection (2) of this section, any person desiring to submit to the department a bid for the performance of any contract for the construction, reconstruction,

improvement, maintenance, or repair of roads, bridges, and their appurtenances, which the department proposes to let, shall apply to the department for prequalification not later than ten days before the letting of the contract. The department shall determine the extent of any applicant's qualifications by a full and appropriate evaluation of the applicant's experience, equipment, financial resources, and performance record. In determining the qualification of persons to bid on any particular contract, the department shall consider the equipment and resources available for the particular contract contemplated.

(2) The department may, in its sole discretion, grant an exemption from all prequalification requirements for (a) any contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances if the estimate of the department for such work is one hundred thousand dollars or less or (b) any contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances if such work is of an emergency nature.

Source: Laws 1955, c. 148, § 51, p. 439; Laws 1973, LB 491, § 6; Laws 2015, LB 312, § 4.

39-1352. Construction contracts; bidders; statement of qualifications; financial showing; certification by public accountant.

(1) Except as provided in subsection (2) of this section, any person proposing to bid on a contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances to be let by the department shall submit to the department, at such times as it may require, a statement showing such person's qualifications. Such statement shall be under oath and on a standard form to be prepared and supplied by the department. The financial showing required in the statement shall be certified by a certified public accountant or by a public accountant holding a currently valid permit from the Nebraska State Board of Public Accountancy. The statement shall be confidential and only for the use of the department.

(2) Subsection (1) of this section shall not apply to any contract granted an exemption from prequalification requirements pursuant to subsection (2) of section 39-1351.

Source: Laws 1955, c. 148, § 52, p. 440; Laws 1961, c. 198, § 1, p. 601; Laws 2015, LB 312, § 5.

39-1353. Construction contracts; proposal forms; issuance to certain bidders.

(1) Proposal forms for submitting bids on any contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances to be let by the department shall be issued by the department at the offices of the department in Lincoln, Nebraska, or at such other location as designated by the department not later than 5 p.m. of the day before the letting of the contract.

(2) Such proposal forms shall be issued only to those persons previously qualified by the department and bids shall be accepted only from such qualified persons. This subsection shall

not apply to any contract granted an exemption from prequalification requirements pursuant to subsection (2) of section 39-1351.

Source: Laws 1955, c. 148, § 53, p. 440; Laws 1969, c. 333, § 2, p. 1189; Laws 1995, LB 447, § 1; Laws 2015, LB 312, § 6; Laws 2017, LB 339, § 131.
Operative Date: July 1, 2017

39-1354. Construction contracts; plans; reproduction; how obtained.

The department, in its discretion, may provide reproductions of the plans prepared by the department for any contract to be let for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances, to any person desiring such reproductions. Such person shall pay to the department a reasonable sum, to be fixed by the department in an amount estimated to cover the actual cost of preparing such a reproduction.

Source: Laws 1955, c. 148, § 54, p. 441.

(i) EQUIPMENT AND MATERIALS

39-1355. Equipment; office accommodations; storage buildings; department's authority and responsibility; limitations.

The department shall have authority to purchase, lease, employ, or acquire by other means, all needed road materials, machinery, equipment, supplies, services, and labor necessary for the construction, reconstruction, maintenance, and control of the state highway system and all tools and materials necessary to keep such machinery and equipment in repair. The department shall also have authority to lease, purchase, construct, or cause to be constructed, buildings for office accommodations, which are necessary in the administration of the duties of the department, and buildings for the storing and housing of materials, machinery, equipment, and supplies; *Provided,* that the department may not construct or cause to be constructed any building exceeding a cost of one hundred thousand dollars without the consent of the Legislature. The maintenance, protection, and control of the materials, machinery, equipment, supplies, tools, and buildings shall be under the authority and responsibility of the department.

Source: Laws 1955, c. 148, § 55, p. 441.

39-1356. Road materials; equipment; acquisition; manufacture; powers.

The department may purchase, lease, construct, or otherwise acquire and may maintain all necessary equipment, machinery, supplies, buildings, and other essential items and employ the necessary labor to remove road materials from the land, to prepare the materials for use, and to manufacture the materials into roadmaking products. The department may sell any surplus of materials or products to any political or governmental subdivision or public corporation of this

state or to any contractor who will use such materials or products exclusively for building or maintaining roads, streets, alleys, or structures of a political or governmental subdivision or public corporation of this state. The funds received from the sale of the road materials or products shall be paid into the state treasury and credited to the Highway Cash Fund.

Source: Laws 1955, c. 148, § 56, p. 441; Laws 1986, LB 599, § 9.

39-1357. Construction or repair of highways; salvaged materials; transfer to political subdivisions.

The department is authorized to transfer, upon such terms as the department shall prescribe, to any other political or governmental subdivision or public corporation of this state, any materials salvaged and recovered from and through the construction, reconstruction, or repair of a highway if the salvaged materials are not presently needed by the department to carry on its work.

Source: Laws 1955, c. 148, § 57, p. 442.

39-1358. State highway system; funds; source; assistance by political subdivisions.

Funds for the construction of the state highway system shall be derived from such state revenue as may be provided by law. Any governmental or political subdivision or public corporation of this state may, if it has funds available, assist with such funds in the construction of any part of a highway in such governmental or political subdivision or public corporation, and when such funds are used, bids shall be received and contracts awarded as provided in sections 39-1348 and 39-1349; *Provided,* that county road dragging funds shall not be used for this purpose.

Source: Laws 1955, c. 148, § 58, p. 442; Laws 1959, c. 167, § 3, p. 610.

(j) MISCELLANEOUS

39-1359. Rights-of-way; inviolate for state and department purposes; temporary use for special events; conditions; notice; Political Subdivisions Tort Claims Act; applicable.

(1) The rights-of-way acquired by the department shall be held inviolate for state highway and departmental purposes and no physical or functional encroachments, structures, or uses shall be permitted within such right-of-way limits, except by written consent of the department or as otherwise provided in subsections (2) and (3) of this section.

(2) A temporary use of the state highway system, other than a freeway, by a county, city, or village, including full and partial lane closures, shall be allowed for special events, as designated by a county, city, or village, under the following conditions:

(a) The roadway is located within the official corporate limits or zoning jurisdiction of the county, city, or village;

(b) A county, city, or village making use of the state highway system for a special event shall have the legal duty to protect the highway property from any damage that may occur arising out of the special event and the state shall not have any such duty during the time the county, city, or village is in control of the property as specified in the notice provided pursuant to subsection (3) of this section;

(c) Any existing statutory or common law duty of the state to protect the public from damage, injury, or death shall become the duty of the county, city, or village making use of the state highway system for the special event, and the state shall not have such statutory or common law duty during the time the county, city, or village is in control of the property as specified in the notice provided pursuant to subsection (3) of this section; and

(d) The county, city, or village using the state highway system for a special event shall formally, by official governing body action, acknowledge that it accepts the duties set out in this subsection and, if a claim is made against the state, shall indemnify, defend, and hold harmless the state from all claims, demands, actions, damages, and liability, including reasonable attorney's fees, that may arise as a result of the special event.

(3) If a county, city, or village has met the requirements of subsection (2) of this section for holding a special event and has provided thirty days' advance written notice of the special event to the department, the county, city, or village may proceed with its temporary use of the state highway system. The notice shall specify the date and time the county, city, or village will assume control of the state highway property and relinquish control of such state highway property to the state.

(4) The Political Subdivisions Tort Claims Act shall apply to any claim arising during the time specified in a notice provided by a political subdivision pursuant to subsection (3) of this section.

Source: Laws 1955, c. 148, § 59, p. 442; Laws 2011, LB 589, § 4.

Cross References

Political Subdivisions Tort Claims Act, see section 13-901.

No physical or functional encroachments upon right-of-way of state highway are permitted without written consent of Department of Roads. State v. Merritt Brothers Sand & Gravel Co., 180 Neb. 660, 144 N.W.2d 180 (1966).

39-1359.01. Rights-of-way; mowing and harvesting of hay; permit; fee; department; powers and duties.

For purposes of this section, the definitions in section 39-1302 apply.

The department shall issue permits which authorize and regulate the mowing and harvesting of hay on the right-of-way of highways of the state highway system. The applicant for a permit shall be informed in writing and shall sign a release acknowledging (1) that he or she will assume all risk and liability for hay quality and for any accidents and damages that may occur as a result of the work and (2) that the State of Nebraska assumes no liability for the hay quality or

for work done by the permittee. The applicant shall show proof of liability insurance of at least one million dollars. The owner or the owner's assignee of land abutting the right-of-way shall have priority to receive a permit for such land under this section until July 30 of each year. Applicants who are not owners of abutting land shall be limited to a permit for five miles of right-of-way per year. The department shall allow mowing and hay harvesting on or after July 15 of each year. The department shall charge a permit fee in an amount calculated to defray the costs of administering this section. All fees received under this section shall be remitted to the State Treasurer for credit to the Highway Cash Fund. The department shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2007, LB 43, § 1; Laws 2014, LB 698, § 1; Laws 2017, LB 339, § 132.
Operative Date: July 1, 2017

39-1360. Drainage facilities on highways; use; consent of department.

No person may use the drainage facilities of a highway for private purposes without first obtaining the written consent of the department.

Source: Laws 1955, c. 148, § 60, p. 442.

39-1361. Cross or dig up highway; permit by department; conditions.

No person, firm, or corporation may dig up, cross, or otherwise use any portion of the state highway system for laying or relaying pipelines, ditches, flumes, pipes, sewers, railways, or any other similar purpose without obtaining a written permit from the department and agreeing to comply with such reasonable regulations as the department shall prescribe. Such regulations may include provisions relevant to an existing portion of the state highway system and also may contemplate future or contingent problems by providing protection to the department from expense or damage arising in the reconstruction or relocation of a portion of the state highway system when such expense or damage would not have existed but for the activity authorized by the permit. No person, firm, or corporation shall construct or install any new pole line, any underground conduit, or any buried cable or erect any new guy wires upon any portion of the state highway right-of-way without obtaining a written consent or permit from the department. The department shall grant such written consent or permits to do any of the things mentioned in this section if the installation of such thing does not interfere with, or cause unreasonable hazards to, the use of the right-of-way for highway purposes. The person, firm, or corporation to whom, or in whose behalf, the permit is given shall pay the cost of placing the highway in as good condition as it was prior to being dug up, crossed, or used and shall, upon the request of the department, furnish the state with a cash deposit or certified check upon a solvent bank, or a surety bond in a guaranty company qualified to do business in Nebraska. The deposit, check, or bond shall be in the amount required by the department and shall be furnished on condition that the sum be forfeited to the state in the event that the conditions of the permit or regulations of the department are breached. A written permit to do any of the things mentioned in this section shall not be required for emergency maintenance or emergency repair work on existing facilities, but

in such cases oral consent shall be secured from the Director-State Engineer or his authorized representative as soon as the exigencies of the situation allow.

Source: Laws 1955, c. 148, § 61, p. 442.

39-1362. Cross or dig up highway; violations; penalty.

Any person, who shall dig up, cross, or otherwise use any portion of the state highway system or drainage facilities of the state highway system for laying or relaying pipelines, ditches, flumes, sewers, railways, for constructing, or installing any new pole line, underground conduit, buried cable, or new guy wires, or for any other similar purpose without obtaining a written permit from the department or without complying with the regulations of the department shall be guilty of a Class III misdemeanor. Each and every day that such a violation continues, after the department issues written notification to the violator, may constitute a separate offense.

Source: Laws 1955, c. 148, § 62, p. 443; Laws 1977, LB 40, § 213.

39-1363. Preservation of historical, archeological, and paleontological remains; agreements; funds; payment.

To more effectually preserve the historical, archeological, and paleontological remains of the state, the department is authorized to enter into agreements with the appropriate agencies of the state charged with preserving historical, archeological, and paleontological remains to have these agencies remove and preserve such remains disturbed or to be disturbed by highway construction and to use highway funds, when appropriated, for this purpose. This authority specifically extends to highways which are part of the National System of Interstate and Defense Highways as defined in the Federal Aid Highway Act of 1956, Public Law 627, 84th Congress, and the use of state funds on a matching basis with federal funds therein.

Source: Laws 1959, c. 178, § 1, p. 649; Laws 2017, LB 339, § 133.
Operative Date: July 1, 2017

39-1364. Plans, specifications, and records of highway projects; available to public, when.

The department shall, upon the request of any citizen of this state, disclose to such citizen full information concerning any highway construction, alteration, maintenance, or repair project in this state, whether completed, presently in process, or contemplated for future action, and permit an examination of the plans, specifications, and records concerning such project, except that any information received by the department as confidential by the laws of this state shall not be disclosed. Any person who willfully fails to comply with the provisions of this section shall be guilty of official misconduct. By the provisions of this section, the officials of the department will not be required to furnish information on the right-of-way of any proposed highway until such information can be made available to the general public.

Source: Laws 1959, c. 179, § 1, p. 650; Laws 2017, LB 339, § 134.
Operative Date: July 1, 2017

39-1365. State highway system; development; legislative findings.

The Legislature finds and declares that the highways of the state are of the utmost importance to future development within the state and that the following actions are necessary for such development: (1) The accelerated completion of all improvement and expansion projects on the Nebraska segments of the National System of Interstate and Defense Highways; (2) the accelerated completion of improvement projects on state highways with geometric and capacity deficiencies; (3) the resurfacing of highways to protect pavement integrity; (4) the accelerated completion of the expressway system, as such system was designated on January 1, 2016, prior to June 30, 2033; and (5) the general upgrading of the state highway system concerning driving surfaces and surfaced shoulders.

Source: Laws 1988, LB 632, § 23; Laws 2016, LB 960, § 26.

39-1365.01. State highway system; plans; department; duties; priorities.

The department shall be responsible for developing a specific and long-range state highway system plan. The department shall annually formulate plans to meet the state highway system needs of all facets of the state and shall assign priorities for such needs. The department shall, on or before December 1 of each year, present such plans to the Legislature. The plans shall be referred to the appropriate standing committees of the Legislature for review. The department shall consider the preservation of the existing state highway system asset as its primary priority except as may otherwise be provided in state or federal law. In establishing secondary priorities, the department shall consider a variety of factors, including, but not limited to, current and projected traffic volume, safety requirements, economic development needs, current and projected demographic trends, and enhancement of the quality of life for all Nebraska citizens. The state highway system plan shall include the designation of those portions of the state highway system which shall be expressways.

Source: Laws 1988, LB 632, § 24; Laws 2010, LB 821, § 1; Laws 2017, LB 339, § 135.
Operative Date: July 1, 2017

39-1365.02. State highway system; federal funding; maximum use; department; report on system needs and planning procedures.

(1) The department shall apply for and make maximum use of available federal funding, including discretionary funding, on all highway construction projects which are eligible for such assistance.

(2) The department shall transmit electronically to the Legislature, by December 1 of each year, a report on the needs of the state highway system, the department's planning procedures, and the progress being made on the expressway system. Such report shall include:

(a) The criteria by which highway needs are determined;

(b) The standards established for each classification of highways;

(c) An assessment of current and projected needs of the state highway system, such needs to be defined by category of improvement required to bring each segment up to standards. Projected fund availability shall not be a consideration by which needs are determined;

(d) Criteria and data, including factors enumerated in section 39-1365.01, upon which decisions may be made on possible special priority highways for commercial growth;

(e) A review of the department's procedure for selection of projects for the annual construction program, the five-year planning program, and extended planning programs;

(f) A review of the progress being made toward completion of the expressway system, as such system was designated on January 1, 2016, and whether such work is on pace for completion prior to June 30, 2033;

(g) A review of the Transportation Infrastructure Bank Fund and the fund's component programs under sections 39-2803 to 39-2807. This review shall include a listing of projects funded and planned to be funded under each of the three component programs; and

(h) A review of the outcomes of the Economic Opportunity Program, including the growth in permanent jobs and related income and the net increase in overall business activity.

Source: Laws 1988, LB 632, § 25; Laws 2012, LB 782, § 40; Laws 2016, LB 960, § 27; Laws 2017, LB 339, § 136.

Operative Date: July 1, 2017

39-1366. Repealed. Laws 1973, LB 45, § 125.

(k) FREEWAYS

39-1367. Freeways; declaration of legislative intent.

Recognizing that safe and efficient transportation on modern high-speed highways is a matter of important interest to all the people in the state, the Legislature determines and declares that effective maintenance, operation, and control of freeways is essential to the general welfare of the State of Nebraska and is therefor a matter of statewide concern.

The establishment of laws capable of meeting future requirements as well as present demands of safe and efficient transportation is recognized as an urgent problem and a proper objective of highway legislation.

It is the intent of the Legislature to consider of paramount importance the convenience and safety of the traveling public.

The Legislature hereby determines and declares that sections 39-1337, 39-1339, 39-1367, and 39-1372 are necessary for the preservation of the public health and safety, for promotion of the general welfare, and as a contribution to the national defense.

Source: Laws 1961, c. 184, § 1, p. 548; Laws 1993, LB 370, § 40.

39-1368. Repealed. Laws 1973, LB 45, § 125.

39-1369. Repealed. Laws 1973, LB 45, § 125.

39-1370. Repealed. Laws 1973, LB 45, § 125.

39-1371. Repealed. Laws 1973, LB 45, § 125.

39-1372. Freeways; maintenance of approach, exit, and frontage roads; lighting facilities.

(1) The department is charged with the maintenance of any freeway, including approach or exit roads thereto or part thereof whether or not such road is situated within or without the limits of any county, village, or city, including cities of the metropolitan and primary classes, except as hereinafter provided otherwise; *Provided,* that responsibility for maintenance of frontage roads shall automatically become the responsibility of the county or city in which they are located unless the department contracts to maintain them.

(2) The responsibility of the department for the maintenance of approach and exit roads shall end at the point where such roads terminate, merge, or intersect with city streets or county roads, except as hereinafter provided.

(3) The department is charged with the maintenance of the separation structure of any bridge situated overhead of a freeway except for ice treatment and removal of snow from such structures; *Provided,* that the department shall not be liable for the maintenance of the approaches to such separation structures or of anything outside the abutments to such separation structures.

(4) The department shall be responsible for construction of lighting facilities upon any part of the roadway of a freeway, including approach or exit roads thereto; *Provided,* that the maintenance and operation of such lighting facilities located within the limits of any city or village shall become the responsibility of such city or village.

(5) Nothing contained in this section shall be construed to prevent the department from entering into special agreements with cities or villages regarding the reconstruction and maintenance of freeways, including approach or exit roads thereto within the limits of such cities or villages.

Source: Laws 1961, c. 184, § 6, p. 552.

39-1373. Repealed. Laws 1973, LB 45, § 125.

39-1374. Repealed. Laws 1973, LB 45, § 125.

39-1375. Repealed. Laws 1973, LB 45, § 125.

39-1376. Repealed. Laws 1973, LB 45, § 125.

39-1377. Repealed. Laws 1973, LB 45, § 125.

39-1378. Repealed. Laws 1973, LB 45, § 125.

39-1379. Repealed. Laws 1973, LB 45, § 125.

39-1380. Repealed. Laws 1973, LB 45, § 125.

39-1381. Repealed. Laws 1973, LB 45, § 125.

39-1382. Repealed. Laws 1973, LB 45, § 125.

39-1383. Repealed. Laws 1973, LB 45, § 125.

39-1384. Repealed. Laws 1973, LB 45, § 125.

39-1385. Repealed. Laws 1973, LB 45, § 125.

39-1386. Repealed. Laws 1973, LB 45, § 125.

39-1387. Repealed. Laws 1973, LB 45, § 125.

39-1388. Repealed. Laws 1973, LB 45, § 125.

39-1389. Repealed. Laws 1973, LB 45, § 125.

(l) STATE RECREATION ROADS

39-1390. State Recreation Road Fund; created; use; preferences; maintenance; investment.

The State Recreation Road Fund is created. The money in the fund shall be transferred by the State Treasurer, on the first day of each month, to the department and shall be expended by the Director-State Engineer with the approval of the Governor for construction and maintenance of dustless-surface roads to be designated as state recreation roads as provided in this section, except that (1) transfers may be made from the fund to the State Park Cash Revolving Fund at the direction of the Legislature through July 31, 2016, and (2) if the balance in the State Recreation Road Fund exceeds fourteen million dollars on the first day of each month, the State Treasurer shall transfer the amount greater than fourteen million dollars to the Game and Parks State Park Improvement and Maintenance Fund. Except as to roads under contract as of March 15, 1972, those roads, excluding state highways, giving direct and immediate access to or located within state parks, state recreation areas, or other recreational or historical areas, shall be eligible for designation as state recreation roads. Such eligibility shall be determined by the Game and Parks Commission and certified to the Director-State Engineer, who shall, after receiving such certification, be authorized to commence construction on such recreation roads as funds are available. In addition, those roads, excluding state highways, giving direct and immediate access to a state veteran cemetery are state recreation roads. After construction of such roads they shall

be shown on the map provided by section 39-1311. Preference in construction shall be based on existing or potential traffic use by other than local residents. Unless the State Highway Commission otherwise recommends, such roads upon completion of construction shall be incorporated into the state highway system. If such a road is not incorporated into the state highway system, the department and the county within which such road is located shall enter into a maintenance agreement establishing the responsibility for maintenance of the road, the maintenance standards to be met, and the responsibility for maintenance costs. Any money in the State Recreation Road Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1963, c. 348, § 2, p. 1119; Laws 1965, c. 225, § 1, p. 649; Laws 1965, c. 501, § 1, p. 1595; Laws 1969, c. 584, § 42, p. 2369; Laws 1972, LB 1131, § 1; Laws 1995, LB 7, § 36; Laws 2003, LB 408, § 1; Laws 2009, First Spec. Sess., LB 3, § 20; Laws 2010, LB 749, § 1; Laws 2014, LB 906, § 15; Laws 2015, LB 661, § 30; Laws 2017, LB 339, § 137.

Operative Date: July 1, 2017

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

39-1390.01. State Recreation Road Fund; road projects authorized.

Section 39-1390 shall not prevent the expenditure of funds from the State Recreation Road Fund on road projects (1)(a) that begin upon or terminate within state highway rights-of-way or (b) that are for intersections, interchanges, or connecting ramps located within state rights-of-way, designed to connect roads of the state highway system to recreation roads, and (2) that are to be constructed as part of a recreation road improvement project.

Source: Laws 1988, LB 814, § 1.

39-1391. Exterior access roads; interior service roads; plans; reviewed annually; report; contents.

The Game and Parks Commission shall develop and file with the Governor and the Legislature a one-year plan and a long-range five-year plan of proposed construction and improvements for all exterior access roads and interior service roads as provided in section 39-1390, based on priority of needs and calculated to contribute to the orderly development of an integrated system of roads with the facilities maintained or managed by the Game and Parks Commission. The first such plan shall be filed on or before January 1, 1974. The plans shall be reviewed and extended annually, on or before January 1 of each year, so that there shall always be a current one-year and five-year plan on file. The plans submitted to the Legislature shall be submitted electronically. All plans shall specify the criteria employed in setting the priorities and shall also identify any additional recreation road requirements which may exist but are not

reflected in the one-year and five-year plans. The commission shall also, at the time it files such plans and extensions thereof, report the construction and improvements certified during each of the two immediately preceding calendar years.

Source: Laws 1973, LB 374, § 1; Laws 2012, LB 782, § 41.

39-1392. Exterior access roads; interior service roads; department; develop and file plans with Governor and Legislature; reviewed annually.

The department shall develop and file with the Governor and the Legislature a one-year and a long-range five-year plan of scheduled design, construction, and improvement for all exterior access roads and interior service roads as certified to it by the Game and Parks Commission. The first such plans shall be filed on or before January 1, 1974. The plans shall be reviewed and extended annually, on or before January 1 of each year, so that there shall always be a current one-year and five-year plan on file. The plans submitted to the Legislature shall be submitted electronically. The department shall also, at the time it files such plans and extensions thereof, report the design, construction, and improvement accomplished during each of the two immediately preceding calendar years.

Source: Laws 1973, LB 374, § 2; Laws 2012, LB 782, § 42; Laws 2017, LB 339, § 138.
Operative Date: July 1, 2017

(m) VEGETATION CONTROL PROGRAM

39-1393. Vegetation control program; permits for cutting or trimming of vegetation; fee; applicant; duties.

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

(2) The department may charge a fee in an amount reasonably calculated to defray the cost of administering the vegetation control program and may adjust the fee periodically to ensure continued recovery of administrative costs, except that such fee shall not exceed fifty dollars. The applicant to whom the permit is issued shall furnish the department with a cash deposit or certified check upon a solvent bank or a surety bond in a guaranty company qualified to do business in Nebraska. The deposit, check, or bond shall be in an amount required by the department and shall be furnished on the condition that the sum be forfeited to the state in the event that the conditions of the permit or rules and regulations adopted and promulgated by the department are violated. The applicant for a permit shall sign a release acknowledging that he or she will assume all risk and liability for any accidents and damages that may occur as a result of

the work done as the permitholder. The applicant shall provide proof of liability insurance of at least one million dollars. The permitholder shall be responsible for compensating the state for loss or damage to state property, including, but not limited to, intentional vegetation, and for restoring state property to its preexisting condition as determined in the sole discretion of the department. Permits are subject to all state and federal environmental laws, rules, and regulations. Each approved permit shall grant written consent to encroach onto the state's right-of-way pursuant to section 39-1359.

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

Source: Laws 2016, LB 1038, § 11.

ARTICLE 14

COUNTY ROADS, GENERAL PROVISIONS

Cross References

Bridge construction and repair, bonds, see sections 23-397 and 23-398.

Section

39-1401. Terms, defined.

As used in Chapter 39, articles 14 to 20, except sections 39-1520.01 and 39-1908, unless the context otherwise requires:

(1) County board shall mean the board of county commissioners in commissioner-type counties and the board of county supervisors in township counties;

(2) Public roads shall mean all roads within this state which have been laid out in pursuance of any law of this state, and which have not been vacated in pursuance of law, and all roads located and opened by the county board of any county and traveled for more than ten years; and

(3) County road unit system shall mean the administration of county and township roads as provided in sections 39-1513 to 39-1518.

Source: Laws 1957, c. 155, art. I, § 1, p. 508.

Because Nebraska statutes vest the powers of a county in a "county board," which term is defined to encompass both boards of supervisors existing under township organization and boards of county commissioners in counties not under township organization, the adoption of township organization does not alter the basic powers of a county. Butler County Dairy v. Butler County, 285 Neb. 408, 827 N.W.2d 267 (2013).

Under Nebraska statutes, the broadest designation for a road is that of public road. Butler County Dairy v. Butler County, 285 Neb. 408, 827 N.W.2d 267 (2013).

39-1402. Public roads; supervision by county board.

General supervision and control of the public roads of each county is vested in the county board. The board shall have the power and authority of establishment, improvement, maintenance and abandonment of public roads of the county and of enforcement of the laws in relation thereto as provided by the provisions of Chapter 39, articles 14 to 20, except sections 39-1520.01 and 39-1908.

Source: Laws 1957, c. 155, art. I, § 2, p. 509.

In the case of a road that is located within both a county and a township, the county board and the township board have concurrent authority over that road. Butler County Dairy v. Butler County, 285 Neb. 408, 827 N.W.2d 267 (2013).

The exercise of a county's authority over township roads can supersede a township's concurrent authority over those same roads. Butler County Dairy v. Butler County, 285 Neb. 408, 827 N.W.2d 267 (2013).

The power of general supervision of public roads vested in county boards by this section is neither exclusive nor mandatory. Butler County Dairy v. Butler County, 285 Neb. 408, 827 N.W.2d 267 (2013).

Under Nebraska statutes, the general supervision of public roads is vested in both county boards and township boards. Butler County Dairy v. Butler County, 285 Neb. 408, 827 N.W.2d 267 (2013).

With respect to public roads, a county which vacates a road while retaining a right-of-way has a duty to exercise such degree of care as would be exercised by a reasonable county under the same circumstances. Blaser v. County of Madison, 285 Neb. 290, 826 N.W.2d 554 (2013).

This section and section 31-740 authorize concurrent authority in a county and a sanitary and improvement district to maintain and improve public roads within the boundaries of the sanitary and improvement district. SID No. 2 of Stanton County v. County of Stanton, 252 Neb. 731, 567 N.W.2d 115 (1997).

This section outlines a county's authority over public roads within the county. State ex rel. Scherer v. Madison Cty. Comrs., 247 Neb. 384, 527 N.W.2d 615 (1995).

The County Board is vested with general supervision and control of the public roads located in its county as provided in this section. Art-Kraft Signs, Inc. v. County of Hall, 203 Neb. 523, 279 N.W.2d 159 (1979).

The statutory definition of public roads makes no distinction between county roads and township roads for the general purpose of this section. Art-Kraft Signs, Inc. v. County of Hall, 203 Neb. 523, 279 N.W.2d 159 (1979).

39-1403. Roads on county or township line; deviation from line.

Any public road that is or shall hereafter be laid out on a county or township line shall be held to be a road on a county or township line, although, owing to the topography of the ground along the county or township line, or at the crossing of any stream of water, the proper authorities, in establishing or locating such road, may have located a portion of the same to one side of such county or township line.

Source: Laws 1957, c. 155, art. I, § 3, p. 509.

39-1404. Public grounds, interests in; cannot arise by operation of law.

No privilege, franchise, right, title, right of user, or other interest in or to any street, avenue, road, thoroughfare, alley or public grounds in any county, city, municipality, town, or village of this state, or in the space or region under, through or above any such street, avenue, road, thoroughfare, alley, or public grounds, shall ever arise or be created, secured, acquired, extended, enlarged or amplified by user, occupation, acquiescence, implication, or estoppel.

Source: Laws 1957, c. 155, art. I, § 4, p. 509.

Title by prescription cannot be obtained to all or any part of state highway. State v. Merritt Brothers Sand & Gravel Co., 180 Neb. 660, 144 N.W.2d 180 (1966).

39-1405. Streets in unincorporated villages and sanitary and improvement districts; powers and duties of county or township authorities; liability for damages.

(1) All public streets of unincorporated villages are a part of the public roads and shall be worked and maintained by the respective county or township authorities.

(2) The county board may, after the clearance of snow and ice from the county road system, clear snow and ice from all public streets of incorporated sanitary and improvement districts in the same manner as if such streets were part of the county road system.

Any county board performing such snow and ice clearance in a sanitary and improvement district shall not be held liable for any damages arising from such snow and ice clearance unless damages arise as a result of gross negligence.

(3) The county board of commissioners in counties having a population of sixty thousand inhabitants or more may enter into contracts with incorporated associations of homeowners representing at least fifty individual housing units which are located wholly within the county and are not part of any sanitary and improvement district or incorporated municipality for the provision of road maintenance services or snow and ice removal services on nonpublic roads which serve the homeowner association. Such contracts shall provide for payment to the county of an amount which fairly represents the cost to the county of providing such additional services.

Source: Laws 1957, c. 155, art. I, § 5, p. 509; Laws 1975, LB 211, § 1; Laws 1986, LB 1131, § 1; Laws 1994, LB 501, § 5.

Subsection (1) of this section requires counties to maintain the public roads within unincorporated villages. Subsection (2) of this section permits, but does not obligate, a county to perform snow and ice clearance in a sanitary and improvement district. State ex rel. Scherer v. Madison Cty. Comrs., 247 Neb. 384, 527 N.W.2d 615 (1995).

39-1406. Repealed. Laws 1985, LB 393, § 18.

39-1407. County road improvement projects; lettings; procedure; county board may authorize Department of Transportation to conduct; contractors' bonds.

Whenever contracts are to be let for road improvements, it shall be the duty of the county board to cause to be prepared and filed with the county clerk an estimate of the nature of the work and the cost thereof. After such estimate has been filed, bids for such contracts shall be advertised by publication of a notice thereof once a week for three consecutive weeks in a legal newspaper of the county prior to the date set for receiving bids. Bids shall be let to the lowest responsible bidder. The board shall have the discretionary power to reject any and all bids for sufficient cause. If all bids are rejected, the county board shall have the power to negotiate any contract for road improvements, but the county board shall adhere to all specifications that were required for the initial bids on contracts. The board shall have the discretionary power to authorize the Department of Transportation to take and let bids on behalf of the county at the offices of the department in Lincoln, Nebraska. When the bid is accepted the bidder shall enter into a sufficient bond for the use and benefit of the county, precinct, or township, for the faithful performance of the contract, and for the payment of all laborers employed in the performance of the work, and for the payment of all damages which the county, precinct, or township may sustain by reason of any failure to perform the work in the manner stipulated. It shall be the duty of the county to determine whether or not the work is performed in keeping with such contract before paying for the same.

Source: Laws 1957, c. 155, art. I, § 7, p. 510; Laws 1972, LB 1058, § 12; Laws 1975, LB 114, § 2; Laws 2017, LB 339, § 139.
Operative Date: July 1, 2017

39-1408. County or township roads; emergencies; authority of county or township boards.

When an emergency or unusual condition exists requiring immediate action in order to preserve a county or township road or provide for safe conditions, the county board as to county roads within the county and the township board as to township roads within the township, or some person to whom such board has delegated such authority, may cause necessary repairs to be made, necessary services to be provided, or may contract for such repairs, or services without calling for competitive bids.

Source: Laws 1957, c. 155, art. I, § 8, p. 510.

39-1409. Labor on roads; wages fixed by county board.

Any person performing labor on roads shall receive the wages fixed by the county board in each county for such labor.

Source: Laws 1957, c. 155, art. I, § 9, p. 511.

39-1410. Section lines declared roads; opening; damages, appraisal and allowance; government corners, how perpetuated.

The section lines are hereby declared to be public roads in each county in the state, and the county board may whenever the public good requires it open such roads without any preliminary survey and cause them to be worked in the same manner as other public roads; *Provided,* any damages claimed by reason of any such road shall be appraised and allowed in the manner provided by law. The county board shall cause existing government corners along such line to be perpetuated by causing to be planted monuments of some durable material, with suitable witnesses, and causing a record to be made of the same and, if government corners are lost or obliterated, the county board shall cause the corners to be located in the manner provided in the manual of instruction for government surveys. The county board shall cause such work to be performed by the county surveyor or, if there is no county surveyor in the county, by some other competent land surveyor.

Source: Laws 1957, c. 155, art. I, § 10, p. 511.

A county cannot open a section line road without giving notice to the landowners, hearing the landowners' claim for damages, or appointing appraisers and making provisions for the payment of the landowners' damages; if it attempts to do so it is trespassing. Olson v. Bonham, 212 Neb. 548, 324 N.W.2d 260 (1982).

39-1411. Road and bridge records, who must keep; carrying capacity posted on bridges.

The county highway superintendent or some other qualified person designated by the county board shall keep in his office a road record which shall include a record of the proceedings in regard to the laying out, establishing, changing, or discontinuing of all roads in the county hereafter established, changed or discontinued, and a record of the cost and maintenance of all such roads. Such person shall record in the bridge record, a record of all county bridges and culverts showing number, location and description of each, and a record of the cost of construction and maintenance of all such bridges and culverts. Such person shall cause to be firmly posted or attached upon each bridge in a conspicuous place at each end thereof a board or metal sign showing the carrying capacity or weight which the bridge will safely carry or bear.

Source: Laws 1957, c. 155, art. I, § 11, p. 511.

Cross References

Road record, duties of county clerk, see section 23-1305.

County held liable for injuries resulting from collapse of bridge where county highway superintendent failed to replace a weight limit sign. Hansmann v. County of Gosper, 207 Neb. 659, 300 N.W.2d 807 (1981).

39-1412. County bridges; loads exceeding posted capacity; no damage recovery; penalty.

Any person driving across or going upon any county bridge with a greater weight than the carrying capacity or weight posted or attached thereupon as provided in section 39-1411, shall

recover no damages from the county because of any accident or injury which may happen to him upon such bridge. Such person shall, for entering upon any such bridge with a greater weight than the carrying capacity or weight posted thereupon as provided in section 39-1411, be guilty of a Class III misdemeanor.

Source: Laws 1957, c. 155, art. I, § 12, p. 512; Laws 1977, LB 40, § 214.

ARTICLE 15

COUNTY ROADS, ORGANIZATION AND ADMINISTRATION

(a) COUNTY HIGHWAY BOARD

(b) COUNTY HIGHWAY SUPERINTENDENT

(c) COUNTY ROAD UNIT SYSTEM

(d) ROADS IN COUNTIES UNDER TOWNSHIP ORGANIZATION

(a) COUNTY HIGHWAY BOARD

39-1501. Highway superintendent or road unit system counties; county boards; general powers and duties.

The county board, in commissioner-type counties having a county highway superintendent and in township-type counties having adopted a county road unit system as provided in sections 39-1513 to 39-1518, shall:

(1) Have general supervision over all the duties and responsibilities of the county highway superintendent and shall make necessary policies and regulations to effect an efficient road administration in conformity with the laws of the State of Nebraska;

(2) Appoint and fix the salary of a county highway superintendent in counties having a population of less than one hundred thousand inhabitants according to the most recent official United States census; *Provided,* that in counties having a population of less than eighteen thousand inhabitants and less than five commissioners the appointment of a county highway superintendent shall be optional with the county board unless a petition is filed with the county clerk as provided by section 39-1502; *and provided further,* that the county board may appoint and fix the salary of a county highway superintendent jointly with one or more other counties and determine the portion of the salary to be paid by the county for its share of the use of a county highway superintendent serving the cooperating counties;

(3) Have authority to coordinate in an effective manner the highway programs and activities of the county with the related activities of the State of Nebraska and all governmental subdivisions thereof;

(4) Have authority to enter into agreements with the federal government or any department or agency of the federal government, the state or any political or governmental subdivision or public corporation of this state, or with a citizen or group of citizens of this state respecting the planning, designating, financing, establishing, constructing, improving, maintaining, using, altering, relocating or vacation of highways, roads, streets, connecting links or bridges, and in such instances may cooperate with the state or with such subdivisions or public corporations on such terms as may be mutually agreed upon; and

(5) Maintain roads in unincorporated areas if such roads are dedicated to the public and are first improved to minimum standards as established by the county board. In a zoning area of a municipality such standards shall be the higher of those established either by the county or the municipality. Future improvements may be undertaken pursuant to the provisions of Chapter 39, article 16.

Source: Laws 1957, c. 155, art. II, § 1, p. 512; Laws 1974, LB 893, § 1.

39-1502. Highway superintendent; optional appointment in certain commissioner counties; protests; election.

The county board, in a county having a population of less than eighteen thousand inhabitants and less than five commissioners, shall appoint and fix the salary of a county highway superintendent whenever a petition for such appointment is signed by ten percent of the legal voters in the county voting for Governor at the last general election and is filed with the county clerk. If a petition protesting such appointment is signed by ten percent of the legal voters in the county and is filed with the county clerk within ninety days from the filing date of the petition for appointment, the county board shall submit the question to the electors. Within ten days from the filing of the petition for appointment, the county board shall publish notice that such petition has been filed, and such notice shall be published once a week for three consecutive weeks in a legal newspaper published in the county or, if none is published in the county, in a legal newspaper of general circulation in the county. If no petition in protest is filed or if a majority of the votes cast are in favor of appointing a county highway superintendent, the county board shall appoint and fix the salary of such superintendent within six months from the filing of the petition for appointment or from the date of balloting as the case may be.

Source: Laws 1957, c. 155, art. II, § 2, p. 513; Laws 1986, LB 960, § 27.

39-1502.01. Highway superintendent; abolition; procedure.

When a county highway superintendent has been appointed following an election held pursuant to section 39-1502, such position may be abolished at any general election after two years from the date of such election in the same manner as the appointment was approved.

Source: Laws 1961, c. 199, § 1, p. 602.

39-1503. Highway superintendent or road unit system counties; county boards; duties.

It shall be the duty of the county board in commissioner-type counties having a county highway superintendent and in township-type counties having adopted a county road unit system to:

(1) Give notice to the public of the date set for public hearings upon the proposed county highway program of the county highway superintendent for the forthcoming year by publication once a week for three consecutive weeks in a legal newspaper published in the county or, if none is published in the county, in a legal newspaper of general circulation in the county. The notice shall clearly state the purpose, time, and place of such public hearings;

(2) Adopt a county highway annual program no later than March 1 of each year which shall include a schedule of construction, repair, and maintenance projects and the order of priority of such projects to be undertaken and carried out by the county and a list of equipment to be purchased and the priority of such purchases, within the limits of the estimated funds available during the next twelve months;

(3) Adopt standards to be applied in road and bridge repair, maintenance, and construction;

(4) Advertise for and take and let bids for all or any portion of the county road work when letting bids, except that when the Department of Transportation takes bids on behalf of the county, the county shall have authority to permit such bids to be taken and let at the offices of the department in Lincoln, Nebraska; and

(5) Cause investigations, studies, and inspections to be made, hold public hearings, and do all other things necessary to carry out the duties imposed upon it by law.

Source: Laws 1957, c. 155, art. II, § 3, p. 514; Laws 1969, c. 333, § 3, p. 1190; Laws 1986, LB 960, § 28; Laws 2017, LB 339, § 140.

Operative Date: July 1, 2017

39-1504. Commissioner counties; no highway superintendent; county board or designee to perform duties.

In commissioner-type counties not having a county highway superintendent, the county board, or some other qualified person designated by the county board, shall assume and perform the powers and duties of the county highway superintendent.

Source: Laws 1957, c. 155, art. II, § 4, p. 515.

39-1505. Bridges, numbering; duties of county board; highway history, highway superintendent to keep.

For the purpose of assisting the county highway superintendent in making and keeping the bridge record, the county board shall adopt a system of numbering all county bridges, and place and keep on each bridge a plain and substantial number, and furnish to the county highway superintendent a complete inventory of all bridges so numbered. The superintendent shall keep all maps, charts, plans, and specifications of such roads and bridges so as to preserve, as nearly as possible, a complete history of the roads of the county.

Source: Laws 1957, c. 155, art. II, § 5, p. 515.

(b) COUNTY HIGHWAY SUPERINTENDENT

39-1506. County highway superintendent; qualifications.

Any person, whether or not a resident of the county, who is a duly licensed engineer in this state, any firm of consulting engineers duly licensed in this state, or any other person who is a competent, experienced, practical road builder shall be qualified to serve as county highway superintendent, except that no member of the county board shall be eligible for appointment. In counties having a population of sixty thousand but less than one hundred fifty thousand inhabitants according to the most recent official United States census, the county surveyor shall

perform all the duties and possess all the powers and functions of the county highway superintendent. In counties having a population of one hundred fifty thousand or more inhabitants, the county engineer shall serve as county highway superintendent.

Source: Laws 1957, c. 155, art. II, § 6, p. 515; Laws 1982, LB 127, § 9; Laws 1986, LB 512, § 3; Laws 2017, LB 200, § 4.

Effective Date: August 24, 2017

39-1507. Highway superintendent; powers; bond; annual inventory.

The county highway superintendent shall have control, government, and supervision of all the public roads and bridges in the county under the general supervision and control of the county board. Before entering upon the duties of his office he shall execute to the county a bond in the sum of five thousand dollars, to be approved by the county board, conditioned for the faithful performance of his duties, and to account for all funds and property that may come into his possession. The county highway superintendent shall prepare and file an annual inventory statement of county personal property in his custody or possession as provided in sections 23-346 to 23-350.

Source: Laws 1957, c. 155, art. II, § 7, p. 515.

39-1508. Highway superintendent; duties.

It shall be the duty of the county highway superintendent to:

(1) Submit to the county board no later than February 1 of each year a proposed annual program, to be known as the county road annual program, proposing a schedule of construction, repair, maintenance and supervision of county roads and bridges, including federal-aid secondary road projects and a list of equipment and material purchases to be undertaken and carried out by the county within the limits of the estimated funds of the county during the next twelve months;

(2) File with the county clerk no later than February 1 of each year a revised and current map of the county roads clearly distinguishing the primary and secondary roads and indicating the past year's improvements thereon; and

(3) Undertake the projects contained in the county road annual program in the order therein stated, and when requested by the county board report the projects completed, the projects in construction, and equipment and material purchased, the amounts expended upon roads and bridges and the sum remaining to be expended; *Provided,* that in case of an emergency deviations from the adopted program may be authorized by the unanimous vote of the county board.

Source: Laws 1957, c. 155, art. II, § 8, p. 516.

39-1509. Highway superintendent; interest in public contracts prohibited; reports to county board; neglect of duty; removal from office.

The county highway superintendent shall not be interested directly or indirectly in any contract with the county, and shall render at any time an accounting of his acts and doings to the county board when requested by it so to do; and he may be removed from office by such board at any time upon failure to perform the duties of his office.

Source: Laws 1957, c. 155, art. II, § 9, p. 516.

39-1510. Highway superintendent; office; plat records of public roads.

The county highway superintendent shall be provided by the county with a suitable office which may be in the office or room occupied by the county board or elsewhere, as the board may choose, and he shall keep in his office plat records showing accurately all public roads and highways established in the county.

Source: Laws 1957, c. 155, art. II, § 10, p. 517.

39-1511. Highway superintendent; construction work, duty to superintend; road claims; approval.

The county highway superintendent shall be the superintendent of construction of all roads, bridges, culverts, road ditch improvements, and their maintenance, and make or cause to be made plans and specifications, when requested by the county board, for all road improvements, bridges, and culverts. All bills for payment of work on the county roads, bridges, culverts, or ditches shall be approved by the county highway superintendent before being allowed by the county board, and charged against the road or bridge to which it belongs and upon which it was expended, in the bridge and road records kept in the office of the superintendent.

Source: Laws 1957, c. 155, art. II, § 11, p. 517.

39-1512. Highway superintendent; annual report; contents.

The county highway superintendent prior to February 1 of each year shall file a written annual report with the county board of all work performed in constructing, improving and maintaining the public roads, bridges, culverts, and ditches of the county, showing the amount of funds available for road work during the year, the amount expended and the balance; the amount of funds available from the state as federal matching funds, if any, the amount thereof used by the county; the number of miles of road established during the year and the location thereof; and the equipment and material purchased or otherwise obtained or disposed of.

Source: Laws 1957, c. 155, art. II, § 12, p. 517.

(c) COUNTY ROAD UNIT SYSTEM

39-1513. County road unit system; optional for township counties; procedure for adoption.

In the event of the filing with the county clerk of a petition signed by ten percent of the qualified electors in the county, the board of county supervisors shall adopt the provisions of the county road unit system by resolution at the next regular meeting of the board. The resolution shall be published once a week for three consecutive weeks in a legal newspaper published in the county or, if none is published in the county, in a legal newspaper of general circulation in the county. The adoption of the county unit plan shall take effect ninety days after the date of the first publication of the resolution providing for such adoption or any later date designated by the resolution, but not later than one year after the date of the first publication of the resolution unless before the effective date of adoption there is filed with the county clerk a petition signed by ten percent of the qualified electors in the county protesting such adoption. In that event, the board of county supervisors shall submit the question of a county road unit system to the electors of the respective counties.

Source: Laws 1957, c. 155, art. II, § 13, p. 517; Laws 1959, c. 167, § 4, p. 610; Laws 1986, LB 960, § 29.

39-1514. County road unit system; abandonment; outstanding contracts.

Any county which adopts the county road unit system may at any general election after two years from the date of such adoption abandon the county road unit system and return to the county and township system; *Provided,* that every outstanding contract made by such county while operating under the provisions of the county road unit system be fully satisfied and complied with.

Source: Laws 1957, c. 155, art. II, § 14, p. 518.

39-1515. County road unit system; abandonment; election.

The election to determine whether the county road unit system shall be abandoned shall be called by the board of county supervisors upon the presentation of a petition signed by at least ten percent of the qualified electors of the county. Such petition shall be filed by the petitioners with the county clerk. At any such election, the votes shall be taken for and against the county road unit system and if the majority of the votes cast at such election be against the county road unit system, then the county shall be restored to the county and township road system.

Source: Laws 1957, c. 155, art. II, § 15, p. 518.

39-1516. County road unit system; adoption; transfer of township funds.

Upon the adoption of the county road unit system in any county, the township board of any township in such county shall forthwith pay over to the county treasurer of such county any and all unused money or funds or surplus funds in the hands of such township board which have been received or acquired by such township from any source for road purposes or for the purchase of machinery, equipment, or material for the construction and maintenance of roads. Upon receipt of said funds and money, the county treasurer shall credit the same to a special fund for each such township and the board of county supervisors shall expend the special fund for the construction and maintenance of roads in the township from which it was received, which expenditure shall be in addition to funds expended by the county in such township from the regular county road and bridge fund. The county treasurer shall likewise credit and transfer to the special fund of each township all tax money in his hands on the date the county road unit system is adopted which were received by him in payment of taxes levied by such township for road purposes and all such taxes thereafter collected by him, and he shall likewise credit and transfer to the special fund all other money in his hands on the date of adoption of the county road unit system which were received by him for the use of such township for road purposes.

Source: Laws 1957, c. 155, art. II, § 16, p. 518.

39-1517. County road unit system; adoption; township equipment and material, transfer and appraisal; outstanding township contracts.

Upon the adoption of the county road unit system in any county, the township board of any township in such county shall forthwith turn over and deliver to the board of county supervisors of such county any and all road machinery, equipment, and material which such township has acquired for the purpose of construction and maintaining township roads. Upon making such delivery, the township board shall file with the county clerk the name of some qualified elector of such township who shall be an appraiser on behalf of the township of such machinery, equipment, or material. Within ten days, after the filing of the name of the township elector with the county clerk, the board of county supervisors shall file with the county clerk the name of a qualified elector of the county who does not reside in such township who shall be the representative of the county as an appraiser of such machinery, equipment, or material. Within five days thereafter, the township appraiser and county appraiser shall meet and select a third appraiser. The three appraisers shall constitute a board of appraisers for the purpose of fixing the value of the road machinery, equipment, and material so delivered to the county by the township and they shall forthwith make such appraisal. In making such appraisal, the board of appraisers shall deduct the amount, if any, which the township board owes for any such machinery, equipment, and material to any person from whom leased or purchased. The report of such appraisal shall be certified by the board of appraisers and filed in the office of the county clerk and the county treasurer. Each of such appraisers shall receive the sum of fifteen dollars for making such appraisal which shall be paid by the board of supervisors from the county road and bridge fund. Within two years after the filing of such appraisal, the board of supervisors shall expend for the construction and maintenance of roads in the township from which such road machinery, equipment, and material was received an amount of money equivalent to the

appraised value of such machinery, equipment, and material which expenditure shall be in addition to funds expended by the county in such township from the regular county road and bridge fund. If any of such machinery, equipment, and material so delivered to the county was purchased or leased by the township under a contract of purchase or lease and such contracts provide that the township upon making further payments would receive title to the machinery, equipment, and material, the county shall assume the contracts as to future payments and be liable therefor, which payments shall be made from the county road and bridge fund. Upon the adoption of the county road unit system all copies of such contracts in the hands of the township board shall forthwith be delivered by the township clerk to the county clerk.

Source: Laws 1957, c. 155, art. II, § 17, p. 519.

39-1518. County road unit system; adoption; settlements with townships; warrants and tax levy.

If the county board of supervisors determines that there are insufficient funds in the county road and bridge fund to compensate a township for the transfer of road machinery, equipment, and material for the construction and maintenance of roads within that township or to pay the cost of making payments on the contracts of purchase or lease of road machinery, equipment, and material assumed by the county under section 39-1517, the board may issue registered warrants for the purpose of paying such costs. The total amount of such warrants issued shall not exceed the total appraised value of all such road machinery and equipment received from all townships plus the amount necessary to make such payments on the contracts of purchase or lease of road machinery, equipment, and material assumed by such county. The proceeds received from the sale of the warrants shall only be used for the purpose for which the warrants are authorized to be issued. Whenever any county board of supervisors issues warrants under this section, the board shall levy a tax upon the taxable value of the taxable property in such county at the first tax-levying period after such warrants are issued sufficient to pay the warrants and the interest on such warrants. If the board deems it advisable not to make all of such levy in any one year, then the board may make an annual tax levy at not more than the next three tax-levying periods occurring after the issuance of the warrants, the total of which levies shall be sufficient to pay the warrants and the interest.

Source: Laws 1957, c. 155, art. II, § 18, p. 520; Laws 1992, LB 1063, § 35; Laws 1992, Second Spec. Sess., LB 1, § 35.

(d) ROADS IN COUNTIES UNDER TOWNSHIP ORGANIZATION

39-1519. Township counties without county road unit system; sections applicable.

The provisions of sections 39-1519 to 39-1527 shall relate only to those counties under the township organization not operating under a county road unit system as provided in sections 39-1513 to 39-1518.

Source: Laws 1957, c. 155, art. II, § 19, p. 521; Laws 1959, c. 167, § 5, p. 610.

Cross References

For other applicable provisions in township counties not having road unit system, see sections 23-228 and 23-265.

39-1520. Township highway superintendent; powers; compensation; failure of overseer to obey.

All township road and culvert work shall be under the general supervision of the township board, except as hereinafter provided in this section. At the first regular board meeting in each year the board shall select one of its number to be township highway superintendent, under whose direction all township road and culvert work shall be done. Compensation for directing road and culvert work shall be fixed at the annual town meeting. If any overseer shall neglect or refuse to obey the directions of the township highway superintendent, he shall be subject to removal by the township board, and his office may be declared vacant and be filled by appointment by the township board, which appointee shall hold office until his successor is elected.

Source: Laws 1957, c. 155, art. II, § 20, p. 521; Laws 1959, c. 181, § 10, p. 657.

In the case of a road that is located within both a county and a township, the county board and the township board have concurrent authority over that road. Butler County Dairy v. Butler County, 285 Neb. 408, 827 N.W.2d 267 (2013).

The exercise of a county's authority over township roads can supersede a township's concurrent authority over those same roads. Butler County Dairy v. Butler County, 285 Neb. 408, 827 N.W.2d 267 (2013).

Under Nebraska statutes, the general supervision of public roads is vested in both county boards and township boards. Butler County Dairy v. Butler County, 285 Neb. 408, 827 N.W.2d 267 (2013).

39-1520.01. Township counties without county road unit system; road districts; creation.

The county board under township organization in counties not operating under the county road unit system shall divide the county, except the portion occupied by the cities and incorporated villages, into as many road districts as may be necessary, and alter the boundaries thereof as may seem proper; *Provided,* in no case shall any road district be so constituted as to be within the limits of two distinct voting precincts or townships.

Source: Laws 1959, c. 181, § 11, p. 658; Laws 1973, LB 75, § 19.

Cross References

For road districts in commissioner counties having seven or more commissioners, see section 39-1637.

39-1521. Bridges over streams; construction; maintenance; expense borne by county.

In counties under township organization the expense of building, maintaining, and repairing bridges over streams on all public roads of the county or township shall be borne exclusively by the county within which such bridges are located.

Source: Laws 1957, c. 155, art. II, § 21, p. 522.

39-1522. Township roads; damages for right-of-way; expenses; payment from general road fund; division of tax levy; expenditure.

The payment of damages for the right-of-way of any public road and the payment for services of county highway superintendent, surveyor, chainmen, and other persons engaged in locating, establishing, or altering any public road, if the road be finally established or altered as provided by law, shall be paid by the county treasurer out of the general road fund of the county upon warrants drawn thereon in the manner provided by law for the other payments out of such fund. Where cities and villages are located within the boundaries of any township, one-half of all money collected from the levy, except that part of the levy raising funds for township library or cemetery purposes, provided in section 23-259 on property within the corporate limits of such cities and villages, shall be paid by the county treasurer to the treasurer of such city or village, and such money when paid to the treasurer thereof shall be expended by the proper officers thereof for maintenance and repair of the streets and alleys of such city or village.

Source: Laws 1957, c. 155, art. II, § 22, p. 522; Laws 1959, c. 181, § 12, p. 658; Laws 1965, c. 226, § 1, p. 650.

39-1523. Township road contracts; payment from township fund; bond issues for bridge construction or repair.

Where any contract is let by the township board, the expense of which is to be borne exclusively by the township, it shall be paid from the township fund; *Provided,* if, under any law of this state, bonds are voted to aid in the building or repairing of any bridge, the expense shall be paid by such bonds or the proceeds thereof.

Source: Laws 1957, c. 155, art. II, § 23, p. 522.

39-1524. Township roads; construction or repair; appropriations from county treasury; how obtained.

When it shall be necessary to build, construct, or repair any road in any township, which would be an unreasonable burden to the same, the cost of which will be more than can be raised in one year by the levy provided in section 23-259, the township board shall present a petition to the county board of the county in which such township is situated, praying for an appropriation from the county treasury to aid in the building, constructing, or repairing of such road, and such county board may, by a majority vote of all the elected members thereof, make an appropriation of so much for that purpose as in its judgment the nature of the case requires and the funds of the county will justify; such appropriation to be expended under the supervision of an authorized agent or agents of the county, if the county board shall so order. In such case, where the county

grants aid as provided in this section, the contract shall be let by the township board, under the provisions of law relating to letting contracts by county boards.

Source: Laws 1957, c. 155, art. II, § 24, p. 522.

This section and section 39-1907, when read together, contemplate that both counties and townships may build and improve public roads within a township. Butler County Dairy v. Butler County, 285 Neb. 408, 827 N.W.2d 267 (2013).

39-1524.01. Repealed. Laws 1973, LB 75, § 20.

39-1525. Repealed. Laws 1973, LB 75, § 20.

39-1526. Repealed. Laws 1973, LB 75, § 20.

39-1527. Change from commissioner to township form of government; use of county road fund for maintenance of township roads.

It shall be lawful in all counties changing from the commissioner form of government to township organization, for such counties to continue for a period of one year after adoption of township organization to use funds from the county road fund to maintain township roads.

Source: Laws 1957, c. 155, art. II, § 27, p. 523.

ARTICLE 16

COUNTY ROADS, ROAD IMPROVEMENT DISTRICTS

Cross References

Municipal annexation of special improvement districts, see sections 31-763 to 31-766.
Refunding bonds, procedure for issuance, see sections 10-615 to 10-617.

(a) SPECIAL IMPROVEMENT DISTRICTS

Section

(b) ROAD DISTRICTS

(c) RURAL ROAD IMPROVEMENT DISTRICT

(a) SPECIAL IMPROVEMENT DISTRICTS

39-1601. Special improvement districts; petition for organization; dissolution; procedure; disposition of funds.

(1) Whenever a petition, (a) containing a definite description of the territory to be embraced, (b) designating the name of the proposed district, and (c) signed by ten percent of the landowners within the limits of a proposed road improvement district is presented and filed with the county board of the county in which the greater portion of the area of the proposed district is located, the county board of any such county shall cause the question to be submitted to the legal voters of such proposed road improvement district as provided in section 39-1605. If fifty-five percent of those voting on the question are in favor of the proposition, the district shall be organized. No lands included within any municipal corporation shall be included in any road improvement district.

(2) Any road improvement district can be dissolved, if there are no outstanding debts, by the board of trustees of any such district, on its own motion or on the request in writing of ten electors, submitting at a special election, after due notice by publication in the manner provided for in subsection (1) of section 39-1604, the question of dissolution of the road improvement district. The special election shall be conducted by mail as provided in sections 32-953 to 32-959. If fifty-one percent of the votes cast on the question at such election are in favor of such dissolution, the board of trustees shall cause a record of such election and the vote thereon to be made in the office of the county clerk in the county in which the election was held to create the district, and the district shall thereupon stand dissolved. An election shall not be required for the dissolution of the district if a petition requesting the district be dissolved, signed by fifty percent of the owners of property located within the district, is presented to the county board of the county. The county board shall determine the sufficiency of the petition and dissolve the district by an order of such board.

(3) In case a district is dissolved pursuant to this section, the funds on hand or to be collected shall be held by the county treasurer in a separate fund, and the trustees of the district shall petition the district court of the county in which the election to form the district was held, for an order approving the distribution of funds to the landowners or easement owners as a dividend on the same basis as collected.

Source: Laws 1957, c. 155, art. III, § 1, p. 523; Laws 2007, LB 248, § 1.

39-1602. Organization with temporary board of trustees; procedure; contracts of temporary board; duties of county board.

Whenever the petition mentioned in subsection (1) of section 39-1601 shall (1) be signed by twenty percent of the landowners within the proposed limits of any such district, (2) contain a list of five legal voters who are owners of property and reside in the proposed district, (3) contain a request that the county board appoint from this list a temporary board of three trustees, and (4) authorize the board to (a) consult with and employ competent independent engineers as to the cost and feasibility of the construction of improvements, (b) consult with other firms or

authorities on the feasibility of financing such improvements, and (c) enter into such contracts with attorneys and others which, in the judgment of the temporary board, are necessary in order to properly present the question of formation of the district to the voters therein, the county board shall give notice, by posting such notice in three conspicuous places in the district, that such a petition has been filed and that a temporary board will be appointed as requested. Such notice shall remain posted for ten days, contain the entire wording of the petition, and advise that if fifty percent of the property owners within the proposed district shall file written objections within ten days from the date the notice is first posted, objecting to the appointment of such a temporary board, no board shall be appointed; *Provided,* any such contract entered into by the temporary board shall be binding upon the board of trustees subsequently elected, in accordance with sections 39-1605 and 39-1606, but shall not be binding on the county or counties wherein the district is located if the district is not created. On the date recommended by the temporary board of trustees, the county board of the county, where the petition was filed, shall call a special election as provided in section 39-1605.

Source: Laws 1957, c. 155, art. III, § 2, p. 525.

39-1603. Engineering services; duties of county board; estimate of cost.

Upon the filing of such petition in the office of the county board wherein the greater portion of the area of the proposed district is located, such county board shall engage the professional engineers, who have furnished engineering to the resident petitioners, who shall prepare an estimate of the cost of paving or improving certain road or roads within the district and file such estimate with the county board.

Source: Laws 1957, c. 155, art. III, § 3, p. 525; Laws 1997, LB 622, § 60.

39-1604. No temporary board; petition; notice; hearing; order.

(1) If no temporary board of trustees is appointed, then not later than four weeks after the filing of such petition in the office of the county board of the county wherein the greater portion of the area of the proposed district is located, such county board shall give notice by publication, in one or more newspapers having a general circulation in the proposed district, once each week during the two weeks prior to such meeting of the time and place where the petition will be heard.

(2) At the time and place so fixed in accordance with subsection (1) of this section, the county board of such county shall meet for a hearing in regard to the formation of such a district as proposed. All persons in such proposed road improvement district shall have an opportunity to be heard touching the location and boundary of the proposed district. Within one week after said meeting, the county board, referred to in subsection (1) of this section, shall by an order determine as to the formation of the district and the boundaries thereof, whether the same way such boundaries are described in such petition or otherwise. If a majority of the resident property owners of such proposed road improvement district shall file written protests, within ten days after the first publication of the notice, the county board shall abandon all such proceedings.

Source: Laws 1957, c. 155, art. III, § 4, p. 526.

39-1605. Organization; special election; ballot form; first board of trustees.

After the determination by the county board, or a majority thereof, as provided by subsection (2) of section 39-1604, it shall call a special election and submit to the legal voters of the proposed road improvement district the question of the organization of such district and the election of a board of trustees who shall be resident taxpayers. Notice of such election shall be given as provided in subsection (1) of section 39-1604. At such election each legal voter resident within the proposed road improvement district shall have a right to cast a ballot with the words thereon, For road improvement district, or Against road improvement district. The special election shall be conducted by mail as provided in sections 32-953 to 32-959. The result of such election shall be entered of record. If fifty-five percent of the votes cast are in favor of the proposed district, such proposed district shall be deemed an organized road improvement district. At the same election there shall be elected three members of a board of trustees. Such members so elected shall be the first board of trustees of such district if the formation of the district is so approved at such election. Such board of trustees shall hold office until their successors are elected and qualified under the provisions of section 39-1606. It shall elect a president and clerk substantially as is provided for in sections 39-1606 and 39-1609.

Source: Laws 1957, c. 155, art. III, § 5, p. 526; Laws 2007, LB 248, § 2.

39-1606. Board of trustees; members; election; filing fee; term; compensation; district; name.

(1) Any resident property owner desiring to file for the office of trustee of a road improvement district may file for such office with the county clerk or election commissioner of the county in which the greater proportion in area of the district is located, not later than forty-five days before the election, by paying a filing fee of five dollars.

(2)(a) The term of office of every member of a board of trustees of a road improvement district existing on January 1, 2008, shall be extended to the first Monday in October following the expiration of the original term. Their successors shall be elected for terms of six years at elections held on the first Tuesday after the second Monday in September of odd-numbered years. The term of office shall begin on the first Monday in October after the election.

(b) The successors to the initial board of trustees of a road improvement district shall be elected on the first Tuesday after the second Monday in September of the first odd-numbered year which is at least fifteen months after the organization of the district pursuant to section 39-1605. One trustee shall be elected for a term of two years, one trustee for a term of four years, and one trustee for a term of six years, and thereafter their respective successors shall be elected for terms of six years at succeeding elections held on the first Tuesday after the second Monday in September of odd-numbered years. The term of office shall begin on the first Monday in October after the election.

(c) Elections under this subsection shall be conducted by mail as provided in sections 32-953 to 32-959.

(3) At the first meeting of the trustees of such district after the election of one or more members, the board shall elect one of their number president. Such district shall be a body corporate and politic by name of Road Improvement District No. ..... of ..... County or ..... Counties, as the case may be, with power to sue, be sued, contract, acquire and hold property, and adopt a common seal. Each trustee shall receive as his or her salary the sum of five dollars for each meeting.

Source: Laws 1957, c. 155, art. III, § 6, p. 527; Laws 1994, LB 76, § 552; Laws 2007, LB 248, § 3.

39-1607. Trustees; failure to qualify; vacancy; how filled.

If any trustee fails to qualify within sixty days after receipt of the certificate of election, the office to which he or she was elected shall be declared vacant. Any vacancy in the board of trustees from any cause may be filled by the remaining trustees until the next election pursuant to section 39-1606. At such election a trustee shall be elected by the voters of the district for the balance of the unexpired term of such trustee, if any.

Source: Laws 1957, c. 155, art. III, § 7, p. 528; Laws 2007, LB 248, § 4.

39-1608. Trustees; bond; amount; conditions; premium; suit on bond.

Each trustee of any such district shall, prior to entering upon his office, execute and file with the county clerk of the county in which said district, or the greater portion of the area thereof, is located, his bond with one or more sureties, to be approved by the county clerk, running to the district in the penal sum of five thousand dollars, conditioned for the faithful performance by said trustee of his official duties and the faithful accounting by him for all funds and property of the district that shall come into his possession or control during his term of office. The premium, if any, on any such bond shall be paid out of the funds of the district. Suit may be brought on such bonds by any person, firm, or corporation that has sustained loss or damage in consequence of the breach thereof.

Source: Laws 1957, c. 155, art. III, § 8, p. 528.

39-1609. Trustees; clerk; engineer; rules and regulations; publication of proceedings.

The board of trustees shall elect one of their members clerk and have the power to appoint, employ, and pay an engineer, who shall be removable at the pleasure of the board. The clerk may be paid not to exceed twelve hundred dollars per year by said board. The board shall have the power to pass all necessary ordinances, resolutions, orders, rules and regulations for the necessary conduct of its business and to carry into effect the objects for which such road improvement district is formed. Immediately after each regular and special meeting of the board, it shall cause to be published, in one newspaper of general circulation in the district, a brief

statement of its proceedings including an itemized list of bills and claims allowed, specifying the amount of each, to whom paid, and for what purpose; *Provided,* no publication shall be required unless the same can be done at an expense not exceeding one-third of the rate of the publication of legal notices.

Source: Laws 1957, c. 155, art. III, § 9, p. 528.

39-1610. Trustees; powers.

The board of trustees of any road improvement district, created by sections 39-1601 to 39-1609, shall have the power to grade, establish grade, change grade, pave, repave, gravel, regravel, macadamize, remacadamize, widen or narrow roads, resurface or relay existing pavement, or otherwise improve any road or roads, or parts thereof, at public cost or by levy of special assessment on the property especially benefited thereby, proportionate to benefits; *Provided,* that none of the improvements hereinbefore named shall be ordered, except as provided in section 39-1611 or 39-1612.

Source: Laws 1957, c. 155, art. III, § 10, p. 529.

39-1611. Trustees; improvements; petition of abutting landowners.

Whenever a petition signed by sixty percent of the resident landowners abutting on or adjacent to any road, highway, or street in the district shall be presented and filed with the clerk of the board of trustees, petitioning therefor, the board of trustees shall (1) by resolution cause such work to be done or such improvement to be made, (2) contract therefor, and (3) levy assessments as provided in sections 39-1623 to 39-1625.

Source: Laws 1957, c. 155, art. III, § 11, p. 529.

39-1612. Trustees; improvements without petition; notice; protests.

Whenever the board of trustees shall deem it necessary to make any of the improvements of any road, highway, or street named in section 39-1610, without the filing of the petition referred to in section 39-1611, it shall so determine by resolution of the board. The board shall thereupon publish a notice of the improvements to be made in one or more newspapers having a general circulation in the district once each week during two consecutive weeks. If a majority of the resident owners of land abutting on or adjacent to such road, highway, or street in the district shall file with the clerk of the board of trustees, within twenty days after the first publication of said notice, written objections to the making of said improvements, said improvements shall not be made as provided in said resolution, referred to in section 39-1611, and the resolution shall be repealed. If the objections are not filed against the improvement in the time and manner provided by this section, the board of trustees shall forthwith cause such work to be done or such

improvement to be made, contract therefor, and levy assessments, as set forth in sections 39-1623 to 39-1625 to pay the cost thereof.

Source: Laws 1957, c. 155, art. III, § 12, p. 529.

39-1613. Protests or petitions; determination of sufficiency.

The sufficiency of the protests or petitions, referred to in sections 39-1611 and 39-1612 as to the ownership of land, shall be determined by the record in the office of the county clerk or register of deeds, of the county or counties where the lands of the district are located, at the time of the adoption of said resolution. In determining the sufficiency of the petitions or objections, intersections shall be disregarded, and any lot of ground owned by the county shall not be counted for or against such improvement.

Source: Laws 1957, c. 155, art. III, § 13, p. 530.

39-1614. Assessments; lien; certification.

All assessments shall be a lien on the property on which levied from the date of levy. The board of trustees of such road improvement district shall cause such assessments, or portion thereof remaining unpaid, to be certified to the county clerk of the county or counties for entry upon the proper tax lists as more particularly set forth in section 39-1625.

Source: Laws 1957, c. 155, art. III, § 14, p. 530.

39-1615. Assessment; payment; delinquency; interest.

One-tenth of the total amount assessed against each lot or parcel of land shall become delinquent in fifty days after the date of such levy; one-tenth in one year; one-tenth in two years; one-tenth in three years; one-tenth in four years; one-tenth in five years; one-tenth in six years; one-tenth in seven years; one-tenth in eight years; and one-tenth in nine years, unless a different number of yearly payments shall be fixed by the board of trustees as permitted under section 39-1626. Each of such installments, except the first, shall draw interest at a rate not exceeding the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, payable annually, from the time of the levy, provided for by sections 39-1601 to 39-1636, until the same shall become delinquent; and after the same becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon from the date the same is delinquent until paid; *Provided,* all of the installments may be paid at one time on any lot or land within fifty days from the date of such levy without interest. If so paid within fifty days, such lot or land shall be exempt from any lien or charge therefor.

Source: Laws 1957, c. 155, art. III, § 15, p. 530; Laws 1961, c. 200, § 1, p. 602; Laws 1980, LB 933, § 28; Laws 1981, LB 167, § 29.

39-1616. Bonds; issuance; payment; interest.

For the purpose of paying the cost of grading, paving, repaving, graveling, regraveling, macadamizing, remacadamizing, or improving the road or roads in any road improvement districts, the board of trustees shall have the power and may, by resolution, cause to be issued bonds of the road improvement district to be called Assessment Paving Bond of Road Improvement District No. ... of ..... County or ..... Counties, as the case may be. Such paving bonds shall be payable within the time provided by section 39-1627. They shall bear interest payable annually or semiannually, with interest coupons attached, payable serially, to be issued in such denominations as may be deemed advisable.

Source: Laws 1957, c. 155, art. III, § 16, p. 531; Laws 1969, c. 51, § 105, p. 338.

39-1617. Sinking fund; investments authorized.

Pending final redemption of bond or bonds for improving the road, roads, highway, or street, the county treasurer is hereby authorized to invest such sinking fund in interest-bearing time certificates of deposit in depositories approved and authorized to receive county money, but in no greater amount in any depository than the same is authorized to receive deposits of county funds; and the interest arising from such certificate of deposit shall be credited to its respective sinking fund as provided by sections 39-1601 to 39-1636.

Source: Laws 1957, c. 155, art. III, § 17, p. 531.

39-1618. Assessments; school district, county, or quasi-municipal corporation; lands subject to.

If, in any road improvement district, there shall be any real estate belonging to any county, school district, or other quasi-municipal corporation, adjacent to or abutting upon the road, roads, highways, or street upon which the improvement has been ordered it shall be the duty of the county board, board of education, or other proper officers to provide for the payment of such special assessments or taxes as may be assessed against the real estate so adjacent or abutting, or within such road improvement district, belonging to the county, school district, or quasi-municipal corporation. In the event of a neglect or refusal to do so, the road improvement district may recover the amount of such special taxes or assessments in any proper action. Any such judgment so obtained may be enforced in the usual manner.

Source: Laws 1957, c. 155, art. III, § 18, p. 532.

39-1619. Intersections; roads adjacent to federal or state lands; assessments; intersection paving bonds; term; interest; warrants.

(1) For the payment of all improvements of the intersections and areas formed by the crossing of roads or alleys and one-half of the roads adjacent to real estate owned by the United States or the State of Nebraska, the assessment shall be made upon the taxable value of all the taxable property in such road improvement district and shall be levied in the manner referred to in subsection (1) of section 39-1621, and for the payment of such improvements, the board of trustees is hereby authorized to issue paving bonds of the road improvement district, in such denominations as it deems to be proper, to be called Intersection Paving Bonds, payable over the life of the improvements and in no event exceeding twenty years from date. Such bonds shall bear interest payable annually or semiannually, with interest coupons attached. For the prompt payment of such bonds, the full faith and credit of all the property in the district is pledged. Such bonds shall not be issued until the work is completed and then not in excess of the cost of the improvements.

(2) For the purpose of making partial payments as the work progresses, warrants may be issued by the board of trustees upon certificates of the engineer in charge showing the amount of the work completed and materials necessarily purchased and delivered for the orderly and proper continuation of the project, in a sum not exceeding ninety-five percent of the cost thereof, which warrants shall be redeemed and paid upon the sale of the bonds referred to in subsection (1) of this section and in section 39-1616 when issued and sold. The bonds may be sold or delivered to the contractor in payment at not less than par. The district shall pay to the contractor interest at the rate of eight percent per annum on the amounts due on partial and final payments, beginning forty-five days after the certification of the amounts due by the engineer in charge and approval by the governing body and running until the date that the warrant is tendered to the contractor.

Source: Laws 1957, c. 155, art. III, § 19, p. 532; Laws 1969, c. 51, § 106, p. 339; Laws 1975, LB 112, § 8; Laws 1979, LB 187, § 158; Laws 1992, LB 719A, § 139.

39-1620. Contracts; letting of bids; notice.

All contracts for work to be done, the expense of which is more than five hundred dollars, shall be let to the lowest responsible bidder, upon notice of not less than twenty days of the terms and conditions of the contract to be let. The board of trustees shall have power to reject any and all bids and readvertise for the letting of such work.

Source: Laws 1957, c. 155, art. III, § 20, p. 533.

39-1621. Budget; taxes; levy; limitation; certification; collection; disbursement.

(1) The board of trustees may, after adoption of the budget statement for such district, annually levy and collect the amount of taxes provided in the adopted budget statement of the district to be received from taxation for corporate purposes upon property within the limits of such road improvement district to the amount of not more than three and five-tenths cents on each one hundred dollars upon the taxable value of the taxable property in such district for general maintenance and operating purposes subject to section 77-3443. The board shall, on or before September 20 of each year, certify any such levy to the county clerk of the counties in which such district is located who shall extend the levy upon the county tax list.

(2) The county treasurer of the county in which the greater portion of the area of the district is located shall be ex officio treasurer of the road improvement district and shall be responsible for all funds of the district coming into his or her hands. The treasurer shall collect all taxes and special assessments levied by the district and collected by him or her from his or her county or from other county treasurers if there is more than one county having land in the district and all money derived from the sale of bonds or warrants. The treasurer shall not be responsible for such funds until they are received by him or her. The treasurer shall disburse the funds of the district only on warrants authorized by the trustees and signed by the president and clerk.

Source: Laws 1957, c. 155, art. III, § 21, p. 533; Laws 1969, c. 145, § 35, p. 694; Laws 1979, LB 187, § 159; Laws 1992, LB 1063, § 36; Laws 1992, Second Spec. Sess., LB 1, § 36; Laws 1993, LB 734, § 39; Laws 1995, LB 452, § 12; Laws 1996, LB 1114, § 57.

39-1622. Special assessments; special benefits; general benefits; levy; lien.

The board of trustees of the road improvement district shall, in addition to its other powers, levy a special assessment to the extent of special benefits conferred the cost of such portion of such improvements as are local improvements upon property found specially benefited thereby which shall be a lien as provided by section 39-1614 when properly levied and certified as required by sections 39-1601 to 39-1636. The board of trustees of such district may find the remainder of the cost of such improvements made are of general benefit to the district and the costs thereof shall be paid from taxes levied against all the property in the district in the manner provided for by subsection (1) of section 39-1621.

Source: Laws 1957, c. 155, art. III, § 22, p. 534; Laws 1959, c. 182, § 1, p. 663; Laws 2015, LB 361, § 54.

39-1623. Improvements; plat; benefits; schedule of proposed special assessments; notice; hearing.

After the completion of any improvements, the engineer shall file with the clerk of the district a complete statement of all the costs of such improvement, a plat of the property in the district specially benefited thereby, and a schedule of the amount proposed to be assessed against

each separate piece of property as a special assessment. A copy of the plat and a schedule of the proposed special assessment shall be filed in the office of the county clerk of the county in which the greater portion of the area of the district is located for public inspection. The trustees of the district shall then order the clerk of the district to give notice that the plat and schedule are on file with the county clerk where the plat and schedule are kept for examination, and that all objections thereto or to prior proceedings on account of errors, irregularities, or inequalities not made in writing and filed with the clerk of the district within twenty days after first publication of the notice shall be deemed to have been waived. Such notice shall be given by publication, once each week during two consecutive weeks, in a newspaper of general circulation in the district and whenever possible by giving notice in writing by either registered or certified mail to the owner of each separate piece of property against which a special assessment is proposed. The notice shall state the time and place where objections are to be filed. The time of such hearing shall be determined in the manner stated in section 39-1624. Any objections so filed shall be considered by the trustees of the district.

Source: Laws 1957, c. 155, art. III, § 23, p. 534; Laws 2015, LB 361, § 55.

39-1624. Proposed special assessments; hearing; equalization; consent.

The hearing on the proposed assessment shall be held by the trustees of the district sitting as a board of adjustment and equalization at the time and place specified in the notice provided for by section 39-1623. Such date of hearing shall not be less than twenty days nor more than thirty days after the first publication of the notice thereof, unless such session be adjourned with provisions for proper notice of such adjournment. At such meeting the proposed assessment shall be adjusted and equalized with reference to benefits resulting from the improvement and shall not exceed such benefits. If the owners of all properties on which special assessments are proposed to be assessed file a consent in writing with the clerk of the district to the proposed assessment, the notice and meeting for adjustment, as provided in this section and section 39-1623, need not be given or had.

Source: Laws 1957, c. 155, art. III, § 24, p. 535.

39-1625. Special assessments; levy; relevy; certification.

After the equalization of such special assessments, as herein required, the same shall be levied by the trustees of the district upon all lots or parcels of ground within the district which are especially benefited by reason of the improvement, as set forth in sections 39-1601 to 39-1636. The same may be relevied if, for any reason, the levy thereof is void, or not enforceable, and in an amount not exceeding the previous levy. Such levy shall be enforced as other special assessments and any payments thereof under any previous levies shall be credited to the person or property making the same. The levy when made shall be certified by the clerk of the district to the county clerk of the county in which the property to be assessed is located and collected by the county treasurer in the same manner as general taxes and shall be subject to the same penalties.

Source: Laws 1957, c. 155, art. III, § 25, p. 535.

39-1626. Special assessments; when delinquent; interest.

All special assessments provided for by sections 39-1601 to 39-1636 shall become due fifty days after date of levy and may be paid within that time without interest, but if not so paid shall bear interest as provided in section 39-1615. Such assessments shall become delinquent as stated in section 39-1615, or otherwise in equal annual installments over such period of years as the board of trustees may determine at the time of making the levy.

Source: Laws 1957, c. 155, art. III, § 26, p. 536.

39-1627. Assessment paving bonds; amount; term; sinking fund.

For the purpose of paying the costs of the assessment portion of the work, the district shall issue its negotiable assessment paving bonds, referred to in section 39-1616, in an amount determined by deducting the special assessments paid within the period provided in section 39-1626 from the total assessment costs. The bonds shall mature in not more than twenty years as determined by the board of trustees of the district. The assessments plus interest collected after the fifty-day waiting period shall be deposited in an assessment bond sinking fund and, if for any reason, the assessments so collected are not sufficient to pay the assessment bonds when due, it shall be the mandatory duty of the board of trustees of the district to cause to be collected as a tax in the manner referred to in subsection (1) of section 39-1621 against all the property in the district sufficient to make good such deficiencies so that the assessment bonds shall be paid promptly at their respective due dates.

Source: Laws 1957, c. 155, art. III, § 27, p. 536.

39-1628. Bonds; issuance; approval by district court.

The board of trustees of a road improvement district organized under the provisions of sections 39-1601 to 39-1636 shall, before issuing any bonds of such district, commence special proceedings, as provided for by section 39-1629, in and by which the proceedings of the board and of the district providing for and authorizing the issuance of the bonds of the district shall be judicially examined, approved, and confirmed, or disapproved and disaffirmed.

Source: Laws 1957, c. 155, art. III, § 28, p. 536.

39-1629. Bonds; approval by district court; petition; contents.

The board of trustees of the district shall, as directed in section 39-1628, file in the district court of the county in which the lands of the district, or the greater portion thereof, are situated, a

petition praying in effect that the proceedings may be examined, approved, and confirmed by the court. The petition shall state the facts showing the proceedings had for issuance of the bonds, and shall state generally that the road improvement district was duly organized, and that the first board of trustees was duly elected. The petition need not state the facts showing such organization of the district or the election of the first board of trustees. A person or persons owning or desirous of purchasing such bonds when issued may bring such action, if the board shall fail to do so, or may become a party to any such action commenced by the board of trustees of such a district.

Source: Laws 1957, c. 155, art. III, § 29, p. 537.

39-1630. Bonds; approval by district court; hearing; notice.

The court shall fix the time for the hearing of the petition, and shall order the clerk of the court to give and publish a notice of the filing of the petition. The notice shall be given as is provided by subsection (1) of section 39-1604, unless other or different notice is fixed by the court. The notice shall state the time and place fixed for the hearing of the petition, the prayer of the petition, and that any person interested in the organization of the district, or in the proceedings for the issuance of the bonds, may, on or before the day fixed for the hearing of the petition, move to dismiss the petition or answer thereto. The petition may be referred to and described in the notice as the petition of ..... (giving its name) praying that the proceedings for the issuance of such bonds of such district may be examined, approved, and confirmed by the court.

Source: Laws 1957, c. 155, art. III, § 30, p. 537; Laws 1959, c. 167, § 6, p. 611.

39-1631. Bonds; approval by district court; interested parties; pleadings.

Any person, interested in the district or in the issuance of the bonds thereof, may move to dismiss the petition or answer thereto. The provisions of the Code of Civil Procedure respecting motions and answer to a petition shall be applicable to motions and answer to the petition in such special proceedings. The persons filing motions or answering the petition shall be the defendants to the special proceedings, and the board of trustees shall be the plaintiff. Every material statement of the petition not specially controverted by the answer must, for the purpose of such special proceedings, be taken as true. Each person failing to answer the petition shall be deemed to admit as true all the material statements of the petition. The rules of pleading and practice provided by the Code of Civil Procedure, which are not inconsistent with the provisions of sections 39-1601 to 39-1636, are applicable to the special proceedings herein provided for.

Source: Laws 1957, c. 155, art. III, § 31, p. 537.

39-1632. Bonds; jurisdiction of district court; trial; judgment; costs; determination of validity.

Upon the hearing of such special proceedings, the court shall have power and jurisdiction to examine and determine the legality and validity of, and approve and confirm, or disapprove and disaffirm, each and all of the proceedings for the organization of such district under sections 39-1601 to 39-1636 from and including the petition for the organization of the district and all other proceedings which may affect the legality or validity of the bonds. The court, in inquiring into the regularity, legality, or correctness of such proceedings, must disregard an error, irregularity, or omission which does not affect the substantial rights of the parties to such special proceedings. It may approve and confirm such proceedings in part and disapprove and declare illegal or invalid other and subsequent parts of the proceedings. The court shall, among other things, find and determine whether the notice of the filing of the petition has been duly given and published for the time and in the manner prescribed in sections 39-1601 to 39-1636. The costs of the special proceedings may be allowed and apportioned between the parties in the discretion of the court. If the court shall determine the proceedings for the organization of the district and the issuing of the bonds legal and valid, the board of trustees shall then prepare a written statement beginning with the filing of the petition for the organization of the district, including all subsequent proceedings for the organization of the district and the issuing of the bonds, and ending with the decree of the court finding the proceedings for the organization of the district and the proceedings for the voting and issuing of the bonds legal and valid. The written statement shall be certified under oath by the board of trustees of the district.

Source: Laws 1957, c. 155, art. III, § 32, p. 538; Laws 2001, LB 420, § 28.

39-1633. Agreements with county, state, and federal governments; proration of costs; application of payments and contributions.

The district may enter into agreements with the State of Nebraska, the federal government, or the county or counties in which the district is located, whereby certain portions of the costs will be assumed and paid by any or all of such agencies and such payments or contributions shall be applied by the board of trustees to reduce such costs and assessments to the property owners of the district.

Source: Laws 1957, c. 155, art. III, § 33, p. 539.

39-1634. Maintenance of improvements; county responsibility; reimbursement by district.

The maintenance and care of the improvements shall be performed by the county or counties in which such district is located but the district shall reimburse the county or counties for such costs up to the limits of funds provided for in the adopted budget statement which are available from the maintenance tax, after paying other costs of operation of the district from such tax.

Source: Laws 1957, c. 155, art. III, § 34, p. 539; Laws 1969, c. 145, § 36, p. 695; Laws 1979, LB 187, § 160.

39-1635. Repealed. Laws 1959, c. 130, § 5.

39-1636. Improvements; plans and specifications; court validation proceedings and decree; filing.

Each time any improvement is made to any road, street, or highway in the district, a copy of the plans and specifications shall be filed in the office of the county highway superintendent of the county or counties in which such district is located. After the court decree of validation has been entered, a copy of the pleadings and showings, as well as the final decree of the court, shall be filed in the office of the county clerk and the county engineer in the county or counties in which the road improvement district is located.

Source: Laws 1957, c. 155, art. III, § 36, p. 539.

39-1636.01. Road lighting system; petition; special assessment; limitation.

If a petition signed by sixty percent of the electors of any district is filed with the county clerk of the county in which such district is located, the board of trustees of any road improvement district may contract for the installment, maintenance, and operation of road lighting systems sufficient to light any road in the district or any portion thereof when, in the judgment of the board of trustees, the lighting of such road or any portion thereof is in the interest of public safety. The cost of installing, maintaining, and operating such road lighting systems shall be levied as a special assessment against the real property specially benefited thereby in proportion to the benefit received. No such special assessment shall exceed thirty-five cents on each one hundred dollars upon the taxable valuation of such property.

Source: Laws 1961, c. 201, § 1, p. 604; Laws 1979, LB 187, § 161; Laws 1992, LB 719A, § 140; Laws 2015, LB 361, § 56.

(b) ROAD DISTRICTS

39-1637. Road districts; commissioner counties; seven or more commissioners; assessment; levy; limitation; fund; use.

In counties under a seven or more commissioner form of government, each former township shall be a road district and fifty-one percent of the resident freeholders of such district may petition the county board of the county in which such district is located to levy an assessment of not to exceed two and one-tenth cents on each one hundred dollars upon the taxable value of all the taxable property in such district subject to section 77-3443. Upon receipt of the petition, the

board of county commissioners shall make the assessment as requested on the taxable value of all the taxable property in such district at the valuation fixed by the assessor or board of equalization, to be levied and collected the same as other taxes. Such taxes shall (1) be and become a part of the district road fund in which the same are levied, (2) be used exclusively in improving the public highways in such district, and (3) not be transferred to any other fund. The board of county commissioners shall designate the road or roads in such district where such levy shall be expended.

Source: Laws 1957, c. 155, art. III, § 37, p. 540; Laws 1979, LB 187, § 162; Laws 1992, LB 719A, § 141; Laws 1996, LB 1114, § 58.

Cross References

Road districts in township counties without road unit system, see section 39-1520.01.

(c) RURAL ROAD IMPROVEMENT DISTIRCT

39-1638. Rural road improvement district; terms, defined.

For purposes of the Rural Road Improvement District Act, unless the context otherwise requires:

(1) Persons shall include individuals, corporations, partnerships, and limited liability companies;

(2) Board, board of county commissioners, or board of county supervisors shall mean the governing body of the county; and

(3) Improvement shall mean the completed road and all work incidental thereto.

Source: Laws 1963, c. 213, § 1, p. 680; Laws 1981, LB 200, § 1; Laws 1993, LB 121, § 212.

39-1639. Resolution; contents.

Any county may establish and construct new roads, change or extend existing roads, and improve such roads by grading, surfacing, draining and incidental work by the board on its own initiative declaring the advisability or necessity therefor in a proposed resolution, which resolution shall state (1) the road or roads to be improved, (2) if a new road is contemplated, the general location of the new road or changes in location of an existing road, (3) the general description of the proposed improvement, and if the road is to be surfaced, the materials to be used therefor, (4) a rough estimate of the total cost of the improvement, which may be made by the county surveyor or any engineer or competent person and need not be based on detailed plans and specifications, (5) proposed method of financing, and (6) the outer boundaries of the district in which it is proposed to levy special assessments.

Source: Laws 1963, c. 213, § 2, p. 680; Laws 1981, LB 200, § 2.

39-1640. Petition; filing; contents.

When a petition is filed with the county clerk signed by persons owning not less than twenty-five percent of the area in the proposed district requesting the formation of a district, the governing body of the county in which the proposed district is located shall prepare and propose the resolution as provided in section 39-1639. The petition shall state the improvements desired and the property to be included in the district.

Source: Laws 1963, c. 213, § 3, p. 681.

39-1641. Petition; hearing; notice.

The board shall set a time and place for hearing on the proposed resolution and give notice thereof by publication in a newspaper of general circulation in the county on the same day each week during two successive weeks immediately prior to such meeting and posting such notice in three conspicuous places in the proposed district.

Source: Laws 1963, c. 213, § 4, p. 681.

39-1642. Petition; hearing; objections; resolution of county board; contents.

If persons owning more than fifty percent in area of the real property in the proposed district file with the county clerk prior to the time set for hearing written objections to the formation of the district stating the reasons for their objections, the resolution shall not be passed. At the hearing, all persons interested in the proposed improvement shall be given an opportunity to be heard on any matters affecting the formation of the district or the improvements to be made therein. The hearing may be continued from time to time to give opportunity to ascertain all pertinent information. At or following said hearing the board may pass the resolution as proposed, amend the resolution and pass the amended resolution, or deny passage of the resolution. The amendments may, among other things, exclude any tracts included in the proposed resolution, include additional property in the district, or change the boundaries of the proposed district.

Source: Laws 1963, c. 213, § 5, p. 681; Laws 1981, LB 200, § 3.

39-1643. Advisory committee; appointment; compensation; expenses.

The board on passing the resolution creating the district shall appoint an advisory committee of not less than three persons residing in the district to advise with the board on all matters affecting the road improvement in the district, financing the cost thereof, and the levy of special assessments. The board may from time to time replace any person who resigns or refuses to act or appoint additional members to the advisory committee. The members of the committees shall

receive no compensation for their services, but may be reimbursed for expenses incurred by them in performing their duties, with reimbursement for mileage to be computed at the rate provided in section 81-1176, and the amount thereof shall be included in the cost of the improvement.

Source: Laws 1963, c. 213, § 6, p. 681; Laws 1981, LB 204, § 60; Laws 1996, LB 1011, § 24.

39-1644. District; name; improvements; contract; county board; gifts and contributions; letting of bids.

The district when formed shall be known as Rural Road Improvement District No. ..... of ..... County. The district shall not include any lands located within a village or city. The board shall proceed as expeditiously as possible to make detailed plans for the improvement and improve the roads as generally outlined in the resolution, but may make such changes in the general plan of improvement found necessary to make the improvement more adequate. The improvement may include culverts, bridges and other drainage work and the county may construct fences along the right-of-way or contract with the adjoining owners to move any existing fences or construct new fences. The county may obtain any property necessary for the improvement by gift, purchase or by eminent domain. The county may accept gifts or contributions to assist in the costs of the improvement and may contract with the state or federal government for assistance in making said improvement and defraying the cost thereof. The county may contract for the entire improvement or any part thereof or may purchase the materials and do part of the work with its own equipment and employees. If the work is done by contract, bids shall be taken and the contract let in the same manner as letting other contracts for county work. The county may employ special engineers and special counsel to assist in the improvement and their compensation shall be considered as a part of the cost of the improvement.

Source: Laws 1963, c. 213, § 7, p. 682.

Authority of county commissioners to establish or extend roads, under the provisions of this act, depends not only upon following the provisions of the act but also upon their acquisition of the necessary right-of-way. State ex rel. Stansbery v. Schwasinger, 205 Neb. 457, 289 N.W.2d 506 (1980).

39-1645. Improvements; cost; partial payment; warrants; interest.

To pay the cost of the improvement as the work progresses the county may issue progress warrants drawn against the rural road improvement fund for the total cost of materials purchased on receipt of the materials, for the right-of-way acquired, for engineering and legal expense, and other incidental expenses, and ninety-five percent of the cost of the work completed and materials necessarily purchased and delivered for the orderly and proper continuation of the project by the contractor as certified by the engineer in charge. On completion of the contract and the acceptance of the improvement by the county, a warrant may be drawn for the balance due the contractor. The warrants shall draw interest at the rate set by the county board. The county shall pay to the contractor interest, at the rate of eight percent per annum on the amounts

due on partial and final payments, beginning forty-five days after the certification of the amounts due by the engineer in charge and approval by the governing body and running until the date that the warrant is tendered to the contractor.

Source: Laws 1963, c. 213, § 8, p. 682; Laws 1969, c. 51, § 107, p. 339; Laws 1975, LB 112, § 9.

39-1646. Rural road improvement fund; establish; county board.

The county shall establish a special fund for each district to be known as rural road improvement district No. ..... fund, and credit to said fund all contributions including money transferred from the county's general fund, all money collected as special assessments, or special levies against the property in the district, and all money received from the sale of the bonds issued under the provisions of section 39-1648. All expenses incurred in connection with the improvement and not paid out of the general funds of the county shall be paid by warrants drawn on said rural road improvement fund.

Source: Laws 1963, c. 213, § 9, p. 683.

39-1647. Assessments; equalization; hearing; notice; publication; lien; interest.

On completion and acceptance of the improvement the engineer in charge shall make and file with the county clerk a statement of the complete cost of the improvements, including interest accruing on the progress warrants. The board with the assistance of the advisory committee and special counsel and engineer in charge shall determine what part of the costs shall be specially assessed to the property in the district and shall prepare a proposed schedule of assessments against all properties in the district deemed specially benefited by the improvements. Any land in the district may be specially assessed for the amount it is specially benefited even though the property does not adjoin the road improved. The board shall fix a time and place when it will sit as a board of adjustment and equalization and give notice thereof by publication on the same day of each week for two consecutive weeks immediately prior to the meeting in a newspaper of general circulation in the county and by mailing a copy of the notice to each record owner of property proposed to be specially assessed. At the meeting the board shall equalize and levy the special assessments. All special assessments provided for in this section shall be a lien on the property from date of levy and shall become due fifty days after date of levy and may be paid within that time without interest but if not so paid they shall bear interest thereafter at a rate established by the board not to exceed the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, until delinquent. Such assessments shall become delinquent in equal annual installments over a period of not to exceed ten years as the board may determine at the time of making the levy. Delinquent installments shall bear interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, until paid and shall be collected in the usual manner for the collection of taxes.

Source: Laws 1963, c. 213, § 10, p. 683; Laws 1981, LB 167, § 30; Laws 1991, LB 63, § 1.

39-1648. Bonds; issuance; sale; maturity; interest; general obligation of county.

On completion and acceptance of the improvement, the county shall issue and sell at not less than par bonds of the county in an amount sufficient to pay the balance of the costs of the improvements, taking into account the amounts collected on special assessments and any funds contributed to the district. The bonds shall mature in not to exceed ten years from their date and bear interest payable annually or semiannually. The bonds shall constitute a general obligation of the county, but all special assessments, special taxes, or contributions made to the district shall constitute a sinking fund for the payment of the bonds. The county shall collect all special assessments and special taxes and levy and collect annually a tax on all taxable property in the county sufficient in rate and amount to pay any deficiency on the amount required to pay both principal and interest on the bonds as the same fall due. The bonds and tax authorized in this section shall be in addition to all other bonds and taxes authorized by law and shall not be included in computing any statutory limitation on the amount of bonds or tax which may be issued or levied by the county.

Source: Laws 1963, c. 213, § 11, p. 684; Laws 1969, c. 51, § 108, p. 340; Laws 1992, LB 719A, § 142.

39-1649. Roads of district; part of county road system; special levy; limitation; receipts; rural road improvement district fund.

When the road improvements have been completed and accepted, the roads shall constitute a part of the county road system and shall be maintained by the county. If the owners of more than fifty percent of the area in the district petition the board for maintenance in excess of that given other similar county roads, the board may levy and collect annually a special levy of not to exceed three and five-tenths cents on each one hundred dollars on all taxable property in the district subject to section 77-3443. The money as collected shall be credited to the rural road improvement district fund and used only for the repair and maintenance of the roads in the district.

Source: Laws 1963, c. 213, § 12, p. 684; Laws 1979, LB 187, § 163; Laws 1992, LB 719A, § 143; Laws 1996, LB 1114, § 59.

39-1650. Advisory committee; enlarge district; proposal filed with county board.

When it shall be deemed advisable by the advisory committee of the district to enlarge the boundaries thereof, and the conditions mentioned in section 39-1639 apply to such enlarged territory, a petition for the enlargement of the district, signed by persons owning not less than twenty-five percent of the territory proposed to be added to the district, may be filed with the county clerk and thereupon the board shall proceed in all respects as provided in sections 39-1640 to 39-1643, so far as applicable.

Source: Laws 1963, c. 213, § 13, p. 685.

39-1651. District; withdrawal; petition; signatures required; hearing; notice; resolution of county board; obligation of district; effect.

A petition seeking the withdrawal of real property from such district, signed by persons owning not less than twenty-five percent of the territory proposed to be withdrawn may be filed with the county clerk. The board shall set a time and place for hearing as set forth in sections 39-1641 and 39-1642. At the hearing the board may pass a resolution permitting the withdrawal of the proposed territory. Any area withdrawn from the district shall be subject to assessment and be otherwise chargeable for the payment and discharge of all the obligations outstanding at the time of filing the petition for withdrawal. An area withdrawn from a district shall not be subject to assessment or otherwise chargeable for any obligations of any nature or kind incurred after the withdrawal of the area from the district.

Source: Laws 1963, c. 213, § 14, p. 685.

39-1652. District; consolidation; petition; hearing; notice; resolution of county board.

Upon the filing of a petition with the county clerk by persons owning not less than twenty-five percent of the territory of each district of the county proposing a consolidation of the districts, the board shall set a time and place for hearing as set forth in sections 39-1641 and 39-1642. At the hearing the board may pass a resolution consolidating the districts petitioning to be consolidated.

Source: Laws 1963, c. 213, § 15, p. 685.

39-1653. District; dissolution; petition; hearing; notice; resolution of county board; funds; disposition.

Upon the filing of a petition for dissolution with the county clerk by persons owning not less than twenty-five percent of the territory of the district, the board shall set a time and place for hearing as set forth in sections 39-1641 and 39-1642. At the hearing the board may pass a resolution dissolving the district. The board shall perform all acts necessary to wind up the

affairs of the district. All funds remaining after discharge of the district's indebtedness shall be deposited in the general fund of the county.

Source: Laws 1963, c. 213, § 16, p. 686.

39-1654. Sections, how construed.

Sections 39-1638 to 39-1655 shall constitute a separate and independent act and shall not be considered as an amendment of any existing law.

Source: Laws 1963, c. 213, § 17, p. 686.

39-1655. Act, how cited.

Sections 39-1638 to 39-1655 shall be known as the Rural Road Improvement District Act.

Source: Laws 1963, c. 213, § 18, p. 686.

ARTICLE 17

COUNTY ROADS, LAND ACQUISITION, ESTABLISHMENT, ALTERATION, SURVEY, RELOCATION, VACATION, AND ABANDONMENT

Cross References

County board, opening and abandonment, roads, general powers of, see section 23-108.

(a) LAND ACQUISITION

(b) ESTABLISHMENT, ALTERATION, AND SURVEY

(a) LAND ACQUISITION

39-1701. County road purposes; property acquisition; eminent domain; power of county board.

When in the judgment of the county board it is necessary or proper for the safety or convenience of the traveling public that additional property be secured for establishment of new roads or for improvement or maintenance of existing roads within the county, such board may on behalf of the county, take, hold and appropriate such property by the exercise of the power of eminent domain, the procedure therefor to be exercised in the manner set forth in Chapter 76, article 7. All costs, expenses, and damages incurred shall be paid out of the general fund of the county or the county road fund.

Source: Laws 1957, c. 155, art. IV, § 1, p. 540; Laws 1973, LB 493, § 1.

39-1702. County road purposes, defined; property acquisition; gift; purchase; exchange; eminent domain; authority of county board; annexation by city or village; effect.

(1) The county board is hereby authorized to acquire, either temporarily or permanently, lands, real or personal property or any interest therein, or any easements deemed to be necessary

or desirable for present or future county road purposes by gift, agreement, purchase, exchange, condemnation, or otherwise. Such lands or real property may be acquired in fee simple or in any lesser estate.

(2) County road purposes, as referred to in subsection (1) of this section, shall include provisions for, but shall not be limited to, the following: (a) The establishment, construction, reconstruction, relocation, improvement, or maintenance of any county road. The right-of-way for such roads shall be of such width as is deemed necessary by the county board; (b) adequate drainage in connection with any road, cut, fill, channel change, or the maintenance thereof; (c) shops, offices, storage buildings and yards, and road maintenance or construction sites; (d) road materials, sites for the manufacture of road materials, and access roads to such sites; (e) the preservation of objects of attraction or scenic value adjacent to, along, or in close proximity to county roads and the culture of trees and flora which may increase the scenic beauty of county roads; (f) roadside areas or parks adjacent to or near any county roads; (g) the exchange of property for other property to be used for rights-of-way or other purposes set forth in this subsection or subsection (1) of this section if the interest of the county will be served and acquisition costs thereby reduced; (h) the maintenance of an unobstructed view of any portion of a county road so as to promote the safety of the traveling public; (i) the construction and maintenance of stock trails and cattle passes; (j) the erection and maintenance of marking and warning signs and traffic signals; and (k) the construction and maintenance of sidewalks and road illumination.

(3) The county board may (a) designate and establish controlled-access facilities, (b) design, construct, maintain, improve, alter, and vacate such facilities, and (c) regulate, restrict, or prohibit access to such facilities so as to best serve the traffic for which such facilities are intended. No road, street, or highway shall be opened into or connected with such facility without the consent of the county board. In order to carry out the purposes of this subsection, the county board may acquire, in public or private property, such rights of access as are deemed necessary. Such acquisitions may be by gift, devise, purchase, agreement, adverse possession, prescription, condemnation, or otherwise and may be in fee simple absolute or in any lesser estate or interest. An adjoining landowner shall not be denied reasonable means of egress and ingress. When a county road adjoins the corporate limits of any city or village, the powers granted in this subsection may be exercised by the governing body of such city or village.

(4) When a city or village annexes a county road, the powers that are granted to the county board in this section and any recorded or prescriptive easement held by the county on the annexed property for road purposes are transferred to and may be exercised by the governing body of the city or village.

Source: Laws 1957, c. 155, art. IV, § 2, p. 541; Laws 1973, LB 493, § 2; Laws 2013, LB 377, § 1.

39-1703. State lands; acquisition for county road purposes; approval of Governor and Department of Transportation; damages.

The county board of any county and the governing authority of any city or village may acquire land owned, occupied, or controlled by the state or any state institution, board, agency, or commission, whenever such land is necessary to construct, reconstruct, improve, relocate, or

maintain a county road or a city or village street or to provide adequate drainage for such roads or streets. The procedure for such acquisition shall, as nearly as possible, be that provided in sections 72-224.02 and 72-224.03. Prior to taking any land for any such purposes, a certificate that the taking of such land is in the public interest must be obtained from the Governor and from the Department of Transportation and be filed in the office of the Department of Administrative Services and a copy thereof in the office of the Board of Educational Lands and Funds. The damages assessed in such proceedings shall be paid to the Board of Educational Lands and Funds and shall be remitted by that board to the State Treasurer for credit to the proper account.

Source: Laws 1957, c. 155, art. IV, § 3, p. 542; Laws 1969, c. 317, § 10, p. 1149; Laws 2017, LB 339, § 141.
Operative Date: July 1, 2017

(b) ESTABLISHMENT, ALTERATION, AND SURVEY

39-1704. County and township roads; establishment or alteration; survey and marking; county and township boards; duties.

Before establishing a new county or township road or before altering the location of an existing county or township road, the county board or the township board, if a township road is being established or altered, shall cause the line of such road to be accurately surveyed and plainly marked; *Provided,* such county board or township board shall be bound to comply with the provisions of this section only to the extent necessary to accurately determine and mark the location of such road.

Source: Laws 1957, c. 155, art. IV, § 4, p. 542.

39-1705. Survey; boundary lines; how marked.

The centerline of a road being altered or established shall be the centerline of survey. Each angle or change of direction must be accurately determined, and the length of each course carefully measured. The distance shall be ascertained to all watercourses and summits of hills along the line thereof where an expenditure of public money or labor will be required. The boundary line of each side of the road shall be marked by substantial stakes driven on the summits of hills, crossings of watercourses, and other convenient places, and in the prairie at reasonable intervals. All stakes driven to indicate said boundary lines shall be marked C. R., the initial letters of County Roads, on the sides facing the road and angles thereof.

Source: Laws 1957, c. 155, art. IV, § 5, p. 542.

39-1706. Survey; monuments; bearing.

Monuments of some durable material shall be firmly established on the centerline of survey at each angle or change of direction, and the bearing taken to any permanent natural or artificial object within a reasonable distance. The distance thereof must be accurately measured and, when the bearing is to a tree, the measurement shall be to the middle of the same.

Source: Laws 1957, c. 155, art. IV, § 6, p. 543.

39-1707. Survey; plat; field notes; filing.

A correct plat of the road, together with the field notes of the surveyor, shall be filed in the office of the county surveyor. Where no regular office is maintained in the county courthouse for the county surveyor such plat and field notes shall be filed with the county clerk.

Source: Laws 1957, c. 155, art. IV, § 7, p. 543.

39-1708. Corner markers; perpetuation; duty of county board; notice of destruction.

It shall be the duty of the county board of each county to cause to be perpetuated the existing corners of land surveys along the public roads and highways where such corners are liable to destruction, either by public travel or construction or maintenance. The board shall cause to be established witness corners in at least two directions and cause such work to be recorded after the manner of other surveys. It shall be the duty of every person supervising the construction, improvement or maintenance of the public roads or highways, to notify the county surveyor of the destruction of any corners of land surveys. If there is no county surveyor in the county, then such notice shall be given to the county board.

Source: Laws 1957, c. 155, art. IV, § 8, p. 543.

Cross References

County surveyor, duties, see sections 23-1907 and 23-1908.

39-1709. Corner markers; loss or destruction; report to county board; liability for failure to report.

Any person having knowledge of the loss or destruction of a corner marker of a land survey, who shall fail or neglect to report the same in writing as provided in section 39-1708 shall be liable for the expense of the resurvey and restoration of such corner, and for any damage sustained by landowners by reason of such failure or neglect.

Source: Laws 1957, c. 155, art. IV, § 9, p. 544.

39-1710. New or altered roads; plats; records; duties of county board.

After a new road has been established or an existing road altered, the county board shall cause the plat of such road to be recorded and platted in the road plat record of the county with a proper reference to the files in the office of the county clerk where the papers relating to the same may be found.

Source: Laws 1957, c. 155, art. IV, § 10, p. 544.

39-1711. Road plat record; contents; entries, when made; duties of county board.

The county board shall cause a road plat record to be kept in which every road that is legally laid out must be platted. Each township shall be platted separately, on a scale of not less than four inches to the mile. All changes in or additions to the roads shall be immediately recorded and entered on the proper page of the road plat record with appropriate reference to the files in the office of the county clerk in which the papers relating to the same may be found.

Source: Laws 1957, c. 155, art. IV, § 11, p. 544.

39-1712. Resurvey; when ordered.

When by reason of the loss or destruction of the field notes of the original survey, or in cases of defective surveys or record, or in cases of such numerous alterations of any road since the original survey that its location cannot be accurately defined by the papers on file in the proper office, the county board may, if it deems it necessary, cause such road to be resurveyed, platted and recorded as provided in sections 39-1705 to 39-1707.

Source: Laws 1957, c. 155, art. IV, § 12, p. 544.

39-1713. Isolated land; access; affidavit; petition; hearing before county board; time; terms, defined.

(1) When any person presents to the county board an affidavit satisfying it (a) that he or she is the owner of the real estate described therein located within the county, (b) that such real estate is shut out from all public access, other than a waterway, by being surrounded on all sides by real estate belonging to other persons, or by such real estate and by water, (c) that he or she is unable to purchase from any of such persons the right-of-way over or through the same to a public road or that it cannot be purchased except at an exorbitant price, stating the lowest price for which the same can be purchased by him or her, and (d) asking that an access road be provided in accordance with section 39-1716, the county board shall appoint a time and place for hearing the matter, which hearing shall be not more than thirty days after the receipt of such affidavit. The application for an access road may be included in a separate petition instead of in such affidavit.

(2) For purposes of sections 39-1713 to 39-1719:

(a) Access road means a right-of-way open to the general public for ingress to and egress from a tract of isolated land provided in accordance with section 39-1716; and

(b) State of Nebraska includes the Board of Educational Lands and Funds, Board of Regents of the University of Nebraska, Board of Trustees of the Nebraska State Colleges, Department of Transportation, Department of Administrative Services, and Game and Parks Commission and all other state agencies, boards, departments, and commissions.

Source: Laws 1957, c. 155, art. IV, § 13, p. 544; Laws 1982, LB 239, § 1; Laws 1999, LB 779, § 4; Laws 2017, LB 339, § 142.

Operative Date: July 1, 2017

Under subsection (2) (now subdivision (1)(b)) of this section, land may be isolated if the land is shut off from all public roads, other than a waterway, by (1) being surrounded on all sides by real estate belonging to other persons or (2) being surrounded on all sides by real estate belonging to others and by water. A writ of mandamus is the proper remedy to compel a county board, in accordance with this section and section 39-1716, to lay out a public road for access to isolated land. Young v. Dodge Cty. Bd. of Supervisors, 242 Neb. 1, 493 N.W.2d 160 (1992).

A road established hereunder is a public road and this section is constitutional. Moritz v. Buglewicz, 187 Neb. 819, 194 N.W.2d 215 (1972).

39-1714. Isolated land; access by private road only; affidavit; petition; hearing before county board.

Whenever all the other conditions prescribed by section 39-1713 are present and, instead of being entirely shut off from all public roads, the only access by any owner of real estate to any public road is by an established private road less than two rods in width, the county board shall, upon the filing of an affidavit or affidavit and petition asking that an access road be provided in accordance with section 39-1716, substantially in the manner set forth in section 39-1713, setting forth such facts, appoint a time and place and hold a hearing thereon in the manner set forth in section 39-1713.

Source: Laws 1957, c. 155, art. IV, § 14, p. 545; Laws 1999, LB 779, § 5.

This section provides that whenever the county board finds that such conditions set forth in section 39-1713 are present and, instead of being entirely shut off from all public roads, that the owner has access to any public road only by an established private road less than 2 rods in width, the county board is required, upon the filing of an affidavit or affidavit and petition to hold a hearing on the matter. Lewis v. Board of Comrs. of Loup Cty., 247 Neb. 655, 529 N.W.2d 745 (1995).

Establishment of a public road upon satisfaction of statutory requirements is a ministerial duty within the power of the county board. Burton v. Annett, 215 Neb. 788, 341 N.W.2d 318 (1983).

39-1715. Isolated land; access; hearing; notice; service; posting.

When a hearing is to be held as provided in sections 39-1713 and 39-1714, the county board shall cause notice of the time and place of the hearing to be given by posting notices thereof in three public places in the county at least ten days before the time fixed therefor. At least fifteen days' written notice of the time and place of the hearing shall be given to all of the owners and

occupants of the lands through which the access road may pass. The notice shall be served personally or by leaving a copy thereof at the usual place of abode of each occupant of such lands and, whenever possible, by either registered or certified mail to the owners of such lands.

Source: Laws 1957, c. 155, art. IV, § 15, p. 545; Laws 1982, LB 239, § 2; Laws 1999, LB 779, § 6.

39-1716. Isolated land; access road; damages; powers of county board; costs; maintenance.

(1) The county board shall, if it finds (a) that the conditions set forth in section 39-1713 or 39-1714 exist, (b) that the isolated land was not isolated at the time it was purchased by the owner or that the owner acquired the land directly from the State of Nebraska, (c) that the isolation of the land was not caused by the owner or by any other person with the knowledge and consent of the owner, and (d) that access is necessary for existing utilization of the isolated land, proceed to provide an access road and, if it finds that the amount of use and the number of persons served warrants such action, may lay out a public road to such real estate.

(2) The county board shall appraise the damages to be suffered by the owner or owners of the real estate over or through which the access road will be provided. Such damages shall be paid by the person petitioning that the access road be provided. For any real estate purchased or otherwise acquired after January 1, 1982, for which public access is granted pursuant to sections 39-1713 to 39-1719, the person petitioning for such access shall also reimburse the county for all engineering and construction costs incurred in providing such access.

(3) Notwithstanding any other provisions of law, an access road provided in accordance with this section shall not be subject to Chapter 39, article 20 or 21. The designation of such an access road shall not impose on the State of Nebraska or any political subdivision any obligation of design, construction, or maintenance for the access road nor give rise to any cause of action against the state or any political subdivision with respect to the access road.

Source: Laws 1957, c. 155, art. IV, § 16, p. 545; Laws 1982, LB 239, § 3; Laws 1999, LB 779, § 7.

This section provides that the county board may lay out a public road of not more than 4 nor less than 2 rods in width to isolated real estate, if it finds that the amount of use and the number of persons served warrant such action. Lewis v. Board of Cmrs. of Loup Cty., 247 Neb. 655, 529 N.W.2d 745 (1995).

A writ of mandamus is the proper remedy to compel a county board, in accordance with this section and section 39-1713, to lay out a public road for access to isolated land. This section applies prospectively, that is, to real estate acquired after January 1, 1982. Young v. Dodge Cty. Bd. of Supervisors, 242 Neb. 1, 493 N.W.2d 160 (1992).

The duty of the board of county commissioners under this section, to lay out a public road upon a showing that the statutory conditions of section 39-1713, R.R.S.1943, exist, is ministerial. Singleton v. Kimball County Board of Commissioners, 203 Neb. 429, 279 N.W.2d 112 (1979).

A road established as provided herein is a public road. Moritz v. Buglewicz, 187 Neb. 819, 194 N.W.2d 215 (1972).

39-1717. Isolated land; location of access road.

Whenever possible, an access road provided in accordance with section 39-1716 shall be along section lines. When the most practicable route for the access road is adjacent to a watercourse, the land to be taken for the access road shall be measured from the edge of the watercourse.

Source: Laws 1957, c. 155, art. IV, § 17, p. 546; Laws 1982, LB 239, § 4; Laws 1999, LB 779, § 8.

39-1718. Isolated land; access road; order of county board; award of damages; payment; filing of order.

If the county board decides to provide an access road in accordance with section 39-1716, the county board shall make and sign an order describing the same and file it with the county clerk, together with its award of damages which order shall be recorded by the clerk, except that the amount assessed as damages to the owner or owners of the real estate shall be paid to the county treasurer before the order providing for the access road is filed.

Source: Laws 1957, c. 155, art. IV, § 18, p. 546; Laws 1982, LB 239, § 5; Laws 1999, LB 779, § 9.

39-1718.01. Isolated land; changes in law; applicability.

Sections 39-1713 to 39-1719 shall not apply if public access has been granted prior to July 17, 1982.

Source: Laws 1982, LB 239, § 6; Laws 1999, LB 779, § 10.

39-1719. Isolated land; access road; award; appeal; procedure.

Any party to an award as provided by section 39-1718 may, within sixty days after the filing thereof, appeal therefrom to the district court of the county where the lands lie. The appeal shall be taken by serving upon the adverse party a notice of such appeal and filing such notice and proof of service thereof with the clerk of the court within the sixty days. Thereupon the appeal shall be set down for hearing at the next term of the court. It shall be heard and determined in like manner as appeals from awards in condemnations as provided in sections 76-704 to 76-724. Such appeal shall not affect the right or authority of the petitioner to the use of the access road under the award of the appraisers.

The applicant shall in case of appeal file such additional security as may be required by the county board for such costs and damages as may accrue against him or her by reason of such appeal. If on appeal the appellant does not obtain a more favorable judgment and award than was given by the appraisers, such appellant shall pay all the costs of such appeal. Either party to such

suit may appeal from the decision of the district court to the Court of Appeals, and the sum deposited as provided in this section shall remain in the hands of the county treasurer until a final decision is had.

Source: Laws 1957, c. 155, art. IV, § 19, p. 546; Laws 1961, c. 189, § 8, p. 583; Laws 1991, LB 732, § 99; Laws 1999, LB 779, § 11.

39-1720. Roads to bridge on county line; opening; maintenance; closing or vacating.

Where there is, or may be hereafter constructed, a public bridge across a stream dividing two counties, it shall be the duty of the county boards of such counties to open and keep open within their respective counties a public road leading from such bridge to the most convenient public road. Each county shall bear the expense necessary to open and maintain such roads in good condition for travel. Such roads shall not be closed or vacated except by concurrent action of the county boards of both counties.

Source: Laws 1957, c. 155, art. IV, § 20, p. 547.

39-1721. County and township roads; portions within cities or villages; subject to municipal regulations.

Such portions of all public roads of the counties and townships as lie within the limits of any incorporated city or village shall conform to the direction and grade and be subject to all the regulations of other streets in such city or village.

Source: Laws 1957, c. 155, art. IV, § 21, p. 547.

(c) VACATION AND ABANDONMENT

39-1722. Road vacation or abandonment; resolution of county board directing study; report to board; permanent record.

The county board of any county may by resolution, when it deems the public interest may require vacation or abandonment of a public road of the county, direct the county highway superintendent or in counties having no highway superintendent then such person as the board may direct to study the use being made of such public road and to submit in writing to the county board within thirty days, a report upon the study made and his or her recommendation as to the vacation or abandonment thereof. Said resolution and report shall be retained in the office of the county clerk as a part of the permanent public records of the county board; *Provided,* that the county board shall not require vacation or abandonment of any public road or any part thereof which is within the area of the zoning jurisdiction of a city of the metropolitan, primary, or first class without the prior approval of the governing body of such city.

Source: Laws 1957, c. 155, art. IV, § 22, p. 547; Laws 1971, LB 192, § 2; Laws 1980, LB 607, § 1.

Statute providing for limited access to interstate highway was not limited or controlled by general road laws. Fougeron v. County of Seward, 174 Neb. 753, 119 N.W.2d 298 (1963).

The discretion exercised by a county board of commissioners under this section and section 39-1725 is not judicial in nature, and as such, the trial court did not have jurisdiction to hear a petition in error under section 25-1901. Camp Clarke Ranch v. Morrill Cty. Bd. of Comrs., 17 Neb. App. 76, 758 N.W.2d 653 (2008).

39-1723. Road vacation or abandonment; electors' petition; contents; study and report.

Any person desiring the vacation or abandonment of any public road of the county shall file in the office of the county clerk of the proper county, a petition signed by ten or more electors residing within ten miles of the road proposed to be vacated or abandoned, which petition shall contain (1) the names and addresses of said electors, (2) a clear and unambiguous description of the road proposed to be vacated or abandoned, (3) the reason or reasons why said road should be vacated or abandoned, and (4) a request that a time and date be set for public hearing before the county board. The county board shall within two weeks thereafter direct the county highway superintendent, or in counties having no highway superintendent then such person as the board may direct, to proceed in the manner set forth in section 39-1722.

Source: Laws 1957, c. 155, art. IV, § 23, p. 547; Laws 1961, c. 189, § 9, p. 583; Laws 1980, LB 607, § 2.

39-1724. County board resolution ordering public hearing; publication; service of notice on adjacent landowners and municipality.

Upon receipt of the report, as provided in section 39-1722, the county board shall adopt a resolution fixing the time, date, and place for public hearing. Such resolution shall contain a clear and unambiguous description of the road to be vacated or abandoned. The county board shall cause such resolution to be published once a week for three consecutive weeks in a legal newspaper published in the county or, if none is published in the county, in a legal newspaper of general circulation in the county. Whenever possible the board shall cause copies to be served by either registered or certified mail upon the owners of land abutting on or adjacent to the road to be vacated or abandoned and upon the planning and public works directors of a city of the metropolitan, primary, or first class when such road or any part thereof is within the area of the zoning jurisdiction of such city by mailing the same to the last-known address of each owner not less than two weeks in advance of the hearing.

Source: Laws 1957, c. 155, art. IV, § 24, p. 548; Laws 1971, LB 192, § 3; Laws 1980, LB 607, § 3; Laws 1986, LB 960, § 30.

39-1725. Order of county board; contents; conditions and vote required for vacation or abandonment; resolution; disposition.

After the public hearing the county board shall by resolution at its next meeting or as soon thereafter as may be practicable vacate or abandon or refuse vacation or abandonment, as in the judgment of the board the public good may require. Vacation and abandonment shall not be ordered except upon vote of two-thirds of all members of the board and the prior approval of the governing body of a city of the metropolitan, primary, or first class has been obtained when any public road or any part thereof is within the area of the zoning jurisdiction of such city. If such road lies within a township in a county operating roads on a township basis the road shall not be vacated or abandoned unless an offer has been made to relinquish to the township in the manner provided in section 39-1726.

In the event that the county board decides to vacate or abandon, its resolution shall state upon what conditions, if any, the vacation or abandonment shall be qualified and particularly whether or not the title or right-of-way to any vacated or abandoned fragment or section of road shall be sold, revert to private ownership, or remain in the public. If the county board fails to specify in a resolution as to the disposition of right-of-way, and if there shall be nonuse of such right-of-way for any public purpose for a continuous period of not less than ten years, the right-of-way shall revert to the owners of the adjacent real estate, one-half on each side thereof. When the county vacates all or any portion of a road, the county shall, within thirty days after the effective date of the vacation, file a certified copy of the vacating resolution with the register of deeds for the county to be indexed against all affected lots.

Source: Laws 1957, c. 155, art. IV, § 25, p. 548; Laws 1959, c. 167, § 7, p. 611; Laws 1971, LB 192, § 4; Laws 1972, LB 1277, § 1; Laws 1980, LB 607, § 4; Laws 2001, LB 483, § 7.

Cross References

Effect of conveyances of tracts adjacent to vacated streets or alleys, see section 76-275.03.

With respect to public roads, a county which vacates a road while retaining a right-of-way has a duty to exercise such degree of care as would be exercised by a reasonable county under the same circumstances. Blaser v. County of Madison, 285 Neb. 290, 826 N.W.2d 554 (2013).

County board's decision not to rebuild bridge upheld where no showing that such discretionary decision was arbitrary or capricious. State ex rel. Goossen v. Board of Supervisors, 198 Neb. 9, 251 N.W.2d 655 (1977).

Constitutionality of this section sustained. Emry v. Lake, 181 Neb. 568, 149 N.W.2d 520 (1967).

Title to abandoned road remained in county until a period of ten years of non-use had elapsed. Plischke v. Jameson, 180 Neb. 803, 146 N.W.2d 223 (1966).

The discretion exercised by a county board of commissioners under section 39-1722 and this section is not judicial in nature, and as such, the trial court did not have jurisdiction to hear a petition in error under section 25-1901. Camp Clarke Ranch v. Morrill Cty. Bd. of Comrs., 17 Neb. App. 76, 758 N.W.2d 653 (2008).

39-1726. County operating roads on a township basis; offer to relinquish; procedure; vacation in metropolitan cities; notice to city planning director.

(1) No fragment of a county road lying within a township in a county operating roads on a township basis shall be vacated or abandoned without first offering to relinquish it to the

township. The county board shall offer to relinquish such county road by written notification to such township. Such offer to relinquish may be conditional or subject to the reservation of any right which the county board deems necessary and proper. Four months after sending the written notification, the county board may proceed to abandon such county road unless a petition from a notified township has been filed with the county board setting forth that the township desires to maintain such road, or portion thereof, subject to the reservations contained in the notice. The county board may reject any petition which does not accept the conditions or reservations set forth in the notice. The petition and the acceptance or rejection thereof by the county board shall be placed upon public record in the office of the county clerk. In the event the petition is accepted, the county board shall by resolution relinquish the county road to the township. From the date of the resolution the county shall be relieved of all responsibility in relation to the road. In the event a petition for relinquishment is not received within four months or in the event that the petition for relinquishment is not accepted, the county board shall, by resolution, state whether the vacated or abandoned road shall be retained or disposed of by sale, or by reverter to the adjacent property or otherwise.

(2) In any county in which is located a city of the metropolitan class, written notification of the proposed vacation or abandonment shall be given to the planning director of the city, and any recommendations which the officer shall make shall be received and considered before such vacation or abandonment is effected.

(3) When the county vacates or abandons all or any portion of a county road, the county shall, within thirty days after the effective date of the vacation, file a certified copy of the vacating resolution with the register of deeds for the county in which the vacated property is located to be indexed against all affected lots.

Source: Laws 1957, c. 155, art. IV, § 26, p. 549; Laws 1963, c. 237, § 1, p. 727; Laws 1980, LB 607, § 5; Laws 2001, LB 483, § 8.

39-1727. County roads; detachment from county road system.

Whenever a county road has been designated and established as provided by sections 39-2001 to 39-2003, the county board may detach the same, or any part thereof, from the county road system, and cause the same to revert back as a township road. The county board shall no longer be obliged to maintain the same and the maintenance and improvement of the road shall thereafter devolve upon the township.

Source: Laws 1957, c. 155, art. IV, § 27, p. 550.

39-1728. Barricading of county or township roads by Department of Transportation permitted; conditions; procedure.

A county or township road may be barricaded by the road department of the state for the purpose of regulating, restricting, or prohibiting ingress and egress to a state highway upon which the department has established a limited- or controlled-access facility; *Provided,* that prior thereto the written notice has been given by the department to the county or township board

having jurisdiction of the road to be barricaded and that within thirty days from the date such notice was given, the county or township board, as the case may be, has not adopted by unanimous vote of all its members and delivered to the department a resolution opposing the barricading of such road; *and provided further,* that road crossings shall be provided along such controlled- or limited-access facilities at intervals of not to exceed five miles unless the consent of the county board has been obtained for the establishment of fewer crossings.

Source: Laws 1957, c. 155, art. IV, § 28, p. 550.

This section is not special legislation and does not operate to deprive landowner of property without due process of law. Fougeron v. County of Seward, 174 Neb. 753, 119 N.W.2d 298 (1963).

39-1729. Access to public roads; right assured; landowners may waive; condemnation.

The right of reasonable convenient egress and ingress from lands or lots, abutting on an existing street or road, may not be denied except with the consent of the owners of such lands or lots, or with the condemnation of such right of access to and from such abutting lands or lots.

Source: Laws 1957, c. 155, art. IV, § 29, p. 550.

39-1730. Public roads; elimination of railroad crossings; petition; procedure.

Upon the petition of the owner or operator of any railroad, the county board is authorized to vacate such part of a public road, outside of incorporated cities and villages, lying within the right-of-way of such railroad, and not part of a state highway, if it appears that such crossing should be eliminated in the interest of public safety. Such petition shall be filed with the county clerk of the county in which such part of a public road is located. The same procedure shall be followed in the elimination of railroad grade crossings as is provided for the relocation, vacation, and abandonment of public roads as set forth in sections 39-1722 to 39-1725.

Source: Laws 1957, c. 155, art. IV, § 30, p. 551.

39-1731. Roads along or across county line; discontinuance.

Roads established by the concurrent action of the county boards of two or more counties can be discontinued only by the concurrent action of the county boards of the several counties in which the same may be situated; but such roads shall be treated in all other respects as other public roads.

Source: Laws 1957, c. 155, art. IV, § 31, p. 551.

ARTICLE 18

COUNTY ROADS, MAINTENANCE

Section

39-1801. County and township roads; temporary closing; detours; authority of county and township board; barricades; violation; penalty.

Whenever a county or township road or a part of such road is impassable or unusually dangerous to travel, whenever it becomes necessary because of construction or maintenance work to suspend all or part of the travel on such road, or whenever justified by necessity in order to provide for the public safety, such road or part of a road may be temporarily closed, and when feasible a suitable detour provided, or the weight limitations of wheel and axle loads as defined in subsections (2) through (4) of section 60-6,294 may be restricted to the extent deemed necessary for a reasonable period where the subgrade or pavement of such roads is weak or materially weakened by climatic conditions, by the county board as to county roads within the county and by the township board as to township roads within the township or by the person to whom the county board or township board has delegated the authority to temporarily close roads within the particular county or township.

Whenever such road or part of a road is temporarily closed, the person, board, or contractor therefor shall erect, at both ends of the portion of the road so closed, suitable barricades, fences, or other enclosures and shall post signs warning the public that the road is closed by authority of law. Such barricades, fences, enclosures, and signs shall serve as notice to the public that such

road is unsafe and that anyone entering such closed road, without permission, does so at his or her own peril.

Whenever a road or part of a road is undergoing construction, repair, or maintenance, while the public use thereof is permitted, traffic thereon may be regulated, limited, or controlled under the same authority as such road may be temporarily closed.

Any person who violates any provision of this section or who removes or interferes with any barricade, fence, enclosure, or warning sign required by this section shall be guilty of a Class V misdemeanor.

Source: Laws 1957, c. 155, art. V, § 1, p. 551; Laws 1961, c. 181, § 9, p. 541; Laws 1977, LB 40, § 215; Laws 1993, LB 370, § 41.

39-1802. Public roads; drainage facilities; construction and maintenance; authority of county board or road overseer; damage to property outside of right-of-way; notice.

The county board shall have the authority to construct, maintain, and improve drainage facilities on the public roads of the county. The county board also shall have the authority to make channel changes, control erosion, and provide stream protection or any other control measures beyond the road right-of-way limits wherever it is deemed necessary in order to protect the roads and drainage facilities from damage. The county board or road overseer shall have the authority to enter upon private or public property for the purposes listed in this section. The county board or road overseer shall make a record of the condition of the premises at the time of entry upon the premises or a record of any claimed encroachment of the road right-of-way that can be used in the event of damages to private property. In case of any damage to the premises, the county board shall pay the record owner of the premises the amount of the damages. Upon failure of the landowner and county board to agree upon the amount of damages, the landowner, in addition to any other available remedy, may file a petition as provided for in section 76-705. The county board or road overseer shall give the record owner of the premises ten days' notice of its intention to enter upon private property for purposes listed in this section or to modify, relocate, remove, or destroy any encroaching private property in the county road right-of-way for such purposes. Upon notice the record owner shall have five days to respond to the county board or road overseer. In the event of an emergency or a threat to public health, safety, or welfare, the notice requirement of this section may be waived.

Source: Laws 1957, c. 155, art. V, § 2, p. 552; Laws 2013, LB 386, § 1.

39-1803. Public road within city limits; maintenance by county; when authorized.

(1) In any case in which the boundary line of an incorporated city extends in and along a public road, which road has not been paved or macadamized, then the county board of any county in which such road lies is hereby authorized and empowered to maintain and keep in repair and proper condition for travel the full width of such road, including the portion which lies within the corporate limits as well as the portion which lies outside of the corporate limits, and to

pay the cost and expense of such maintenance, repair, and upkeep, so long as the road remains unpaved.

(2) A county may enter into an agreement under the Interlocal Cooperation Act with a city or village located in such county to appropriate and use county road funds for the improvement, maintenance, or repair of a road or street that is:

(a) Located within the corporate limits of the city or village if the street is classified as other arterial, collector, or local under subdivisions (4) through (6) of section 39-2104 and such street acts as a direct link or extension of an other arterial as described in subdivision (5) of section 39-2103;

(b) Located on the boundary between the corporate limits of the city or village and the county; or

(c) A city or village road or street directly impacted by county operations or through traffic.

Source: Laws 1957, c. 155, art. V, § 3, p. 552; Laws 2002, LB 616, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.

39-1804. Main thoroughfare through cities and villages of 1,500 inhabitants or less; graveling by county; when authorized; chargeable to Highway Allocation Fund.

The county board may, with the approval of the mayor and council or the chairperson and board of trustees, as the case may be, whenever conditions warrant, furnish, deliver, and spread gravel of a depth not exceeding three inches on certain streets in cities of the second class and villages having a population of not more than fifteen hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census and shall charge the cost of such improvement to that portion of the Highway Allocation Fund allocated to such counties from the Highway Trust Fund under section 39-2215. No improvement of any street or streets in cities of the second class or villages having a population of not more than fifteen hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census shall be made under the provisions of this section unless the street or streets, when graveled, will constitute one main thoroughfare through such city or village that connects with or forms a part of the county highway system of such county which has been or which shall be graveled up to the corporate limits of such city or village. Before being entitled to such county aid in graveling such thoroughfare, the same must have been properly graded by such city or village in accordance with the grade established in the construction of the county road system.

Source: Laws 1957, c. 155, art. V, § 4, p. 553; Laws 1972, LB 1058, § 13; Laws 1986, LB 599, § 10; Laws 2017, LB 113, § 41.

Effective Date: August 24, 2017

39-1805. Snow fences; access to adjacent property authorized; damages; payment.

The county board shall cause the county roads to be kept sufficiently clear of snow and ice so as to be reasonably safe for travel. The county shall have the authority to enter upon private or public property adjacent to any county road and to place and maintain thereon snow fences wherever it is deemed necessary in order to prevent snow drifting on the traveled portion of such road. Such snow fences shall be erected in such a manner as to provide the most protection to the road and shall not be placed on such property prior to October 15, nor remain on such property after April 1, without the consent of the property owner. In case of any damage to such property, the county shall pay the amount of such damage to the owner of the property.

Source: Laws 1957, c. 155, art. V, § 5, p. 553.

39-1806. Snow fences; refusal of access to lands; willful or malicious damage; other violations; penalty.

Any person who shall refuse to allow an agent or employee of the county board access to any lands for the purpose of installing, maintaining or removing any snow fences, or any person who shall violate any other provision of section 39-1805, or any person who shall willfully or maliciously damage or destroy any snow fence installed and erected, as provided for by law, shall be guilty of a Class III misdemeanor.

Source: Laws 1957, c. 155, art. V, § 6, p. 554; Laws 1977, LB 40, § 216.

39-1807. Road lighting system; installation, maintenance, operation; powers of county board.

The county board of any county, as a part of its duties, shall have power and authority to contract for the installment, maintenance, and operation of road lighting systems, sufficient to light any county road, or any portion thereof in its county, when, in the judgment of the county board, the lighting of such road or any portion thereof is in the interest of public safety. The cost of installing, maintaining, and operating such road lighting systems shall be paid out of funds that are available for the construction and maintenance of county roads.

Source: Laws 1957, c. 155, art. V, § 7, p. 554.

39-1808. Livestock lanes; when provided by county board.

Whenever the condition of any sand roadbed shall be such that the driving of cattle or other livestock thereon will destroy or impair said sand roadbed, the county board may at its discretion, locate, build, and maintain lanes or other driveways adjacent to said road through which such cattle or other livestock shall be driven.

Source: Laws 1957, c. 155, art. V, § 8, p. 554.

39-1809. Livestock lanes; establishment; maintenance; powers of county board.

In the establishment and maintenance of such lanes and driveways the county board shall have the same powers and follow the same procedure as is provided by law for the establishment and maintenance of public roads and highways, except as to bridges, culverts and the grading of such lanes and driveways.

Source: Laws 1957, c. 155, art. V, § 9, p. 554.

39-1810. Livestock lanes; driving livestock on adjacent highway; penalty.

Any person who shall drive or assist in driving any cattle or livestock over a public road where such lane or driveway has been established as provided in section 39-1808 shall be guilty of a Class III misdemeanor.

Source: Laws 1957, c. 155, art. V, § 10, p. 554; Laws 1977, LB 40, § 217.

39-1811. Weeds; mowing; duty of landowner; neglect of duty; obligation of county board; cost; assessment and collection.

(1) It shall be the duty of the landowners in this state to mow all weeds that can be mowed with the ordinary farm mower to the middle of all public roads and drainage ditches running along their lands at least twice each year, namely, sometime in July for the first time and sometime in September for the second time.

(2) This section shall not restrict landowners, a county, or a township from management of (a) roadside vegetation on road shoulders or of sight distances at intersections and entrances at any time of the year or (b) snow control mowing as may be necessary.

(3) Except as provided in subsection (2) of this section, no person employed by or under contract with a county or township to mow roadside ditches shall do such mowing before July 1 of any year.

(4) Whenever a landowner, referred to in subsections (1) and (5) of this section, neglects to mow the weeds as provided in this section, it shall be the duty of the county board on complaint of any resident of the county to cause the weeds to be mowed or otherwise destroyed on neglected portions of roads or ditches complained of.

(5) The county board shall cause to be ascertained and recorded an accurate account of the cost of mowing or destroying such weeds, as referred to in subsections (1) and (4) of this section, in such places, specifying, in such statement or account of costs, the description of the land abutting upon each side of the highway where such weeds were mowed or destroyed, and, if known, the name of the owner of such abutting land. The board shall file such statement with the county clerk, together with a description of the lands abutting on each side of the road where such expenses were incurred, and the county board, at the time of the annual tax levy made upon

lands and property of the county, may, if it desires, assess such cost upon such abutting land, giving such landowner due notice of such proposed assessment and reasonable opportunity to be heard concerning the proposed assessment before the same is finally made.

Source: Laws 1957, c. 155, art. V, § 11, p. 555; Laws 2017, LB 584, § 1.
Effective Date: August 24, 2017

39-1812. Hedges and trees; trimming; duties of landowners.

Each landowner in this state upon whose land there is standing or growing any osage orange, willow or locust hedge fence, trees, or undergrowth, bordering the public roads, when such fence, trees, or undergrowth become a public nuisance to travel on the roads, or obstruct the view at or near railroad crossings, crossroads or abrupt turns in the road, shall keep the same trimmed not less than once a year by cutting back to within four feet of the ground, excepting trees, which shall be trimmed from the ground up eight feet, and the trimmings so cut shall be burned or removed from the road right-of-way within ten days after each cutting.

Source: Laws 1957, c. 155, art. V, § 12, p. 555.

39-1813. Hedges and trees; failure of landowner to trim; procedure; notice; hearing; order.

Whenever any landowner or his agent shall neglect to trim such hedge fence, trees, or undergrowth as provided in section 39-1812, it shall be the duty of the person in charge of county road maintenance in the area in which such hedge fence, trees, or undergrowth is located, to report the same in writing simultaneously to the county attorney and to the county board, giving the location of the hedge fence, trees, or undergrowth and declaring the same to be a public nuisance. The county attorney shall, upon receipt of such written notice, immediately serve written notice upon the owner of the hedge fence, trees, or undergrowth, or upon his agent, to have such hedge fence, trees, or undergrowth, trimmed and the trimmings burned or removed within ten days. Upon failure of the landowner or his agent to comply with the notice of the county attorney within ten days, the county attorney shall give notice in writing to the landowner or his agent, fixing a date for a hearing before the county board on the complaint previously entered, that the landowner or his agent is maintaining a public nuisance by failing to trim said hedge fence, trees, or undergrowth in accordance with the provisions of section 39-1812. The notice shall fix a time not earlier than the next regular meeting of the county board, and in any event not less than five days after the date of the notice, when the owner or agent may appear before the county board and a hearing shall be had upon the matter. The county attorney shall appear at the hearing on behalf of the county for the abatement of the alleged public nuisance maintained by the owner or agent of the land upon which the hedge fence, trees, or undergrowth may be found. If at the hearing it shall appear that the hedge fence, trees, or undergrowth named in the notice are in a condition contrary to the provisions of section 39-1812, the county board shall forthwith and at once declare such hedge fence, trees, or undergrowth a public nuisance, and make an immediate order for the trimming of the same in accordance with the provisions of section 39-1812. If the owner or agent shall neglect or fail to comply with the order within thirty

days after receipt of such written notice, the county board shall cause the same to be done. The cost shall be paid from the general fund and a statement of such cost shall be recorded by the county board with the county clerk, giving a proper description of the lands whereon such hedge fence, trees, or undergrowth was trimmed, and the county clerk shall include such costs in making the county tax lists as an assessment and charge against such lands, which charge shall be a lien upon said lands and be collected the same as all other taxes regularly levied. Nothing in sections 39-1812 and 39-1813 shall be deemed to abridge the right of appeal from the finding of the county board to the district court.

Source: Laws 1957, c. 155, art. V, § 13, p. 556.

39-1814. Road over private property; when authorized; fences; auto gates.

Where it is apparent to the county board that a county or township road causes or would cause unnecessary burdens upon the county or township or upon the landowners adjoining such road, the county board may provide that such road may be fenced by such landowners; *Provided,* the safety and welfare of the traveling public are not substantially affected thereby; *provided further,* that the county board may install and maintain auto gates through such fences where the road crosses the fences; *and provided further,* that auto gates shall be not less than eighteen feet in length when located upon an established graded road.

Source: Laws 1957, c. 155, art. V, § 14, p. 557; Laws 1963, c. 238, § 1, p. 729.

39-1815. Road over private property; leaving gates open; penalty.

It shall be unlawful for any person traveling upon a road provided for in section 39-1814 to leave the gates open when he shall have passed through the same. Any person who violates the provisions of this section shall be guilty of a Class III misdemeanor.

Source: Laws 1957, c. 155, art. V, § 15, p. 557; Laws 1977, LB 40, § 218.

39-1816. Parking motor vehicles on right-of-way; county board; power to prohibit or restrict; violation; penalty.

In order to promote safety, power is conferred upon the county board of any county to prohibit or restrict the parking of motor vehicles on the right-of-way of county highways outside the corporate limits of any city or village and to erect and maintain appropriate signs thereon giving notice of no parking or restricted parking.

Any person, firm, association, partnership, limited liability company, or corporation which parks a motor vehicle in the right-of-way of a county highway where no parking or restricted parking signs have been erected or maintained, in violation of such signs, shall be guilty of a Class V misdemeanor. Whenever any peace officer finds a vehicle parked in violation of this

section, he or she may move such vehicle at the expense of the registered owner or request the driver or person in charge of such vehicle to move such vehicle.

If any motor vehicle is found upon the right-of-way of any county highway in violation of this section and the identity of the driver cannot be determined, the owner or person in whose name such vehicle is registered shall be prima facie responsible for such violation.

Source: Laws 1963, c. 216, § 1, p. 688; Laws 1977, LB 40, § 219; Laws 1993, LB 121, § 213.

39-1817. Roads; water impoundment structure; when permitted; liability.

The county board of any county may, in accordance with sections 39-1817 to 39-1820, enter into an agreement with any agency or political subdivision of the state approving the construction of a water impoundment structure which, when completed, may result in the occasional and temporary storage or flowage of floodwaters upon, across, or adjacent to any road classified as a local road or remote residential road. Any such agreement may include such terms regarding the maintenance of such road or other matters incident to the construction and operation of such water impoundment structure as the parties to the agreement determine to be mutually acceptable. Conformance with sections 39-1817 to 39-1820 shall relieve the county board and all other parties to any such agreement of any liability for personal injury or property damage suffered by any person while utilizing any such road for travel during a period of inundation.

Source: Laws 1979, LB 265, § 1; Laws 1988, LB 903, § 1; Laws 2008, LB 1068, § 2.

39-1818. Water impoundment structure; approval; criteria considered.

A water impoundment structure which will result in temporary storage and flowage of water upon, across, or adjacent to a road upstream from such structure may be approved only if such road would not be inundated because of the storage in such structure of waters from a ten-year, twenty-four-hour or lesser frequency storm. A water impoundment structure which will also serve as a roadbed may be approved and constructed only if the structure would contain the runoff from a twenty-five-year, twenty-four-hour frequency storm without water overtopping such structure or being discharged through its emergency spillway, except that if the road which is subject to such inundation is classified as a local road or remote residential road with current average daily traffic of fifty vehicles or less, the containment of a ten-year, twenty-four-hour frequency storm shall be sufficient. In making the storm frequency determinations required by this section, any recognized method may be used.

Source: Laws 1979, LB 265, § 2; Laws 1988, LB 903, § 2; Laws 2008, LB 1068, § 3.

39-1819. Water impoundment structure; county board; erect warning devices; form; maintenance.

Whenever any water impoundment structure is approved pursuant to sections 39-1817 to 39-1820, it shall be the responsibility of the county board to erect at both ends of the portion of the road subject to such inundation permanent warning devices providing notice of the potential hazard. Such warning devices shall conform to the United States Department of Transportation's Manual of Uniform Traffic Control Devices, shall have printed thereon the words FLOOD AREA, and shall indicate the distance from such sign to the opposite extreme of the flood hazard area. The county board shall exercise reasonable care in maintaining such warning devices.

Source: Laws 1979, LB 265, § 3.

39-1820. Existing water impoundment structure; liability; relieved from; when.

Any liability of the type described in section 39-1817 which might arise because of the operation of a water impoundment structure constructed prior to April 3, 1979, shall be relieved by conformance by the county board with section 39-1819 even if conformance with the provisions of section 39-1818 has not been achieved.

Source: Laws 1979, LB 265, § 4.

ARTICLE 19

COUNTY ROADS, ROAD FINANCES

Cross References

Flood control funds from United States Government, use for county roads, see section 79-1049.
Forest reserve funds from United States Government, use for county roads, see section 79-1044.
Surplus funds, transfers by county board to road funds, see section 23-333.

Section

39-1912. Repealed. Laws 1963, c. 348, § 6.
39-1913. Repealed. Laws 1963, c. 348, § 6.
39-1914. Repealed. Laws 1963, c. 348, § 6.

39-1901. Road damages; payment from general fund; barricades by Department of Transportation; payment by department; claimant's petition.

All damages caused by the laying out, altering, opening, or discontinuing of any county road shall be paid by warrant on the general fund of the county in which such road is located, except that the Department of Transportation shall pay the damages, if any, which a person sustains and is legally entitled to recover because of the barricading of a county or township road pursuant to section 39-1728. Upon the failure of the party damaged and the county to agree upon the amount of damages, the damaged party, in addition to any other available remedy, may file a petition as provided for in section 76-705.

Source: Laws 1957, c. 155, art. VI, § 1, p. 558; Laws 2017, LB 339, § 143.
Operative Date: July 1, 2017

39-1902. Road districts; special tax levy; limit; collection; warrants; payment.

In order to provide for the payment of all outstanding road district warrants and to liquidate indebtedness against road districts, the county board of any county where such indebtedness exists is hereby authorized and empowered to levy a special tax not exceeding three and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such road districts or so much thereof as may be necessary to pay all the outstanding indebtedness of the character described in this section, except that in no case shall the taxes levied in any one year by the county board in any road district, including the county taxes for all purposes, exceed the aggregate of ten and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such road district unless such additional levy is authorized by a vote of the electors of the county. The levy shall be made by the county board at its regular annual meeting while assembled for the purpose of levying other taxes as provided by law. The tax shall be collected by the county treasurer in the same manner as other county taxes are collected, and all warrants shall be paid by the county treasurer in order in which they appear on his or her register.

Source: Laws 1957, c. 155, art. VI, § 2, p. 558; Laws 1979, LB 187, § 164; Laws 1992, LB 719A, § 144.

39-1903. Road districts; annual levies to meet deficiencies; limit.

In case the levy mentioned in section 39-1902 is not sufficient to pay the entire amount of the indebtedness of the various road districts, the county board in such counties where a deficiency exists shall annually thereafter make other levies for this purpose not exceeding three and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in

such district in any one year until all the indebtedness against the road districts in such county has been paid.

Source: Laws 1957, c. 155, art. VI, § 3, p. 558; Laws 1979, LB 187, § 165; Laws 1992, LB 719A, § 145.

39-1904. Road tax; levy; same rate in rural and municipal areas; division between municipalities and counties; authorized expenditures.

The county board may levy the same rate of county road tax upon the property within cities and villages as is levied upon the property in the county not within cities and villages. One-half of such tax collected within cities or villages, when collected, shall be paid to the cities or villages within the county where levied to be used for the construction, improvement, or maintenance of municipal streets and alleys; and the remaining portion of such tax, when collected, shall be placed in the county road fund to be expended by the county board for construction, improvement, or maintenance of the roads and bridges in the county.

Source: Laws 1957, c. 155, art. VI, § 4, p. 559; Laws 1959, c. 183, § 1, p. 665.

39-1905. Road tax; special levy by petition; limit; contributions; district road fund; authorized expenditures.

Fifty-one percent of the resident freeholders of any road district, precinct, or township in this state, as shown by the records of the register of deeds of the county in which such road district, precinct, or township is situated, may petition the county board of the county in which such district, precinct, or township is located to levy an assessment of not to exceed ten and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such road district, precinct, or township. Upon receipt of such petition, the county board shall make the assessment, as requested, upon the taxable value of all the taxable property in such road district, precinct, or township to be levied and collected the same as other taxes. Such taxes and any voluntary contributions (1) shall be and become a part of the district road fund of the district, precinct, or township in which the taxes are levied, (2) shall be used exclusively in constructing or improving the public roads in such district, precinct, or township, and (3) shall not be transferred to any other fund. In counties under township organization, the township board shall designate the road or roads in such road district where such levy shall be expended. In other counties the county board shall designate the road or roads in such road district where such levy shall be expended.

Source: Laws 1957, c. 155, art. VI, § 5, p. 559; Laws 1979, LB 187, § 166; Laws 1992, LB 719A, § 146.

39-1906. Road construction or improvement; special levy; limit; bonds.

Any township or precinct may make a special levy, not exceeding three and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such township or precinct, to improve, to construct, or to aid in the improvement or construction of a road. For the same purpose, any township or precinct may issue bonds by proceeding in the manner prescribed in sections 39-836 to 39-842.

Source: Laws 1957, c. 155, art. VI, § 6, p. 560; Laws 1959, c. 167, § 8, p. 612; Laws 1971, LB 992, § 1; Laws 1979, LB 187, § 167; Laws 1992, LB 719A, § 147.

39-1907. County roads in township counties; construction or improvement; use of township road fund.

In counties under township organization, the electors of any township through which a county road passes, at any annual or special meeting, may direct the payment to the county, out of the township road fund, of such sum as may be determined upon and as the condition of such fund permits, to assist in the construction or improvement of the portion of said county road lying within such township.

Source: Laws 1957, c. 155, art. VI, § 7, p. 560.

39-1908. Federal-aid secondary highway; in city or village; improvement by county; approval by city or village; conditions; contribution.

Wherever a federal-aid secondary highway traverses or passes through any city or village, the county board may with the approval of the mayor and council or the chairman and board of trustees of such city or village, grade, pave, curb, gutter or hard-surface such highway lying in the corporate limits of such city or village; *Provided,* that such city or village may pay or contribute to the county highway fund of the county for paving or hard-surfacing such highway in an amount designated by the county board but not to exceed fifty percent of the cost of such project lying within the corporate limits of such city or village.

Source: Laws 1959, c. 184, § 1, p. 666; Laws 1963, c. 239, § 1, p. 730.

39-1909. Repealed. Laws 1963, c. 348, § 6.

39-1910. Repealed. Laws 1963, c. 348, § 6.

39-1911. Repealed. Laws 1963, c. 348, § 6.

39-1912. Repealed. Laws 1963, c. 348, § 6.

39-1913. Repealed. Laws 1963, c. 348, § 6.

39-1914. Repealed. Laws 1963, c. 348, § 6.

ARTICLE 20

COUNTY ROAD CLASSIFICATION

Section

39-2001. Designation of primary and secondary county roads by county board; procedure; determination by Department of Transportation; when; certification; record.

(1) The county board of each county shall select and designate, from the laid out and platted public roads within the county, certain roads to be known as primary and secondary county roads. Primary county roads shall include (a) direct highways leading to and from rural schools where ten or more grades are being taught, (b) highways connecting cities, villages, and market centers, (c) rural mail route and star mail route roads, (d) main-traveled roads, and (e) such other roads as are designated as such by the county board. All county roads not designated as primary county roads shall be secondary county roads.

(2) As soon as the primary county roads are designated as provided by subsection (1) of this section, the county board shall cause such primary county roads to be plainly marked on a map to be deposited with the county clerk and be open to public inspection. Upon filing the map the county clerk shall at once fix a date of hearing thereon, which shall not be more than twenty days nor less than ten days from the date of filing. Notice of the filing of the map and of the date of such hearing shall be published prior to the hearing in one issue of each newspaper published in the English language in the county.

(3) At any time before the hearing provided for by subsection (2) of this section is concluded, any ten freeholders of the county may file a petition with the county clerk asking for any change in the designated primary county roads, setting forth the reason for the proposed change. Such petition shall be accompanied by a plat showing such proposed change.

(4) The roads designated on the map by the county board shall be conclusively established as the primary roads. If no agreement is reached between the county board and the petitioners at the hearing, the county clerk shall forward the map, together with all petitions and plats, to the Department of Transportation.

(5) The department shall, upon receipt of the maps, petitions, and plats, proceed to examine the same, and shall determine the lines to be followed by the said county roads, having regard to volume of traffic, continuity, and cost of construction. The department shall, not later than twenty days from the receipt thereof, return the papers to the county clerk, together with the decision of the department in writing, duly certified, and accompanied by a plat showing the lines of the county roads as finally determined. The county clerk shall file the papers and record the decision, and the same shall be conclusive as to the lines of the county roads established therein.

Source: Laws 1957, c. 155, art. VII, § 1, p. 560; Laws 2017, LB 339, § 144.
Operative Date: July 1, 2017

All public roads within a county are county roads in the sense that they are located within the territory of a county, but not all public roads within a county are designated as primary or secondary county roads. Butler County Dairy v. Butler County, 285 Neb. 408, 827 N.W.2d 267 (2013).

39-2002. County primary road system; designation by county board; when; redesignation of primary roads; procedure; current map kept on file.

The county board of each county shall select and designate, within six months from January 1, 1958, the roads which will be county primary roads and which will constitute the county primary road system. Such roads shall be selected from those roads which already have been designated as primary county roads pursuant to section 39-2001 or from those roads which were maintained by the Department of Transportation under section 39-1309. The primary county roads shall include only the more important county roads as determined by the actual or potential traffic volumes and other traffic survey data.

The county board of each county shall have authority to redesignate the county primary roads from time to time by naming additional roads as primary roads and by rescinding the designation of existing county primary roads. The county board shall follow the same procedure for redesignation as is required by law for initially designating the county primary roads. The principle of designating only the more important county roads as primary roads as determined by the actual or potential traffic volumes and other traffic survey data shall be adhered to.

A copy of a current map of the county roads showing the location of roads and bridges and reflecting the county primary road system as designated in this section shall be kept on file and available to public inspection at the office of the county clerk and with the department.

Source: Laws 1957, c. 155, art. VII, § 2, p. 561; Laws 1963, c. 240, § 1, p. 730; Laws 2017, LB 339, § 145.
Operative Date: July 1, 2017

39-2003. County roads; maintenance at county expense; exception.

All county roads designated in accordance with sections 39-2001 and 39-2002 shall be maintained at the expense of the county; *Provided,* that in counties under township organization not operating under the county road unit system, the county board may, by resolution entered on its records, delegate to the township board the duty of maintaining in the township any road which has been designated after September 7, 1947, as a county primary road.

Source: Laws 1957, c. 155, art. VII, § 3, p. 562.

ARTICLE 21

FUNCTIONAL CLASSIFICATION

39-2101. State highways; functional classification; declaration.

Recognizing that safe and efficient transportation over public roads is a matter of major importance to all of the people in the state, the Legislature hereby determines and declares that an integrated system of public roads is essential to the general welfare of the State of Nebraska.

Adequate public roads provide for the free flow of traffic, protect the health and safety of the citizens of the state, result in lower cost of motor vehicle operation, increase property values, and generally promote the economic and social progress of the state.

Providing such a system of facilities and the efficient management, operation, and control thereof are recognized as urgent problems and proper objectives of legislation pertaining to all public roads.

As a result of the comprehensive three-year study of all public roads in Nebraska conducted by a committee of the Legislative Council as authorized by the Legislature in 1965 and 1967, a study through which determination has been made of the engineering, financial, and management needs of all public roads, a program has been developed to provide an integrated system of public roads for the state, its counties, and its municipalities.

Recognizing that cooperation among these governmental entities is essential in bringing to fruition the development of a truly integrated system of public roads, it is the intent of the Legislature to provide by law the structure upon which the state, its counties, and its municipalities can work as equal partners in the development, operation, and management of such a system.

Fundamental to the development of an integrated system of public roads is a determination of the function each road segment serves. Through adoption by law of a functional classification system, it is the intent of the Legislature that each segment of public road shall be identified according to the function it serves. Identification of roads according to function then will permit the establishment of uniform standards of design, construction, operation, and maintenance for each classification of road. Such standards will promote the general safety of the traveling public, enhance the free flow of traffic, and provide improved utilization of highway financing.

Responsibility for the various functional classifications of public roads shall be assigned by law to the state, the counties, and the municipalities, as appropriate, such assignments reflecting the general responsibilities of each entity.

Through establishment of a Board of Public Roads Classifications and Standards composed of representation from the state, counties, municipalities, and general public, it is the intent of the Legislature to give each governmental entity and the public an equal voice in developing reasonable standards for each classification of road which shall be adequate to meet the needs of an increasingly mobile society.

Both long-range planning and annual programming are essential to the orderly development of an integrated system of public roads. It is the intent of the Legislature to provide by law a structure which will enable each governmental entity to program its individual needs on a priority basis, yet to establish an intergovernmental relationship which will permit their working in cooperation with each other to attain the desired objective of an integrated system. The structure will have the flexibility necessary to recognize that annual programs cannot always be met as planned because of unforeseen problems which may arise.

To assure realization of the maximum benefits possible from the substantial investment Nebraska citizens make toward their public roads, it is the intent of the Legislature to provide by law a system of planning, programming, budgeting, reporting, and accounting for each governmental entity which will bring improved management methods. Such management will provide citizens the opportunity to know how each governmental entity intends to spend its highway money, and to determine its performance when measured against its plans.

Nebraska's public roads system is one of the largest in the nation; yet its population is relatively small and ranges from high concentrations of people in urban centers to vast rural areas in which the population is sparsely located. The citizens in these diverse areas have the same need, however, for a transportation system which will meet their respective needs. It is not economically feasible to develop all public roads throughout the state to the same high standards,

and thus it becomes incumbent upon the Legislature to devise a program under which the roads most important to these diverse areas are developed to modern standards. Adoption of a functional classification system and implementation of modern management methods will combine to bring such a program into being and result in improved utilization of highway financing.

Recognizing that highway financing heretofore has been inadequate to meet the needs of a modern transportation system, and that the distribution of revenue has resulted in disparities of treatment, it is the intent of the Legislature to provide reasonable financing and more equitable distribution of revenue. The objectives of this total program are to bring the state highway system up to adequate standards in a twenty-year period, and to bring the road systems of its counties, and the street systems of its municipalities, up to adequate standards over a twenty-year period.

Source: Laws 1969, c. 312, § 1, p. 1116.

This article contemplates continuous highway planning and improvements and every highway and bridge is subject to reevaluation and change. State ex rel. Goossen v. Board of Supervisors, 198 Neb. 9, 251 N.W.2d 655 (1977).

39-2102. Functional classification; categories.

For purposes of functional classification thereof, the public highways, roads, and streets of this state are hereby divided into the two broad categories of rural highways and municipal streets. Rural highways shall consist of all public highways and roads outside the limits of any incorporated municipality and municipal streets shall consist of all public streets within the limits of any incorporated municipality.

Source: Laws 1969, c. 312, § 2, p. 1119.

39-2103. Rural highways; functional classifications.

Rural highways are hereby divided into nine functional classifications as follows:

(1) Interstate, which shall consist of the federally designated National System of Interstate and Defense Highways;

(2) Expressway, which shall consist of a group of highways following major traffic desires in Nebraska which rank next in importance to the National System of Interstate and Defense Highways. The expressway system is one which ultimately should be developed to multilane divided highway standards;

(3) Major arterial, which shall consist of the balance of routes which serve major statewide interests for highway transportation. This system is characterized by high-speed, relatively long-distance travel patterns;

(4) Scenic-recreation, which shall consist of highways or roads located within or which provide access to or through state parks, recreation or wilderness areas, other areas of geographical, historical, geological, recreational, biological, or archaeological significance, or areas of scenic beauty;

(5) Other arterial, which shall consist of a group of highways of less importance as through-travel routes which would serve places of smaller population and smaller recreation areas not served by the higher systems;

(6) Collector, which shall consist of a group of highways which pick up traffic from many local or land-service roads and carry it to community centers or to the arterial systems. They are the main school bus routes, mail routes, and farm-to-market routes;

(7) Local, which shall consist of all remaining rural roads, except minimum maintenance roads and remote residential roads;

(8) Minimum maintenance, which shall consist of (a) roads used occasionally by a limited number of people as alternative access roads for areas served primarily by local, collector, or arterial roads or (b) roads which are the principal access roads to agricultural lands for farm machinery and which are not primarily used by passenger or commercial vehicles; and

(9) Remote residential, which shall consist of roads or segments of roads in remote areas of counties with (a) a population density of no more than five people per square mile or (b) an area of at least one thousand square miles, and which roads or segments of roads serve as primary access to no more than seven residences. For purposes of this subdivision, residence means a structure which serves as a primary residence for more than six months of a calendar year. Population shall be determined using data from the most recent federal decennial census.

The rural highways classified under subdivisions (1) through (3) of this section should, combined, serve every incorporated municipality having a minimum population of one hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census or sufficient commerce, a part of which will be served by stubs or spurs, and along with rural highways classified under subdivision (4) of this section, should serve the major recreational areas of the state.

For purposes of this section, sufficient commerce means a minimum of two hundred thousand dollars of gross receipts under the Nebraska Revenue Act of 1967.

Source: Laws 1969, c. 312, § 3, p. 1119; Laws 1972, LB 866, § 2; Laws 1976, LB 724, § 1; Laws 1980, LB 873, § 1; Laws 1983, LB 10, § 3; Laws 2008, LB 1068, § 4; Laws 2017, LB 113, § 42.

Effective Date: August 24, 2017

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

39-2104. Municipal streets; functional classifications.

Municipal streets are hereby divided into six functional classifications as follows:

(1) Interstate, which shall consist of the federally designated national system of interstate and defense highways;

(2) Expressway, which shall consist of two categories: Extensions of rural expressways and some additional routes which serve very high volumes of local traffic within urban areas;

(3) Major arterial, which shall generally consist of extensions of the rural major arterials which provide continuous service through municipalities for long-distance rural travel. They are the arterial streets used to transport products into and out of municipalities;

(4) Other arterial, which shall consist of two categories: Municipal extensions of rural other arterials, and arterial movements peculiar to a municipality's own complex, that is streets which interconnect major areas of activity within a municipality, such as shopping centers, the central business district, manufacturing centers, and industrial parks;

(5) Collector, which shall consist of a group of streets which collect traffic from residential streets and move it to smaller commercial centers or to higher arterial systems; and

(6) Local, which shall consist of the balance of streets in each municipality, principally residential access service streets and local business streets. They are characterized by very short trip lengths, almost exclusively limited to vehicles desiring to go to or from an adjacent property.

Source: Laws 1969, c. 312, § 4, p. 1120.

39-2105. Functional classifications; jurisdictional responsibility.

Jurisdictional responsibility for the various functional classifications of public highways and streets shall be as follows:

(1) The state shall have the responsibility for the design, construction, reconstruction, maintenance, and operation of all roads classified under the category of rural highways as interstate, expressway, and major arterial, and the municipal extensions thereof, except that the state shall not be responsible for that portion of a municipal extension which exceeds the design of the rural highway leading into the municipality. When the design of a rural highway differs at the different points where it leads into the municipality, the state's responsibility for the municipal extension thereof shall be limited to the lesser of the two designs. The state shall be responsible for the entire interstate system under either the rural or municipal category and for connecting links between the interstate and the nearest existing state highway system in rural areas, except that if such a connecting link has not been improved and a sufficient study by the Department of Transportation results in the determination that a link to an alternate state highway would provide better service for the area involved, the department shall have the option of providing the alternate route, subject to satisfactory local participation in the additional cost of the alternate route;

(2) The various counties shall have the responsibility for the design, construction, reconstruction, maintenance, and operation of all roads classified as other arterial, collector, local, minimum maintenance, and remote residential under the rural highway category;

(3) The various incorporated municipalities shall have the responsibility for the design, construction, reconstruction, maintenance, and operation of all streets classified as expressway which are of a purely local nature, that portion of municipal extensions of rural expressways and major arterials which exceeds the design of the rural portions of such systems, and responsibility for those streets classified as other arterial, collector, and local within their corporate limits; and

(4) Jurisdictional responsibility for all scenic-recreation roads and highways shall remain with the governmental subdivision which had jurisdictional responsibility for such road or highway prior to its change in classification to scenic-recreation made pursuant to this section and sections 39-2103, 39-2109, and 39-2113.

Source: Laws 1969, c. 312, § 5, p. 1121; Laws 1971, LB 738, § 1; Laws 1980, LB 873, § 2; Laws 1983, LB 10, § 4; Laws 2008, LB 1068, § 5; Laws 2017, LB 339, § 146.

Operative Date: July 1, 2017

39-2106. Board of Public Roads Classifications and Standards; established; members; number; appointment; qualifications; compensation; expenses.

To assist in developing the functional classification system, there is hereby established the Board of Public Roads Classifications and Standards which shall consist of eleven members to be appointed by the Governor with the approval of the Legislature. Of the members of such board, two shall be representatives of the Department of Transportation, three shall be representatives of the counties, one of whom shall be a licensed county highway superintendent in good standing and two of whom shall be county board members, three shall be representatives of the municipalities who shall be either public works directors or licensed city street superintendents in good standing, and three shall be lay citizens who shall represent the three congressional districts of the state. The county members on the board shall represent the various classes of counties, as defined in section 23-1114.01, in the following manner: One shall be a representative from either a Class 1 or Class 2 county; one shall be a representative from either a Class 3 or Class 4 county; and one shall be a representative from either a Class 5, Class 6, or Class 7 county. The municipal members of the board shall represent municipalities of the following sizes by population: One shall be a representative from a municipality of less than two thousand five hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census; one shall be a representative from a municipality of two thousand five hundred to fifty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census; and one shall be a representative from a municipality of over fifty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census. In making such appointments, the Governor shall consult with the Director-State Engineer and with the appropriate county and municipal officials and may consult with organizations representing such officials or representing counties or municipalities as may be appropriate. At the expiration of the existing term, one member from the county representatives, the municipal representatives, and the lay citizens shall be appointed for a term of two years; and two members from the county representatives, the municipal representatives, and the lay citizens shall be appointed for terms of four years. One representative from the department shall be appointed for a two-year term and the other representative shall be appointed for a four-year term. Thereafter, all such appointments shall be for terms of four years each. Members of such board shall receive no compensation for their services as such, except that the lay members shall receive the same compensation as members of the State Highway Commission, and all members shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as provided in sections 81-1174 to 81-1177 for state employees. All expenses of such board shall be paid by the department.

Source: Laws 1969, c. 312, § 6, p. 1122; Laws 1971, LB 100, § 1; Laws 1981, LB 204, § 61; Laws 2017, LB 113, § 43; Laws 2017, LB 339, § 147.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 113, section 43, with LB 339, section 147, to reflect all amendments.
Note: Changes made by LB 339 became operative July 1, 2017. Changes made by LB 113 became effective August 24, 2017.

39-2107. Board of Public Roads Classifications and Standards; office space; furniture; equipment; supplies; personnel.

The Department of Transportation shall furnish the Board of Public Roads Classifications and Standards with necessary office space, furniture, equipment, and supplies as well as necessary professional, technical, and clerical assistants.

Source: Laws 1969, c. 312, § 7, p. 1123; Laws 2017, LB 339, § 148.
Operative Date: July 1, 2017

39-2108. Board of Public Roads Classifications and Standards; proceedings; subject to Administrative Procedure Act.

All proceedings of the Board of Public Roads Classifications and Standards shall be subject to the provisions of the Administrative Procedure Act.

Source: Laws 1969, c. 312, § 8, p. 1123.

Cross References

Administrative Procedure Act, see section 84-920.

39-2109. Board of Public Roads Classifications and Standards; functional classification; criteria; adoption; hearing; publication; filing.

(1) The Board of Public Roads Classifications and Standards shall develop the specific criteria for each functional classification set forth in sections 39-2103 and 39-2104, which criteria shall be consistent with the general criteria set forth in those sections. No such criteria shall be adopted until after public hearings have been held thereon at such times and places as to assure interested parties throughout the state an opportunity to be heard thereon. Following their adoption, such criteria shall be printed and published and copies thereof shall be deposited with the Secretary of State, the Clerk of the Legislature, the county clerk of each county, and the clerk of each incorporated municipality.

(2) Within eighteen months after July 18, 2008, the Board of Public Roads Classifications and Standards shall adopt and promulgate the specific criteria for remote residential roads.

Source: Laws 1969, c. 312, § 9, p. 1123; Laws 1980, LB 873, § 3; Laws 1983, LB 10, § 5; Laws 2008, LB 1068, § 6.

39-2110. Functional classification; specific criteria; assignment to highways, roads, streets.

Following adoption and publication of the specific criteria required by section 39-2109, the Department of Transportation, after consultation with the appropriate local authorities in each instance, shall assign a functional classification to each segment of highway, road, and street in this state. Before assigning any such classification, the department shall make reasonable effort to resolve any differences of opinion between the department and any county or municipality. Whenever a new road or street is to be opened or an existing road or street is to be extended, the department shall, upon a request from the operating jurisdiction, assign a functional classification to such segment in accordance with the specific criteria established under section 39-2109.

Source: Laws 1969, c. 312, § 10, p. 1123; Laws 2008, LB 1068, § 7; Laws 2017, LB 339, § 149.
Operative Date: July 1, 2017

39-2111. Functional classification; assignment; appeal.

The county or municipality may appeal to the Board of Public Roads Classifications and Standards from any action taken by the Department of Transportation in assigning any functional classification under section 39-2110. Upon the taking of such an appeal, the board shall review all information pertaining to the assignment, hold a hearing thereon if deemed advisable, and render a decision on the assigned classification. The decision of the board may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1969, c. 312, § 11, p. 1123; Laws 1971, LB 100, § 2; Laws 1988, LB 352, § 32; Laws 2017, LB 339, § 150.
Operative Date: July 1, 2017

Cross References

Administrative Procedure Act, see section 84-920.

39-2112. Functional classification; assignment; Department of Transportation; request to reclassify; county board; public hearing; decision; appeal.

Any county or municipality may, based on changing traffic patterns or volume or a change in jurisdiction, request the Department of Transportation to reclassify any segment of highway, road, or street. Any county that wants to use the minimum maintenance, remote residential, or scenic-recreation functional classification or wants to return a road to its previous functional classification may request the department to reclassify an applicable segment of highway or road. If a county board wants a road or a segment of road to be classified as remote residential, it shall

hold a public hearing on the matter prior to requesting the department to reclassify such road or segment of road. The department shall review a request made under this section and either grant or deny the reclassification in whole or in part. Any county or municipality dissatisfied with the action taken by the department under this section may appeal to the Board of Public Roads Classifications and Standards in the manner provided in section 39-2111.

Source: Laws 1969, c. 312, § 12, p. 1124; Laws 1971, LB 100, § 3; Laws 2008, LB 1068, § 8; Laws 2017, LB 339, § 151.
Operative Date: July 1, 2017

39-2113. Board of Public Roads Classifications and Standards; minimum standards; signs required; when; rule for relaxing; request for review; decision.

(1) In addition to the duties imposed upon it by section 39-2109, the Board of Public Roads Classifications and Standards shall develop minimum standards of design, construction, and maintenance for each functional classification set forth in sections 39-2103 and 39-2104. Except for scenic-recreation road standards, such standards shall be such as to assure that each segment of highway, road, or street will satisfactorily meet the requirements of the area it serves and the traffic patterns and volumes which it may reasonably be expected to bear.

(2) The standards for a scenic-recreation road and highway classification shall insure a minimal amount of environmental disruption practicable in the design, construction, and maintenance of such highways, roads, and streets by the use of less restrictive, more flexible design standards than other highway classifications. Design elements of such a road or highway shall incorporate parkway-like features which will allow the user-motorist to maintain a leisurely pace and enjoy the scenic and recreational aspects of the route and include rest areas and scenic overlooks with suitable facilities.

(3) The standards developed for a minimum maintenance road and highway classification shall provide for a level of minimum maintenance sufficient to serve farm machinery and the occasional or intermittent use by passenger and commercial vehicles. The standards shall provide that any defective bridges, culverts, or other such structures on, in, over, under, or part of the minimum maintenance road may be removed by the county in order to protect the public safety and need not be replaced by equivalent structures except when deemed by the county board to be essential for public safety or for the present or future transportation needs of the county. The standards for such minimum maintenance roads shall include the installation and maintenance by the county at entry points to minimum maintenance roads and at regular intervals thereon of appropriate signs to adequately warn the public that the designated section of road has a lower level of maintenance effort than other public roads and thoroughfares. Such signs shall conform to the requirements in the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6,118.

(4) The standards developed for a remote residential road classification shall provide for a level of maintenance sufficient to provide access to remote residences, farms, and ranches by passenger and commercial vehicles. The standards shall allow for one-lane traffic where sight distance is adequate to warn motorists of oncoming traffic. The standards for remote residential roads shall include the installation and maintenance by the county at entry points to remote residential roads of appropriate signs to adequately warn members of the public that they are

traveling on a one-lane road. Such signs shall conform to the requirements in the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6,118.

(5) The board shall by rule provide for the relaxation of standards for any functional classification in those instances in which their application is not feasible because of peculiar, special, or unique local situations.

(6) Any county or municipality which believes that the application of standards for any functional classification to any segment of highway, road, or street would work a special hardship, or any other interested party which believes that the application of standards for scenic-recreation roads and highways to any segment of highway, road, or street would defeat the purpose of the scenic-recreation functional classification contained in section 39-2103, may request the board to relax the standards for such segment. The Department of Transportation, when it believes that the application of standards for any functional classification to any segment of highway that is not hard surfaced would work a special hardship, may request the board to relax such standards. The board shall review any request made pursuant to this section and either grant or deny it in whole or in part. This section shall not be construed to apply to removal of a road or highway from the state highway system pursuant to section 39-1315.01.

Source: Laws 1969, c. 312, § 13, p. 1124; Laws 1973, LB 324, § 1; Laws 1980, LB 873, § 4; Laws 1983, LB 10, § 6; Laws 1993, LB 370, § 42; Laws 2008, LB 1068, § 9; Laws 2017, LB 339, § 152.

Operative Date: July 1, 2017

39-2114. Counties and municipalities; contract between themselves; filing required.

In order to achieve the efficiencies and economics resulting from unified operations, the Legislature encourages the counties and municipalities to make use of the Interlocal Cooperation Act or the Joint Public Agency Act by contracting between and among themselves for cooperative programs of administering all phases of their road and street programs. Any such contract shall be filed with the Board of Public Roads Classifications and Standards.

Source: Laws 1969, c. 312, § 14, p. 1124; Laws 1999, LB 87, § 72.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

39-2115. Six-year plan; basis; filing; failure to file; penalty; funds placed in escrow.

The Department of Transportation and each county and municipality shall develop and file with the Board of Public Roads Classifications and Standards a long-range, six-year plan of highway, road, and street improvements based on priority of needs and calculated to contribute to the orderly development of an integrated statewide system of highways, roads, and streets. Each such plan shall be filed with the board promptly upon preparation but in no event later than March 1, 1971. If any county or municipality, or the department, shall fail to file its plan on or before such date, the board shall so notify the local governing board, the Governor, and the State

Treasurer, who shall suspend distribution of any highway-user revenue allocated to such county or municipality, or the department, until the plan has been filed. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality.

Source: Laws 1969, c. 312, § 15, p. 1124; Laws 1971, LB 100, § 4; Laws 1973, LB 137, § 1; Laws 1976, LB 724, § 2; Laws 2017, LB 339, § 153.
Operative Date: July 1, 2017

39-2116. Board of Public Roads Classifications and Standards; review of plans and programs; recommendations.

The Board of Public Roads Classifications and Standards shall review all six-year plans required by sections 39-2115 to 39-2117 or annual metropolitan transportation improvement programs under section 39-2119.01 submitted to it and make such recommendations for changes therein as it believes necessary or desirable in order to achieve the orderly development of an integrated system of highways, roads, and streets, but in so doing the board shall take into account the fact that individual priorities of needs may not lend themselves to immediate integration. The Department of Transportation and each county and municipality shall give careful and serious consideration to any such recommendations received from the board and shall not reject them except for substantial or compelling reason.

Source: Laws 1969, c. 312, § 16, p. 1125; Laws 1971, LB 100, § 5; Laws 2007, LB 277, § 2; Laws 2017, LB 339, § 154.
Operative Date: July 1, 2017

39-2117. Six-year plan; extension.

The six-year plans required by the provisions of section 39-2115 shall be extended annually, on or before the anniversary date by the addition of a new year, so that there shall at all times be a six-year plan on file with the Board of Public Roads Classifications and Standards. Each such extension shall be subject to the provisions of section 39-2116.

Source: Laws 1969, c. 312, § 17, p. 1125; Laws 1971, LB 100, § 6; Laws 1976, LB 724, § 3.

39-2118. Department of Transportation; plan for specific highway improvements; file annually with Board of Public Roads Classifications and Standards; review.

The Department of Transportation shall annually prepare and file with the Board of Public Roads Classifications and Standards a plan for specific highway improvements for the current

year. The annual plan shall be filed on or before July 1 of each year. In so doing, the department shall take into account all federal funds which will be available to the department for such year. The board shall review each such annual plan to determine whether it is consistent with the department's current six-year plan. The department shall be required to justify any inconsistency with the six-year plan to the satisfaction of the board.

Source: Laws 1969, c. 312, § 18, p. 1125; Laws 1971, LB 100, § 7; Laws 1976, LB 724, § 4; Laws 2017, LB 339, § 155.
Operative Date: July 1, 2017

39-2119. Counties and municipalities; plan or program for specific improvements; file annually with Board of Public Roads Classifications and Standards; hearing; notice; adoption; review; failure to file; penalty; funds placed in escrow.

Each county and municipality shall annually prepare and file, under sections 39-2115 to 39-2117 or 39-2119.01, with the Board of Public Roads Classifications and Standards, a plan or program for specific road or street improvements for the current year. The annual plan or program shall be filed on or before March 1 of each year. No such plan or program shall be adopted until after a local public hearing thereon and its approval by the local governing body. The board shall prescribe the nature and time of notice of such hearing, which shall be such as shall be likely to come to the attention of interested citizens in the jurisdiction involved. The board shall review each such annual plan or program within sixty days after it has been filed to determine whether it is consistent with the county's or municipality's current six-year plan. The county or municipality shall be required to justify any inconsistency with the six-year plan to the satisfaction of the board. If any county or municipality shall fail to comply with the provisions of this section, the board shall so notify the local governing board, the Governor, and the State Treasurer, who shall suspend distribution of any highway-user revenue allocated to such county or municipality until there has been compliance. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality.

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

Source: Laws 1969, c. 312, § 19, p. 1126; Laws 1971, LB 100, § 8; Laws 1973, LB 137, § 2; Laws 1976, LB 724, § 5; Laws 2007, LB 277, § 3.

39-2119.01. County or municipality; use of annual metropolitan transportation improvement program as alternate submission authorized.

Any county or municipality that is designated as a metropolitan planning organization pursuant to 23 U.S.C. 134(d), as such section existed on January 1, 2007, may, in lieu of

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

Source: Laws 2007, LB 277, § 4.

39-2120. Standardized system of annual reporting; Auditor of Public Accounts and Board of Public Roads Classifications and Standards; develop.

The Auditor of Public Accounts and the Board of Public Roads Classifications and Standards shall develop and schedule for implementation a standardized system of annual reporting to the board by the Department of Transportation and by counties and municipalities, which system shall include:

(1) A procedure for documenting and certifying that standards of design, construction, and maintenance of roads and streets have been met;

(2) A procedure for documenting and certifying that all tax revenue for road or street purposes has been expended in accordance with approved plans and standards, to include county and municipal tax revenue, as well as highway-user revenue allocations made by the state;

(3) A uniform system of accounting which clearly indicates, through a system of reports, a comparison of receipts and expenditures to approved budgets and programs;

(4) A system of budgeting which reflects uses and sources of funds in terms of programs and accomplishments;

(5) An approved system of reporting an inventory of machinery, equipment, and supplies; and

(6) An approved system of cost accounting of the operation of equipment.

Source: Laws 1969, c. 312, § 20, p. 1126; Laws 1971, LB 100, § 9; Laws 2017, LB 339, § 156.

Operative Date: July 1, 2017

39-2121. Department of Transportation; counties; municipalities; reports; penalty; when imposed; appeal.

(1) The Department of Transportation and each county and municipality shall make the reports provided for by section 39-2120.

(2) If any county or municipality or the department fails to file such report on or before its due date, the Board of Public Roads Classifications and Standards shall so notify the local governing board, the Governor, and the State Treasurer who shall suspend distribution of any highway-user revenue allocated to such county or municipality or the department until the report has been filed. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality.

(3) If any county or municipality either (a) files a materially false report or (b) constructs any highway, road, or street below the minimum standards developed under section 39-2113, without having received prior approval thereof, such county's or municipality's share of highway-user revenue allocated during the following calendar year shall be reduced by ten percent and the amount of any such reduction shall be distributed among the other counties or municipalities, as appropriate, in the manner provided by law for allocation of highway-user revenue. The penalty for filing a materially false report and the penalty for constructing a highway, road, or street below established minimum standards without prior approval shall be assessed by the board only after a review of the facts involved in such case and the holding of a public hearing on the matter. The decision thereafter rendered by the board may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1969, c. 312, § 21, p. 1127; Laws 1971, LB 100, § 10; Laws 1973, LB 137, § 3; Laws 1976, LB 724, § 6; Laws 1988, LB 352, § 33; Laws 2017, LB 339, § 157.

Operative Date: July 1, 2017

Cross References

Administrative Procedure Act, see section 84-920.

39-2122. Board of Public Roads Classifications and Standards; duties.

The Board of Public Roads Classifications and Standards may make occasional random checks of construction projects to determine that the standards of design and construction developed under section 39-2113 are being met.

Source: Laws 1969, c. 312, § 22, p. 1128; Laws 1971, LB 100, § 11.

39-2123. Repealed. Laws 2014, LB 757, § 4.

39-2124. Legislative intent.

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

Source: Laws 1969, c. 312, § 24, p. 1128; Laws 1971, LB 100, § 13; Laws 1983, LB 10, § 8; Laws 2007, LB 277, § 5; Laws 2017, LB 339, § 158.

Operative Date: July 1, 2017

39-2125. Sections, how construed.

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

Source: Laws 1969, c. 312, § 25, p. 1128; Laws 1983, LB 10, § 9; Laws 2007, LB 277, § 6.

ARTICLE 22

NEBRASKA HIGHWAY BONDS

Section

39-2201. Terms, defined.

As used in the Nebraska Highway Bond Act, unless the context otherwise requires:

(1) Bond fund shall mean the Highway Restoration and Improvement Bond Fund created in section 39-2215.01;

(2) Bonds shall mean the bonds authorized to be issued under the Nebraska Highway Bond Act and shall include notes or other similar evidences of indebtedness;

(3) Commission shall mean the State Highway Commission;

(4) Construction shall mean and include acquisition, construction, resurfacing, restoring, rehabilitation, and reconstruction necessary to plan, build, improve, replace, or extend a highway, and to construct shall mean and include to acquire, to construct, to resurface, to restore, to rehabilitate, and to reconstruct as necessary to plan, build, improve, replace, or extend a highway;

(5) Cost of construction shall mean and include obligations to contractors and builders for construction and for the restoration of property damaged or destroyed in connection with such construction, the cost of acquiring land, property rights, rights-of-way, franchises, easements, and other interests deemed necessary or convenient for construction, the cost of acquiring any property, real or personal, tangible or intangible, or any interest therein, deemed necessary or convenient for construction, the interest requirements upon any bonds prior to, during, and for a period of eighteen months after completion of construction, fees and expenses of paying agents and other agents appointed by the commission for such bonds during any such period, the costs and expenses of preliminary investigations to determine the feasibility or practicability of such construction, the fees and expenses of engineers for making preliminary studies, surveys, reports, estimates of costs and of revenue, and other estimates and for preparing plans and specifications and supervising construction as well as for the performance of all other duties of engineers in relation to such construction or the issuance of bonds therefor, expenses of administration during construction, legal expenses and fees, financing charges, municipal bond insurance or surety bond premiums, credit facility fees, costs of audits, costs of preparing and issuing such bonds, and all other items of expense incident to such construction, the financing thereof, and the acquisition of land and property therefor;

(6) Fund shall mean the Highway Trust Fund which is created by section 39-2215; and

(7) Highway shall mean and include any public road now or at any time hereafter classified by the Legislature as the responsibility of the state to construct and any related facility, the cost of which is financed in whole or in part by the issuance of bonds under the Nebraska Highway Bond Act.

The Legislature hereby reserves the right to vary and change by law the definitions of construction, cost of construction, and highway contained in this section.

Source: Laws 1969, c. 309, § 1, p. 1106; Laws 1988, LB 632, § 1; Laws 2000, LB 1135, § 5.

39-2202. Repealed. Laws 2000, LB 1135, § 34.

39-2203. Bonds; issuance; amount; commission; powers.

The commission acting for and on behalf of the state may issue from time to time bonds in such principal amounts as shall be necessary to provide sufficient funds to defray any or all of the cost of construction of highways. The principal amount of the bonds so authorized to be issued shall not exceed, in the aggregate, the total amount authorized by the Legislature from time to time for such purpose. The proceeds from the sale of any bonds issued under the Nebraska Highway Bond Act shall be deposited in the state treasury to the credit of the Highway Cash Fund and shall be used only to finance or to refinance through the issuance of refunding bonds the construction of highways in this state as authorized by law. The commission is hereby granted all powers necessary or convenient to carry out the purposes and exercise the powers granted by such act.

Source: Laws 1969, c. 309, § 3, p. 1108; Laws 1988, LB 632, § 2.

39-2204. Attorney General; legal advisor to commission; Auditor of Public Accounts; books; audit annually.

(1) The Attorney General shall serve as legal advisor to the commission and, to assist him or her in the performance of his or her duties as such, may authorize the commission to employ special bond counsel.

(2) The Auditor of Public Accounts shall audit the books of the commission at such time as he or she determines necessary.

Source: Laws 1969, c. 309, § 4, p. 1108; Laws 2011, LB 337, § 2.

39-2205. Bonds; issuance; amount.

Bonds may be issued under the Nebraska Highway Bond Act only to the extent that the annual aggregate principal and interest requirements, in the calendar year in which such bonds are issued and in each calendar year thereafter until the scheduled maturity of such bonds, on such bonds and on all other bonds theretofore issued and to be outstanding and unpaid upon the issuance of such bonds shall not exceed the amount which is equal to fifty percent of the money deposited in the fund or the bond fund, as the case may be, from which such bonds shall be paid during the calendar year preceding the issuance of the bonds proposed to be issued. This section shall not apply to the first issuance of each series of bonds authorized by the Legislature.

If short-term bonds are issued in anticipation of the issuance of long-term refunding bonds and such short-term bonds are secured by insurance or a letter of credit or similar guarantee issued by a financial institution rated by a national rating agency in one of the two highest categories of bond ratings, then, for the purposes of the Nebraska Highway Bond Act, when determining the amount of short-term bonds that may be issued and the amount of taxes, fees, or other money to be deposited in any fund for the payment of bonds issued under the act, the annual aggregate principal and interest payments on the short-term bonds shall be deemed to be

such payments thereon, except that the final principal payment shall not be that specified in the short-term bonds but shall be the principal and all interest payments required to reimburse the issuer of the insurance policy or letter of credit or similar guarantee pursuant to the reimbursement agreement between the commission and such issuer.

Source: Laws 1969, c. 309, § 5, p. 1108; Laws 1988, LB 632, § 3.

39-2206. Bonds; negotiable instruments.

Whether or not the bonds are of such form and character as to be negotiable instruments under article 8, Uniform Commercial Code, the bonds shall be and hereby are made negotiable instruments within the meaning and for all purposes of article 8, Uniform Commercial Code, with the exception of any provisions thereof pertaining to registration.

Source: Laws 1969, c. 309, § 6, p. 1108.

39-2207. Bonds; date; maturity; interest; redemption; sale.

The bonds shall be authorized by resolution or resolutions of the commission, bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration and conversion privileges, be executed in such manner, be payable in such medium of payment and at such place or places within or without the state, and be subject to such terms of redemption and such redemption price or prices as such resolution or resolutions may provide. The bonds may be sold by the commission, at public or private sale, at such price or prices as the commission shall determine.

Source: Laws 1969, c. 309, § 7, p. 1109; Laws 2001, LB 420, § 29.

39-2208. Interim receipts; exchangeable for definitive bonds; mutilated, destroyed, stolen, or lost; replacement; security.

Prior to the preparation of definitive bonds, the commission may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The commission may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed, stolen or lost. In so replacing any bonds, the commission shall take adequate security to protect against any loss which might be incurred as a result thereof.

Source: Laws 1969, c. 309, § 8, p. 1109.

39-2209. Resolution authorizing issuance of bonds; contents.

Any resolution or resolutions of the commission authorizing any bonds or any issue thereof may contain provisions, consistent with the Nebraska Highway Bond Act and not in derogation or limitation of such act, which shall be a part of the contract with the holders thereof, as to:

(1) Pledging all or any part of the money in the fund or bond fund, as the case may be, to secure the payment of the bonds, subject to such agreements with the bondholders as may then prevail;

(2) The use and disposition of money in the fund or bond fund;

(3) The setting aside of reserves, sinking funds, or arbitrage rebate funds and the funding, regulation, and disposition thereof;

(4) Limitations on the purpose to which the proceeds from the sale of bonds may be applied;

(5) Limitations on the issuance of additional bonds and on the retirement of outstanding or other bonds pursuant to the Nebraska Highway Bond Act;

(6) The procedure by which the terms of any agreement with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(7) Vesting in a bank or trust company as paying agent such rights, powers, and duties as the commission may determine, vesting in a trustee appointed by the bondholders pursuant to the Nebraska Highway Bond Act such rights, powers, and duties as the commission may determine, and limiting or abrogating the right of the bondholders to appoint a trustee under such act or limiting the rights, powers, and duties of such trustee;

(8) Providing for a municipal bond insurance policy, surety bond, letter of credit, or other credit support facility or liquidity facility; and

(9) Any other matters, of like or different character, which in any way affect the security or protection of the bonds.

Source: Laws 1969, c. 309, § 9, p. 1109; Laws 1988, LB 632, § 4.

39-2210. Commission; retirement of bonds; powers.

The commission, subject to such agreements with bondholders as may then prevail, shall have the power out of any money available therefor to purchase the bonds for retirement.

Source: Laws 1969, c. 309, § 10, p. 1110.

39-2211. Commission; bonds; issuance; agreements; contents; powers.

In addition to the powers conferred upon the commission to secure the bonds in the Nebraska Highway Bond Act, the commission shall have power in connection with the issuance of bonds to enter into such agreements, consistent with the act and not in derogation or limitation of the act, as it may deem necessary, convenient, or desirable concerning the use or disposition of the money in the fund or bond fund including the pledging or creation of any security interest in such money and the doing of or refraining from doing any act which the commission would have

the right to do to secure the bonds in the absence of such agreements. The commission shall have the power to enter into amendments of any such agreements, consistent with the Nebraska Highway Bond Act and not in derogation or limitation of the act, within the powers granted to the commission by the act and to perform such agreements. The provisions of any such agreements may be made a part of the contract with the holders of the bonds.

Source: Laws 1969, c. 309, § 11, p. 1110; Laws 1988, LB 632, § 5.

39-2212. Pledge or security agreement; lien on funds.

Any pledge or security instrument made by the commission shall be valid and binding from the time when the pledge or security instrument is made. The money in the fund or bond fund so pledged and entrusted shall immediately be subject to the lien of such pledge or security instrument upon the deposit thereof in the fund without any physical delivery thereof or further act. The lien of any such pledge or security instrument shall be valid and binding as against all parties having subsequently arising claims of any kind in tort, contract, or otherwise, irrespective of whether such parties have notice thereof. Neither the resolution nor any security instrument or other instrument by which a pledge or other security is created need be recorded or filed and the commission shall not be required to comply with any of the provisions of the Uniform Commercial Code.

Source: Laws 1969, c. 309, § 12, p. 1111; Laws 1988, LB 632, § 6.

39-2213. Bonds; special obligations of state; payment.

The bonds shall be special obligations of the state payable solely and only from the fund or bond fund, as the case may be, and neither the members of the commission nor any person executing the bonds shall be liable thereon. Such bonds shall not be a general obligation debt of this state and they shall contain on the face thereof a statement to such effect.

Source: Laws 1969, c. 309, § 13, p. 1111; Laws 1988, LB 632, § 7.

39-2214. State; pledge with holders of bonds.

The state pledges and agrees with the holders of any bonds issued under the Nebraska Highway Bond Act that it will not limit or alter or in any way impair the rights and remedies of such holders until such bonds, together with the interest thereon, the interest on any unpaid installments of interest, and all costs and expenses for which the commission is liable in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged.

Source: Laws 1969, c. 309, § 14, p. 1111; Laws 1988, LB 632, § 8.

39-2215. Highway Trust Fund; created; allocation; investment; State Treasurer; transfer; disbursements.

(1) There is hereby created in the state treasury a special fund to be known as the Highway Trust Fund.

(2) All funds credited to the Highway Trust Fund pursuant to sections 66-489.02, 66-499, 66-4,140, 66-4,147, 66-6,108, and 66-6,109.02, and related penalties and interest, shall be allocated as provided in such sections.

(3) All other motor vehicle fuel taxes, diesel fuel taxes, compressed fuel taxes, and alternative fuel fees related to highway use retained by the state, all motor vehicle registration fees retained by the state other than those fees credited to the State Recreation Road Fund pursuant to subdivision (3) of section 60-3,156, and other highway-user taxes imposed by state law and allocated to the Highway Trust Fund, except for the proceeds of the sales and use taxes derived from motor vehicles, trailers, and semitrailers credited to the fund pursuant to section 77-27,132, are hereby irrevocably pledged for the terms of the bonds issued prior to January 1, 1988, to the payment of the principal, interest, and redemption premium, if any, of such bonds as they mature and become due at maturity or prior redemption and for any reserves therefor and shall, as received by the State Treasurer, be deposited in the fund for such purpose.

(4) Of the money in the fund specified in subsection (3) of this section which is not required for the use specified in such subsection, (a) an amount to be determined annually by the Legislature through the appropriations process may be transferred to the Motor Fuel Tax Enforcement and Collection Cash Fund for use as provided in section 66-738 on a monthly or other less frequent basis as determined by the appropriation language, (b) an amount to be determined annually by the Legislature through the appropriations process shall be transferred to the License Plate Cash Fund as certified by the Director of Motor Vehicles, and (c) the remaining money may be used for the purchase for retirement of the bonds issued prior to January 1, 1988, in the open market.

(5) The State Treasurer shall monthly transfer, from the proceeds of the sales and use taxes credited to the Highway Trust Fund and any money remaining in the fund after the requirements of subsections (2) through (4) of this section are satisfied, thirty thousand dollars to the Grade Crossing Protection Fund.

(6) Except as provided in subsection (7) of this section, the balance of the Highway Trust Fund shall be allocated fifty-three and one-third percent, less the amount provided for in section 39-847.01, to the Department of Transportation, twenty-three and one-third percent, less the amount provided for in section 39-847.01, to the various counties for road purposes, and twenty-three and one-third percent to the various municipalities for street purposes. If bonds are issued pursuant to subsection (2) of section 39-2223, the portion allocated to the department shall be credited monthly to the Highway Restoration and Improvement Bond Fund, and if no bonds are issued pursuant to such subsection, the portion allocated to the department shall be credited monthly to the Highway Cash Fund. The portions allocated to the counties and municipalities shall be credited monthly to the Highway Allocation Fund and distributed monthly as provided by law. Vehicles accorded prorated registration pursuant to section 60-3,198 shall not be included in any formula involving motor vehicle registrations used to determine the allocation and distribution of state funds for highway purposes to political subdivisions.

(7) If it is determined by December 20 of any year that a county will receive from its allocation of state-collected highway revenue and from any funds relinquished to it by municipalities within its boundaries an amount in such year which is less than such county received in state-collected highway revenue in calendar year 1969, based upon the 1976 tax rates for highway-user fuels and registration fees, the department shall notify the State Treasurer that an amount equal to the sum necessary to provide such county with funds equal to such county's 1969 highway allocation for such year shall be transferred to such county from the Highway Trust Fund. Such makeup funds shall be matched by the county as provided in sections 39-2501 to 39-2510. The balance remaining in the fund after such transfer shall then be reallocated as provided in subsection (6) of this section.

(8) The State Treasurer shall disburse the money in the Highway Trust Fund as directed by resolution of the commission. All disbursements from the fund shall be made upon warrants drawn by the Director of Administrative Services. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act and the earnings, if any, credited to the fund.

Source: Laws 1969, c. 309, § 15, p. 1111; Laws 1971, LB 53, § 3; Laws 1979, LB 571, § 2; Laws 1981, LB 22, § 8; Laws 1983, LB 118, § 2; Laws 1984, LB 1089, § 1; Laws 1986, LB 599, § 11; Laws 1988, LB 632, § 9; Laws 1989, LB 258, § 3; Laws 1990, LB 602, § 1; Laws 1991, LB 627, § 4; Laws 1992, LB 319, § 1; Laws 1994, LB 1066, § 25; Laws 1994, LB 1160, § 49; Laws 1995, LB 182, § 22; Laws 2002, LB 989, § 7; Laws 2002, Second Spec. Sess., LB 1, § 2; Laws 2003, LB 563, § 17; Laws 2004, LB 983, § 1; Laws 2004, LB 1144, § 3; Laws 2005, LB 274, § 228; Laws 2008, LB 846, § 1; Laws 2011, LB 170, § 1; Laws 2011, LB 289, § 3; Laws 2017, LB 339, § 159.

Operative Date: July 1, 2017

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

39-2215.01. Highway Restoration and Improvement Bond Fund; created; use; investment.

(1) There is hereby created in the state treasury a fund to be known as the Highway Restoration and Improvement Bond Fund.

(2) If bonds are issued pursuant to subsection (2) of section 39-2223, all motor vehicle fuel taxes, diesel fuel taxes, compressed fuel taxes, and alternative fuel fees related to highway use, motor vehicle registration fees, and other highway-user taxes which are retained by the state and allocated to the bond fund from the Highway Trust Fund shall be hereby irrevocably pledged for the terms of the bonds issued after July 1, 1988, to the payment of the principal, interest, and redemption premium, if any, of such bonds as they mature and become due at maturity or prior redemption and for any reserves therefor and shall, as received by the State Treasurer, be deposited directly in the bond fund for such purpose. Of the money in the bond fund not required for such purpose, such remaining money may be used for the purchase for retirement of the bonds in the open market or for any other lawful purpose related to the issuance of bonds, and

the balance, if any, shall be transferred monthly to the Highway Cash Fund for such use as may be provided by law.

(3) The State Treasurer shall disburse the money in the bond fund as directed by resolution of the commission. All disbursements from the bond fund shall be made upon warrants drawn by the Director of Administrative Services. Any money in the bond fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1988, LB 632, § 10; Laws 1990, LB 602, § 2; Laws 1994, LB 1066, § 26; Laws 1994, LB 1160, § 50; Laws 1995, LB 182, § 23; Laws 2011, LB 289, § 4.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

39-2216. Legislature; holders of bonds; pledges not to repeal, diminish, or apply funds for other uses.

The Legislature hereby irrevocably pledges and agrees with the holders of the bonds issued under the Nebraska Highway Bond Act that so long as such bonds remain outstanding and unpaid it shall not repeal, diminish, or apply to any other purposes the motor vehicle fuel taxes, diesel fuel taxes, compressed fuel taxes, and alternative fuel fees related to highway use, motor vehicle registration fees, and such other highway-user taxes which may be imposed by state law and allocated to the fund or bond fund, as the case may be, if to do so would result in fifty percent of the amount deposited in the fund or bond fund in each year being less than the amount equal to the maximum annual principal and interest requirements of such bonds.

Source: Laws 1969, c. 309, § 16, p. 1112; Laws 1988, LB 632, § 11; Laws 1994, LB 1160, § 51; Laws 1995, LB 182, § 24; Laws 2011, LB 289, § 5.

39-2217. Bondholders; rights protected; suit at law or in equity.

Any holder of bonds issued under the Nebraska Highway Bond Act or any of the coupons appertaining thereto, except to the extent the rights given by such act may be restricted by resolution of the commission, may, either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of this state or as granted under the act or under the resolution authorizing the issuance of the bonds and may enforce and compel the performance of all duties required by such laws, by such act, or by such resolution to be performed by the commission or by any employee thereof.

Source: Laws 1969, c. 309, § 17, p. 1112; Laws 1988, LB 632, § 12.

39-2218. Bonds; legal obligations; investment.

The bonds are hereby made securities in which all public officers, boards, agencies, and bodies of the state, its counties, political subdivisions, public corporations, and municipalities and the officers, boards, agencies or bodies of any of them, all insurance companies and associations and other persons carrying on an insurance business, all banks, trust companies, savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees, and other fiduciaries, and all other persons who are now or who may hereafter be authorized to invest in notes, bonds, or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. Notwithstanding any other provision of law, the bonds are also hereby made securities which may be deposited with and shall be received by all public officers, boards, agencies, and bodies of this state, its counties, political subdivisions, public corporations and municipalities, and the officers, boards, agencies or bodies of any of them for any purpose for which the deposit of notes, bonds, or other obligations of the state is now or may be hereafter authorized.

Source: Laws 1969, c. 309, § 18, p. 1113.

39-2219. Bonds; interest; exempt from taxation.

It is hereby found, determined, and declared that there exists a need for the construction of highways in this state requiring the issuance of bonds by the commission acting for and on behalf of the state, all as more fully provided in the Nebraska Highway Bond Act, that the creation of the commission and the carrying out of its purpose are in all respects for the benefit of the people of this state and for the improvement of their health, welfare, and prosperity and constitute a public purpose, and that such bonds, the interest thereon, and the income therefrom shall at all times be exempt from taxation by this state or any political subdivision of this state.

Source: Laws 1969, c. 309, § 19, p. 1113; Laws 1988, LB 632, § 13.

39-2220. Repealed. Laws 2000, LB 1135, § 34.

39-2221. Act, how construed.

The Nebraska Highway Bond Act is supplemental to existing statutes and shall not be construed as repealing or amending existing statutes but shall be construed harmoniously and implemented compatibly with them.

Source: Laws 1969, c. 309, § 21, p. 1113; Laws 1988, LB 632, § 14.

39-2222. Act, how cited.

Sections 39-2201 to 39-2226 shall be known and may be cited as the Nebraska Highway Bond Act.

Source: Laws 1969, c. 309, § 22, p. 1113; Laws 1988, LB 632, § 15.

39-2223. Bonds; issuance; amount.

(1) Under the authority granted by Article XIII, section 1, of the Constitution of Nebraska, the Legislature hereby authorizes the issuance of bonds in the principal amount of twenty million dollars in 1969 and in the principal amount of twenty million dollars on or before June 30, 1977, with the proceeds thereof to be used for the construction of highways in this state, the Legislature expressly finding that the need for such construction requires such action. Such bonds shall in all respects comply with the provisions of Article XIII, section 1, of the Constitution of Nebraska.

(2) Under the authority granted by Article XIII, section 1, of the Constitution of Nebraska, the Legislature hereby authorizes after July 1, 1988, the issuance of bonds in a principal amount to be determined by the commission, not to exceed fifty million dollars. The outstanding principal amount of such bonds may exceed such limit if and to the extent that the commission determines that the issuance of advance refunding bonds under section 39-2226 in a principal amount greater than the bonds to be refunded would reduce the aggregate bond principal and interest requirements payable from the bond fund. The proceeds of such issues shall be used exclusively (a) for the construction, resurfacing, reconstruction, rehabilitation, and restoration of highways in this state, the Legislature expressly finding that the need for such construction and reconstruction work and the vital importance of the highway system to the welfare and safety of all Nebraskans requires such action, or (b) to eliminate or alleviate cash-flow problems resulting from the receipt of federal funds. Such bonds shall in all respects comply with the provisions of Article XIII, section 1, of the Constitution of Nebraska.

Source: Laws 1969, c. 314, § 1, p. 1132; Laws 1975, LB 401, § 1; Laws 1988, LB 632, § 16.

39-2224. Bonds; sale; proceeds; appropriated to Highway Cash Fund.

(1) The proceeds of the sale of bonds authorized by subsection (1) of section 39-2223 are hereby appropriated to the Highway Cash Fund of the Department of Transportation, for the biennium ending June 30, 1977, for expenditure for the construction of highways.

(2) The proceeds of the sale of bonds authorized by subsection (2) of section 39-2223 are hereby appropriated to the Highway Cash Fund of the Department of Transportation for expenditure for highway construction, resurfacing, reconstruction, rehabilitation, and restoration and for the elimination or alleviation of cash-flow problems resulting from the receipt of federal funds.

Source: Laws 1969, c. 314, § 2, p. 1132; Laws 1975, LB 401, § 2; Laws 1988, LB 632, § 17; Laws 2017, LB 339, § 160.
Operative Date: July 1, 2017

39-2225. Highway Cash Fund; warrants.

The Director of Administrative Services shall draw his warrants upon the Highway Cash Fund for, but never in excess of, the amount herein appropriated upon presentation of proper vouchers. The State Treasurer shall pay such warrants out of the Highway Cash Fund.

Source: Laws 1969, c. 314, § 3, p. 1132.

39-2226. Commission; issue refunding bonds; when; procedure; proceeds; how invested; safekeeping; when considered as outstanding and unpaid.

For the purpose of refunding present and future bonded indebtedness issued pursuant to the Nebraska Highway Bond Act, the commission may issue, without further legislative authorization, refunding bonds with which to call and redeem all or any part of such outstanding bonds at or before the maturity or the redemption date thereof, may include various series and issues of the outstanding bonds in a single issue of refunding bonds, and may issue refunding bonds to pay any redemption premium and interest to accrue and become payable on the outstanding bonds being refunded. The refunding bonds may be issued and delivered at any time prior to the date of maturity or the redemption date of the bonds to be refunded that the commission determines to be in the best interests of the state. The refunding bonds shall, except as specifically provided in this section, be issued in accordance with such act. The proceeds derived from the sale of refunding bonds issued pursuant to this section may be invested in obligations of or guaranteed by the United States Government pending the time the proceeds are required for the purposes for which refunding bonds are issued, and to further secure the refunding bonds, the commission may enter into a contract with any bank or trust company, within or without the state, with respect to the safekeeping and application of the proceeds of the refunding bonds and the safekeeping and application of the earnings on the investment. Such contract shall become a part of the contract with the holders of the refunding bonds. Bonds refunded by such refunding bonds, which have been called for redemption or with respect to which the bond trustee or paying agent has irrevocable instructions to call such bonds for redemption on a date certain in accordance with the terms thereof, and which have sufficient funds or obligations of, or guaranteed by, the United States Government set aside in safekeeping to be applied for the complete payment of such bonds, interest thereon, and redemption premium, if any on the redemption date, shall not be considered as outstanding and unpaid bonds with respect to the limitations set forth in section 39-2205.

Source: Laws 1975, LB 401, § 3; Laws 1988, LB 632, § 18.

ARTICLE 23

COUNTY HIGHWAY AND CITY STREET SUPERINTENDENTS ACT

Section

39-2301. Act, how cited; legislative findings.

(1) Sections 39-2301 to 39-2311 shall be known and may be cited as the County Highway and City Street Superintendents Act.

(2) The Legislature finds that in order to safeguard life, health, and property, and in order to further professional management of county road and municipal street programs, persons practicing or offering to practice street or highway superintending in this state are encouraged to become licensed as provided in the act.

Source: Laws 1969, c. 144, § 1, p. 665; Laws 2003, LB 500, § 1.

39-2301.01. Terms, defined.

For purposes of the County Highway and City Street Superintendents Act, unless the context otherwise requires:

(1) Board of examiners means the Board of Examiners for County Highway and City Street Superintendents;

(2) City street superintendent means a person who engages in the practice of street superintending for an incorporated municipality;

(3) County highway superintendent means a person who engages in the practice of highway superintending for a county; and

(4) Street or highway superintending means:

(a) Developing and annually updating long-range plans based on needs and coordinated with adjacent local governmental units;

(b) Developing annual programs for design, construction, and maintenance;

(c) Developing annual budgets based on programmed projects and activities;

(d) Implementing the capital improvements and maintenance activities provided in the approved plans, programs, and budgets; and

(e) Managing personnel, contractors, and equipment in support of such planning, programming, budgeting, and implementation operations.

Source: Laws 2003, LB 500, § 2.

39-2302. County highway or city street superintendents; license required; effect.

No person shall be employed by any county as a county highway superintendent or by any municipality as a city street superintendent to qualify for the incentive payments provided in sections 39-2501 to 39-2520 unless he or she has been licensed under the County Highway and City Street Superintendents Act.

Source: Laws 1969, c. 144, § 2, p. 665; Laws 2003, LB 500, § 3.

39-2303. Repealed. Laws 2003, LB 500, § 23.

39-2304. Board of Examiners for County Highway and City Street Superintendents; created; members; qualifications; appointment; term; vacancy; expenses.

The Board of Examiners for County Highway and City Street Superintendents is created. The board shall consist of seven members to be appointed by the Governor, four of whom shall be county representatives, and three of whom shall be municipal representatives.

Immediately preceding appointment to the board, each county and municipal representative shall hold a current license as a county highway or city street superintendent pursuant to the County Highway and City Street Superintendents Act. Of the county representatives, no more than one member shall be appointed from each class of county as defined in section 23-1114.01, and of the municipal representatives, no more than one shall be appointed from each congressional district, one of whom shall be a representative of a city of the metropolitan or primary class, one of whom shall be a representative of a city of the first class, and one of whom shall be a representative of a city of the second class or a village.

In making such appointments, the Governor may give consideration to a list of licensed county highway engineers, county highway superintendents, and county surveyors submitted by the Nebraska Association of County Officials and to a list of licensed city street superintendents or street commissioners, city engineers, and public works directors submitted by the League of Nebraska Municipalities. Two county representatives shall initially be appointed for terms of two years each, and two county representatives shall initially be appointed for terms of four years each. One municipal representative shall initially be appointed for a term of two years, and two municipal representatives shall initially be appointed for terms of four years each. Thereafter, all such appointments shall be for terms of four years each.

In the event a county or municipal representative loses his or her license as a county highway or city street superintendent, such person shall no longer be qualified to serve on the board and such seat shall be vacant. In the event of a vacancy occurring on the board for any reason, such vacancy shall be filled by appointment by the Governor for the remainder of the unexpired term. Such appointed person shall meet the same requirements and qualifications as the member whose vacancy he or she is filling.

Members of the board shall receive no compensation for their services as members of the board but shall be reimbursed for their actual and necessary expenses incurred while engaged in the performance of their official duties as provided in sections 81-1174 to 81-1177.

Source: Laws 1969, c. 144, § 4, p. 666; Laws 1981, LB 204, § 63; Laws 1992, LB 175, § 1; Laws 2003, LB 500, § 4.

39-2305. Board of examiners; office space; equipment; meetings.

The board of examiners shall be furnished necessary office space, furniture, equipment, stationery, and clerical assistance by the Department of Transportation. The board shall organize itself by selecting from among its members a chairperson and such other officers as it may find desirable. The board shall meet at such times at the headquarters of the department in Lincoln, Nebraska, as may be necessary for the administration of the County Highway and City Street Superintendents Act.

Source: Laws 1969, c. 144, § 5, p. 666; Laws 2003, LB 500, § 5; Laws 2017, LB 339, § 161.

Operative Date: July 1, 2017

39-2306. Class B license; application; fee; exceptions.

(1) Any person desiring to be issued a Class B license under section 39-2308 shall make application therefor to the board of examiners upon forms prescribed and furnished by the board. The application shall include the applicant's social security number. Such application shall be accompanied by an application fee of twenty-five dollars.

(2) Any professional engineer shall be entitled to a Class B license under section 39-2308 without examination.

Source: Laws 1969, c. 144, § 6, p. 667; Laws 1997, LB 622, § 61; Laws 1997, LB 752, § 94; Laws 2003, LB 500, § 6.

39-2307. Board of examiners; examinations; conduct; test qualifications of applicants for Class B licenses.

The board of examiners shall, twice each year, conduct examinations of applicants for Class B licenses under section 39-2308. Such examinations shall be designed to test the qualifications

of applicants for the position of county highway superintendent or city street superintendent and shall cover the ability to:

(1) Develop and annually update long-range plans based on needs and coordinated with adjacent local governmental units;

(2) Develop annual programs for design, construction, and maintenance;

(3) Develop annual budgets based on programmed projects and activities;

(4) Implement the capital improvements and maintenance activities provided in the approved plans, programs, and budgets; and

(5) Understand principles pertaining to highway, road, and street operations and to management of personnel, contractors, and equipment.

Source: Laws 1969, c. 144, § 7, p. 667; Laws 2003, LB 500, § 7.

39-2308. Class B license; term; renewal.

Any person satisfactorily completing the examination required by section 39-2307 or exempt from such examination under the provisions of subsection (2) of section 39-2306 shall be issued a Class B license as a county highway or city street superintendent. Such license shall be valid for a period of one year and shall be renewable upon the payment of an annual fee of ten dollars. Any person holding a license on January 1, 2004, shall be deemed to be holding a Class B license under this section.

Source: Laws 1969, c. 144, § 8, p. 668; Laws 2003, LB 500, § 8.

39-2308.01. Class A license; application; qualifications; fees; term; renewal.

Any person holding a Class B license issued pursuant to section 39-2308 may apply to the board of examiners for a Class A license upon forms prescribed and furnished by the board upon submitting evidence that (1) he or she has been employed and appointed by one or more county or counties or municipality or municipalities as a county highway or city street superintendent at least half-time for at least two years within the past six years or (2) he or she has at least four years' experience in work comparable to street or highway superintending. Such application shall be accompanied by a fee of seventy-five dollars. A Class A license shall be valid for a period of three years and shall be renewable for three years as provided in section 39-2308.02 upon payment of a fee of fifty dollars.

Source: Laws 2003, LB 500, § 9.

39-2308.02. Class A license; renewal; professional development required.

(1) As a condition for renewal of a license issued pursuant to section 39-2308.01, the holder of a Class A license shall be required to have successfully completed twenty hours of professional development within the preceding three years. Any license holder who completes in

excess of twenty hours of professional development within the preceding three years may have the excess, not to exceed ten hours, applied to the requirement for the next triennium.

(2) The board of examiners shall not renew the Class A license of a license holder who has failed to complete the professional development requirements pursuant to subsection (1) of this section unless he or she can show good cause why he or she was unable to comply with such requirements. If the board determines that good cause was shown, the board shall permit such license holder to make up all outstanding required hours of professional development. If the board determines that good cause was not shown or if the license holder requests renewal as a Class B licensee, the board shall issue a Class B license. Renewal of such Class B license shall be governed by section 39-2308.

(3) A holder of a Class B license who previously held a Class A license may be reissued a Class A license by:

(a) Electing to either:

(i) Complete one and one-half of the triennial requirements for professional development as set forth in the rules and regulations of the board; or

(ii) Reapply under section 39-2308.01; and

(b) Paying the seventy-five-dollar Class A application fee.

Source: Laws 2003, LB 500, § 10.

39-2308.03. Licensees; additional licensure; requirements.

The holder of a county highway superintendent's license shall be entitled to hold a city street superintendent's license of the same or a lower level upon payment of the application fee for that additional license. The holder of a city street superintendent's license shall be entitled to hold a county highway superintendent's license of the same or a lower level upon payment of the application fee for that additional license.

Source: Laws 2003, LB 500, § 11.

39-2309. License; suspension; revocation; grounds; hearing; notice.

The board of examiners may suspend or revoke any license issued under the County Highway and City Street Superintendents Act for fraud or deceit in obtaining it, neglect of duty, or incompetence in the performance of duty. Such action shall only be taken after notice and hearing under the provisions of the Administrative Procedure Act.

Source: Laws 1969, c. 144, § 9, p. 668; Laws 2003, LB 500, § 12.

Cross References

Administrative Procedure Act, see section 84-920.

39-2310. Funds received under act; use.

All funds received under the County Highway and City Street Superintendents Act shall be remitted to the State Treasurer for credit to the Highway Cash Fund. Expenses of the members of the board of examiners as provided in section 39-2304 shall be paid by the Department of Transportation from the Highway Cash Fund.

Source: Laws 1969, c. 144, § 10, p. 668; Laws 1971, LB 53, § 4; Laws 1972, LB 1496, § 1; Laws 2003, LB 500, § 13; Laws 2017, LB 339, § 162.
Operative Date: July 1, 2017

39-2311. Rules and regulations.

The board of examiners may adopt and promulgate rules and regulations for the administration of the County Highway and City Street Superintendents Act.

Source: Laws 1969, c. 144, § 11, p. 668; Laws 2003, LB 500, § 14.

ARTICLE 24

HIGHWAY ALLOCATION FUND

Section

39-2401. Highway Allocation Fund; created; investment.

There is hereby established the Highway Allocation Fund. There shall be paid into such fund the amounts disbursed from time to time from the Highway Trust Fund as provided by law together with such sums as may be appropriated thereto from the General Fund and proceeds of sales and use taxes credited to the Highway Allocation Fund under section 77-27,132. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1971, LB 53, § 5; Laws 1986, LB 599, § 12; Laws 1995, LB 7, § 37; Laws 2006, LB 904, § 1.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

39-2402. Repealed. Laws 1986, LB 599, § 25.

39-2403. Repealed. Laws 1986, LB 599, § 25.

ARTICLE 25

DISTRIBUTION TO POLITICAL SUBDIVISIONS

(a) ROADS

(b) STREETS

(a) ROADS

39-2501. Incentive payments for road purposes; priority.

Before making distribution of funds allocated to the counties or municipal counties for road purposes, incentive payments shall first be made as provided in sections 39-2502 to 39-2505.

Source: Laws 1969, c. 315, § 1, p. 1133; Laws 2001, LB 142, § 39.

39-2502. County highway superintendent, defined; duties; incentive payment.

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

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

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

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

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

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

(6) Preparing and submitting annually to the Board of Public Roads Classifications and Standards the county's one-year plans, six-year plans, or annual metropolitan transportation improvement programs for highway, road, and street improvements under sections 39-2115 to 39-2117, 39-2119, and 39-2119.01 and a report showing the actual receipts, expenditures, and accomplishments compared with those budgeted and programmed in the county's annual plans as set forth in section 39-2120.

Source: Laws 1969, c. 315, § 2, p. 1133; Laws 1976, LB 724, § 7; Laws 2003, LB 500, § 15; Laws 2007, LB 277, § 7.

Cross References

County Highway and City Street Superintendents Act, see section 39-2301.

39-2503. Incentive payment; amount.

The incentive payment to the various counties and municipal counties shall be based on the level of license of the county highway superintendent employed by the county and on the rural population of each county or municipal county, as determined by the most recent federal census, according to the following table:

Rural Population	Class B License Payment	Class A License Payment
Not more than 3,000	$4,500.00	$9,000.00
3,001 to 5,000	$4,875.00	$9,750.00
5,001 to 10,000	$5,250.00	$10,500.00
10,001 to 20,000	$5,625.00	$11,250.00
20,001 to 30,000	$6,000.00	$12,000.00
30,001 and more	$6,375.00	$12,750.00

Source: Laws 1969, c. 315, § 3, p. 1134; Laws 1981, LB 51, § 1; Laws 2001, LB 142, § 40; Laws 2003, LB 500, § 16.

39-2504. Incentive payment; reduction; when; consulting engineer; when; contracting with another political subdivision; payment.

(1) A reduced incentive payment shall be made to any county or municipal county having in its employ either (a) a licensed county highway superintendent for only a portion of the calendar year preceding the year in which the payment is made or (b) two or more successive licensed county highway superintendents for the calendar year preceding the year in which the payment is made. Such reduced payment shall be in the proportion of the payment amounts listed in section 39-2503 as the number of full months each such licensed superintendent was employed is of twelve.

(2) Any county or municipal county that contracts for the services of a consulting engineer licensed under the County Highway and City Street Superintendents Act or any other person licensed under the act to perform the duties outlined in section 39-2502 rather than employing a licensed county highway superintendent shall be entitled to an incentive payment equal to two-thirds the payment amount provided in section 39-2503 or two-thirds of the reduced incentive payment provided in subsection (1) of this section, as determined by the Department of Transportation pursuant to section 39-2505.

(3) Any county or municipal county that contracts with another county or municipal county or with any city or village for the services of a licensed county highway superintendent as provided in section 39-2114 shall be entitled to the incentive payment provided in section 39-2503 or the reduced incentive payment provided in subsection (1) of this section.

Source: Laws 1969, c. 315, § 4, p. 1134; Laws 1981, LB 51, § 2; Laws 2001, LB 142, § 41; Laws 2003, LB 500, § 17; Laws 2017, LB 339, § 163.

Operative Date: July 1, 2017

Cross References

County Highway and City Street Superintendents Act, see section 39-2301.

39-2505. Incentive payments; Department of Transportation; certify amount; State Treasurer; payment.

The Department of Transportation shall, in January of each year commencing in 1970, determine and certify to the State Treasurer the amount of each incentive payment to be made under the provisions of sections 39-2501 to 39-2505. The State Treasurer shall, on or before February 15, make the incentive payments in accordance with such certification.

Source: Laws 1969, c. 315, § 5, p. 1134; Laws 2017, LB 339, § 164.
Operative Date: July 1, 2017

39-2506. Repealed. Laws 1985, LB 25, § 3.

39-2507. Allocation of funds for road purposes; factors used.

The following factors and weights shall be used in determining the amount to be allocated to each of the counties or municipal counties for road purposes each year:

(1) Rural population of each county or municipal county, as determined by the most recent federal census, twenty percent;

(2) Total population of each county or municipal county, as determined by the most recent federal census, ten percent;

(3) Lineal feet of bridges twenty feet or more in length and all overpasses in each county or municipal county, as determined by the most recent inventory available within the Department of Transportation, ten percent, and for purposes of this subdivision a bridge or overpass located partly in one county or municipal county and partly in another shall be considered as being located one-half in each county or municipal county;

(4) Total motor vehicle registrations, other than prorated commercial vehicles, in the rural areas of each county or municipal county, as determined from the most recent information available from the Department of Motor Vehicles, twenty percent;

(5) Total motor vehicle registrations, other than prorated commercial vehicles, in each county or municipal county as determined from the most recent information available from the Department of Motor Vehicles, ten percent;

(6) Total miles of county or municipal county and township roads within each county or municipal county, as determined by the most recent inventory available within the Department of Transportation, twenty percent; and

(7) Value of farm products sold from each county or municipal county, as determined from the most recent federal Census of Agriculture, ten percent.

Source: Laws 1969, c. 315, § 7, p. 1135; Laws 2001, LB 142, § 42; Laws 2017, LB 339, § 165.
Operative Date: July 1, 2017

39-2508. Allocation of funds for road purposes; Department of Transportation; State Treasurer; duties.

The Department of Transportation shall compute the amount allocated to each county or municipal county under each of the factors listed in section 39-2507 and shall then compute the total allocation to each such county or municipal county and transmit such information to the local governing board and the State Treasurer, who shall disburse funds accordingly.

Source: Laws 1969, c. 315, § 8, p. 1136; Laws 1985, LB 25, § 1; Laws 2001, LB 142, § 43; Laws 2017, LB 339, § 166.
Operative Date: July 1, 2017

39-2509. Matching funds; requirement; exceptions; effect.

(1) Each county or municipal county shall be entitled to one-half of the amount allocated to it each year under sections 39-2507 and 39-2508 with no requirement for providing funds locally, but shall be required to match the second one-half on the basis of one dollar for each two dollars it receives with any available funds.

(2) Each county or municipal county which, during the preceding fiscal year, failed to provide locally the minimum required by subsection (1) of this section shall forfeit one dollar for each dollar which it fails to so provide locally. Any amounts forfeited under the provisions of this subsection first shall be made available to the incorporated municipalities, as determined by the county board or the council of the municipal county, within the county or municipal county which forfeits the funds, such funds to be matched by the incorporated municipalities in the same manner as would have been required of the county or municipal county had it not forfeited the funds, and if not so used, then shall be allocated among and distributed to the counties and municipal counties that have complied with the requirements of subsection (1) of this section. Such distribution shall be made as provided in sections 39-2507 and 39-2508, except that any county or municipal county having levied its constitutional maximum and not levied sufficient funds to fully match its share of the second half of the highway-user funds allocated to that county or municipal county may apply to the Board of Public Roads Classifications and Standards for exemption from that part of the local matching requirement that it cannot match. The board may grant such exemption if, in its judgment, the county or municipal county has not unnecessarily increased its expenditures for other than road purposes after receiving its allocation for roads in previous years.

(3) For the purposes of this section, providing locally shall include, but not be limited to, providing money for road purposes through the following, except that there shall not be duplication in the following in the determination of the total:

(a) Property taxes levied by action of county and township boards or the council of the municipal county for construction, improvement, maintenance, and repair of roads, bridges, culverts, and drainage structures, for curbs, for snow removal, for grading of dirt and gravel roads, for traffic signs and signals, and for construction of storm sewers directly related to roads and property taxes levied for the payment of the principal and interest on general obligation bonds for any of the foregoing;

(b) Contributions received for road purposes;

(c) Local costs in the acquisition of road right-of-way, including incidental expenses directly related to such acquisition; and

(d) Inheritance taxes allocated for road purposes.

Source: Laws 1969, c. 315, § 9, p. 1136; Laws 1971, LB 694, § 1; Laws 1971, LB 844, § 2; Laws 1985, LB 25, § 2; Laws 2001, LB 142, § 44.

39-2510. Funds received; use; restriction; exception.

(1) All money derived from fees, excises, or license fees relating to registration, operation, or use of vehicles on the public highways, or to fuels used for the propulsion of such vehicles, shall be expended for payment of highway obligations, cost of construction, reconstruction, maintenance, and repair of public highways and bridges and county, city, township, and village roads, streets, and bridges, and all facilities, appurtenances, and structures deemed necessary in connection with such highways, bridges, roads, and streets, or may be pledged to secure bonded indebtedness issued for such purposes, except for (a) the cost of administering laws under which such money is derived, (b) statutory refunds and adjustments provided therein, and (c) money derived from the motor vehicle operators' license fees or money received from parking meter proceeds, fines, and penalties.

(2) The requirements of subsection (1) of this section also apply to sales and use taxes imposed on motor vehicles, trailers, and semitrailers pursuant to sections 13-319 and 77-27,142, except that such provisions shall not apply in a county or municipal county that has issued bonds (a) the proceeds of which were used for purposes listed in subsection (1) of this section and for which revenue other than sales and use taxes on motor vehicles, trailers, and semitrailers is pledged for payment or (b) approved by a vote that required the use of sales and use taxes imposed on motor vehicles, trailers, and semitrailers for a specific purpose other than those listed in subsection (1) of this section, until all such bonds issued prior to January 1, 2006, have been paid or retired. The county or municipal county shall include a certification with the report under section 39-2120 showing the amount of revenue other than sales and use tax revenue derived from motor vehicles, trailers, or semitrailers that is to be expended for the purposes listed in subsection (1) of this section and the amount of sales and use taxes expected to be collected from sales of motor vehicles, trailers, and semitrailers for that year.

Source: Laws 1969, c. 315, § 10, p. 1138; Laws 1997, LB 271, § 15; Laws 2006, LB 904, § 2.

(b) STREETS

39-2511. Incentive payments for street purposes; priority.

Before making distribution of funds allocated to the municipalities or municipal counties for street purposes, incentive payments shall first be made as provided in sections 39-2512 to 39-2515.

Source: Laws 1969, c. 316, § 1, p. 1139; Laws 2001, LB 142, § 45.

39-2512. City street superintendent, defined; duties; incentive payment.

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

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

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

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

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

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

(6) Preparing and submitting annually to the Board of Public Roads Classifications and Standards the one-year plans, six-year plans, or annual metropolitan transportation improvement programs of the municipality or municipal county for highway, road, and street improvements under sections 39-2115 to 39-2117, 39-2119, and 39-2119.01 and a report showing the actual receipts, expenditures, and accomplishments compared with those budgeted and programmed in the annual plans of the municipality or municipal county as set forth in section 39-2120.

Source: Laws 1969, c. 316, § 2, p. 1139; Laws 1976, LB 724, § 8; Laws 2001, LB 142, § 46; Laws 2003, LB 500, § 18; Laws 2007, LB 277, § 8.

Cross References

County Highway and City Street Superintendents Act, see section 39-2301.

39-2513. Incentive payment; amount.

The incentive payment to the various municipalities or municipal counties shall be based on the level of license of the city street superintendent employed by the municipality or municipal counties and on the population of each municipality or urbanized area of each municipal county, as determined by the most recent federal census figures certified by the Tax Commissioner as provided in section 77-3,119, according to the following table:

Population	Class B License Payment	Class A License Payment
Not more than 500	$300.00	$600.00
501 to 1,000	$500.00	$1,000.00
1,001 to 2,500	$1,500.00	$3,000.00
2,501 to 5,000	$2,000.00	$4,000.00
5,001 to 10,000	$3,000.00	$6,000.00
10,001 to 20,000	$3,500.00	$7,000.00
20,001 to 40,000	$3,750.00	$7,500.00
40,001 to 200,000	$4,000.00	$8,000.00
200,001 and more	$4,250.00	$8,500.00

Source: Laws 1969, c. 316, § 3, p. 1139; Laws 1993, LB 726, § 9; Laws 1994, LB 1127, § 5; Laws 2001, LB 142, § 47; Laws 2003, LB 500, § 19.

39-2514. Incentive payment; reduction; when; consulting engineer; when; contracting with another political subdivision.

(1) A reduced incentive payment shall be made to any municipality or municipal county having in its employ either (a) a licensed city street superintendent for only a portion of the calendar year preceding the year in which the payment is made or (b) two or more successive licensed city street superintendents for the calendar year preceding the year in which the payment is made. Such reduced payment shall be in the proportion of the payment amounts listed in section 39-2513 as the number of full months each such licensed superintendent was employed is of twelve.

(2) Any municipality or municipal county that contracts for the services of a consulting engineer licensed under the County Highway and City Street Superintendents Act or any other person licensed under the act to perform the duties outlined in section 39-2512 rather than employing a licensed city street superintendent shall be entitled to an incentive payment as provided in section 39-2513 or to the reduced incentive payment provided in subsection (1) of this section, as determined by the Department of Transportation pursuant to section 39-2515.

(3) Any municipality or municipal county that contracts with another municipality, county, or municipal county for the services of a licensed city street superintendent as provided in section 39-2114 shall be entitled to the incentive payment provided in section 39-2513 or the reduced incentive payment provided in subsection (1) of this section.

Source: Laws 1969, c. 316, § 4, p. 1140; Laws 2001, LB 142, § 48; Laws 2003, LB 500, § 20; Laws 2017, LB 339, § 167.

Operative Date: July 1, 2017

Cross References

County Highway and City Street Superintendents Act, see section 39-2301.

39-2515. Incentive payments; Department of Transportation, certify amount; State Treasurer; payment.

The Department of Transportation shall, in January of each year commencing in 1970, determine and certify to the State Treasurer the amount of each incentive payment to be made under the provisions of sections 39-2511 to 39-2520. The State Treasurer shall, on or before February 15, make the incentive payments in accordance with such certification.

Source: Laws 1969, c. 316, § 5, p. 1140; Laws 2017, LB 339, § 168.
Operative Date: July 1, 2017

39-2516. Repealed. Laws 1982, LB 592, § 2.

39-2517. Allocation of funds for street purposes; factors used.

The following factors and weights shall be used in determining the amount to be allocated to each of the municipalities or municipal counties for street purposes each year:

(1) Total population of each incorporated municipality or the urbanized area of a municipal county, as determined by the most recent federal census figures certified by the Tax Commissioner as provided in section 77-3,119, fifty percent;

(2) Total motor vehicle registrations, other than prorated commercial vehicles, in each incorporated municipality or the urbanized area of a municipal county, as determined from the most recent information available from the Department of Motor Vehicles, thirty percent; and

(3) Total number of miles of traffic lanes of streets in each incorporated municipality or the urbanized area of a municipal county, as determined by the most recent inventory available within the Department of Transportation, twenty percent.

Source: Laws 1969, c. 316, § 7, p. 1141; Laws 1993, LB 726, § 10; Laws 1994, LB 1127, § 6; Laws 2001, LB 142, § 49; Laws 2017, LB 339, § 169.
Operative Date: July 1, 2017

39-2518. Allocation of funds for street purposes; Department of Transportation; State Treasurer; duties.

The Department of Transportation shall compute the amount allocated to each municipality or municipal county under the factors listed in section 39-2517 and shall then compute the total allocation to each such municipality or municipal county and transmit such information to the local governing body and the State Treasurer, who shall disburse funds accordingly.

Source: Laws 1969, c. 316, § 8, p. 1141; Laws 1986, LB 729, § 1; Laws 2001, LB 142, § 50; Laws 2017, LB 339, § 170.

Operative Date: July 1, 2017

39-2519. Matching funds; requirement; exceptions; effect.

(1) Each city of the metropolitan or primary class or successor municipal county shall be entitled to the first one-third of its annual allocation with no requirement of matching, but shall be required to match the second one-third, on the basis of one dollar for each dollar it receives, with funds provided locally for street purposes, and shall be required to match the final one-third, on the basis of one dollar for each two dollars it receives, with funds so provided. Each city of the first or second class or village or successor municipal county shall be entitled to one-half of its annual allocation with no requirement of matching, but shall be required to match the second one-half on the basis of one dollar for each two dollars it receives, with any available funds. Any municipality or municipal county which during the preceding fiscal year failed to provide the matching funds required by this subsection shall, except as provided in subsection (2) or (3) of this section, forfeit so much of its allocation as it fails to match. Any amount so forfeited shall be reallocated and distributed to the municipalities or municipal counties which have met the full matching provisions of this subsection. Such reallocation shall be made in the manner provided in sections 39-2517 and 39-2518.

(2) Any municipality or municipal county may accumulate and invest any portion or all of the money it receives for a period not to exceed four years so as to provide funds for one or more specific street improvement projects. Any municipality or municipal county so accumulating funds shall certify to the State Treasurer that the required matching funds are being accumulated and invested each year of the accumulation.

(3) Any municipality may, for any year, certify to the State Treasurer that it relinquishes, to the county in which it is situated in whole or in part or to a county whose border is contiguous with and adjacent to any county which is adjacent to the county in which the municipality is situated in whole or in part, all or a part of the state funds allocated to it for that year. The amount so relinquished shall be available for distribution to such county subject to the same matching as would have been required of the municipality had it not relinquished such funds and without regard to the provisions of sections 39-2501 to 39-2510. Any amount so distributed to the county shall be used exclusively for road purposes within the trade area of the relinquishing municipality as may be agreed upon by the county and municipal governing bodies.

(4) Any municipality may certify to the State Treasurer that it relinquishes, to the county in which it is situated in whole or in part, all or a part of the state funds allocated to it for not to exceed three years. The amount so relinquished shall be available for distribution to such county subject to the same matching as would have been required of the municipality had it not relinquished such funds and without regard to the provisions of sections 39-2501 to 39-2510. Any relinquishment under this subsection shall be made pursuant to an agreement between the relinquishing municipality and the county, to which other political subdivisions may also be parties, which provides for the accumulation and investment by the county of the amount relinquished for not to exceed three years so as to provide funds for one or more specific road improvement projects.

(5) For purposes of this section, provided locally shall include, but not be limited to, money provided for street purposes through the following, except that there shall not be duplication in the following in the determination of the total:

(a) Local motor vehicle or wheel fees or taxes;

(b) Property taxes levied by action of the local governing body for construction, improvement, maintenance, and repair of streets and bridges, curbs, snow removal, street cleaning, grading of dirt and gravel streets and roads, traffic signs and signals, construction of storm sewers directly related to streets, offstreet public parking owned by the municipality or municipal county, and the payment of the principal and interest on general obligation bonds for any of the foregoing;

(c) Special assessments levied for street paving or improvement districts and offstreet public parking owned by the municipality or municipal county;

(d) Local costs in the acquisition of street right-of-way including incidental expenses directly related to such acquisition; and

(e) Any other funds provided solely for street purposes.

Source: Laws 1969, c. 316, § 9, p. 1141; Laws 1971, LB 74, § 1; Laws 1972, LB 907, § 1; Laws 1976, LB 724, § 9; Laws 1993, LB 384, § 1; Laws 1997, LB 271, § 16; Laws 2001, LB 142, § 51; Laws 2002, LB 616, § 2.

39-2520. Funds received; use restriction; exception.

(1) All money derived from fees, excises, or license fees relating to registration, operation, or use of vehicles on the public highways, or to fuels used for the propulsion of such vehicles, shall be expended for payment of highway obligations, cost of construction, reconstruction, maintenance, and repair of public highways and bridges and county, city, township, and village roads, streets, and bridges, and all facilities, appurtenances, and structures deemed necessary in connection with such highways, bridges, roads, and streets, or may be pledged to secure bonded indebtedness issued for such purposes, except for (a) the cost of administering laws under which such money is derived, (b) statutory refunds and adjustments provided therein, and (c) money derived from the motor vehicle operators' license fees or money received from parking meter proceeds, fines, and penalties.

(2) The requirements of subsection (1) of this section also apply to sales and use taxes imposed on motor vehicles, trailers, and semitrailers pursuant to sections 13-319 and 77-27,142, except that such provisions shall not apply in a municipality that has issued bonds (a) the proceeds of which were used for purposes listed in subsection (1) of this section and for which revenue other than sales and use taxes on motor vehicles, trailers, and semitrailers is pledged for payment or (b) approved by a vote that required the use of sales and use taxes imposed on motor vehicles, trailers, and semitrailers for a specific purpose other than those listed in subsection (1) of this section, until all such bonds issued prior to January 1, 2006, have been paid or retired. The municipality shall include a certification with the report under section 39-2120 showing the amount of revenue other than sales and use tax revenue derived from motor vehicles, trailers, or semitrailers that is to be expended for the purposes listed in subsection (1) of this section and the amount of sales and use taxes expected to be collected from sales of motor vehicles, trailers, and semitrailers for that year.

Source: **L**aws 1969, c. 316, § 10, p. 1143; Laws 1971, LB 74, § 2; Laws 1997, LB 271, § 17; Laws 2006, LB 904, § 3.

ARTICLE 26

JUNKYARDS

Section

39-2601. Purpose of sections.

For the purpose of promoting the public safety, health, welfare, convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is declared to be in the public interest to regulate and restrict the location and maintenance of junkyards in areas adjacent to the Highway Beautification Control System within this state. The Legislature finds and declares that junkyards which do not conform to the requirements of sections 39-2601 to 39-2612 are public nuisances.

Source: Laws 1971, LB 398, § 1; Laws 1995, LB 264, § 24.

39-2601.01. Expenditure of funds; limitation.

The department shall not expend any funds under sections 39-2601 to 39-2612 unless federal-aid matching funds are available for the purpose described in 23 U.S.C. 136.

Source: Laws 1995, LB 264, § 34.

39-2602. Terms, defined.

For purposes of sections 39-2601 to 39-2612, unless the context otherwise requires:

(1) Junk means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material;

(2) Automobile graveyard means any establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts;

(3) Junkyard means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk or for the maintenance or operation of an automobile graveyard, and includes garbage dumps and sanitary fills;

(4) Highway Beautification Control System has the same meaning as in section 39-201.01;

(5) Scenic byway has the same meaning as in section 39-201.01;

(6) Main-traveled way means the traveled portion of an interstate or primary highway on which through traffic is carried and, in the case of a divided highway, the traveled portion of each of the separated roadways;

(7) Person means any natural person, partnership, limited liability company, association, corporation, or governmental subdivision; and

(8) Department means the Department of Transportation.

Source: Laws 1971, LB 398, § 2; Laws 1993, LB 121, § 214; Laws 1995, LB 264, § 25; Laws 2017, LB 339, § 171.

Operative Date: July 1, 2017

For purposes of subsection (2) of this section, a scrapped vehicle is an automobile which has no value whatsoever as a vehicle, but the only worth of which is in the value of its metal for remelting or remanufacturing. For purposes of subsection (2) of this section, a ruined vehicle is one which, through destruction or disintegration, has become formless, useless, or valueless. For purposes of subsection (2) of this section, a wrecked vehicle is one which is seriously damaged in its outward appearance. For purposes of subsection (2) of this section, a dismantled vehicle is one which is stripped of furnishings or equipment. For purposes of subsection (2) of this section, a junked vehicle is one no longer intended or in condition for legal use upon a public highway. State v. Melcher, 240 Neb. 592, 483 N.W.2d 540 (1992).

39-2603. Location.

(1) Except as provided in subsection (2) of this section, no person shall locate or maintain a junkyard, any portion of which is within one thousand feet of the nearest edge of the right-of-way of any roadway of the Highway Beautification Control System, without obtaining a permit from the department.

(2) Junkyards located in counties which have formally adopted a comprehensive development plan and a zoning resolution regulating the location of junkyards within one thousand feet of the nearest edge of the right-of-way of any roadway of the Highway Beautification Control System, except those routes which consist of the federally designated National System of Interstate and Defense Highways, shall be exempt from the permit requirements of sections 39-2601 to 39-2612.

Source: Laws 1971, LB 398, § 3; Laws 1995, LB 264, § 26; Laws 2003, LB 186, § 1.

39-2604. Permit; issuance; fees; disposition.

The department may issue permits for the location and operation of junkyards within the limits prescribed in section 39-2603. If the applicant is an individual, the application for a permit shall include the applicant's social security number. The department shall charge an annual permit fee to be paid to the department in the manner provided by the department and shall thereafter be paid into the Highway Cash Fund and shall, by order, adjust the annual fees to cover the costs of administering the provisions of sections 39-2601 to 39-2612.

Source: Laws 1971, LB 398, § 4; Laws 1995, LB 264, § 27; Laws 1997, LB 752, § 95.

39-2605. Permit; issuance; conditions.

No permit shall be granted for the location and maintenance of a junkyard within one thousand feet of the nearest edge of the right-of-way of any roadway of the Highway Beautification Control System except the following:

(1) Those which are screened by natural objects, plantings, fences or other appropriate means so as not to be visible from the main-traveled way of the system, or otherwise removed from sight;

(2) Those located within areas which are zoned for industrial use under authority of the law of a municipality or county, except those located along any route designated as a scenic byway;

(3) Those located within unzoned industrial areas, which areas shall be determined from actual land uses and defined by rules to be promulgated by the department, except those located along any route designated as a scenic byway; and

(4) Those which are not visible from the main-traveled way of the system.

Source: Laws 1971, LB 398, § 5; Laws 1995, LB 264, § 28.

39-2606. Existing junkyards; screening; expense paid by department.

Except as provided in section 39-2608, any junkyard lawfully in existence on August 27, 1971, which is within one thousand feet of the nearest edge of the right-of-way and visible from the main-traveled way of the Highway Beautification Control System and which does not qualify for a permit under section 39-2605 shall be screened by the department so as not to be visible from the main-traveled way of such highway, the cost of which shall be paid in full by the department.

Source: Laws 1971, LB 398, § 6; Laws 1995, LB 264, § 29.

39-2607. Rules and regulations; promulgation.

The department may promulgate rules governing the materials, location, planting, construction, and maintenance for the screening or fencing required by the provisions of sections 39-2601 to 39-2612.

Source: Laws 1971, LB 398, § 7; Laws 1995, LB 264, § 30.

39-2608. Removal; when; department; powers.

Any junkyard in existence on August 27, 1971, which does not qualify for a permit under section 39-2605 and which cannot, as a practical matter, be screened may be removed. The department may acquire by gift, purchase, exchange or condemnation from the owner, such interests in lands as may be necessary to acquire the location, or to effect the removal or disposal of such junkyards.

Source: Laws 1971, LB 398, § 8; Laws 1995, LB 264, § 31.

39-2609. Nuisance; injunction.

The department may apply to the district court in the county in which such junkyards may be located for an injunction to abate such nuisance or for such other relief as may be necessary or proper.

Source: Laws 1971, LB 398, § 9.

39-2610. Sections, how construed.

Nothing in sections 39-2601 to 39-2612 shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation, or resolution which is more restrictive than sections 39-2601 to 39-2612.

Source: Laws 1971, LB 398, § 10; Laws 1995, LB 264, § 32.

39-2611. Agreements with federal authority; authorization.

The department shall be authorized to enter into agreements with the appropriate federal authority as provided by 23 U.S.C., relating to the control of junkyards in areas adjacent to the Highway Beautification Control System, and to take action in the name of the state to comply with the terms of such agreement.

Source: Laws 1971, LB 398, § 11; Laws 1995, LB 264, § 33.

39-2612. Violations; penalty.

Any person who shall be found in violation of section 39-2603 shall be guilty of a Class II misdemeanor. Each day's violation shall constitute a separate offense.

Source: Laws 1971, LB 398, § 12; Laws 1977, LB 40, § 220.

ARTICLE 27

BUILD NEBRASKA ACT

Section

39-2701. Act, how cited.

Sections 39-2701 to 39-2705 shall be known and may be cited as the Build Nebraska Act.

Source: Laws 2011, LB 84, § 1.

39-2702. Terms, defined.

For purposes of the Build Nebraska Act:

(1) Department means the Department of Transportation;

(2) Fund means the State Highway Capital Improvement Fund; and

(3) Surface transportation project means (a) expansion or reconstruction of a road or highway which is part of the state highway system, (b) expansion or reconstruction of a bridge which is part of the state highway system, or (c) construction of a new road, highway, or bridge which, if built, would be a part of the state highway system.

Source: Laws 2011, LB 84, § 2; Laws 2017, LB 339, § 172.
Operative Date: July 1, 2017

39-2703. State Highway Capital Improvement Fund; created; use; investment.

(1) The State Highway Capital Improvement Fund is created. The fund shall consist of money credited to the fund pursuant to section 77-27,132 and any other money as determined by the Legislature.

(2) The department may create or direct the creation of accounts within the fund as the department determines to be appropriate and useful in administering the fund.

(3) Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Investment earnings from investment of money in the fund shall be credited to the fund.

Source: Laws 2011, LB 84, § 3.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

39-2704. Fund; uses enumerated.

The fund shall be used as follows:

(1) At least twenty-five percent of the money credited to the fund pursuant to section 77-27,132 each fiscal year shall be used, as determined by the department, for construction of the expressway system and federally designated high priority corridors; and

(2) The remaining money credited to the fund pursuant to section 77-27,132 each fiscal year shall be used to pay for surface transportation projects of the highest priority as determined by the department.

Source: Laws 2011, LB 84, § 4.

39-2705. Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out the Build Nebraska Act.

Source: Laws 2011, LB 84, § 5.

ARTICLE 28

TRANSPORTATION INNOVATION ACT

Section

39-2801. Act, how cited.

Sections 39-2801 to 39-2824 shall be known and may be cited as the Transportation Innovation Act.

Source: Laws 2016, LB 960, § 1.

39-2802. Terms, defined.

For purposes of the Transportation Innovation Act:

(1) Alternative technical concept means changes suggested by a qualified, eligible, short-listed design-builder to the department's basic configurations, project scope, design, or construction criteria;

(2) Best value-based selection process means a process of selecting a design-builder using price, schedule, and qualifications for evaluation factors;

(3) Construction manager means the legal entity which proposes to enter into a construction manager-general contractor contract pursuant to the act;

(4) Construction manager-general contractor contract means a contract which is subject to a qualification-based selection process between the department and a construction manager to furnish preconstruction services during the design development phase of the project and, if an agreement can be reached which is satisfactory to the department, construction services for the construction phase of the project;

(5) Construction services means activities associated with building the project;

(6) Department means the Department of Transportation;

(7) Design-build contract means a contract between the department and a design-builder which is subject to a best value-based selection process to furnish (a) architectural, engineering, and related design services and (b) labor, materials, supplies, equipment, and construction services;

(8) Design-builder means the legal entity which proposes to enter into a design-build contract;

(9) Multimodal transportation network means the interconnected system of highways, roads, streets, rail lines, river ports, and transit systems which facilitates the movement of people and freight to enhance Nebraska's economy;

(10) Preconstruction services means all nonconstruction-related services that a construction manager performs in relation to the design of the project before execution of a contract for construction services. Preconstruction services includes, but is not limited to, cost estimating, value engineering studies, constructability reviews, delivery schedule assessments, and life-cycle analysis;

(11) Project performance criteria means the performance requirements of the project suitable to allow the design-builder to make a proposal. Performance requirements shall include, but are not limited to, the following, if required by the project: Capacity, durability, standards, ingress and egress requirements, description of the site, surveys, soil and environmental information concerning the site, material quality standards, design and milestone dates, site development requirements, compliance with applicable law, and other criteria for the intended use of the project;

(12) Proposal means an offer in response to a request for proposals (a) by a design-builder to enter into a design-build contract or (b) by a construction manager to enter into a construction manager-general contractor contract;

(13) Qualification-based selection process means a process of selecting a construction manager based on qualifications;

(14) Request for proposals means the documentation by which the department solicits proposals; and

(15) Request for qualifications means the documentation or publication by which the department solicits qualifications.

Source: Laws 2016, LB 960, § 2; Laws 2017, LB 339, § 173.
Operative Date: July 1, 2017

39-2803. Transportation Infrastructure Bank Fund; created; use; investment.

(1) The Transportation Infrastructure Bank Fund is created. The fund shall be administered by the department and shall be used for purposes of sections 39-2803 to 39-2807. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Investment earnings from investment of money in the fund shall be credited to the fund.

(2) The Transportation Infrastructure Bank Fund shall consist of money transferred from the Cash Reserve Fund pursuant to section 84-612 and any other money as determined by the Legislature.

(3) It is the intent of the Legislature that additional fuel tax revenue generated by Laws 2015, LB 610, shall be transferred from the Roads Operations Cash Fund to the Transportation Infrastructure Bank Fund. Transfers shall be initiated each fiscal year by the State Treasurer following certification of revenue receipts by the Director-State Engineer from July 1, 2016, through June 2033. Transferred funds shall be used for purposes of sections 39-2803 to 39-2807.

Source: Laws 2016, LB 960, § 3.
Termination Date: June 30, 2033

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

39-2804. Accelerated State Highway Capital Improvement Program; created.

The Accelerated State Highway Capital Improvement Program is created. The department shall administer the program using funds from the Transportation Infrastructure Bank Fund. The purpose of the program is to accelerate capital improvement projects to provide the earliest possible mobility, freight, and safety benefits to the state, thereby accelerating enhancements to the state's economy and the quality of life of the general public. The department shall develop the program. The projects eligible for funding under the program include construction of the expressway system and federally designated high priority corridors and needs-driven capacity improvements across the state.

Source: Laws 2016, LB 960, § 4.
Termination Date: June 30, 2033

39-2805. County Bridge Match Program; created; termination.

(1) The County Bridge Match Program is created. The department shall administer the program using funds from the Transportation Infrastructure Bank Fund, except that no more than forty million dollars shall be expended for this program. The purpose of the program is to promote innovative solutions and provide additional funding to accelerate the repair and replacement of deficient bridges on the county road system. The department shall develop the program, including participation criteria and matching fund requirements for counties, in consultation with a statewide association representing county officials. Participation by counties in the program shall be voluntary. The details of the program shall be presented to the Appropriations Committee and the Transportation and Telecommunications Committee of the Legislature on or before December 1, 2016.

(2) The County Bridge Match Program terminates on June 30, 2023.

Source: Laws 2016, LB 960, § 5.
Termination Date: June 30, 2033

39-2806. Economic Opportunity Program; created.

The Economic Opportunity Program is created. The Department of Transportation shall administer the program in consultation with the Department of Economic Development using funds from the Transportation Infrastructure Bank Fund, except that no more than twenty million dollars shall be expended for this program. The purpose of the program is to finance transportation improvements to attract and support new businesses and business expansions by successfully connecting such businesses to Nebraska's multimodal transportation network and to increase employment, create high-quality jobs, increase business investment, and revitalize rural and other distressed areas of the state. The Department of Transportation shall develop the program, including the application process, criteria for providing funding, matching requirements, and provisions for recapturing funds awarded for projects with unmet obligations, in consultation with statewide associations representing municipal and county officials, economic developers, and the Department of Economic Development. No project shall be approved through the Economic Opportunity Program without an economic impact analysis proving positive economic impact. The details of the program shall be presented to the Appropriations Committee and the Transportation and Telecommunications Committee of the Legislature on or before December 1, 2016.

Source: Laws 2016, LB 960, § 6; Laws 2017, LB 339, § 174.
Operative Date: July 1, 2017
Termination Date: June 30, 2033

39-2807. Sections; termination.

Sections 39-2803 to 39-2807 terminate on June 30, 2033. The State Treasurer shall transfer any unobligated funds remaining in the Transportation Infrastructure Bank Fund on such date to the Cash Reserve Fund.

Source: Laws 2016, LB 960, § 7.
Termination Date: June 30, 2033

39-2808. Purpose of sections.

The purpose of sections 39-2808 to 39-2823 is to provide the department alternative methods of contracting for public projects. The alternative methods of contracting shall be available to the department for use on any project regardless of the funding source. Notwithstanding any other provision of state law to the contrary, the Transportation Innovation Act shall govern the design-build and construction manager-general contractor procurement process.

Source: Laws 2016, LB 960, § 8.

39-2809. Design-build contract; construction manager-general contract; authorized.

The department, in accordance with sections 39-2808 to 39-2823, may solicit and execute a design-build contract or a construction manager-general contractor contract for a public project, other than a project that is primarily resurfacing, rehabilitation, or restoration.

Source: Laws 2016, LB 960, § 9.

39-2810. Department; hire engineering or architectural consultant.

The department may hire an engineering or architectural consultant to assist the department with the development of project performance criteria and requests for proposals, with evaluation of proposals, with evaluation of the construction to determine adherence to the project performance criteria, and with any additional services requested by the department to represent its interests in relation to a project. The procedures used to hire such person or organization shall comply with the Nebraska Consultants' Competitive Negotiation Act. The person or organization hired shall be ineligible to be included as a provider of other services in a proposal for the project for which he or she has been hired and shall not be employed by or have a financial or other interest in a design-builder or construction manager who will submit a proposal.

Source: Laws 2016, LB 960, § 10.

Cross References

Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.

39-2811. Guidelines; contents.

The department shall adopt guidelines for entering into a design-build contract or construction manager-general contractor contract. The guidelines shall include the following:

(1) Preparation and content of requests for qualifications;

(2) Preparation and content of requests for proposals;

(3) Qualification and short-listing of design-builders and construction managers. The guidelines shall provide that the department will evaluate prospective design-builders and construction managers based on the information submitted to the department in response to a request for qualifications and will select a short list of design-builders or construction managers who shall be considered qualified and eligible to respond to the request for proposals;

(4) Preparation and submittal of proposals;

(5) Procedures and standards for evaluating proposals;

(6) Procedures for negotiations between the department and the design-builders or construction managers submitting proposals prior to the acceptance of a proposal if any such negotiations are contemplated; and

(7) Procedures for the evaluation of construction under a design-build contract to determine adherence to the project performance criteria.

Source: Laws 2016, LB 960, § 11.

39-2812. Process; provisions applicable.

The process for selecting a design-builder and entering into a design-build contract shall be in accordance with sections 39-2813 to 39-2816.

Source: Laws 2016, LB 960, § 12.

39-2813. Request for qualifications for design-build proposals; publication; short list created.

(1) The department shall prepare a request for qualifications for design-build proposals and shall prequalify design-builders. The request for qualifications shall describe the project in sufficient detail to permit a design-builder to respond. The request for qualifications shall identify the maximum number of design-builders the department will place on a short list as qualified and eligible to receive a request for proposals.

(2) A person or organization hired by the department under section 39-2810 shall be ineligible to compete for a design-build contract on the same project for which the person or organization was hired.

(3) The request for qualifications shall be (a) published in a newspaper of statewide circulation at least thirty days prior to the deadline for receiving the request for qualifications and (b) sent by first-class mail to any design-builder upon request.

(4) The department shall create a short list of qualified and eligible design-builders in accordance with the guidelines adopted pursuant to section 39-2811. The department shall select at least two prospective design-builders, except that if only one design-builder has responded to the request for qualifications, the department may, in its discretion, proceed or cancel the procurement. The request for proposals shall be sent only to the design-builders placed on the short list.

Source: Laws 2016, LB 960, § 13.

39-2814. Request for proposals for design-build contract; elements.

The department shall prepare a request for proposals for each design-build contract. The request for proposals shall contain, at a minimum, the following elements:

(1) The guidelines adopted by the department in accordance with section 39-2811. The identification of a publicly accessible location of the guidelines, either physical or electronic, shall be considered compliance with this subdivision;

(2) The proposed terms and conditions of the design-build contract, including any terms and conditions which are subject to further negotiation;

(3) A project statement which contains information about the scope and nature of the project;

(4) A statement regarding alternative technical concepts including the process and time period in which such concepts may be submitted, confidentiality of the concepts, and ownership of the rights to the intellectual property contained in such concepts;

(5) Project performance criteria;

(6) Budget parameters for the project;

(7) Any bonding and insurance required by law or as may be additionally required by the department;

(8) The criteria for evaluation of proposals and the relative weight of each criterion. The criteria shall include, but are not limited to, the cost of the work, construction experience, design experience, and the financial, personnel, and equipment resources available for the project. The relative weight to apply to any criterion shall be at the discretion of the department based on each project, except that in all cases, the cost of the work shall be given a relative weight of at least fifty percent;

(9) A requirement that the design-builder provide a written statement of the design-builder's proposed approach to the design and construction of the project, which may include graphic materials illustrating the proposed approach to design and construction and shall include price proposals;

(10) A requirement that the design-builder agree to the following conditions:

(a) At the time of the design-build proposal, the design-builder must furnish to the department a written statement identifying the architect or engineer who will perform the architectural or engineering work for the project. The architect or engineer engaged by the design-builder to perform the architectural or engineering work with respect to the project must have direct supervision of such work and may not be removed by the design-builder prior to the completion of the project without the written consent of the department;

(b) At the time of the design-build proposal, the design-builder must furnish to the department a written statement identifying the general contractor who will provide the labor, material, supplies, equipment, and construction services. The general contractor identified by the design-builder may not be removed by the design-builder prior to completion of the project without the written consent of the department;

(c) A design-builder offering design-build services with its own employees who are design professionals licensed to practice in Nebraska must (i) comply with the Engineers and Architects Regulation Act by procuring a certificate of authorization to practice architecture or engineering and (ii) submit proof of sufficient professional liability insurance in the amount required by the department; and

(d) The rendering of architectural or engineering services by a licensed architect or engineer employed by the design-builder must conform to the Engineers and Architects Regulation Act; and

(11) Other information or requirements which the department, in its discretion, chooses to include in the request for proposals.

Source: Laws 2016, LB 960, § 14.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.

39-2815. Stipend.

The department shall pay a stipend to qualified design-builders that submit responsive proposals but are not selected. Payment of the stipend shall give the department ownership of the intellectual property contained in the proposals and alternative technical concepts. The amount of the stipend shall be at the discretion of the department.

Source: Laws 2016, LB 960, § 15.

39-2816. Submission of proposals; sealed; rank of design-builders; negotiation of contract.

(1) Design-builders shall submit proposals as required by the request for proposals. The department may meet with individual design-builders prior to the time of submitting the proposal and may have discussions concerning alternative technical concepts. If an alternative technical concept provides a solution that is equal to or better than the requirements in the request for proposals and the alternative technical concept is acceptable to the department, it may be incorporated as part of the proposal by the design-builder. Notwithstanding any other provision of state law to the contrary, alternative technical concepts shall be confidential and not disclosed to other design-builders or members of the public from the time the proposals are submitted until such proposals are opened by the department.

(2) Proposals shall be sealed and shall not be opened until expiration of the time established for making the proposals as set forth in the request for proposals.

(3) Proposals may be withdrawn at any time prior to the opening of such proposals in which case no stipend shall be paid. The department shall have the right to reject any and all proposals at no cost to the department other than any stipend for design-builders who have submitted responsive proposals. The department may thereafter solicit new proposals using the same or different project performance criteria or may cancel the design-build solicitation.

(4) The department shall rank the design-builders in order of best value pursuant to the criteria in the request for proposals. The department may meet with design-builders prior to ranking.

(5) The department may attempt to negotiate a design-build contract with the highest ranked design-builder selected by the department and may enter into a design-build contract after negotiations. If the department is unable to negotiate a satisfactory design-build contract with the highest ranked design-builder, the department may terminate negotiations with that design-builder. The department may then undertake negotiations with the second highest ranked design-builder and may enter into a design-build contract after negotiations. If the department is unable to negotiate a satisfactory contract with the second highest ranked design-builder, the department may undertake negotiations with the third highest ranked design-builder, if any, and may enter into a design-build contract after negotiations.

(6) If the department is unable to negotiate a satisfactory contract with any of the ranked design-builders, the department may either revise the request for proposals and solicit new proposals or cancel the design-build process under sections 39-2808 to 39-2823.

Source: Laws 2016, LB 960, § 16.

39-2817. Selection of construction manager; construction manager-general contractor contract; sections applicable; request for qualifications; prequalification; publication; short list created.

(1) The process for selecting a construction manager and entering into a construction manager-general contractor contract shall be in accordance with this section and sections 39-2818 to 39-2820.

(2) The department shall prepare a request for qualifications for construction manager-general contractor contract proposals and shall prequalify construction managers. The request for qualifications shall describe the project in sufficient detail to permit a construction manager to respond. The request for qualifications shall identify the maximum number of eligible construction managers the department will place on a short list as qualified and eligible to receive a request for proposals.

(3) The request for qualifications shall be (a) published in a newspaper of statewide circulation at least thirty days prior to the deadline for receiving the request for qualifications and (b) sent by first-class mail to any construction manager upon request.

(4) The department shall create a short list of qualified and eligible construction managers in accordance with the guidelines adopted pursuant to section 39-2811. The department shall select at least two construction managers, except that if only one construction manager has responded to the request for qualifications, the department may, in its discretion, proceed or cancel the procurement. The request for proposals shall be sent only to the construction managers placed on the short list.

Source: Laws 2016, LB 960, § 17.

39-2818. Request for proposals for construction manager-general contractor contract; elements.

The department shall prepare a request for proposals for each construction manager-general contractor contract. The request for proposals shall contain, at a minimum, the following elements:

(1) The guidelines adopted by the department in accordance with section 39-2811. The identification of a publicly accessible location of the guidelines, either physical or electronic, shall be considered compliance with this subdivision;

(2) The proposed terms and conditions of the contract, including any terms and conditions which are subject to further negotiation;

(3) Any bonding and insurance required by law or as may be additionally required by the department;

(4) General information about the project which will assist the department in its selection of the construction manager, including a project statement which contains information about the scope and nature of the project, the project site, the schedule, and the estimated budget;

(5) The criteria for evaluation of proposals and the relative weight of each criterion;

(6) A statement that the construction manager shall not be allowed to sublet, assign, or otherwise dispose of any portion of the contract without consent of the department. In no case

shall the department allow the construction manager to sublet more than seventy percent of the work, excluding specialty items; and

(7) Other information or requirements which the department, in its discretion, chooses to include in the request for proposals.

Source: Laws 2016, LB 960, § 18.

39-2819. Submission of proposals; sealed; rank of construction managers; negotiation of contract.

(1) Construction managers shall submit proposals as required by the request for proposals.

(2) Proposals shall be sealed and shall not be opened until expiration of the time established for making the proposals as set forth in the request for proposals.

(3) Proposals may be withdrawn at any time prior to signing a contract for preconstruction services. The department shall have the right to reject any and all proposals at no cost to the department. The department may thereafter solicit new proposals or may cancel the construction manager-general contractor procurement process.

(4) The department shall rank the construction managers in accordance with the qualification-based selection process and pursuant to the criteria in the request for proposals. The department may meet with construction managers prior to the ranking.

(5) The department may attempt to negotiate a contract for preconstruction services with the highest ranked construction manager and may enter into a contract for preconstruction services after negotiations. If the department is unable to negotiate a satisfactory contract for preconstruction services with the highest ranked construction manager, the department may terminate negotiations with that construction manager. The department may then undertake negotiations with the second highest ranked construction manager and may enter into a contract for preconstruction services after negotiations. If the department is unable to negotiate a satisfactory contract with the second highest ranked construction manager, the department may undertake negotiations with the third highest ranked construction manager, if any, and may enter into a contract for preconstruction services after negotiations.

(6) If the department is unable to negotiate a satisfactory contract for preconstruction services with any of the ranked construction managers, the department may either revise the request for proposals and solicit new proposals or cancel the construction manager-general contractor contract process under sections 39-2808 to 39-2823.

Source: Laws 2016, LB 960, § 19.

39-2820. Department; cost estimate; conduct contract negotiations.

(1) Before the construction manager begins any construction services, the department shall:

(a) Conduct an independent cost estimate for the project; and

(b) Conduct contract negotiations with the construction manager to develop a construction manager-general contractor contract for construction services.

(2) If the construction manager and the department are unable to negotiate a contract, the department may use other contract procurement processes. Persons or organizations who submitted proposals but were unable to negotiate a contract with the department shall be eligible to compete in the other contract procurement processes.

Source: Laws 2016, LB 960, § 20.

39-2821. Contracts; changes authorized.

A design-build contract and a construction manager-general contractor contract may be conditioned upon later refinements in scope and price and may permit the department in agreement with the design-builder or construction manager to make changes in the project without invalidating the contract.

Source: Laws 2016, LB 960, § 21.

39-2822. Department; authority for political subdivision projects.

The department may enter into agreements under sections 39-2808 to 39-2823 to let, design, and construct projects for political subdivisions when any of the funding for such projects is provided by or through the department. In such instances, the department may enter into contracts with the design-builder or construction manager. The provisions of the Political Subdivisions Construction Alternatives Act shall not apply to projects let, designed, and constructed under the supervision of the department pursuant to agreements with political subdivisions under sections 39-2808 to 39-2823.

Source: Laws 2016, LB 960, § 22.

Cross References

Political Subdivisions Construction Alternatives Act, see section 13-2901.

39-2823. Insurance.

Nothing in sections 39-2808 to 39-2823 shall limit or reduce statutory or regulatory requirements regarding insurance.

Source: Laws 2016, LB 960, § 23.

39-2824. Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out the Transportation Innovation Act.

Source: Laws 2016, LB 960, § 24.

CHAPTER 49

ARTICLE 8
DEFINITIONS, CONSTRUCTION, AND CITATION

49-801. Statutes; terms, defined.

Unless the context is shown to intend otherwise, words and phrases in the statutes of Nebraska hereafter enacted are used in the following sense:

(1) Acquire when used in connection with a grant of power or property right to any person shall include the purchase, grant, gift, devise, bequest, and obtaining by eminent domain;

(2) Action shall include any proceeding in any court of this state;

(3) Attorney shall mean attorney at law;

(4) Company shall include any corporation, partnership, limited liability company, joint-stock company, joint venture, or association;

(5) Domestic when applied to corporations shall mean all those created by authority of this state;

(6) Federal shall refer to the United States;

(7) Foreign when applied to corporations shall include all those created by authority other than that of this state;

(8) Grantee shall include every person to whom any estate or interest passes in or by any conveyance;

(9) Grantor shall include every person from or by whom any estate or interest passes in or by any conveyance;

(10) Inhabitant shall be construed to mean a resident in the particular locality in reference to which that word is used;

(11) Land or real estate shall include lands, tenements, and hereditaments and all rights thereto and interest therein other than a chattel interest;

(12) Magistrate shall include judge of the county court and clerk magistrate;

(13) Month shall mean calendar month;

(14) Oath shall include affirmation in all cases in which an affirmation may be substituted for an oath;

(15) Peace officer shall include sheriffs, coroners, jailers, marshals, police officers, state highway patrol officers, members of the National Guard on active service by direction of the Governor during periods of emergency, and all other persons with similar authority to make arrests;

(16) Person shall include bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations;

(17) Personal estate shall include money, goods, chattels, claims, and evidences of debt;

(18) Process shall mean a summons, subpoena, or notice to appear issued out of a court in the course of judicial proceedings;

(19) Service animal shall have the same meaning as in 28 C.F.R. 36.104, as such regulation existed on January 1, 2008;

(20) State when applied to different states of the United States shall be construed to extend to and include the District of Columbia and the several territories organized by Congress;

(21) Sworn shall include affirmed in all cases in which an affirmation may be substituted for an oath;

(22) The United States shall include territories, outlying possessions, and the District of Columbia;

(23) Violate shall include failure to comply with;

(24) Writ shall signify an order or citation in writing issued in the name of the state out of a court or by a judicial officer; and

(25) Year shall mean calendar year.

Source: Laws 1947, c. 182, § 1, p. 601; Laws 1967, c. 175, § 2, p. 490; Laws 1972, LB 1032, § 255; Laws 1975, LB 481, § 30; Laws 1984, LB 13, § 83; Laws 1988, LB 1030, § 43; Laws 1993, LB 121, § 303; Laws 2008, LB 806, § 12.

In conjunction with section 25-2221 and subsection (13) of this section, a political subdivision has until the end of the last day of the 6-month period after a claimant has filed a tort claim upon which to make a final disposition of such claim. Geddes v. York County, 273 Neb. 271, 729 N.W.2d 661 (2007).

Unless the context is shown to intend otherwise, action includes any proceeding in a court and only final orders therein are bases for appeals. Grantham v. General Telephone Co., 187 Neb. 647, 193 N.W.2d 449 (1972).

Term person in statutes includes a corporation. Fosler v. Aden, 175 Neb. 535, 122 N.W.2d 494 (1963).

The word month is legislatively defined as calendar month. Ruan Transport Corp. v. Peake Inc., 163 Neb. 319, 79 N.W.2d 575 (1956).

49-801.01. Internal Revenue Code; reference.

Except as provided by Article VIII, section 1B, of the Constitution of Nebraska and in sections 77-1106, 77-1108, 77-1109, 77-1117, 77-1119, 77-2701.01, 77-2714 to 77-27,123, 77-27,191, 77-2902, 77-2906, 77-2908, 77-2909, 77-4103, 77-4104, 77-4108, 77-5509, 77-5515, 77-5527 to 77-5529, 77-5539, 77-5717 to 77-5719, 77-5728, 77-5802, 77-5803, 77-5806, 77-5903, 77-6302, and 77-6306, any reference to the Internal Revenue Code refers to the Internal Revenue Code of 1986 as it exists on May 11, 2017.

Source: Laws 1995, LB 574, § 1; Laws 1996, LB 984, § 1; Laws 1997, LB 46, § 1; Laws 1998, LB 1015, § 2; Laws 1999, LB 33, § 1; Laws 2000, LB 944, § 1; Laws 2001,

LB 122, § 1; Laws 2001, LB 620, § 45; Laws 2002, LB 989, § 8; Laws 2003, LB 281, § 1; Laws 2004, LB 1017, § 1; Laws 2005, LB 312, § 1; Laws 2005, LB 383, § 1; Laws 2006, LB 1003, § 2; Laws 2007, LB 315, § 1; Laws 2008, LB 896, § 1; Laws 2009, LB 251, § 1; Laws 2010, LB 879, § 2; Laws 2011, LB 134, § 1; Laws 2011, LB 389, § 11; Laws 2012, LB 725, § 1; Laws 2012, LB 1128, § 20; Laws 2013, LB 24, § 1; Laws 2014, LB 191, § 13; Laws 2014, LB 739, § 1; Laws 2015, LB 171, § 1; Laws 2017, LB 234, § 1.

Effective Date: May 11, 2017

49-802. Statutes; general rules of construction.

Unless such construction would be inconsistent with the manifest intent of the Legislature, rules for construction of the statutes of Nebraska hereafter enacted shall be as follows:

(1) When the word may appears, permissive or discretionary action is presumed. When the word shall appears, mandatory or ministerial action is presumed.

(2) The present tense of any verb includes the future, when applicable.

(3) The phrase shall have been includes past and future cases.

(4) Gender when referring to masculine also includes feminine and neuter.

(5) Words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

(6) Singular words may extend and be applied to several persons or things as well as to one person or thing.

(7) Plural words may extend and be applied to one person or thing as well as to several persons or things.

(8) Title heads, chapter heads, section and subsection heads or titles, and explanatory notes and cross references, in the statutes of Nebraska, supplied in compilation, do not constitute any part of the law.

(9) Whenever, in the statute laws of this state, a reference is made to two or more sections and the section numbers given in the reference are connected by the word to, the reference includes both the sections whose numbers are given and all intervening sections.

(10) No law repealed by subsequent act of the Legislature is revived or affected by the repeal of such repealing act.

(11) The repeal of a curative or validating law does not impair or affect any cure or validation previously perfected thereunder.

The enumeration of the rules of construction set out in this section is not intended to be exclusive, but is intended to set forth the common situations which arise in the preparation of legislative bills where a general statement by the Legislature of its purpose may aid and assist in ascertaining the legislative intent.

Source: Laws 1947, c. 182, § 2, p. 603.

1. Singular or plural construction
2. Mandatory or discretionary action
3. Miscellaneous

1. Singular or plural construction

Words county superintendent included the plural county superintendents. Moser v. Turner, 180 Neb. 635, 144 N.W.2d 192 (1966).

Designation in statute of term polling places conferred authority to designate one polling place. Peterson v. Cook, 175 Neb. 296, 121 N.W.2d 399 (1963).

Word municipality in airport act included more than one. Spencer v. Village of Wallace, 153 Neb. 536, 45 N.W.2d 473 (1951).

2. Mandatory or discretionary action

On appeal from a county or municipal court, notice of appeal and bond must be filed within ten days after rendition of judgment and this period cannot be prolonged by filing a motion for new trial. Edward Frank Rozman Co. v. Keillor, 195 Neb. 587, 239 N.W.2d 779 (1976).

The word "shall" in section 9-504(3), U.C.C., makes notice a mandatory obligation. Bank of Gering v. Glover, 192 Neb. 575, 223 N.W.2d 56 (1974).

Use of word may in Sexual Psychopath Act disclosed legislative intent that discretion was vested in district court. State v. Noll, 171 Neb. 831, 108 N.W.2d 108 (1961).

Use of the word shall disclosed legislative intent that mandatory action was intended. Anderson v. Carlson, 171 Neb. 741, 107 N.W.2d 535 (1961).

3. Miscellaneous

The heading, or catchline, is supplied in the compilation of the statutes and does not constitute any part of the law. State v. Holmes, 221 Neb. 629, 379 N.W.2d 765 (1986).

The Chapter heading "Highways, Bridges and Ferries" does not limit the guest statute so as to make it inapplicable to a vehicle on private property. Hale v. Taylor, 192 Neb. 298, 220 N.W.2d 378 (1974).

Unless such construction would be inconsistent with the manifest intent of the Legislature, heads supplied in compilation of sections enacted after passage of this section do not constitute any part of the law enacted. Cosentino v. City of Omaha, 186 Neb. 407, 183 N.W.2d 475 (1971).

This section constitutes legislative sanction of a sound rule of statutory construction. Yeoman v. Houston, 168 Neb. 855, 97 N.W.2d 634 (1959).

49-803. Repealed. Laws 1995, LB 589, § 16.

49-804. Appropriations; validity; requirements.

An appropriation shall only exist when the following criteria have been met:

(1) There shall be included the phrase there is hereby appropriated;

(2) A specific fund type shall be identified and the fund shall be appropriated;

(3) The amount to be appropriated from such fund shall be identified;

(4) A specific budget program or a specific statement reflecting the purpose for expending such funds shall be identified; and

(5) The time period during which such funds shall be expended shall be identified.

Source: Laws 1979, LB 232, § 1.

49-805. Appropriations; failure to meet criteria; effect.

Any legislation not meeting the criteria established in section 49-804 shall not be considered a valid appropriation as defined in Article III, section 22, of the Nebraska Constitution.

Source: Laws 1979, LB 232, § 2.

49-805.01. Appropriations from state treasury; specific sums.

All appropriations of money from the state treasury, whether such money is derived from the levy of state taxes or from any other source, shall be by the appropriation of specific sums.

Source: Laws 1921, c. 24, § 1, p. 150; C.S.1922, § 6228; C.S.1929, § 77-2617; R.S.1943, § 77-2417; Laws 1979, LB 194, § 1; R.S.1943, (1986), § 77-2417; Laws 1989, LB 13, § 2.

49-806. Statutes; list of section numbers; rules of construction.

Unless the Legislature specifies otherwise or the legislative intent is clearly to the contrary, in construing statutes in effect prior to, on, or after July 10, 1984:

(1) If a list of statutes in a section in the form of two section numbers joined by the word to is amended to include a newly enacted statute which is assigned a section number which falls within the range of the specified list, the Revisor of Statutes shall not be required to print the statute showing both the original list and the section number of the newly enacted statute and the list shall be construed to encompass the new statute as of the date the newly enacted statute takes effect or becomes operative, whichever is later;

(2) If a list of statutes in a section is in the form of two section numbers joined by the word to and a statute, the section number of which falls within the range of the list, is repealed, the list shall be construed to exclude the repealed statute as of the date its repeal takes effect or becomes operative, whichever is later; and

(3) If a list of statutes by section numbers is defined to be a named act and the list is later amended to include an additional section or to exclude a repealed section, either by a direct change or by operation of subdivision (2) of this section, any reference to the act by name shall be construed to encompass the added or exclude the repealed section as of the date its enactment or repeal takes effect or becomes operative, whichever is later.

Source: Laws 1984, LB 633, § 1.

CHAPTER 60

ARTICLE 6
NEBRASKA RULES OF THE ROAD

(a) GENERAL PROVISIONS

(b) POWERS OF STATE AND LOCAL AUTHORITIES

(c) PENALTY AND ENFORCEMENT PROVISIONS

60-682. Violations; traffic infraction.
60-682.01. Speed limit violations; fines.
60-683. Peace officers; duty to enforce rules and laws; powers.
60-684. Person charged with traffic infraction; citation; refusal to sign; penalty.
60-685. Misdemeanor or traffic infraction; lawful complaints.
60-686. Posting of bond; forfeiture of bonds; exceptions.
60-687. Arrest or apprehension.
60-688. Prosecution; disposition thereof.
60-689. Prosecutions where penalty not specifically provided.
60-690. Aiding or abetting; guilty of such offense.
60-691. Moving traffic offense; conviction; court may require course of instruction.
60-692. Failure to satisfy judgment; effect.
60-693. Evidence in civil actions; conviction not admissible.
60-694. Conviction; credibility as a witness.
60-694.01. Operator's license; revocation; reinstatement fee.

(d) ACCIDENTS AND ACCIDENT REPORTING

60-695. Peace officers; investigation of traffic accident; duty to report; Department of Transportation; powers; duties.
60-696. Motor vehicle; accident; duty to stop; information to furnish; report; powers of peace officer; violation; penalty.
60-697. Accident; driver's duty; penalty.
60-698. Accident; failure to stop; penalty.
60-699. Accidents; reports required of operators and owners; when; supplemental reports; reports of peace officers open to public inspection; limitation on use as evidence; violation; penalty.
60-6,100. Accidents; reports required of garages and repair shops.
60-6,101. Accidents; coroner; report to Department of Transportation.
60-6,102. Accident; death; driver; pedestrian sixteen years or older; coroner; examine body; amount of alcohol or drugs; report to Department of Transportation; public information.
60-6,103. Accident; driver or pedestrian sixteen years of age or older; person killed; submit to chemical test; results in writing to Director-State Engineer; public information.
60-6,104. Accidents; body fluid; samples; test; report.
60-6,105. Accidents; reports; statements; not available in trial arising out of accident involved; exception.
60-6,106. Accidents; reports; expenses; reimbursement to county by Department of Transportation.
60-6,107. Accidents; Department of Health and Human Services; Department of Transportation; adopt rules and regulations.

(e) APPLICABILITY OF TRAFFIC LAWS

60-6,108. Required obedience to traffic laws; private property used for public road by consent of owner; provisions uniform throughout the state.
60-6,109. Drivers to exercise due care with pedestrian; audible signal.
60-6,110. Obedience to peace officers; violation; penalty.
60-6,111. Persons riding animals or driving animal-drawn vehicles; farm implements; duties.
60-6,112. Rules of the road; exceptions.
60-6,113. Government vehicles; provisions applicable.
60-6,114. Authorized emergency vehicles; privileges; conditions.
60-6,115. Closed road; travel permitted; when.
60-6,116. Vehicle owner; driver violations.
60-6,117. Parental duties; child less than sixteen.

(f) TRAFFIC CONTROL DEVICES

60-6,118. Manual on Uniform Traffic Control Devices; adoption by Department of Transportation.
60-6,119. Obedience to traffic control devices; exceptions.
60-6,120. Placing and maintaining traffic control devices; jurisdiction.
60-6,121. Placing and maintaining traffic control devices; local authorities.
60-6,122. Traffic control devices; when illegal to sell or lease.
60-6,123. Traffic control signals; meaning; turns on red signal; when; signal not in service; effect.
60-6,124. Pedestrian-control signals.
60-6,125. Flashing signals; exception.
60-6,126. Lane direction control signals; signs.
60-6,126.01. Road name signs; authorized.
60-6,127. Display of unauthorized signs, signals, or markings; public nuisance; removal.
60-6,128. Advertising devices adjacent to highway; when prohibited; public nuisance; removal.
60-6,129. Interference with official traffic control devices or railroad signs or signals; prohibited; liability in civil action.
60-6,130. Signs, markers, devices, or notices; prohibited acts; penalty.

(g) USE OF ROADWAY AND PASSING

60-6,131. Driving on right half of roadway required; exceptions.
60-6,132. Vehicles proceeding in opposite direction; passing.
60-6,133. Overtaking and passing rules; vehicles proceeding in same direction.
60-6,134. Overtaking and passing upon the right; when permitted.
60-6,134.01. School crossing zone; overtaking and passing prohibited; penalty.
60-6,135. Limitations on overtaking and passing on the left; precautions required; return to right side of highway.
60-6,136. Limitations on overtaking, passing, or driving to the left of the center of roadway; when prohibited.
60-6,137. No-passing zones; exception.
60-6,138. One-way roadways and rotary traffic islands; jurisdiction; exception for emergency vehicles.
60-6,139. Driving on roadways laned for traffic; rules; traffic control devices.
60-6,140. Following vehicles; restrictions.
60-6,141. Driving on divided highways; driving on median prohibited; exceptions.
60-6,142. Driving on highway shoulders prohibited; exceptions.
60-6,143. Controlled-access highway; entrances; exits.
60-6,144. Restrictions on use of controlled-access highway.
60-6,145. Official signs on controlled-access highway.

(h) RIGHT-OF-WAY

60-6,146. Vehicles approaching or entering intersection at same time; right-of-way; entering a highway or roadway.
60-6,147. Vehicle turning left; yield right-of-way.
60-6,148. Preferential right-of-way; stop and yield signs.
60-6,149. Vehicle entering roadway from private road or driveway; yield right-of-way.
60-6,150. Moving a stopped, standing, or parked vehicle; yield right-of-way.
60-6,151. Operation of vehicles upon the approach of emergency vehicles.

(i) PEDESTRIANS

60-6,152. Pedestrian obedience to traffic control devices and regulations.
60-6,152.01. Person operating wheelchair; rights and duties applicable to pedestrian.
60-6,153. Pedestrians' right-of-way in crosswalk; traffic control devices.
60-6,154. Crossing at other than crosswalks; yield right-of-way.
60-6,155. Pedestrians to use right half of crosswalk.

(j) TURNING AND SIGNALS

(k) STOPPING, STANDING, PARKING, AND BACKING UP

(l) SPECIAL STOPS

(m) MISCELLANEOUS RULES

(n) SPEED RESTRICTIONS

(o) ALCOHOL AND DRUG VIOLATIONS

60-6,211.04. Applicability of other laws.
60-6,211.05. Ignition interlock device; continuous alcohol monitoring device and abstention from alcohol use; orders authorized; prohibited acts; violation; penalty; costs; Department of Motor Vehicles Ignition Interlock Fund; created; use; investment; prohibited acts relating to tampering with device; hearing.
60-6,211.06. Implied consent to submit to chemical test violation; court and department records; expungement; when authorized.
60-6,211.07. Implied consent to submit to chemical test violation; impounded license; return; prohibited act; effect.
60-6,211.08. Open alcoholic beverage container; consumption of alcoholic beverages; prohibited acts; applicability of section to certain passengers of limousine or bus.
60-6,211.09. Continuous alcohol monitoring devices; Office of Probation Administration; duties.
60-6,211.10. Repealed. Laws 2009, LB 497, § 12.
60-6,211.11. Prohibited acts relating to ignition interlock device; violation; penalty.

(p) OTHER SERIOUS TRAFFIC OFFENSES

60-6,212. Careless driving, defined.
60-6,213. Reckless driving, defined.
60-6,214. Willful reckless driving, defined.
60-6,215. Reckless driving; first offense; penalty.
60-6,216. Willful reckless driving; first offense; penalty.
60-6,217. Reckless driving or willful reckless driving; second offense; penalty.
60-6,218. Reckless driving or willful reckless driving; third and subsequent offenses; penalty.

(q) LIGHTING AND WARNING EQUIPMENT

60-6,219. Motor vehicle; autocycle or motorcycle; lights; requirements; prohibited acts.
60-6,220. Lights; vehicle being driven; vehicle parked on freeway.
60-6,221. Headlights; construction; adjustment; requirements.
60-6,222. Violations; penalty.
60-6,223. Acetylene headlights; number; construction; requirements.
60-6,224. Headlights; glare; duty of operator; penalty.
60-6,225. Spotlights; auxiliary driving lights; signal lights; other devices; intensity and direction.
60-6,226. Brake and turnsignal light requirements; exceptions; signaling requirements.
60-6,227. Repealed. Laws 2008, LB 756, § 34.
60-6,228. Vehicle proceeding in forward motion; backup lights on; prohibited; violation; penalty.
60-6,229. Lights, red or green, in front of vehicle prohibited; exceptions.
60-6,230. Lights; rotating or flashing; colored lights; when permitted.
60-6,231. Flashing or rotating lights; authorized emergency vehicles; colors permitted.
60-6,232. Rotating or flashing amber light; when permitted.
60-6,233. Rotating or flashing red light or red and blue lights; when permitted; application; permit; expiration.
60-6,234. Rotating or flashing lights; violation; penalty.
60-6,235. Clearance lights; requirements; substitution; violations; penalty.
60-6,236. Vehicles required to have clearance lights; flares; reflectors; when required as equipment.
60-6,237. Vehicles required to have clearance lights; flares; reflectors; how and when displayed.
60-6,238. Vehicles; red flags; red emergency reflectors; when required as equipment; how and when displayed.
60-6,239. Clearance lights, flares, and reflector requirements; violations; penalty.
60-6,240. Removing flares or flags; penalty.
60-6,241. Vehicles; slow moving; emblem required; when used.
60-6,242. Vehicles; slow moving; equipped with bracket.
60-6,243. Load projecting to rear; red flag or red light required.

(r) BRAKES

(s) TIRES

(t) WINDSHIELDS, WINDOWS, AND MIRRORS

(u) OCCUPANT PROTECTION SYSTEMS

(v) RADAR TRANSMISSION DEVICES

(w) HELMETS

(x) MISCELLANEOUS EQUIPMENT PROVISIONS

(y) SIZE, WEIGHT, AND LOAD

(z) SPECIAL RULES FOR LIVESTOCK FORAGE VEHICLES

(aa) SPECIAL RULES FOR MOTORCYCLES

(bb) SPECIAL RULES FOR MOPEDS

(cc) SPECIAL RULES FOR BICYCLES

(dd) SPECIAL RULES FOR SNOWMOBILES

(ee) SPECIAL RULES FOR MINIBIKES AND OTHER OFF-ROAD VEHICLES

(mm) FARM EQUIPMENT DEALERS

(a) GENERAL PROVISIONS

60-601. Rules, how cited.

Sections 60-601 to 60-6,383 shall be known and may be cited as the Nebraska Rules of the Road.

Source: Laws 1973, LB 45, § 122; Laws 1989, LB 285, § 9; Laws 1992, LB 291, § 14; Laws 1992, LB 872, § 5; R.S.Supp; 1992, § 39-6,122; Laws 1993, LB 370, § 97; Laws 1993, LB 564, § 14; Laws 1996, LB 901, § 3; Laws 1996, LB 1104, § 2; Laws 1997, LB 91, § 1; Laws 1998, LB 309, § 12; Laws 1999, LB 585, § 3; Laws 2001, LB 38, § 42; Laws 2002, LB 1105, § 448; Laws 2002, LB 1303, § 10; Laws 2004, LB 208, § 8; Laws 2006, LB 853, § 14; Laws 2006, LB 925, § 4; Laws 2008, LB 736, § 6; Laws 2008, LB 756, § 18; Laws 2009, LB 92, § 1; Laws 2010, LB 650, § 35; Laws 2010, LB 945, § 2; Laws 2011, LB 164, § 1; Laws 2011, LB 289, § 29; Laws 2011, LB 667, § 32; Laws 2011, LB 675, § 4; Laws 2012, LB 751, § 43; Laws 2012, LB 1155, § 18; Laws 2014, LB 1039, § 1; Laws 2015, LB 231, § 27; Laws 2015, LB 641, § 1; Laws 2016, LB 977, § 20.

Sections 39-601 to 39-6,122 do not apply to the users of a hospital drive that does not fit the statutory definition of a "highway" found in section 39-602. However, common law rules applicable to users of public ways do apply. Bassinger v. Agnew, 206 Neb. 1, 290 N.W.2d 793 (1980) (pursuant to Laws 1993, LB 370, sections 97 to 470, language from sections 39-601 to 39-6,122 was placed in sections 60-601 to 60-6,374. Pursuant to Laws 1993, LB 370, section 120, "highway" is now defined in section 60-624).

60-602. Declaration of legislative purpose.

The purposes and policies of the Nebraska Rules of the Road are:

(1) To make more uniform highway traffic laws between states;

(2) To educate drivers so that they can develop instinctive habits resulting in safer emergency reactions;

(3) To educate drivers and pedestrians of all ages to more readily understand each other's responsibilities and privileges when all obey the same rules;

(4) To promote economic savings by relieving congestion and confusion in traffic;

(5) To increase the efficiency of streets and highways by the application of uniform traffic control devices;

(6) To reduce the huge annual loss of life and property which occurs on Nebraska's highways; and

(7) To assist traffic law enforcement by encouraging voluntary compliance with law through uniform rules.

Source: Laws 1973, LB 45, § 1; R.S.1943, (1988), § 39-601; Laws 1993, LB 370, § 98.

60-603. Rules; not retroactive.

The Nebraska Rules of the Road as enacted by Laws 1993, LB 370, shall not have a retroactive effect and shall not apply to any traffic accident, to any cause of action arising out of a traffic accident or judgment arising therefrom, or to any violation of the motor vehicle laws of this state occurring prior to January 1, 1994. All violations, offenses, prosecutions, and criminal appeals under prior law are saved and preserved. All civil causes of action based upon or under prior law arising out of traffic accidents prior to such date and judgments thereon or appeals therefrom are saved and preserved.

Source: Laws 1973, LB 45, § 120; R.S.1943, (1988), § 39-6,120; Laws 1993, LB 370, § 99.

60-604. Construction of rules.

The Nebraska Rules of the Road shall be so interpreted and construed as to effectuate their general purpose to make uniform the laws relating to motor vehicles.

Source: Laws 1973, LB 45, § 121; R.S.1943, (1988), § 39-6,121; Laws 1993, LB 370, § 100.

Sections 39-601 to 39-6,122 do not apply to the users of a hospital drive that does not fit the statutory definition of a "highway" found in section 39-602. However, common law rules applicable to users of public ways do apply. Bassinger v. Agnew, 206 Neb. 1, 290 N.W.2d 793 (1980) (pursuant to Laws 1993, LB 370, sections 97 to 470, language from sections 39-601 to 39-6,122 was placed in sections 60-601 to 60-6,374. Pursuant to Laws 1993, LB 370, section 120, "highway" is now defined in section 60-624).

60-605. Definitions, where found.

For purposes of the Nebraska Rules of the Road, the definitions found in sections 60-606 to 60-676 shall be used.

Source: Laws 1993, LB 370, § 101; Laws 1996, LB 901, § 4; Laws 1997, LB 91, § 2; Laws 2001, LB 38, § 43; Laws 2006, LB 853, § 15; Laws 2006, LB 925, § 5; Laws 2008, LB 756, § 19; Laws 2010, LB 650, § 36; Laws 2011, LB 289, § 30; Laws 2012, LB 1155, § 19; Laws 2015, LB 231, § 28.

60-606. Acceleration or deceleration lane, defined.

Acceleration or deceleration lane shall mean a supplementary lane of a highway lane for traffic, which adjoins the traveled lanes of a highway and connects an approach or exit road with such highway.

Source: Laws 1993, LB 370, § 102.

60-607. Alley, defined.

Alley shall mean a highway intended to provide access to the rear or side of lots or buildings and not intended for the purpose of through vehicular traffic.

Source: Laws 1993, LB 370, § 103.

60-608. Approach or exit road, defined.

Approach or exit road shall mean any highway or ramp designed and used solely for the purpose of providing ingress or egress to or from an interchange or rest area of a highway. An approach road shall begin at the point where it intersects with any highway not a part of the highway for which such approach road provides access and shall terminate at the point where it merges with an acceleration lane of a highway. An exit road shall begin at the point where it intersects with a deceleration lane of a highway and shall terminate at the point where it intersects any highway not a part of a highway from which the exit road provides egress.

Source: Laws 1993, LB 370, § 104.

60-609. Arterial highway, defined.

Arterial highway shall mean a highway primarily for through traffic, usually on a continuous route.

Source: Laws 1993, LB 370, § 105.

60-610. Authorized emergency vehicle, defined.

Authorized emergency vehicle shall mean such fire department vehicles, police vehicles, rescue vehicles, and ambulances as are publicly owned, such other publicly or privately owned vehicles as are designated by the Director of Motor Vehicles, and such publicly owned military vehicles of the National Guard as are designated by the Adjutant General pursuant to section 55-133.

Source: Laws 1993, LB 370, § 106; Laws 2008, LB 196, § 2.

60-610.01. Autocycle, defined.

Autocycle means any motor vehicle (1) having a seat that does not require the operator to straddle or sit astride it, (2) designed to travel on three wheels in contact with the ground, (3) in which the operator and passenger ride either side by side or in tandem in a seating area that is completely enclosed with a removable or fixed top and is equipped with manufacturer-installed air bags, a manufacturer-installed roll cage, and for each occupant a manufacturer-installed three-point safety belt system, (4) having antilock brakes, and (5) designed to be controlled with a steering wheel and pedals.

Source: Laws 2015, LB 231, § 29.

60-611. Bicycle, defined.

Bicycle shall mean (1) every device propelled solely by human power, upon which any person may ride, and having two tandem wheels either of which is more than fourteen inches in diameter or (2) a device with two or three wheels, fully operative pedals for propulsion by human power, and an electric motor with a capacity not exceeding seven hundred fifty watts which produces no more than one brake horsepower and is capable of propelling the bicycle at a maximum design speed of no more than twenty miles per hour on level ground.

Source: Laws 1993, LB 370, § 107; Laws 2015, LB 95, § 10.

60-612. Bus, defined.

Bus shall mean every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

Source: Laws 1993, LB 370, § 108.

60-613. Business district, defined.

Business district shall mean the territory contiguous to and including a highway when within any six hundred feet along such highway there are buildings in use for business or industrial purposes, including, but not limited to, hotels, banks, office buildings, railroad stations, or public buildings which occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of a highway.

Source: Laws 1993, LB 370, § 109.

60-614. Cabin trailer, defined.

Cabin trailer shall mean a trailer or semitrailer which is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place, whether used for such purposes or instead permanently or temporarily for the advertising, sale, display, or promotion of merchandise or services or for any other commercial purpose except transportation of property for hire or transportation of property for distribution by a private carrier. Cabin trailer shall not mean a trailer or semitrailer which is permanently attached to real estate. There shall be three classes of cabin trailers:

(1) Camping trailer which shall include cabin trailers one hundred two inches or less in width and forty feet or less in length and adjusted mechanically smaller for towing;

(2) Mobile home which shall include cabin trailers more than one hundred two inches in width or more than forty feet in length; and

(3) Travel trailer which shall include cabin trailers not more than one hundred two inches in width nor more than forty feet in length from front hitch to rear bumper, except as provided in subdivision (2)(k) of section 60-6,288.

Source: Laws 1993, LB 370, § 110; Laws 1993, LB 575, § 4; Laws 2001, LB 376, § 2.

A manufactured home is a class of cabin trailer for purposes of this section. Green Tree Fin. Servicing v. Sutton, 264 Neb. 533, 650 N.W.2d 228 (2002).

60-614.01. Continuous alcohol monitoring device, defined.

Continuous alcohol monitoring device means a portable device capable of automatically and periodically testing and recording alcohol consumption levels and automatically and periodically transmitting such information and tamper attempts regarding such device, regardless of the location of the person being monitored.

Source: Laws 2006, LB 925, § 6.

60-615. Controlled-access highway, defined.

Controlled-access highway shall mean every highway or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or egress from except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway.

Source: Laws 1993, LB 370, § 111.

60-616. Crosswalk, defined.

Crosswalk shall mean:

(1) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of such roadway measured from the curbs or, in the absence of curbs, from the edge of the roadway; or

(2) Any portion of a roadway at an intersection or elsewhere distinctly designated by competent authority and marked for pedestrian crossing by lines, signs, or other devices.

Source: Laws 1993, LB 370, § 112.

Crosswalk defined and considered as worded in former section. Therkildsen v. Gottsch, 194 Neb. 729, 235 N.W.2d 622 (1975).

60-617. Daytime, defined.

Daytime shall mean that period of time between sunrise and sunset.

Source: Laws 1993, LB 370, § 113.

60-618. Divided highway, defined.

Divided highway shall mean a highway with separated roadways for traffic in opposite directions.

Source: Laws 1993, LB 370, § 114.

60-618.01. Expressway, defined.

Expressway shall mean a divided arterial highway designed primarily for through traffic with full or partial control of access which may have grade separations at intersections.

Source: Laws 1996, LB 901, § 5.

60-618.02. Electric personal assistive mobility device, defined.

Electric personal assistive mobility device shall mean a self-balancing, two-nontandem-wheeled device, designed to transport only one person and containing an electric propulsion system with an average power of seven hundred fifty watts or one horsepower, whose maximum speed on a paved level surface, when powered solely by such a propulsion system and while being ridden by an operator who weighs one hundred seventy pounds, is less than twenty miles per hour.

Source: Laws 2002, LB 1105, § 449.

60-619. Farm tractor, defined.

Farm tractor shall mean every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

Source: Laws 1993, LB 370, § 115.

60-620. Final conviction, defined.

Final conviction shall mean the final determination of all questions of fact and of law.

Source: Laws 1993, LB 370, § 116.

60-621. Freeway, defined.

Freeway shall mean a divided arterial highway designed primarily for through traffic with full control of access and with grade separations at all intersecting road crossings, including all interchanges and approach and exit roads thereto.

Source: Laws 1993, LB 370, § 117.

60-622. Full control of access, defined.

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

Source: Laws 1993, LB 370, § 118.

60-622.01. Golf car vehicle, defined.

Golf car vehicle means a vehicle that has at least four wheels, has a maximum level ground speed of less than twenty miles per hour, has a maximum payload capacity of one thousand two hundred pounds, has a maximum gross vehicle weight of two thousand five hundred pounds, has a maximum passenger capacity of not more than four persons, is designed and manufactured for operation on a golf course for sporting and recreational purposes, and is not being operated within the boundaries of a golf course.

Source: Laws 2012, LB 1155, § 20.

60-623. Grade separation, defined.

Grade separation shall mean a crossing of two highways at different levels.

Source: Laws 1993, LB 370, § 119.

60-624. Highway, defined.

Highway shall mean the entire width between the boundary limits of any street, road, avenue, boulevard, or way which is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

Source: Laws 1993, LB 370, § 120.

A hospital driveway which is privately maintained and subject to use by patients, visitors, and others having legitimate business at the hospital is not a "highway," within the meaning of this section and, therefore, the rules of the road as set forth in sections 39-601 to 39-6,122 do not apply to its use. However, common law applicable to users of public ways does apply. Bassinger v. Agnew, 206 Neb. 1, 290 N.W.2d 793 (1980) (sections 39-601 to 39-6,122 were transferred to Chapter 60, article 6).

Where highway includes two roadways thirty feet apart, each crossing thereof is a separate intersection. Therkildsen v. Gottsch, 194 Neb. 729, 235 N.W.2d 622 (1975).

60-624.01. Idle reduction technology, defined.

Idle reduction technology means any device or system of devices that is installed on a heavy-duty diesel-powered on-highway truck or truck-tractor and is designed to provide to such truck or truck-tractor those services, such as heat, air conditioning, or electricity, that would otherwise require the operation of the main drive engine while the truck or truck-tractor is temporarily parked or remains stationary.

Source: Laws 2008, LB 756, § 20.

60-625. Implement of husbandry, defined.

Implement of husbandry shall mean every vehicle or implement designed and adapted exclusively for agricultural, horticultural, or livestock-raising operations or for lifting or carrying an implement of husbandry and used primarily off any highway.

Source: Laws 1993, LB 370, § 121; Laws 2000, LB 1361, § 1.

60-625.01. Impoundment of operator's license, defined.

Impoundment of operator's license shall have the meaning found in section 60-470.01.

Source: Laws 2001, LB 38, § 44.

60-626. Interchange, defined.

Interchange shall mean a grade-separated intersection with one or more turning roadways for travel between any of the highways radiating from and forming part of such intersection.

Source: Laws 1993, LB 370, § 122.

60-627. Intersection, defined.

Intersection shall mean the area embraced within the prolongation or connection of the lateral curb lines or, if there are no lateral curb lines, the lateral boundary lines of the roadways of two or more highways which join one another at, or approximately at, right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict. When a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection. The junction of an alley with a highway shall not constitute an intersection.

Source: Laws 1993, LB 370, § 123.

Intersection right-of-way is a qualified, not absolute, right to proceed, exercising due care, in a lawful manner in preference to an opposing vehicle. Reese v. Mayer, 198 Neb. 499, 253 N.W.2d 317 (1977).

60-628. Local authority, defined.

Local authority shall mean every county, municipal, and other local board or body having power to enact laws, rules, or regulations relating to traffic under the Constitution of Nebraska and the laws of this state and generally including the directors of state institutions, the Game and Parks Commission, and all natural resources districts with regard to roads not a part of the state highway system and within the limits of such institution, of an area under Game and Parks Commission control, or of an area owned or leased by a natural resources district, but outside the limits of any incorporated city or village.

Source: Laws 1993, LB 370, § 124.

60-628.01. Low-speed vehicle, defined.

Low-speed vehicle means a four-wheeled motor vehicle (1) whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour on a paved, level surface, (2) whose gross vehicle weight rating is less than three thousand pounds, and (3) that complies with 49 C.F.R. part 571, as such part existed on January 1, 2017.

Source: Laws 2011, LB 289, § 31; Laws 2016, LB 929, § 10; Laws 2017, LB 263, § 72.
Operative Date: April 28, 2017

60-629. Mail, defined.

Mail shall mean to deposit in the United States mail properly addressed and with postage prepaid.

Source: Laws 1993, LB 370, § 125.

60-630. Maintenance, defined.

Maintenance shall mean the act, operation, or continuous process of repair, reconstruction, or preservation of the whole or any part of any highway, including surface, shoulders, roadsides, traffic control devices, structures, waterways, and drainage facilities, for the purpose of keeping it at or near or improving upon its original standard of usefulness and safety.

Source: Laws 1993, LB 370, § 126.

60-631. Manual, defined.

Manual shall mean the Manual on Uniform Traffic Control Devices adopted by the Department of Transportation pursuant to section 60-6,118.

Source: Laws 1993, LB 370, § 127; Laws 2017, LB 339, § 182.
Operative Date: July 1, 2017

60-632. Median, defined.

Median shall mean that part of a divided highway, such as a physical barrier or clearly indicated dividing section or space, so constructed as to impede vehicular traffic across or within such barrier, section, or space or to divide such highway into two roadways for vehicular travel in opposite directions.

Source: Laws 1993, LB 370, § 128.

60-633. Median crossover, defined.

Median crossover shall mean a connection between roadways of a divided highway the use of which may permit a vehicle to reverse its direction by continuously moving forward.

Source: Laws 1993, LB 370, § 129.

60-634. Median opening, defined.

Median opening shall mean a gap in a median provided for crossing and turning traffic.

Source: Laws 1993, LB 370, § 130.

60-635. Metal tire, defined.

Metal tire shall mean every tire the surface of which in contact with the highway is wholly or partly of metal or other hard nonresilient material.

Source: Laws 1993, LB 370, § 131.

60-636. Minibike, defined.

Minibike shall mean a two-wheel motor vehicle which has a total wheel and tire diameter of less than fourteen inches or an engine-rated capacity of less than forty-five cubic centimeters displacement or any other two-wheel motor vehicle primarily designed by the manufacturer for off-road use only. Minibike shall not include an electric personal assistive mobility device.

Source: Laws 1993, LB 370, § 132; Laws 2002, LB 1105, § 450.

60-636.01. Minitruck, defined.

Minitruck means a foreign-manufactured import vehicle or domestic-manufactured vehicle which (1) is powered by an internal combustion engine with a piston or rotor displacement of one thousand five hundred cubic centimeters or less, (2) is sixty-seven inches or less in width, (3) has a dry weight of four thousand two hundred pounds or less, (4) travels on four or more tires, (5) has a top speed of approximately fifty-five miles per hour, (6) is equipped with a bed or compartment for hauling, (7) has an enclosed passenger cab, (8) is equipped with headlights, taillights, turnsignals, windshield wipers, a rearview mirror, and an occupant protection system, and (9) has a four-speed, five-speed, or automatic transmission.

Source: Laws 2010, LB 650, § 37; Laws 2012, LB 898, § 4.

60-637. Moped, defined.

Moped shall mean a device with fully operative pedals for propulsion by human power, an automatic transmission, and a motor with a cylinder capacity not exceeding fifty cubic centimeters which produces no more than two brake horsepower and is capable of propelling the device at a maximum design speed of no more than thirty miles per hour on level ground.

Source: Laws 1993, LB 370, § 133; Laws 2015, LB 95, § 11.

60-638. Motor vehicle, defined.

Motor vehicle shall mean every self-propelled land vehicle, not operated upon rails, except bicycles, mopeds, self-propelled chairs used by persons who are disabled, and electric personal assistive mobility devices.

Source: Laws 1993, LB 370, § 134; Laws 2002, LB 1105, § 451; Laws 2015, LB 95, § 12.

60-639. Motorcycle, defined.

Motorcycle shall mean every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, excluding autocycles, tractors, and electric personal assistive mobility devices.

Source: Laws 1993, LB 370, § 135; Laws 2002, LB 1105, § 452; Laws 2015, LB 231, § 30.

60-640. Motor-driven cycle, defined.

Motor-driven cycle shall mean every motorcycle, including every motor scooter, with a motor which produces not to exceed five brake horsepower as measured at the drive shaft, mopeds, and every bicycle with motor attached except for a bicycle as described in subdivision (2) of section 60-611. Motor-driven cycle shall not include an electric personal assistive mobility device.

Source: Laws 1993, LB 370, § 136; Laws 2002, LB 1105, § 453; Laws 2015, LB 95, § 13.

60-641. Nighttime, defined.

Nighttime shall mean that period of time between sunset and sunrise.

Source: Laws 1993, LB 370, § 137.

60-642. Operator or driver, defined.

Operator or driver shall mean any person who operates, drives, or is in actual physical control of a vehicle.

Source: Laws 1993, LB 370, § 138.

60-643. Operator's license, defined.

Operator's license shall have the meaning found in section 60-474.

Source: Laws 1993, LB 370, § 139.

60-644. Owner, with respect to a vehicle, defined.

Owner, with respect to a vehicle, shall mean a person, other than a person holding a security interest, having the property in or title to a vehicle, including a person entitled to the use and possession of a vehicle subject to a security interest in another person, but excluding a lessee under a lease not intended as security.

Source: Laws 1993, LB 370, § 140.

60-645. Park or parking, defined.

Park or parking shall mean the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.

Source: Laws 1993, LB 370, § 141.

60-646. Peace officer, defined.

Peace officer shall mean any town marshal, chief of police, local police officer, sheriff, or deputy sheriff, the Superintendent of Law Enforcement and Public Safety, or any officer of the Nebraska State Patrol and shall also include members of the National Guard on active service by direction of the Governor during periods of emergency or civil disorder and Game and Parks Commission conservation officers while in areas under the control of the Game and Parks

Commission. With respect to directing traffic only, peace officer shall also include any person authorized to direct or regulate traffic.

Source: Laws 1993, LB 370, § 142; Laws 1998, LB 922, § 405.

60-647. Pedestrian, defined.

Pedestrian shall mean any person afoot.

Source: Laws 1993, LB 370, § 143.

60-648. Pneumatic tire, defined.

Pneumatic tire shall mean any tire designed so that compressed air supports the load of the wheel.

Source: Laws 1993, LB 370, § 144.

60-649. Private road or driveway, defined.

Private road or driveway shall mean every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons.

Source: Laws 1993, LB 370, § 145.

A residential driveway is not private property that is open to public access. Thus, criminal liability under section 60-6,196 does not extend to intoxicated persons in control of a vehicle parked on a residential driveway, regardless of whether part of the vehicle crosses a sidewalk. State v. McCave, 282 Neb. 500, 805 N.W.2d 290 (2011).

60-649.01. Property-carrying unit, defined.

Property-carrying unit shall mean any part of a commercial motor vehicle combination, except the truck-tractor, used to carry property and shall include trailers and semitrailers.

Source: Laws 2006, LB 853, § 16.

60-650. Railroad, defined.

Railroad shall mean a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

Source: Laws 1993, LB 370, § 146.

60-651. Railroad sign or signal, defined.

Railroad sign or signal shall mean any sign, signal, or device erected by authority of a public body or official or by a railroad intended to give notice of the presence of railroad tracks or the approach of a railroad train.

Source: Laws 1993, LB 370, § 147.

60-652. Railroad train, defined.

Railroad train shall mean a steam engine or an engine with an electric or other motor, with or without cars coupled thereto, operated upon rails.

Source: Laws 1993, LB 370, § 148.

60-653. Registration, defined.

Registration shall mean the registration certificate or certificates and license plates issued under the Motor Vehicle Registration Act.

Source: Laws 1993, LB 370, § 149; Laws 2005, LB 274, § 237.

Cross References

Motor Vehicle Registration Act, see section 60-301.

60-654. Residential district, defined.

Residential district shall mean the territory contiguous to and including a highway not comprising a business district when the property on such highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business.

Source: Laws 1993, LB 370, § 150.

60-654.01. Revocation of operator's license, defined.

Revocation of operator's license shall have the meaning found in section 60-476.01.

Source: Laws 2001, LB 38, § 45.

60-655. Right-of-way, defined.

Right-of-way shall mean the right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other.

Source: Laws 1993, LB 370, § 151.

The standard for determining whether a vehicle is "approaching" is whether or not the vehicle poses an immediate hazard; that is, whether the circumstances are such that there is a danger of collision if one vehicle does not grant precedence to the other. Springer v. Bohling, 259 Neb. 71, 607 N.W.2d 836 (2000).

The right-of-way does not include a right to encroach upon that half of the highway upon which cars coming from the opposite direction are entitled to travel. Generally, an unexcused vehicular encroachment on another's lane of traffic, such as driving to the left of the middle of a roadway, prevents acquisition of a right-of-way and precludes the unlawful encroachment from becoming a favored position in movement of traffic. Krul v. Harless, 222 Neb. 313, 383 N.W.2d 744 (1986).

A police vehicle enjoys privileges as an emergency vehicle as long as the officer operates emergency equipment in good faith belief that he or she is responding to an emergency. Maple v. City of Omaha, 222 Neb. 293, 384 N.W.2d 254 (1986).

Vehicle on the right has the favored position but does not have an absolute right to proceed regardless of the circumstances. Crink v. Northern Nat. Gas. Co., 200 Neb. 460, 263 N.W.2d 857 (1978).

Intersection right-of-way is a qualified, not absolute, right to proceed, exercising due care, in a lawful manner in preference to an opposing vehicle. Reese v. Mayer, 198 Neb. 499, 253 N.W.2d 317 (1977).

60-656. Roadway, defined.

Roadway shall mean that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. If a highway includes two or more separate roadways, the term roadway shall refer to any such roadway separately but not to all such roadways collectively.

Source: Laws 1993, LB 370, § 152.

60-657. Safety zone, defined.

Safety zone shall mean an area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as such area.

Source: Laws 1993, LB 370, § 153.

60-658. School bus, defined.

School bus shall mean any motor vehicle which complies with the general design, equipment, and color requirements adopted and promulgated pursuant to subdivision (12) of section 79-318 and which is used to transport students to or from school or in connection with school activities but shall not include buses operated by common carriers in urban transportation of school students.

Source: Laws 1993, LB 370, § 154; Laws 1993, LB 575, § 5; Laws 2009, LB 549, § 3; Laws 2013, LB 222, § 20.

60-658.01. School crossing zone, defined.

School crossing zone means the area of a roadway designated to the public by the Department of Transportation or any county, city, or village as a school crossing zone through the use of a sign or traffic control device as specified by the department or any county, city, or village in conformity with the manual but does not include any area of a freeway. A school crossing zone starts at the location of the first sign or traffic control device identifying the school crossing zone and continues until a sign or traffic control device indicates that the school crossing zone has ended.

Source: Laws 1997, LB 91, § 3; Laws 2017, LB 339, § 183.
Operative Date: July 1, 2017

60-659. Security interest, defined.

Security interest shall mean an equitable title or property right in a vehicle reserved or created by agreement and which secures payment or performance of an obligation, including the interest of a lessor under a lease intended as security, and which is perfected when it is valid against third parties generally, subject only to specific statutory exceptions.

Source: Laws 1993, LB 370, § 155.

60-660. Semitrailer, defined.

Semitrailer shall mean any vehicle, with or without motive power, designed to carry persons or property and to be drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

Source: Laws 1993, LB 370, § 156.

60-661. Shoulder, defined.

Shoulder shall mean that part of the highway contiguous to the roadway and designed for the accommodation of stopped vehicles, for emergency use, and for lateral support of the base and surface courses of the roadway.

Source: Laws 1993, LB 370, § 157.

60-662. Sidewalk, defined.

Sidewalk shall mean that portion of a highway between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use by pedestrians.

Source: Laws 1993, LB 370, § 158.

Criminal liability under section 60-6,196 does not extend to intoxicated persons in control of a vehicle parked on a residential driveway, regardless of whether part of the vehicle crosses a sidewalk. State v. McCave, 282 Neb. 500, 805 N.W.2d 290 (2011).

Sidewalk is portion of street between curb lines, or lateral lines of roadway and adjacent property lines, intended for use by pedestrians. Therkildsen v. Gottsch, 194 Neb. 729, 235 N.W.2d 622 (1975).

60-663. Snowmobile, defined.

Snowmobile shall mean a self-propelled motor vehicle designed to travel on snow or ice or a natural terrain steered by wheels, skis, or runners and propelled by a belt-driven track with or without steel cleats.

Source: Laws 1993, LB 370, § 159.

60-664. Solid tire, defined.

Solid tire shall mean every tire of rubber or other resilient material which does not depend upon compressed air or metal for the support of the load of the wheel to which it attaches.

Source: Laws 1993, LB 370, § 160.

60-665. Stand or standing, defined.

Stand or standing shall mean the halting of a vehicle, whether occupied or not, other than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

Source: Laws 1993, LB 370, § 161.

60-666. State, defined.

State shall mean a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a province of Canada.

Source: Laws 1993, LB 370, § 162.

60-667. Stop or stopping, defined.

(1) Stop, when required, shall mean a complete cessation of movement.

(2) Stop or stopping, when prohibited, shall mean any halting even momentarily of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a peace officer or traffic control device.

Source: Laws 1993, LB 370, § 163.

60-668. Through highway, defined.

Through highway shall mean every highway or portion thereof on which vehicular traffic is given preferential right-of-way and at the entrances to which vehicular traffic from intersecting highways is required by law to yield such right-of-way to vehicles on such highway in obedience to a stop sign, yield sign, or other traffic control device, when such sign or device is erected as provided by law.

Source: Laws 1993, LB 370, § 164.

60-669. Traffic, defined.

Traffic shall mean pedestrians, ridden or herded animals, and vehicles and other conveyances either singly or together while using any highway for purposes of travel.

Source: Laws 1993, LB 370, § 165.

60-670. Traffic control device, defined.

Traffic control device shall mean any sign, signal, marking, or other device not inconsistent with the Nebraska Rules of the Road placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

Source: Laws 1993, LB 370, § 166.

60-671. Traffic control signal, defined.

Traffic control signal shall mean any signal, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and permitted to proceed.

Source: Laws 1993, LB 370, § 167.

60-672. Traffic infraction, defined.

Traffic infraction shall mean the violation of any provision of the Nebraska Rules of the Road or of any law, ordinance, order, rule, or regulation regulating traffic which is not otherwise declared to be a misdemeanor or a felony.

Source: Laws 1993, LB 370, § 168; Laws 2000, LB 74, § 1.

60-673. Trailer, defined.

Trailer shall mean any vehicle, with or without motive power, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

Source: Laws 1993, LB 370, § 169.

60-674. Truck, defined.

Truck shall mean any motor vehicle designed, used, or maintained primarily for the transportation of property.

Source: Laws 1993, LB 370, § 170.

60-675. Truck-tractor, defined.

Truck-tractor shall mean any motor vehicle designed and primarily used for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

Source: Laws 1993, LB 370, § 171.

The classification of a vehicle as a truck-tractor under this section, is not changed by the addition of a box to the vehicle if the design and primary use of the vehicle is to draw other vehicles, and any load carried by the truck-

tractor, other than a part of the weight of the vehicle and the load so drawn, is merely incidental to its primary use. State v. Speicher & Herrick, 203 Neb. 535, 279 N.W.2d 162 (1979).

60-676. Vehicle, defined.

Vehicle shall mean every device in, upon, or by which any person or property is or may be transported or drawn upon a highway except devices moved solely by human power or used exclusively upon stationary rails or tracks.

Source: Laws 1993, LB 370, § 172.

(b) POWERS OF STATE AND LOCAL AUTHORITIES

60-677. Areas not part of state highway system or within an incorporated city or village; jurisdiction.

The directors of state institutions, and the Game and Parks Commission and natural resources districts for areas under their control, shall have the powers of local authorities provided for in the Nebraska Rules of the Road with regard to roadways running through, within, or along the grounds of the institution or area which are not part of the state highway system and not within the limits of any incorporated city or village. The governing body of an incorporated city or village may delegate to the director of a state institution, or to the Game and Parks Commission or a natural resources district for an area under its control, responsibility for regulating traffic and placing and maintaining traffic control devices on roadways not part of the state highway system running through or within the limits of such institution or area and within the incorporated city or village when such city or village does not exercise its right to regulate traffic on such roadway.

Source: Laws 1973, LB 45, § 12; Laws 1984, LB 861, § 16; R.S.1943, (1988), § 39-612; Laws 1993, LB 370, § 173.

60-678. Regulations; violations; penalty.

The State of Nebraska or any department, board, commission, or governmental subdivision thereof is hereby authorized, in its respective jurisdiction, to enact regulations permitting, prohibiting, and controlling the use of motor vehicles, minibikes, motorcycles, off-road recreation vehicles of any and all types, other powered vehicles, electric personal assistive mobility devices, and vehicles which are not self-propelled. Any person who operates any of such vehicles without the permission of the appropriate governmental entity or in a place, time, or manner which has been prohibited by such entity shall be guilty of a Class III misdemeanor.

Such governmental entity may further authorize the supervising official of any area under its ownership or control to permit, control, or prohibit operation of any motor vehicle, minibike, motorcycle, off-road recreational vehicle of any or all types, other powered vehicle, electric personal assistive mobility device, or vehicle which is not self-propelled on all or any portion of any area under its ownership or control at any time by posting or, in case of an emergency, by

personal notice. Any person operating any such vehicle where prohibited, where not permitted, or in a manner so as to endanger the peace and safety of the public or as to harm or destroy the natural features or manmade features of any such area shall be guilty of a Class III misdemeanor.

Source: Laws 1971, LB 644, § 11; Laws 1977, LB 39, § 102; R.S.1943, (1988), § 60-2106; Laws 1993, LB 370, § 174; Laws 2002, LB 1105, § 454.

60-679. Roadway; removal of dead or injured persons; peace officer.

Peace officers may remove a dead body or an injured person from any roadway to the nearest available position off the roadway as may be necessary to keep the roadway open or safe for public travel or to any hospital, clinic, or medical doctor as may be necessary to preserve life.

Source: Laws 1973, LB 45, § 84; Laws 1978, LB 593, § 1; Laws 1979, LB 376, § 1; R.S.1943, (1988), § 39-684; Laws 1993, LB 370, § 175.

Cross References

Effect of section on alcohol-related offenses, see section 53-1,120.

60-680. Regulation of highways by local authority; police powers.

(1) Any local authority with respect to highways under its jurisdiction and within the reasonable exercise of the police power may:

(a) Regulate or prohibit stopping, standing, or parking;

(b) Regulate traffic by means of peace officers or traffic control devices;

(c) Regulate or prohibit processions or assemblages on the highways;

(d) Designate highways or roadways for use by traffic moving in one direction;

(e) Establish speed limits for vehicles in public parks;

(f) Designate any highway as a through highway or designate any intersection as a stop or yield intersection;

(g) Restrict the use of highways as authorized in section 60-681;

(h) Regulate operation of bicycles and require registration and inspection of such, including requirement of a registration fee;

(i) Regulate operation of electric personal assistive mobility devices;

(j) Regulate or prohibit the turning of vehicles or specified types of vehicles;

(k) Alter or establish speed limits authorized in the Nebraska Rules of the Road;

(l) Designate no-passing zones;

(m) Prohibit or regulate use of controlled-access highways by any class or kind of traffic except those highways which are a part of the state highway system;

(n) Prohibit or regulate use of heavily traveled highways by any class or kind of traffic it finds to be incompatible with the normal and safe movement of traffic, except that such regulations shall not be effective on any highway which is part of the state highway system unless authorized by the Department of Transportation;

(o) Establish minimum speed limits as authorized in the rules;

(p) Designate hazardous railroad grade crossings as authorized in the rules;

(q) Designate and regulate traffic on play streets;

(r) Prohibit pedestrians from crossing a roadway in a business district or any designated highway except in a crosswalk as authorized in the rules;

(s) Restrict pedestrian crossings at unmarked crosswalks as authorized in the rules;

(t) Regulate persons propelling push carts;

(u) Regulate persons upon skates, coasters, sleds, and other toy vehicles;

(v) Notwithstanding any other provision of law, adopt and enforce an ordinance or resolution prohibiting the use of engine brakes on the National System of Interstate and Defense Highways that has a grade of less than five degrees within its jurisdiction. For purposes of this subdivision, engine brake means a device that converts a power producing engine into a power-absorbing air compressor, resulting in a net energy loss;

(w) Adopt and enforce such temporary or experimental regulations as may be necessary to cover emergencies or special conditions; and

(x) Adopt other traffic regulations except as prohibited by state law or contrary to state law.

(2) No local authority, except an incorporated city with more than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, shall erect or maintain any traffic control device at any location so as to require the traffic on any state highway or state-maintained freeway to stop before entering or crossing any intersecting highway unless approval in writing has first been obtained from the Department of Transportation.

(3) No ordinance or regulation enacted under subdivision (1)(d), (e), (f), (g), (j), (k), (l), (m), (n), (p), (q), or (s) of this section shall be effective until traffic control devices giving notice of such local traffic regulations are erected upon or at the entrances to such affected highway or part thereof affected as may be most appropriate.

Source: Laws 1973, LB 45, § 97; R.S.1943, (1988), § 39-697; Laws 1993, LB 370, § 176; Laws 2000, LB 1361, § 2; Laws 2002, LB 491, § 2; Laws 2002, LB 1105, § 455; Laws 2017, LB 113, § 48; Laws 2017, LB 339, § 184.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 113, section 48, with LB 339, section 184, to reflect all amendments.

Note: Changes made by LB 339 became operative July 1, 2017. Changes made by LB 48 became effective August 24, 2017.

The city is authorized to regulate or prohibit parking on its streets. There is no requirement that such prohibitions be made by ordinance. Morrow v. City of Ogallala, 213 Neb. 414, 329 N.W.2d 351 (1983).

A city ordinance regulating funeral processions was a reasonable and valid exercise of the city's police power under this section and does not conflict with Nebraska's present right-of-way statutes, sections 39-609(1) and 39-614(1)(a). Herman v. Lee, 210 Neb. 563, 316 N.W.2d 56 (1982).

60-681. Highways, travel on; regulation by local authorities; when authorized; signs.

Local authorities may by ordinance or resolution prohibit the operation of vehicles upon any highway or impose restrictions as to the weight of vehicles, for a total period not to exceed one hundred eighty days in any one calendar year, when operated upon any highway under the

jurisdiction of and for the maintenance of which such local authorities are responsible whenever any such highway by reason of deterioration, rain, snow, or other climatic condition will be seriously damaged or destroyed unless the use of vehicles thereon is prohibited or the permissible weight thereof reduced. Such local authorities enacting any such ordinance or resolution shall erect or cause to be erected and maintained signs designating the provisions of the ordinance or resolution at each end of that portion of any highway affected thereby, and the ordinance or resolution shall not be effective until such signs are erected and maintained.

Local authorities may also, by ordinance or resolution, prohibit the operation of trucks or other commercial vehicles or impose limitations as to the weight thereof on designated highways, which prohibitions and limitations shall be designated by appropriate signs placed on such highways.

Source: Laws 1931, c. 110, § 35, p. 316; C.S.Supp. 1941, § 39-1166; R.S.1943, § 39-770; R.S.1943, (1988), § 39-6,189; Laws 1993, LB 370, § 177; Laws 2016, LB 977, § 21.

A city ordinance prohibiting vehicles weighing over five tons from using city streets except when such vehicles are delivering goods to or from city residences or businesses is constitutional. State v. Davison, 213 Neb. 173, 328 N.W.2d 206 (1982).

(c) PENALTY AND ENFORCEMENT PROVISIONS

60-682. Violations; traffic infraction.

Unless otherwise declared in the Nebraska Rules of the Road with respect to particular offenses, a violation of any provision of the rules shall constitute a traffic infraction.

Source: Laws 1973, LB 45, § 102; R.S.1943, (1988), § 39-6,102; Laws 1993, LB 370, § 178.

Cross References

General penalty, see section 60-689.
Operator's license, assessment of points, revocation, see section 60-4,182 et seq.

Prosecution of a traffic infraction is a misdemeanor criminal proceeding authorizing a non-lawyer associate judge of the county court to preside in any such proceeding. Miller v. Peterson, 208 Neb. 658, 305 N.W.2d 364 (1981).

Prosecution for a traffic infraction is a criminal action. State v. Knoles, 199 Neb. 211, 256 N.W.2d 873 (1977).

Held, contributory negligence no defense where defendant's negligence was sole proximate cause of intersection accident. Bonnes v. Olson, 197 Neb. 309, 248 N.W.2d 756 (1976).

60-682.01. Speed limit violations; fines.

(1) Any person who operates a vehicle in violation of any maximum speed limit established for any highway or freeway is guilty of a traffic infraction and upon conviction shall be fined:

(a) Ten dollars for traveling one to five miles per hour over the authorized speed limit;

(b) Twenty-five dollars for traveling over five miles per hour but not over ten miles per hour over the authorized speed limit;

(c) Seventy-five dollars for traveling over ten miles per hour but not over fifteen miles per hour over the authorized speed limit;

(d) One hundred twenty-five dollars for traveling over fifteen miles per hour but not over twenty miles per hour over the authorized speed limit;

(e) Two hundred dollars for traveling over twenty miles per hour but not over thirty-five miles per hour over the authorized speed limit; and

(f) Three hundred dollars for traveling over thirty-five miles per hour over the authorized speed limit.

(2) The fines prescribed in subsection (1) of this section shall be doubled if the violation occurs within a maintenance, repair, or construction zone established pursuant to section 60-6,188. For purposes of this subsection, maintenance, repair, or construction zone means (a)(i) the portion of a highway identified by posted or moving signs as being under maintenance, repair, or construction or (ii) the portion of a highway identified by maintenance, repair, or construction zone speed limit signs displayed pursuant to section 60-6,188 and (b) within such portion of a highway where road construction workers are present. The maintenance, repair, or construction zone starts at the location of the first sign identifying the maintenance, repair, or construction zone and continues until a posted or moving sign indicates that the maintenance, repair, or construction zone has ended.

(3) The fines prescribed in subsection (1) of this section shall be doubled if the violation occurs within a school crossing zone as defined in section 60-658.01.

Source: Laws 1996, LB 901, § 11; Laws 1997, LB 91, § 4; Laws 2008, LB 621, § 2; Laws 2009, LB 111, § 1.

60-683. Peace officers; duty to enforce rules and laws; powers.

All peace officers are hereby specifically directed and authorized and it shall be deemed and considered a part of the official duties of each of such officers to enforce the provisions of the Nebraska Rules of the Road, including the specific enforcement of maximum speed limits, and any other law regulating the operation of vehicles or the use of the highways. To perform the official duties imposed by this section, the Superintendent of Law Enforcement and Public Safety and all officers of the Nebraska State Patrol shall have the powers stated in section 81-2005. All other peace officers shall have the power:

(1) To make arrests upon view and without warrant for any violation committed in their presence of any of the provisions of the Motor Vehicle Operator's License Act or of any other law regulating the operation of vehicles or the use of the highways, if and when designated or called upon to do so as provided by law;

(2) To make arrests upon view and without warrant for any violation committed in their presence of any provision of the laws of this state relating to misdemeanors or felonies, if and when designated or called upon to do so as provided by law;

(3) At all times to direct all traffic in conformity with law or, in the event of a fire or other emergency or in order to expedite traffic or insure safety, to direct traffic as conditions may require;

(4) When in uniform, to require the driver of a vehicle to stop and exhibit his or her operator's license and registration certificate issued for the vehicle and submit to an inspection of such vehicle and the license plates and registration certificate for the vehicle and to require the driver of a motor vehicle to present the vehicle within five days for correction of any defects revealed by such motor vehicle inspection as may lead the inspecting officer to reasonably believe that such motor vehicle is being operated in violation of the statutes of Nebraska or the rules and regulations of the Director of Motor Vehicles;

(5) To inspect any vehicle of a type required to be registered according to law in any public garage or repair shop or in any place where such a vehicle is held for sale or wrecking;

(6) To serve warrants relating to the enforcement of the laws regulating the operation of vehicles or the use of the highways; and

(7) To investigate traffic accidents for the purpose of carrying on a study of traffic accidents and enforcing motor vehicle and highway safety laws.

Source: Laws 1939, c. 78, § 1, p. 317; Laws 1941, c. 176, § 13, p. 693; C.S.Supp. 1941, § 39-11,119; R.S.1943, § 39-7,124; Laws 1989, LB 285, § 10; R.S.Supp. 1992, § 39-6,192; Laws 1993, LB 370, § 179; Laws 1996, LB 901, § 6; Laws 2005, LB 274, § 238.

Cross References

Motor Vehicle Operator's License Act, see section 60-462.

Investigative stop and search of auto by police held unconstitutional where officer had no reasonable suspicion the occupants were committing, had committed, or were about to commit a crime. State v. Colgrove, 198 Neb. 319, 253 N.W.2d 20 (1977).

In the absence of any proof of factual foundation, a mere radio dispatch to an officer to stop a vehicle does not constitute a "reasonably founded" suspicion authorizing detention. State v. Benson, 198 Neb. 14, 251 N.W.2d 659 (1977).

This section is constitutional and authorizes officers of the law to conduct routine stops of motor vehicles to check registration and operator's licenses even though there is no probable cause to believe a violation of law has occurred or is occurring. State v. Shepardson, 194 Neb. 673, 235 N.W.2d 218 (1975).

In enforcing licensing laws, officers are authorized to stop vehicles. State v. Holmberg, 194 Neb. 337, 231 N.W.2d 672 (1975).

The provisions of this section furnish no authority for an officer to issue an order to a person not under arrest to follow him where the offense involved was not a felony nor a violation of any law regulating the operation of vehicles or use of the highway. State v. Embrey, 188 Neb. 649, 198 N.W.2d 322 (1972).

Federal district court reversed for error in granting habeas corpus relief on Fourth Amendment grounds to state prisoner who had received full and fair hearing in state court with respect to alleged violations of his Fourth Amendment rights. Holmberg v. Parratt, 548 F.2d 745 (8th Cir. 1977).

Where officer's only reason for stopping automobile was for baseless check to determine if it carried front license plate, search pursuant to stop was unreasonable and court abstains from comment on constitutionality of section. United States v. Bell, 383 F.Supp. 1298 (D. Neb. 1974).

60-684. Person charged with traffic infraction; citation; refusal to sign; penalty.

Whenever any person is charged with a traffic infraction, such person shall be issued a citation pursuant to the provisions of section 29-424. Any person who refuses to sign the citation shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished as provided by the provisions of section 29-426.

Source: Laws 1973, LB 45, § 105; Laws 1974, LB 829, § 9; R.S.1943, (1988), § 39-6,105; Laws 1993, LB 370, § 180.

60-685. Misdemeanor or traffic infraction; lawful complaints.

When a person has been charged with any act declared to be a misdemeanor or traffic infraction by the Motor Vehicle Operator's License Act, the Motor Vehicle Registration Act, the Motor Vehicle Safety Responsibility Act, or the Nebraska Rules of the Road, and is issued a citation meeting the requirements prescribed by the Supreme Court, if such citation includes the information and is sworn to as required by the laws of this state, then such citation when filed with a court having jurisdiction shall be deemed a lawful complaint for the purpose of prosecution.

Source: Laws 1973, LB 45, § 107; Laws 1974, LB 829, § 10; R.S.1943, (1988), § 39-6,107; Laws 1993, LB 370, § 181; Laws 2005, LB 274, § 239.

Cross References

Motor Vehicle Operator's License Act, see section 60-462.
Motor Vehicle Registration Act, see section 60-301.
Motor Vehicle Safety Responsibility Act, see section 60-569.

60-686. Posting of bond; forfeiture of bonds; exceptions.

(1) When any person is required to post bond under any provision of the Nebraska Rules of the Road, such bond may consist of an unexpired guaranteed arrest bond certificate or a similar written instrument by its terms of current force and effect signed by such person and issued to him or her by an automobile club or a similar association or insurance company or a corporation, organized under the laws of this state, not for profit, which has been exempted from the payment of federal income taxes, as provided by section 501(c)(4), (6), or (8) of the Internal Revenue Code, jointly and severally with a corporate surety duly authorized to transact fidelity or surety insurance business in this state or with an insurance company duly authorized to transact both automobile liability and fidelity and surety insurance business in this state to guarantee the appearance of such person at any hearing upon any arrest or apprehension or any violation or, in default of any such appearance, the prompt payment by or on behalf of such person of any fine or forfeiture imposed for such default not in excess of two hundred dollars.

(2) The provisions of subsection (1) of this section shall not apply to any person who is charged with a felony.

Source: Laws 1973, LB 45, § 108; Laws 1974, LB 829, § 11; Laws 1974, LB 920, § 1; R.S.1943, (1988), § 39-6,108; Laws 1993, LB 370, § 182; Laws 1995, LB 574, § 56.

60-687. Arrest or apprehension.

The procedures outlined in the Nebraska Rules of the Road shall apply only to apprehensions and arrests without a warrant for violations of the provisions of the rules and shall not exclude other lawful means of effecting such arrest or apprehension.

Source: Laws 1973, LB 45, § 109; R.S.1943, (1988), § 39-6,109; Laws 1993, LB 370, § 183.

60-688. Prosecution; disposition thereof.

Prosecutions for violations declared by the Nebraska Rules of the Road to be misdemeanors or felonies shall be conducted and disposed of in the same manner as provided for such prosecutions under the laws of this state, and traffic infractions shall be treated in the same manner as misdemeanors, except as otherwise provided by law.

Source: Laws 1973, LB 45, § 111; R.S.1943, (1988), § 39-6,111; Laws 1993, LB 370, § 184; Laws 2000, LB 74, § 2.

60-689. Prosecutions where penalty not specifically provided.

Any person who is found guilty of a traffic infraction in violation of the Nebraska Rules of the Road for which a penalty has not been specifically provided shall be fined:

(1) Not more than one hundred dollars for the first offense;

(2) Not more than two hundred dollars for a second offense within a one-year period; and

(3) Not more than three hundred dollars for a third and subsequent offense within a one-year period.

Source: Laws 1973, LB 45, § 112; Laws 1974, LB 829, § 12; Laws 1975, LB 547, § 1; Laws 1977, LB 40, § 207; R.S.1943, (1988), § 39-6,112; Laws 1993, LB 370, § 185.

60-690. Aiding or abetting; guilty of such offense.

Any person who commits, attempts to commit, conspires to commit, or aids or abets in the commission of any act declared in the Nebraska Rules of the Road to be a misdemeanor or felony, whether individually or in connection with one or more other persons or as a principal, agent, or accessory, shall be guilty of such offense, and any person who falsely, fraudulently, forcibly, or willfully induces, causes, coerces, requires, or directs another to violate any provision of the rules shall be likewise guilty of such offense.

Source: Laws 1973, LB 45, § 115; R.S.1943, (1988), § 39-6,115; Laws 1993, LB 370, § 186.

60-691. Moving traffic offense; conviction; court may require course of instruction.

When a person has been convicted in any court in this state of any moving traffic offense, the court may, in addition to the penalty provided by law for such offense and as a part of the judgment of conviction or as a condition of probation, require such person, at his or her expense if any, to attend and satisfactorily complete a course of instruction at a driver improvement school, if such school exists, located and operating within the county of such person's residence or within the jurisdiction of such court. Such school shall be designated by the court in its order and shall provide instruction in the recognition of hazardous traffic situations and prevention of traffic accidents.

Source: Laws 1969, c. 509, § 2, p. 2088; R.S.1943, (1988), § 60-427.01; Laws 1989, LB 285, § 7; R.S.Supp. 1992, § 39-6,114.01; Laws 1993, LB 370, § 187.

60-692. Failure to satisfy judgment; effect.

When any person fails within thirty working days to satisfy any judgment imposed for any traffic infraction, it shall be the duty of the clerk of the court in which such judgment is rendered within this state to transmit a copy of such judgment to the Department of Motor Vehicles as provided in section 60-4,100.

Source: Laws 1973, LB 45, § 110; Laws 1991, LB 420, § 6; R.S.Supp. 1992, § 39-6,110; Laws 1993, LB 370, § 188; Laws 2017, LB 259, § 14.
Operative Date: July 1, 2019

60-693. Evidence in civil actions; conviction not admissible.

No evidence of the conviction of any person for any violation of any provision of the Nebraska Rules of the Road shall be admissible in any court in any civil action.

Source: Laws 1973, LB 45, § 118; R.S.1943, (1988), § 39-6,118; Laws 1993, LB 370, § 189.

Evidence of conviction for a traffic infraction, including a conviction for violation of a municipal ordinance, is not admissible in a civil suit for damages arising out of the same traffic infraction. Stevenson v. Wright, 273 Neb. 789, 733 N.W.2d 559 (2007).

60-694. Conviction; credibility as a witness.

The conviction of a person upon a charge of violating any provision of the Nebraska Rules of the Road or other traffic regulation which is less than a felony shall not affect or impair the credibility of such person as a witness in any civil or criminal proceeding.

Source: Laws 1973, LB 45, § 119; R.S.1943, (1988), § 39-6,119; Laws 1993, LB 370, § 190.

60-694.01. Operator's license; revocation; reinstatement fee.

Whenever an operator's license is ordered revoked by the court or by administrative action of the Department of Motor Vehicles pursuant to the Nebraska Rules of the Road, the licensee shall pay a reinstatement fee to the Department of Motor Vehicles to reinstate his or her eligibility for a new license, in addition to complying with the other applicable provisions of the Nebraska Rules of the Road. The reinstatement fee shall be one hundred twenty-five dollars. The department shall remit the fees to the State Treasurer. The State Treasurer shall credit seventy-five dollars of each fee to the General Fund and fifty dollars of each fee to the Department of Motor Vehicles Cash Fund.

Source: Laws 2001, LB 38, § 46.

(d) ACCIDENTS AND ACCIDENT REPORTING

60-695. Peace officers; investigation of traffic accident; duty to report; Department of Transportation; powers; duties.

It shall be the duty of any peace officer who investigates any traffic accident in the performance of his or her official duties in all instances of an accident resulting in injury or death to any person or in which estimated damage exceeds one thousand dollars to the property of any one person to submit an original report of such investigation to the Accident Records Bureau of the Department of Transportation within ten days after each such accident. The department shall have authority to collect accident information it deems necessary and shall prescribe and furnish appropriate forms for reporting.

Source: Laws 1973, LB 45, § 104; Laws 1985, LB 94, § 1; Laws 1988, LB 1030, § 41; R.S.1943, (1988), § 39-6,104; Laws 1993, LB 370, § 191; Laws 2003, LB 185, § 3; Laws 2017, LB 339, § 185.
Operative Date: July 1, 2017

60-696. Motor vehicle; accident; duty to stop; information to furnish; report; powers of peace officer; violation; penalty.

(1) Except as provided in subsection (2) of this section, the driver of any vehicle involved in an accident upon a public highway, private road, or private drive, resulting in damage to property, shall (a) immediately stop such vehicle at the scene of such accident and (b) give his or her name, address, telephone number, and operator's license number to the owner of the property struck or the driver or occupants of any other vehicle involved in the collision.

(2) The driver of any vehicle involved in an accident upon a public highway, private road, or private drive, resulting in damage to an unattended vehicle or property, shall immediately stop such vehicle and leave in a conspicuous place in or on the unattended vehicle or property a written notice containing the information required by subsection (1) of this section. In addition, such driver shall, without unnecessary delay, report the collision, by telephone or otherwise, to an appropriate peace officer.

(3)(a) A peace officer may remove or cause to be removed from a roadway, without the consent of the driver or owner, any vehicle, cargo, or other property which is obstructing the roadway creating or aggravating an emergency situation or otherwise endangering the public safety. Any vehicle, cargo, or other property obstructing a roadway shall be removed by the most expeditious means available to clear the obstruction, giving due regard to the protection of the property removed.

(b) This subsection does not apply if an accident results in or is believed to involve the release of hazardous materials, hazardous substances, or hazardous wastes, as those terms are defined in section 75-362.

(4) Any person violating subsection (1) or (2) of this section is guilty of a Class II misdemeanor. If such person has had one or more convictions under this section in the twelve years prior to the date of the current conviction under this section, such person is guilty of a Class I misdemeanor. As part of any sentence, suspended sentence, or judgment of conviction under this section, the court may order the defendant not to drive any motor vehicle for any purpose in the State of Nebraska for a period of up to one year from the date ordered by the court. If the court orders the defendant not to drive any motor vehicle for any purpose in the State of Nebraska for a period of up to one year from the date ordered by the court, the court shall also order that the operator's license of such person be revoked for a like period.

Source: Laws 1931, c. 110, § 28, p. 314; C.S.Supp. 1941, § 39-1159; R.S.1943, § 39-762; Laws 1947, c. 148, § 2(2), p. 409; Laws 1949, c. 119, § 2, p. 316; Laws 1949, c. 120, § 2, p. 317; Laws 1959, c. 169, § 1, p. 617; R.R.S.1943, § 39-762.01; Laws 1978, LB 748, § 26; R.S.1943, (1988), § 39-6,104.02; Laws 1993, LB 370, § 192; Laws 1994, LB 929, § 1; Laws 2001, LB 254, § 1; Laws 2006, LB 925, § 7; Laws 2007, LB 561, § 1; Laws 2010, LB 914, § 1.

Cross References

Operator's license, assessment of points, see sections 60-497.01 and 60-4,182 et seq.

In a trial on charge of violating section 39-762 (transferred to section 60-697), request for instruction on leaving scene of property damage accident as lesser offense was properly refused. State v. Jones, 186 Neb. 303, 183 N.W.2d 235 (1971).

60-697. Accident; driver's duty; penalty.

(1) The driver of any vehicle involved in an accident upon either a public highway, private road, or private drive, resulting in injury or death to any person, shall (a) immediately stop such vehicle at the scene of such accident and ascertain the identity of all persons involved, (b) give his or her name and address and the license number of the vehicle and exhibit his or her operator's license to the person struck or the occupants of any vehicle collided with, and (c)

render to any person injured in such accident reasonable assistance, including the carrying of such person to a physician or surgeon for medical or surgical treatment if it is apparent that such treatment is necessary or is requested by the injured person.

(2) Any person violating any of the provisions of this section shall upon conviction thereof be punished as provided in section 60-698.

Source: Laws 1931, c. 110, § 28, p. 314; C.S.Supp. 1941, § 39-1159; R.S.1943, § 39-762; Laws 1947, c. 148, § 2(1), p. 409; Laws 1949, c. 119, § 1, p. 315; Laws 1949, c. 120, § 1, p. 317; R.R.S.1943, § 39-762; R.S.1943, (1988), § 39-6,104.01; Laws 1993, LB 370, § 193; Laws 2005, LB 274, § 240; Laws 2006, LB 925, § 8; Laws 2011, LB 675, § 5.

Cross References

Operator's license, assessment of points, revocation, see sections 60-497.01, 60-498, and 60-4,182 et seq.

Under the facts in this case, a sentence of three years imprisonment was not excessive. State v. Keil, 192 Neb. 741, 224 N.W.2d 363 (1974).

Injury is a term in common and accepted usage and a penal statute which fails to define it is not unconstitutionally vague. State v. Etchison, 188 Neb. 134, 195 N.W.2d 498 (1972).

Under this section, leaving the scene of a property damage accident is not an includable offense. State v. Jones, 186 Neb. 303, 183 N.W.2d 235 (1971).

Circumstantial evidence was sufficient to prove knowledge of injury. In re Interest of Moore, 186 Neb. 67, 180 N.W.2d 917 (1970).

Knowledge that an accident has happened and that injury has been inflicted is an essential element of the offense under this section. State v. Snell, 177 Neb. 396, 128 N.W.2d 823 (1964).

Evidence was sufficient to sustain conviction of leaving the scene of an accident involving personal injury. State v. Nichols, 175 Neb. 761, 123 N.W.2d 860 (1963).

Effect of arrest of party for leaving scene of accident considered. Bryant v. Greene, 164 Neb. 15, 81 N.W.2d 580 (1957).

This and succeeding section are not invalid as being vague, duplicitous, and illegal. Carr v. State, 152 Neb. 248, 40 N.W.2d 677 (1950).

Where deceased voluntarily jumped from a moving vehicle and was injured in alighting without in any manner coming in contact with vehicle, this section does not apply. Behrens v. State, 140 Neb. 671, 1 N.W.2d 289 (1941).

The crime of manslaughter is a distinct offense from that of leaving the scene of an accident causing death under this section. Wright v. State, 139 Neb. 684, 298 N.W. 685 (1941).

60-698. Accident; failure to stop; penalty.

(1) Any person convicted of violating section 60-697 relative to the duty to stop in the event of certain accidents shall be guilty of (a) a Class IIIA felony if the accident resulted in an injury to any person other than a serious bodily injury as defined in section 60-6,198 or death or (b) a Class III felony if the accident resulted in the death of any person or serious bodily injury as defined in section 60-6,198.

(2) The court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of not less than one year nor more than fifteen years from the date ordered by the court and shall order that the operator's license of such person be revoked for a like period. The order of the court shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked, whichever is later.

Source: Laws 1931, c. 110, § 56, p. 324; C.S.Supp. 1941, § 39-1187; R.S.1943, § 39-763; Laws 1953, c. 214, § 2, p. 757; R.R.S.1943, § 39-763; Laws 1978, LB 748, § 27; R.S.1943, (1988), § 39-6,104.03; Laws 1993, LB 31, § 18; Laws 1993, LB 370, § 194; Laws 1997, LB 772, § 6; Laws 2006, LB 925, § 9; Laws 2011, LB 675, § 6.

The grade of the offense is determined by the maximum punishment authorized. Carr v. State, 152 Neb. 248, 40 N.W.2d 677 (1950).

This section provides penalty for violation of statutory provisions requiring driver to stop in event of an accident. Behrens v. State, 140 Neb. 671, 1 N.W.2d 289 (1941).

60-699. Accidents; reports required of operators and owners; when; supplemental reports; reports of peace officers open to public inspection; limitation on use as evidence; violation; penalty.

(1) The operator of any vehicle involved in an accident resulting in injuries or death to any person or damage to the property of any one person, including such operator, to an apparent extent of more than one thousand dollars shall within ten days forward a report of such accident to the Department of Transportation. If the operator is physically incapable of making the report, the owner of the motor vehicle involved in the accident shall, within ten days from the time he or she learns of the accident, report the matter in writing to the Department of Transportation. The Department of Transportation or Department of Motor Vehicles may require operators involved in accidents to file supplemental reports of accidents upon forms furnished by it whenever the original report is insufficient in the opinion of either department. The operator or the owner of the motor vehicle shall make such other and additional reports relating to the accident as either department requires. Such records shall be retained for the period of time specified by the State Records Administrator pursuant to the Records Management Act.

(2) The report of accident required by this section shall be in two parts. Part I shall be in such form as the Department of Transportation may prescribe and shall disclose full information concerning the accident. Part II shall be in such form as the Department of Motor Vehicles may prescribe and shall disclose sufficient information to disclose whether or not the financial responsibility requirements of the Motor Vehicle Safety Responsibility Act are met through the carrying of liability insurance.

(3) Upon receipt of a report of accident, the Department of Transportation shall determine the reportability and classification of the accident and enter all information into a computerized data base. Upon completion, the Department of Transportation shall electronically send Part II of the report to the Department of Motor Vehicles for purposes of section 60-506.01.

(4) Such reports shall be without prejudice. All reports made by peace officers, made to or filed with peace officers in their respective offices or departments, or filed with or made by or to any other law enforcement agency of the state shall be open to public inspection, but accident reports filed by the operator or owner of a motor vehicle pursuant to this section shall not be open to public inspection. The fact that a report by an operator or owner has been so made shall be admissible in evidence solely to prove compliance with this section, but no such report or any part of or statement contained in the report shall be admissible in evidence for any other purpose in any trial, civil or criminal, arising out of such accidents nor shall the report be referred to in

any way or be any evidence of the negligence or due care of either party at the trial of any action at law to recover damages.

(5) The failure by any person to report an accident as provided in this section or to correctly give the information required in connection with the report shall be a Class V misdemeanor.

Source: Laws 1931, c. 110, § 29, p. 315; C.S.Supp. 1941, § 39-1160; R.S.1943, § 39-764; Laws 1951, c. 120, § 1, p. 531; Laws 1953, c. 215, § 1, p. 761; Laws 1961, c. 189, § 2, p. 580; Laws 1961, c. 319, § 1, p. 1019; Laws 1973, LB 417, § 1; R.S.Supp. 1973, § 39-764; Laws 1985, LB 94, § 2; R.S.1943, (1988), § 39-6,104.04; Laws 1993, LB 370, § 195; Laws 1993, LB 575, § 24; Laws 2003, LB 185, § 4; Laws 2017, LB 263, § 73; Laws 2017, LB 339, § 186.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 263, section 73, with LB 339, section 186, to reflect all amendments.

Note: Changes made by LB 339 became operative July 1, 2017. Changes made by LB 263 became operative August 24, 2017.

Cross References

Motor Vehicle Safety Responsibility Act, see section 60-569.
Records Management Act, see section 84-1220.

Report of accident was not admissible in evidence. Styskal v. Brickey, 158 Neb. 208, 62 N.W.2d 854 (1954).

60-6,100. Accidents; reports required of garages and repair shops.

The person in charge of any garage or repair shop to which is brought any vehicle which shows evidence of having been involved in a serious accident or struck by any bullet shall report to the nearest police station or sheriff's office within twenty-four hours after such vehicle is received, giving the engine number, if applicable, the license number, and the name and address of the owner or operator of such vehicle.

Source: Laws 1931, c. 110, § 30, p. 315; C.S.Supp. 1941, § 39-1161; R.S.1943, § 39-765; R.S.1943, (1988), § 39-6,104.05; Laws 1993, LB 370, § 196; Laws 2005, LB 274, § 241.

60-6,101. Accidents; coroner; report to Department of Transportation.

Any coroner or other official performing the duties of coroner shall report in writing to the Department of Transportation the death of any person within his or her jurisdiction as the result of an accident involving a motor vehicle and the circumstances of such accident. Such report by the coroner shall be made within ten days after such death.

Source: Laws 1974, LB 66, § 1; R.S.1943, (1988), § 39-6,104.06; Laws 1993, LB 370, § 197; Laws 1993, LB 590, § 1; Laws 2017, LB 339, § 187.

Operative Date: July 1, 2017

Where in course of autopsy, and not for purpose of complying with statute in effect at time of accident, coroner compiled information as to alcohol content of blood, his testimony was not inadmissible in wrongful death case. Blackledge v. Martin K. Eby Constr. Co., Inc. 542 F.2d 474 (8th Cir. 1976).

60-6,102. Accident; death; driver; pedestrian sixteen years or older; coroner; examine body; amount of alcohol or drugs; report to Department of Transportation; public information.

In the case of a driver who dies within four hours after being in a motor vehicle accident, including a motor vehicle accident in which one or more persons in addition to such driver is killed, and of a pedestrian sixteen years of age or older who dies within four hours after being struck by a motor vehicle, the coroner or other official performing the duties of coroner shall examine the body and cause such tests to be made as are necessary to determine the amount of alcohol or drugs in the body of such driver or pedestrian. Such information shall be included in each report submitted pursuant to sections 60-6,101 to 60-6,104 and shall be tabulated on a monthly basis by the Department of Transportation. Such information, including the identity of the deceased and any such amount of alcohol or drugs, shall be public information and may be released or disclosed as provided in rules and regulations of the department.

Source: Laws 1974, LB 66, § 2; R.S.1943, (1988), § 39-6,104.07; Laws 1993, LB 370, § 198; Laws 1993, LB 590, § 2; Laws 2017, LB 339, § 188.
Operative Date: July 1, 2017

Where in course of autopsy, and not for purpose of complying with statute in effect at time of accident, coroner compiled information as to alcohol content of blood, his testimony was not inadmissible in wrongful death case. Blackledge v. Martin K. Eby Constr. Co., Inc. 542 F.2d 474 (8th Cir. 1976).

60-6,103. Accident; driver or pedestrian sixteen years of age or older; person killed; submit to chemical test; results in writing to Director-State Engineer; public information.

Any surviving driver or pedestrian sixteen years of age or older who is involved in a motor vehicle accident in which a person is killed shall be requested, if he or she has not otherwise been directed by a peace officer to submit to a chemical test under section 60-6,197, to submit to a chemical test of blood, urine, or breath as the peace officer directs for the purpose of determining the amount of alcohol or drugs in his or her body fluid. The results of such test shall be reported in writing to the Director-State Engineer who shall tabulate such results on a monthly basis. Such information, including the identity of such driver or pedestrian and any such amount of alcohol or drugs, shall be public information and may be released or disclosed as provided in rules and regulations of the Department of Transportation. The provisions of sections 60-6,199, 60-6,200, and 60-6,202 shall, when applicable, apply to the tests provided for in this section.

Source: Laws 1974, LB 66, § 3; R.S.1943, (1988), § 39-6,104.08; Laws 1993, LB 370, § 199; Laws 1993, LB 590, § 3; Laws 2017, LB 339, § 189.
Operative Date: July 1, 2017

60-6,104. Accidents; body fluid; samples; test; report.

All samples and tests of body fluids under sections 60-6,101 to 60-6,103 shall be submitted to and performed by an individual possessing a valid permit issued by the Department of Health and Human Services for such purpose. Such tests shall be performed according to methods approved by the department. Such individual shall promptly perform such analysis and report the results thereof to the official submitting the sample.

Source: Laws 1974, LB 66, § 4; R.S.1943, (1988), § 39-6,104.09; Laws 1993, LB 370, § 200; Laws 1996, LB 1044, § 282; Laws 2007, LB 296, § 232.

60-6,105. Accidents; reports; statements; not available in trial arising out of accident involved; exception.

No report and no statement contained in a report submitted pursuant to sections 60-6,101 to 60-6,104 or any part thereof shall be made available for any purpose in any trial arising out of the accident involved unless necessary solely to prove compliance with such sections.

Source: Laws 1974, LB 66, § 5; R.S.1943, (1988), § 39-6,104.10; Laws 1993, LB 370, § 201.

Where in course of autopsy, and not for purpose of complying with statute in effect at time of accident, coroner compiled information as to alcohol content of blood, his testimony was not inadmissible in wrongful death case. Blackledge v. Martin K. Eby Constr. Co., Inc. 542 F.2d 474 (8th Cir. 1976).

60-6,106. Accidents; reports; expenses; reimbursement to county by Department of Transportation.

The Department of Transportation shall reimburse any county for expenses and costs incurred by the county pursuant to sections 60-6,101 to 60-6,105. The department shall provide the official in each county with the appropriate reporting form.

Source: Laws 1974, LB 66, § 6; R.S.1943, (1988), § 39-6,104.11; Laws 1993, LB 370, § 202; Laws 1993, LB 590, § 4; Laws 2017, LB 339, § 190.
Operative Date: July 1, 2017

60-6,107. Accidents; Department of Health and Human Services; Department of Transportation; adopt rules and regulations.

(1) Except as provided in subsection (2) of this section, the Department of Health and Human Services shall adopt necessary rules and regulations for the administration of the provisions of sections 60-6,101 to 60-6,106.

(2) The Department of Transportation shall adopt and promulgate rules and regulations which shall provide for the release and disclosure of the results of tests conducted under sections 60-6,102 and 60-6,103.

Source: Laws 1974, LB 66, § 7; R.S.1943, (1988), § 39-6,104.12; Laws 1993, LB 370, § 203; Laws 1993, LB 590, § 5; Laws 1996, LB 1044, § 283; Laws 2007, LB 296, § 233; Laws 2017, LB 339, § 191.

Operative Date: July 1, 2017

(e) APPLICABILITY OF TRAFFIC LAWS

60-6,108. Required obedience to traffic laws; private property used for public road by consent of owner; provisions uniform throughout the state.

(1) The provisions of the Nebraska Rules of the Road relating to operation of vehicles refer exclusively to operation of vehicles upon highways except where a different place is specifically referred to in a given section, but sections 60-6,196, 60-6,197, 60-6,197.04, and 60-6,212 to 60-6,218 shall apply upon highways and anywhere throughout the state except private property which is not open to public access.

(2) Nothing in the Nebraska Rules of the Road shall be construed to prevent the owner of real property used by the public for the purposes of vehicular travel, by permission of the owner and not as a matter of right, from prohibiting such use nor from requiring other, different, or additional conditions from those specified or otherwise regulating the use thereof by such owner.

(3) The Nebraska Rules of the Road shall be applicable and uniform throughout this state and in all political subdivisions and municipalities of this state, and no local authority shall enact or enforce any ordinance directly contrary to the Nebraska Rules of the Road unless expressly authorized by the Legislature.

Source: Laws 1973, LB 45, § 3; Laws 1992, LB 291, § 3; R.S.Supp. 1992, § 39-603; Laws 1993, LB 370, § 204; Laws 2004, LB 208, § 9.

Criminal liability under section 60-6,196 does not extend to intoxicated persons in control of a vehicle parked on a residential driveway, regardless of whether part of the vehicle crosses a sidewalk. State v. McCave, 282 Neb. 500, 805 N.W.2d 290 (2011).

60-6,109. Drivers to exercise due care with pedestrian; audible signal.

Notwithstanding the other provisions of the Nebraska Rules of the Road, every driver of a vehicle shall exercise due care, which shall include, but not be limited to, leaving a safe distance of no less than three feet clearance, when applicable, to avoid colliding with any pedestrian upon any roadway and shall give an audible signal when necessary and shall exercise proper precaution upon observing any child or obviously confused or incapacitated person upon a roadway.

Source: Laws 1973, LB 45, § 44; R.S.1943, (1988), § 39-644; Laws 1993, LB 370, § 205; Laws 2012, LB 1030, § 1.

In order for a driver to be held to the higher standard of care in this section, there must be evidence both that the person was actually confused or actually incapacitated and that such condition was objectively obvious to a reasonable driver. State v. Welch, 275 Neb. 517, 747 N.W.2d 613 (2008).

This section does not except the operation of section 39-643, which pertains to the duty of care required by a pedestrian who crosses the street between intersections. Hines v. Pollock, 229 Neb. 614, 428 N.W.2d 207 (1988) (pursuant to Laws 1993, LB 370, section 250, language from section 39-643 was placed in section 60-6,154).

This section merely sets out a higher standard of care in the situations described therein; intoxicated plaintiff was not an "obviously confused or incapacitated person" within the meaning of the statute. Hines v. Pollock, 229 Neb. 614, 428 N.W.2d 207 (1988).

Defendant failed to exercise due care when he failed to see a pedestrian who was in plain sight near a crosswalk and struck her with the cement truck he was driving. This section is not unconstitutionally vague. Due care under the section means the absence of negligence. State v. Mattan, 207 Neb. 679, 300 N.W.2d 810 (1981).

A driver who is aware that a pedestrian standing on the curb is a 78-year-old with poor eyesight is compelled under this section to maintain a proper lookout and to exercise due care. Dutton v. Travis, 4 Neb. App. 875, 551 N.W.2d 759 (1996).

60-6,110. Obedience to peace officers; violation; penalty.

(1) Any person who knowingly fails or refuses to obey any lawful order of any peace officer who is controlling or directing traffic shall be guilty of a traffic infraction.

(2) Any person who knowingly fails to obey any lawful order of a peace officer shall be guilty of a Class III misdemeanor whenever such order is given in furtherance of the apprehension of a person who has violated the Nebraska Rules of the Road or of a person whom such officer reasonably believes has violated the rules.

Source: Laws 1973, LB 45, § 4; Laws 1977, LB 41, § 8; R.S.1943, (1988), § 39-604; Laws 1993, LB 370, § 206.

A person driving in response to a lawful order by a law enforcement officer is engaged in privileged conduct for which he cannot be punished. Fulmer v. Jensen, 221 Neb. 582, 379 N.W.2d 736 (1986).

One who drives in response to the lawful order of a law enforcement officer engages in privileged conduct and may not be punished for so doing. State v. Lichti, 219 Neb. 894, 367 N.W.2d 138 (1985).

60-6,111. Persons riding animals or driving animal-drawn vehicles; farm implements; duties.

(1) Any person who rides an animal or drives an animal-drawn vehicle, a farm tractor, or an implement of husbandry upon a roadway shall be granted all of the rights and shall be subject to all of the duties made applicable to the driver of a vehicle by the Nebraska Rules of the Road except those provisions of the rules which by their very nature can have no application.

(2) Whenever the slowness of such animal, animal-drawn vehicle, farm tractor, or implement of husbandry is obstructing the normal flow of traffic, the rider or driver shall drive to the nearest available shoulder of the highway and allow traffic to pass.

Source: Laws 1973, LB 45, § 5; R.S.1943, (1988), § 39-605; Laws 1993, LB 370, § 207.

60-6,112. Rules of the road; exceptions.

Unless specifically made applicable, the Nebraska Rules of the Road, except those provisions relating to careless driving, reckless driving, and driving while under the influence of alcoholic liquor or drugs, shall not apply to:

(1) Persons, teams of draft animals, motor vehicles, and other equipment while actually engaged in work upon the surface of a highway, but the rules shall apply to such persons and vehicles when traveling to or from such work; or

(2) Government employees and public utility employees to the extent that there would be a conflict between the rules and the performance of their official duties.

Source: Laws 1973, LB 45, § 6; Laws 1986, LB 896, § 1; Laws 1987, LB 133, § 1; R.S.1943, (1988), § 39-606; Laws 1993, LB 370, § 208.

This section does not absolve persons engaged in road work from obeying the fundamental premise that an operator of a vehicle is under a continuing duty to exercise reasonable care for the safety of others. Gatzemeyer v. Neligh Township, 233 Neb. 329, 445 N.W.2d 593 (1989).

Under the facts of this case, a wrongful death action was allowed against the driver and operator of a snowplow when the plow was in operation on the left side of the road in the face of oncoming traffic. Beebe v. Sorensen Sand & Gravel Co., 209 Neb. 559, 308 N.W.2d 829 (1981).

60-6,113. Government vehicles; provisions applicable.

Unless specifically exempted, the Nebraska Rules of the Road shall apply to all drivers of vehicles owned or operated on behalf of the United States or any state or political subdivision thereof.

Source: Laws 1973, LB 45, § 7; R.S.1943, (1988), § 39-607; Laws 1993, LB 370, § 209.

60-6,114. Authorized emergency vehicles; privileges; conditions.

(1) Subject to the conditions stated in the Nebraska Rules of the Road, the driver of an authorized emergency vehicle, when responding to an emergency call, when pursuing an actual or suspected violator of the law, or when responding to but not when returning from a fire alarm, may:

(a) Stop, park, or stand, irrespective of the provisions of the rules, and disregard regulations governing direction of movement or turning in specified directions; and

(b) Except for wreckers towing disabled vehicles and highway maintenance vehicles and equipment:

(i) Proceed past a steady red indication, a flashing red indication, or a stop sign but only after slowing down as may be necessary for safe operation; and

(ii) Exceed the maximum speed limits so long as he or she does not endanger life, limb, or property.

(2) Except when operated as a police vehicle, the exemptions granted in subsection (1) of this section shall apply only when the driver of such vehicle, while in motion, sounds an audible signal by bell, siren, or exhaust whistle as may be reasonably necessary and when such vehicle is equipped with at least one lighted light displaying a red light visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle.

(3) The exemptions granted in subsection (1) of this section shall not relieve the driver from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect such driver from the consequences of his or her reckless disregard for the safety of others.

(4) Authorized emergency vehicles operated by police and fire departments shall not be subject to the size and weight limitations of sections 60-6,288 to 60-6,290 and 60-6,294.

Source: Laws 1973, LB 45, § 8; R.S.1943, (1988), § 39-608; Laws 1993, LB 370, § 210; Laws 2005, LB 82, § 2.

The driver of an emergency vehicle has the right to proceed past a steady red light, but must exercise due care in doing so. Gatewood v. City of Bellevue, 232 Neb. 525, 441 N.W.2d 585 (1989).

Police vehicle enjoys privileges as an emergency vehicle as long as the officer operates emergency equipment in good faith belief that he or she is responding to an emergency. Police officer exercised due regard in operating an emergency vehicle. Maple v. City of Omaha, 222 Neb. 293, 384 N.W.2d 254 (1986).

The trial court did not err in refusing to direct a verdict in favor of the plaintiff, who was injured when he was struck by a police car responding to an emergency call. Stephen v. City of Lincoln, 209 Neb. 792, 311 N.W.2d 889 (1981).

60-6,115. Closed road; travel permitted; when.

Notwithstanding the provisions of subsection (1) of section 60-6,119, when the Department of Transportation, any local authority, or its authorized representative or permittee has closed, in whole or in part, by barricade or otherwise, during repair or construction, any portion of any highway, the restrictions upon the use of such highway shall not apply to persons living along such closed highway or to persons who would need to travel such highway during the normal course of their operations if no other route of travel is available to such person, but extreme care shall be exercised by such persons on such highway.

Source: Laws 1993, LB 370, § 211; Laws 2017, LB 339, § 192.
Operative Date: July 1, 2017

Subsection (5) of this section applies to the operation of an automobile while it is on that part of the road which is closed and requires extreme caution so as to avoid the additional hazards that may be incident to the reason why the road has been closed. Birchem v. Eggers, 236 Neb. 775, 463 N.W.2d 824 (1990) (pursuant to Laws 1993, LB 370, section 211, language from subsection (5) of section 39-609 was placed in section 60-6,115).

60-6,116. Vehicle owner; driver violations.

The owner of any vehicle or any person employing or otherwise directing the driver of any vehicle shall not require or knowingly permit the operation of such vehicle in any manner contrary to the Nebraska Rules of the Road.

Source: Laws 1973, LB 45, § 116; R.S.1943, (1988), § 39-6,116; Laws 1993, LB 370, § 212.

60-6,117. Parental duties; child less than sixteen.

The parent or guardian of any child who is less than sixteen years old shall not knowingly permit any such child to violate any provision of the Nebraska Rules of the Road.

Source: Laws 1973, LB 45, § 87; R.S.1943, (1988), § 39-687; Laws 1993, LB 370, § 213.

(f) TRAFFIC CONTROL DEVICES

60-6,118. Manual on Uniform Traffic Control Devices; adoption by Department of Transportation.

Consistent with the provisions of the Nebraska Rules of the Road, the Department of Transportation may adopt and promulgate rules and regulations adopting and implementing a manual providing a uniform system of traffic control devices on all highways within this state which, together with any supplements adopted by the department, shall be known as the Manual on Uniform Traffic Control Devices.

Source: Laws 1973, LB 45, § 98; Laws 1984, LB 677, § 1; R.S.1943, (1988), § 39-698; Laws 1993, LB 370, § 214; Laws 2017, LB 339, § 193.
Operative Date: July 1, 2017

60-6,119. Obedience to traffic control devices; exceptions.

(1) The driver of any vehicle shall obey the instructions of any traffic control device applicable thereto placed in accordance with the Nebraska Rules of the Road, unless otherwise directed by a peace officer, subject to the exceptions granted the driver of an authorized emergency vehicle in the rules.

(2) No provision of the rules for which traffic control devices are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible to be seen by a reasonably observant person. Whenever any provision of the rules does not state that traffic control devices are required, such provision shall be effective even though no devices are erected or in place.

(3) Whenever traffic control devices are placed in position approximately conforming to the requirements of the rules, such devices shall be presumed to have been so placed by the official act or direction of lawful authority unless the contrary is established by competent evidence.

(4) Any traffic control device placed pursuant to the rules and purporting to conform with the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of the rules unless the contrary is established by competent evidence.

Source: Laws 1973, LB 45, § 9; R.S.1943, (1988), § 39-609; Laws 1993, LB 370, § 215.

Subsection (5) of this section applies to the operation of an automobile while it is on that part of the road which is closed and requires extreme caution so as to avoid the additional hazards that may be incident to the reason why the road has been closed. Birchem v. Eggers, 236 Neb. 775, 463 N.W.2d 824 (1990) (pursuant to Laws 1993, LB 370, section 211, language from subsection (5) of section 39-609 was placed in section 60-6,115).

A city ordinance regulating funeral processions was a reasonable and valid exercise of the city's police power under section 39-697(1)(c) (transferred to section 60-680) and does not conflict with Nebraska's present right-of-way statutes, this section and section 39-614(1)(a) (transferred to section 60-6,123). Herman v. Lee, 210 Neb. 563, 316 N.W.2d 56 (1982).

This section does not apply to a highway partially barricaded but not closed to traffic. Central Constr. Co. v. Republican City School Dist. No. 1, 206 Neb. 615, 294 N.W.2d 347 (1980).

60-6,120. Placing and maintaining traffic control devices; jurisdiction.

(1) The Department of Transportation shall place and maintain, or provide for such placing and maintaining, such traffic control devices, conforming to the manual, upon all state highways as it deems necessary to indicate and to carry out the Nebraska Rules of the Road or to regulate, warn, or guide traffic.

(2)(a) In incorporated cities and villages with less than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the department shall have exclusive jurisdiction regarding the erection and maintenance of traffic control devices on the state highway system but shall not place traffic control devices on the state highway system within incorporated cities of more than twenty-five hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census without consultation with the proper city officials.

(b) In incorporated cities of forty thousand or more inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, except on state-maintained freeways of the state highway system where the department retains exclusive jurisdiction, the city shall have jurisdiction regarding erection and maintenance of traffic control devices on the state highway system after consultation with the department, except that there shall be joint jurisdiction with the department for such traffic control devices for which the department accepts responsibility for the erection and maintenance.

(3) No local authority shall place or maintain any traffic control device upon any highway under the jurisdiction of the department, except by permission of the department, or on any state-maintained freeway of the state highway system.

(4) The placing of traffic control devices by the department shall not be a departmental rule, regulation, or order subject to the statutory procedures for such rules, regulations, or orders but shall be considered as establishing precepts extending the provisions of the Nebraska Rules of the Road as necessary to regulate, warn, or guide traffic. Violation of such traffic control devices shall be punishable as provided in the rules.

Source: Laws 1973, LB 45, § 10; R.S.1943, (1988), § 39-610; Laws 1993, LB 370, § 216; Laws 2017, LB 113, § 49; Laws 2017, LB 339, § 194.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 113, section 49, with LB 339, section 194, to reflect all amendments.

Note: Changes made by LB 339 became operative July 1, 2017. Changes made by LB 113 became effective August 24, 2017.

Sovereign immunity barred a claim against the State of Nebraska and Cass County concerning the lack of pavement markings at a railroad crossing at which a collision occurred because the decision of whether to place pavement markings at the crossing was discretionary. Shipley v. Department of Roads, 283 Neb. 832, 813 N.W.2d 455 (2012).

60-6,121. Placing and maintaining traffic control devices; local authorities.

Local authorities in their respective jurisdictions shall place and maintain such traffic control devices upon highways under their jurisdictions as they deem necessary to indicate and to carry out the provisions of the Nebraska Rules of the Road or to regulate, warn, or guide traffic. All such traffic control devices erected pursuant to the rules shall conform with the manual.

Source: Laws 1973, LB 45, § 11; R.S.1943, (1988), § 39-611; Laws 1993, LB 370, § 217.

Sovereign immunity barred a claim against the State of Nebraska and Cass County concerning the lack of pavement markings at a railroad crossing at which a collision occurred because the decision of whether to place pavement markings at the crossing was discretionary. Shipley v. Department of Roads, 283 Neb. 832, 813 N.W.2d 455 (2012).

Once a city elects to install a pedestrian crosswalk signal, it is required to conform to the Manual on Uniform Traffic Control Devices in determining the pedestrian clearance interval, and the discretionary immunity exception of section 13-910 does not apply. Tadros v. City of Omaha, 269 Neb. 528, 694 N.W.2d 180 (2005).

The Nebraska Legislature intended political subdivisions to have discretion in the installation of traffic control devices, for purposes of a claim under the Political Subdivisions Tort Claims Act. Dresser v. Thayer Cty, 18 Neb. App. 99, 774 N.W.2d 640 (2009).

60-6,122. Traffic control devices; when illegal to sell or lease.

It shall be unlawful for any person to sell, lease, or offer for sale or lease any traffic control devices which are not in compliance with the manual.

Source: Laws 1973, LB 45, § 13; R.S.1943, (1988), § 39-613; Laws 1993, LB 370, § 218.

60-6,123. Traffic control signals; meaning; turns on red signal; when; signal not in service; effect.

Whenever traffic is controlled by traffic control signals exhibiting different colored lights or colored lighted arrows, successively one at a time or in combination, only the colors green, red, and yellow shall be used, except for special pedestrian signals carrying a word legend, number, or symbol, and such lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(1)(a) Vehicular traffic facing a circular green indication may proceed straight through or turn right or left unless a sign at such place prohibits either such turn, but vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such indication is exhibited;

(b) Vehicular traffic facing a green arrow indication, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow or such other movement as is permitted by other indications shown at the same time, and such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection; and

(c) Unless otherwise directed by a pedestrian-control signal, pedestrians facing any green indication, except when the sole green indication is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk;

(2)(a) Vehicular traffic facing a steady yellow indication is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection, and upon display of a steady yellow indication, vehicular traffic shall stop before entering the nearest crosswalk at the intersection, but if such stop cannot be made in safety, a vehicle may be driven cautiously through the intersection; and

(b) Pedestrians facing a steady yellow indication, unless otherwise directed by a pedestrian-control signal, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway;

(3)(a) Vehicular traffic facing a steady red indication alone shall stop at a clearly marked stop line or shall stop, if there is no such line, before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, before entering the intersection. The traffic shall remain standing until an indication to proceed is shown except as provided in subdivisions (3)(b) and (3)(c) of this section;

(b) Except where a traffic control device is in place prohibiting a turn, vehicular traffic facing a steady red indication may cautiously enter the intersection to make a right turn after stopping as required by subdivision (3)(a) of this section. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection;

(c) Except where a traffic control device is in place prohibiting a turn, vehicular traffic facing a steady red indication at the intersection of two one-way streets may cautiously enter the intersection to make a left turn after stopping as required by subdivision (3)(a) of this section. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection; and

(d) Unless otherwise directed by a pedestrian-control signal, pedestrians facing a steady red indication alone shall not enter the roadway;

(4) If a traffic control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking, the stop shall be made at the signal; and

(5)(a) If a traffic control signal at an intersection is not operating because of a power failure or other cause and no peace officer, flagperson, or other traffic control device is providing direction for traffic at the intersection, the intersection shall be treated as a multi-way stop; and

(b) If a traffic control signal is not in service and the signal heads are turned away from traffic or covered with opaque material, subdivision (a) of this subdivision shall not apply.

Source: Laws 1973, LB 45, § 14; Laws 1980, LB 821, § 1; Laws 1987, LB 135, § 1; R.S.1943, (1988), § 39-614; Laws 1993, LB 370, § 219; Laws 2010, LB 805, § 10.

In the case of a collision involving two vehicles approaching an intersection from opposite directions with a green light for both vehicles, a determination of which vehicle was "lawfully" in the intersection first, thereby possessing a superior right-of-way for purposes of this section, was a question of fact for the jury. Nguyen v. Rezac, 256 Neb. 458, 590 N.W.2d 375 (1999).

Speeding up to cross an intersection on a yellow light in violation of subdivision (2)(a) of this section provides sufficient cause for a police officer observing the violation to make an investigatory stop. State v. LaMere, 230 Neb. 629, 432 N.W.2d 822 (1988).

A pedestrian crossing at a regular crosswalk with the right-of-way has a right, until he has notice or knowledge to the contrary, to assume that others will respect his right-of-way. Even though a statute grants the right-of-way to a pedestrian crossing a street in the crosswalk, it does not excuse contributory negligence on his part. Holly v. Mitchell, 213 Neb. 203, 328 N.W.2d 750 (1982).

A city ordinance regulating funeral processions was a reasonable and valid exercise of the city's police power under section 39-697(1)(c) (transferred to section 60-680) and does not conflict with Nebraska's present right-of-way statutes, section 39-609(1) (transferred to section 60-6,119) and this section. Herman v. Lee, 210 Neb. 563, 316 N.W.2d 56 (1982).

Directed verdict was improperly granted to a motorist where a factual issue existed as to whether the motorist or a bicyclist was in the favored position to proceed into the intersection. Luellman v. Ambroz, 2 Neb. App. 855, 516 N.W.2d 627 (1993).

60-6,124. Pedestrian-control signals.

Whenever pedestrian-control signals exhibiting the words WALK or DONT WALK or exhibiting the symbol of a walking person or an upraised hand are in place, such signals shall indicate as follows:

(1) Pedestrians facing a steady WALK indication or a symbol of a walking person may proceed across the roadway in the direction of such signal and shall be given the right-of-way by the drivers of all vehicles; and

(2) No pedestrian shall start to cross the roadway in the direction of a DONT WALK indication or a symbol of an upraised hand, but any pedestrian who has partially completed his or her crossing on the WALK or walking person indication shall immediately proceed to a sidewalk or safety island while the flashing DONT WALK or flashing upraised hand indication is showing.

Source: Laws 1973, LB 45, § 15; Laws 1987, LB 135, § 2; R.S.1943, (1988), § 39-615; Laws 1993, LB 370, § 220.

A pedestrian crossing at a regular crosswalk with the right-of-way has a right, until he has notice or knowledge to the contrary, to assume that others will respect his right-of-way. Even though a statute grants the right-of-way to a

pedestrian crossing a street in the crosswalk, it does not excuse contributory negligence on his part. Holly v. Mitchell, 213 Neb. 203, 328 N.W.2d 750 (1982).

60-6,125. Flashing signals; exception.

Whenever an illuminated flashing red or yellow light is used in a traffic signal or with a traffic sign, it shall require obedience by vehicular traffic as follows:

(1) When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop at a clearly marked stop line or shall stop, if there is no such line, before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. The right to proceed shall be subject to the rules applicable after making a stop at a stop sign; and

(2) When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such light only with caution.

This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules set forth in the Nebraska Rules of the Road pertaining to such railroad grade crossings.

Source: Laws 1973, LB 45, § 16; R.S.1943, (1988), § 39-616; Laws 1993, LB 370, § 221.

Generally, the failure to see an approaching vehicle is not negligence as a matter of law unless the vehicle is undisputably in a favored position. Treffer v. Seevers, 195 Neb. 114, 237 N.W.2d 114 (1975).

60-6,126. Lane direction control signals; signs.

When lane direction control signals are placed over the individual lanes of a street or highway, vehicular traffic may travel in any lane over which a specified or appropriate green indication is shown but shall not enter or travel in any lane over which a specified or appropriate red indication is shown. When such signals are in use, signs adequate to advise motorists of the meaning of such signals shall be erected.

Source: Laws 1973, LB 45, § 17; R.S.1943, (1988), § 39-617; Laws 1993, LB 370, § 222.

60-6,126.01. Road name signs; authorized.

Local authorities may place and maintain road name signs on the same sign posts as signs under the jurisdiction of the Department of Transportation when highway visibility would not be impaired. Local authorities may also place and maintain road name signs in the right-of-way of any highway under the jurisdiction of the Department of Transportation when highway visibility would not be impaired.

Source: Laws 2006, LB 853, § 17; Laws 2017, LB 339, § 195.
Operative Date: July 1, 2017

60-6,127. Display of unauthorized signs, signals, or markings; public nuisance; removal.

(1) No person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, light, marking, or device which purports to be, is an imitation of, or resembles a lawful traffic control device or railroad sign or signal, which uses the words stop or danger prominently displayed, which implies the need or requirement of stopping or the existence of danger, which attempts to direct the movement of traffic, which otherwise copies or resembles any lawful traffic control device, or which hides from view or interferes with the effectiveness of a traffic control device or any railroad sign or signal.

(2) No person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal which bears commercial advertising except as authorized by sections 39-204 to 39-206.

(3) This section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs unless prohibited by another statute.

(4) Every such prohibited sign, signal, or marking is hereby declared to be a public nuisance, and the authority having jurisdiction over any highway where such prohibited sign, signal, or marking is found may remove it or cause it to be removed without notice.

Source: Laws 1973, LB 45, § 18; R.S.1943, (1988), § 39-618; Laws 1993, LB 370, § 223.

60-6,128. Advertising devices adjacent to highway; when prohibited; public nuisance; removal.

No advertising devices shall be erected or operated upon any private property adjacent to or near any highway which:

(1) Have a light, the beam of which is concentrated on the highway or adversely affects the vision of operators of vehicles upon the roadway by the use of flashing red, amber, yellow, or green lights which have the very obvious appearance of devices generally used as official traffic control devices; or

(2) Have photo-flash type lights, flood lights, spotlights, or other lighted signs which use the words Stop or Danger prominently displayed, which imply the need or requirement of stopping or the existence of danger, or which otherwise copy or resemble official traffic control devices.

Nothing in this section shall be construed to apply to official traffic control devices erected by the public agencies having jurisdiction.

Any advertising device erected, maintained, or operated in violation of this section is hereby declared to be a public nuisance. It shall be the duty of the public agency having jurisdiction to notify the owner of all lights in violation of the provisions of this section, and the public agency may remove such lights if the owner fails or refuses to remove them within a reasonable time after he or she is notified of such violation.

Source: Laws 1963, c. 224, § 3, p. 704; R.R.S.1943, § 39-714.05; R.S.1943, (1988), § 39-618.01; Laws 1993, LB 370, § 224.

60-6,129. Interference with official traffic control devices or railroad signs or signals; prohibited; liability in civil action.

(1) No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down, or remove any traffic control device, any railroad sign or signal, or any part of such a device, sign, or signal.

(2) Any person who moves, alters, damages, or destroys warning devices placed upon roads which the Department of Transportation or any local authority or its representative has closed in whole or in part for the protection of the public or for the protection of the highway from damage during construction, improvement, or maintenance operation and thereby causes injury or death to any person or damage to any property, equipment, or material thereon shall be liable, subject to sections 25-21,185 and 25-21,185.07 to 25-21,185.12, for the full or allocated amount of such death, injury, or damage, and such amount may be recovered by the injured or damaged party or his or her legal representative in a civil action brought in any court of competent jurisdiction.

Source: Laws 1973, LB 45, § 19; Laws 1992, LB 262, § 10; R.S.Supp. 1992, § 39-619; Laws 1993, LB 370, § 225; Laws 2017, LB 339, § 196.

Operative Date: July 1, 2017

60-6,130. Signs, markers, devices, or notices; prohibited acts; penalty.

(1) Any person who willfully or maliciously shoots upon the public highway and injures, defaces, damages, or destroys any signs, monuments, road markers, traffic control devices, traffic surveillance devices, or other public notices lawfully placed upon such highways shall be guilty of a Class III misdemeanor.

(2) No person shall willfully or maliciously injure, deface, alter, or knock down any sign, traffic control device, or traffic surveillance device.

(3) It shall be unlawful for any person, other than a duly authorized representative of the Department of Transportation, a county, or a municipality, to remove any sign, traffic control device, or traffic surveillance device placed along a highway for traffic control, warning, or informational purposes by official action of the department, county, or municipality. It shall be unlawful for any person to possess a sign or device which has been removed in violation of this subsection.

(4) Any person violating subsection (2) or (3) of this section shall be guilty of a Class II misdemeanor and shall be assessed liquidated damages in the amount of the value of the sign, traffic control device, or traffic surveillance device and the cost of replacing it.

Source: G.S.1873, c. 58, § 100, p. 743; R.S.1913, § 3040; Laws 1915, c. 60, § 1, p. 154; C.S.1922, § 2791; C.S.1929, § 39-1026; R.S.1943, § 39-714; Laws 1971, LB 331, § 1; C.S.Supp. 1972, § 39-714; Laws 1977, LB 41, § 9; Laws 1989, LB 283, § 1; R.S.Supp. 1992, § 39-619.01; Laws 1993, LB 370, § 226; Laws 2017, LB 339, § 197.

Operative Date: July 1, 2017

(g) USE OF ROADWAY AND PASSING

60-6,131. Driving on right half of roadway required; exceptions.

(1) Upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway except as follows:

(a) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(b) When an obstruction exists making it necessary to drive to the left of the center of the highway, except that any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

(c) Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

(d) Upon a roadway restricted to one-way traffic.

(2) Upon all roadways, any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

(3) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the centerline of the roadway except when authorized by official traffic control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes or except as permitted under subdivision (1)(b) of this section. This subsection shall not be construed to prohibit the crossing of the centerline in making a left turn into or from an alley, private road, or driveway unless such movement is otherwise prohibited by signs.

Source: Laws 1973, LB 45, § 20; R.S.1943, (1988), § 39-620; Laws 1993, LB 370, § 227.

Violation of this statute is only evidence of negligence and does not constitute negligence per se. Bourke v. Watts, 223 Neb. 511, 391 N.W.2d 552 (1986).

Violation of a statute is evidence of negligence, but not negligence per se. Clark Bilt, Inc. v. Wells Dairy Co., 200 Neb. 20, 261 N.W.2d 772 (1978).

60-6,132. Vehicles proceeding in opposite direction; passing.

Passing vehicles proceeding in opposite directions shall each keep to the right side of the roadway, passing left to left, and upon roadways having width for not more than one lane of traffic in each direction, each driver shall give to the other, as nearly as possible, at least one-half of the main-traveled portion of the roadway.

Source: Laws 1973, LB 45, § 21; R.S.1943, (1988), § 39-621; Laws 1993, LB 370, § 228.

60-6,133. Overtaking and passing rules; vehicles proceeding in same direction.

Except when overtaking and passing on the right is permitted, the following rules shall govern the overtaking and passing of vehicles proceeding in the same direction:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall first give a visible signal of his or her intention and shall pass to the left of the other vehicle at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle;

(2) The driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle and shall not increase the speed of his or her vehicle until completely passed by the overtaking vehicle; and

(3) The driver of a vehicle overtaking a bicycle or electric personal assistive mobility device proceeding in the same direction shall exercise due care, which shall include, but not be limited to, leaving a safe distance of no less than three feet clearance, when applicable, when passing a bicycle or electric personal assistive mobility device and shall maintain such clearance until safely past the overtaken bicycle or electric personal assistive mobility device.

Source: Laws 1973, LB 45, § 22; R.S.1943, (1988), § 39-622; Laws 1993, LB 370, § 229; Laws 1993, LB 575, § 6; Laws 2000, LB 1361, § 3; Laws 2012, LB 1030, § 2.

60-6,134. Overtaking and passing upon the right; when permitted.

(1) The driver of a vehicle may overtake and pass on the right of another vehicle only under the following conditions:

(a) When the vehicle to be overtaken is making or about to make a left turn;

(b) Upon a two-way street or highway with an unobstructed roadway, not occupied by parked vehicles, of sufficient width for two or more lanes of moving vehicles going in the same direction when the passing vehicle is traveling in one of such lanes; or

(c) Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, when the roadway is free from obstructions and of sufficient width for two or more lanes of moving vehicles.

(2) In no event shall the driver of a vehicle overtake and pass another vehicle upon the right unless such movement may be made safely upon the roadway.

Source: Laws 1973, LB 45, § 23; Laws 1983, LB 406, § 1; R.S.1943, (1988), § 39-623; Laws 1993, LB 370, § 230.

60-6,134.01. School crossing zone; overtaking and passing prohibited; penalty.

It is unlawful for a person operating a motor vehicle to overtake and pass another vehicle in a school crossing zone in which the roadway has only one lane of traffic in each direction. Any person convicted of overtaking and passing another vehicle in a school crossing zone is guilty of a traffic infraction and shall be fined not more than two hundred dollars for the first offense and

at least two hundred dollars but not more than four hundred dollars for a second or subsequent offense.

Source: Laws 1997, LB 91, § 5.

60-6,135. Limitations on overtaking and passing on the left; precautions required; return to right side of highway.

(1) No vehicle shall overtake another vehicle proceeding in the same direction on an undivided two-way roadway when such overtaking requires the overtaking vehicle to be driven on the left side of the center of the roadway unless the left side is clearly visible for a distance sufficient to accomplish such overtaking and is free from oncoming traffic for a distance sufficient to:

(a) Permit the overtaking vehicle to return to an authorized lane of traffic before coming within two hundred feet of any approaching vehicle; and

(b) Permit the overtaking vehicle to be safely clear of the overtaken vehicle while returning to the authorized lane of travel as provided in the Nebraska Rules of the Road.

(2) After completing such overtaking, the overtaking vehicle shall return to the authorized lane of travel as soon as practicable.

(3) Any such overtaking shall be subject to the rules.

(4) The provisions of this section shall not permit the crossing of the centerline of an undivided highway providing for two or more lanes of traffic in each direction for the purpose of overtaking and passing another vehicle.

Source: Laws 1973, LB 45, § 24; R.S.1943, (1988), § 39-624; Laws 1993, LB 370, § 231.

60-6,136. Limitations on overtaking, passing, or driving to the left of the center of roadway; when prohibited.

(1) No driver shall overtake and pass another vehicle or drive to the left of the center of the roadway whenever:

(a) He or she approaches the crest of a grade or is upon a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;

(b) He or she approaches within one hundred feet of or traverses any intersection or railroad grade crossing;

(c) The view is obstructed when he or she approaches within one hundred feet of any bridge, viaduct, or tunnel; or

(d) The section of roadway is designated as a no-passing zone under section 60-6,137.

(2) The limitations imposed by subsection (1) of this section shall not apply (a) upon a one-way roadway, (b) under the conditions described in subdivision (1)(b) of section 60-6,131, or (c) to the driver of a vehicle turning left into or from an alley, private road, or driveway unless otherwise prohibited by signs.

Source: Laws 1973, LB 45, § 25; R.S.1943, (1988), § 39-625; Laws 1993, LB 370, § 232.

A driver is negligent as a matter of law if he makes a left turn between intersections without signaling. Ben Gay, Inc., v. Giesbrecht, 720 F.2d 1003 (8th Cir. 1983).

60-6,137. No-passing zones; exception.

(1) The Department of Transportation and local authorities may determine those portions of any highway under their respective jurisdictions where overtaking and passing or driving to the left of the center of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones. When such signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey such indications.

(2) Where signs or markings are in place to define a no-passing zone, no driver shall at any time drive on the left side of the roadway within such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.

(3) This section shall not apply (a) under the conditions described in subdivision (1)(b) of section 60-6,131 or (b) to the driver of a vehicle turning left into or from an alley, private road, or driveway unless otherwise prohibited by signs.

Source: Laws 1973, LB 45, § 26; R.S.1943, (1988), § 39-626; Laws 1993, LB 370, § 233; Laws 2017, LB 339, § 198.

Operative Date: July 1, 2017

60-6,138. One-way roadways and rotary traffic islands; jurisdiction; exception for emergency vehicles.

(1) The Department of Transportation and local authorities with respect to highways under their respective jurisdictions may designate any highway, roadway, part of a roadway, or specific lanes upon which vehicular traffic shall proceed in one direction at all times or at such times as shall be indicated by traffic control devices.

(2) Except for emergency vehicles, no vehicle shall be operated, backed, pushed, or otherwise caused to move in a direction which is opposite to the direction designated by competent authority on any deceleration lane, acceleration lane, access ramp, shoulder, or roadway.

(3) A vehicle which passes around a rotary traffic island shall be driven only to the right of such island.

Source: Laws 1973, LB 45, § 27; R.S.1943, (1988), § 39-627; Laws 1993, LB 370, § 234; Laws 2017, LB 339, § 199.

Operative Date: July 1, 2017

60-6,139. Driving on roadways laned for traffic; rules; traffic control devices.

Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following rules, in addition to all others consistent with this section, shall apply:

(1) A vehicle shall be driven as nearly as practicable within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety;

(2) Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except (a) when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, (b) in preparation for making a left turn, or (c) when such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by traffic control devices;

(3) Traffic control devices may be erected by the Department of Transportation or local authorities to direct specified traffic to use a designated lane or to designate those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such device; and

(4) Traffic control devices may be installed by the department or local authorities to prohibit the changing of lanes on sections of roadway and drivers of vehicles shall obey the directions of every such device.

Source: Laws 1973, LB 45, § 28; R.S.1943, (1988), § 39-628; Laws 1993, LB 370, § 235; Laws 2017, LB 339, § 200.

Operative Date: July 1, 2017

By including the language "as nearly as practicable," subdivision (1) of this section expressly requires that surrounding circumstances be considered. State v. Au, 285 Neb. 797, 829 N.W.2d 695 (2013).

The language "as nearly as practicable" conveys that subdivision (1) of this section does not require absolute adherence to a feasibility requirement, but, rather, something less rigorous. State v. Au, 285 Neb. 797, 829 N.W.2d 695 (2013).

The mere touching or crossing of a lane divider line, without more, does not constitute a traffic violation under this section. State v. Au, 285 Neb. 797, 829 N.W.2d 695 (2013).

60-6,140. Following vehicles; restrictions.

(1) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, and such driver shall have due regard for the speed of such vehicles and the traffic upon and the condition of the roadway.

(2) The driver of any motor vehicle drawing a trailer, semitrailer, or another vehicle, when traveling upon a roadway outside of a business or residential district, who is following another vehicle shall, subject to varying road conditions, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger and shall not follow another motor vehicle drawing a trailer, semitrailer, or another vehicle more closely than one hundred feet. This subsection shall not prevent a vehicle from overtaking and passing any other vehicle.

(3) The driver of a motor vehicle upon any roadway outside of a business or residential district in a caravan or motorcade, whether or not towing other vehicles, shall operate such vehicle so as to allow sufficient space between each such vehicle or combination of vehicles so

as to enable any other vehicle to enter and occupy such space without danger. This subsection shall not apply to funeral processions.

(4) The driver of any motor vehicle when traveling upon a roadway outside of a business or residential district shall not follow any highway maintenance vehicle more closely than one hundred feet if:

(a) Such highway maintenance vehicle is engaged in plowing snow, removing deposited material from the surface of the road, or spreading salt, sand, or other material upon the surface of the road or is in motion on or near the traveled portion of a road performing other highway maintenance duties; and

(b) Such highway maintenance vehicle is displaying a flashing amber or white light.

This subsection shall not prevent a vehicle from overtaking and passing any other vehicle.

(5) The driver of any motor vehicle, when traveling upon a roadway outside of a business or residential district, who is following another vehicle displaying flashing amber or white lights shall not follow such vehicle more closely than one hundred feet. This subsection shall not prevent a vehicle from overtaking and passing any other vehicle.

Source: Laws 1973, LB 45, § 29; Laws 1986, LB 437, § 1; R.S.1943, (1988), § 39-629; Laws 1993, LB 370, § 236.

A state trooper had probable cause to stop a vehicle, in which the defendant was a passenger, for following too closely, despite the trooper's statement that he had a hunch the passengers could be involved in transporting contraband. The trooper testified that he observed the vehicle following one car length behind a semi-truck while both vehicles were traveling over 70 miles per hour in the rain; thus, the trooper's alleged ulterior motivation for the stop was irrelevant. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

60-6,141. Driving on divided highways; driving on median prohibited; exceptions.

(1) Whenever any highway has been divided into two or more roadways by a median, a driver shall drive only upon the right-hand roadway unless directed or permitted to use another roadway by traffic control devices or competent authority.

(2) No driver shall drive any vehicle over, across, or within any median except through a median opening or median crossover as established by competent authority. Medians on freeways shall not be crossed or entered upon at any point unless specifically directed by competent authority.

(3) No driver except drivers of authorized emergency vehicles and drivers of wreckers or other vehicles assisting a stranded vehicle shall use any emergency entrance or median crossover on a freeway intended only for emergency vehicles, but no such excepted driver shall drive in such manner as to create a hazard to any other vehicle.

Source: Laws 1973, LB 45, § 30; Laws 1981, LB 64, § 1; R.S.1943, (1988), § 39-630; Laws 1993, LB 370, § 237.

60-6,142. Driving on highway shoulders prohibited; exceptions.

No person shall drive on the shoulders of highways, except that:

(1) Vehicles may be driven on the shoulders of highways (a) by federal mail carriers while delivering the United States mail or (b) to safely remove a vehicle from a roadway;

(2) Implements of husbandry may be driven on the shoulders of highways; and

(3) Bicycles and electric personal assistive mobility devices may be operated on paved shoulders of highways included in the state highway system other than Nebraska segments of the National System of Interstate and Defense Highways.

Source: Laws 1973, LB 45, § 31; Laws 1988, LB 969, § 1; R.S.1943, (1988), § 39-631; Laws 1993, LB 370, § 238; Laws 1993, LB 575, § 7; Laws 2002, LB 1105, § 456.

Any crossing of the fog line onto the shoulder constitutes driving on the shoulder and is a violation of this section. State v. Magallanes, 284 Neb. 871, 824 N.W.2d 696 (2012).

Any crossing of the fog line onto the shoulder constitutes driving on the shoulder and is a violation of this section. State v. Magallanes, 284 Neb. 871, 824 N.W.2d 696 (2012).

60-6,143. Controlled-access highway; entrances; exits.

No person shall drive a vehicle onto or from any controlled-access highway except at such entrances and exits as are established by competent authority.

Source: Laws 1973, LB 45, § 32; R.S.1943, (1988), § 39-632; Laws 1993, LB 370, § 239.

60-6,144. Restrictions on use of controlled-access highway.

Use of a freeway and entry thereon by the following shall be prohibited at all times except by permit from the Department of Transportation or from the local authority in the case of freeways not under the jurisdiction of the department:

(1) Pedestrians except in areas specifically designated for that purpose;

(2) Hitchhikers or walkers;

(3) Vehicles not self-propelled;

(4) Bicycles, motor-driven cycles, motor scooters not having motors of more than ten horsepower, and electric personal assistive mobility devices;

(5) Animals led, driven on the hoof, ridden, or drawing a vehicle;

(6) Funeral processions;

(7) Parades or demonstrations;

(8) Vehicles, except emergency vehicles, unable to maintain minimum speed as provided in the Nebraska Rules of the Road;

(9) Construction equipment;

(10) Implements of husbandry, whether self-propelled or towed, except as provided in section 60-6,383;

(11) Vehicles with improperly secured attachments or loads;

(12) Vehicles in tow, when the connection consists of a chain, rope, or cable, except disabled vehicles which shall be removed from such freeway at the nearest interchange;

(13) Vehicles with deflated pneumatic, metal, or solid tires or continuous metal treads except maintenance vehicles;

(14) Any person standing on or near a roadway for the purpose of soliciting or selling to an occupant of any vehicle; or

(15) Overdimensional vehicles.

Source: Laws 1973, LB 45, § 33; R.S.1943, (1988), § 39-633; Laws 1993, LB 370, § 240; Laws 1993, LB 575, § 8; Laws 2002, LB 1105, § 457; Laws 2006, LB 853, § 18; Laws 2016, LB 977, § 23; Laws 2017, LB 339, § 201.

Operative Date: July 1, 2017

60-6,145. Official signs on controlled-access highway.

The Department of Transportation and local authorities shall erect and maintain at appropriate locations official signs on freeways under their respective jurisdictions apprising motorists of the restrictions placed upon the use of such highways by the Nebraska Rules of the Road. When the department or local authority posts such signs, it need not follow the usual rules and procedure of posting signs on or near freeways nor shall the department be required to conform with the formalities of public hearings. When such signs are erected, no person shall violate the restrictions stated on such signs.

Source: Laws 1973, LB 45, § 34; R.S.1943, (1988), § 39-634; Laws 1993, LB 370, § 241; Laws 2017, LB 339, § 202.

Operative Date: July 1, 2017

(h) RIGHT-OF-WAY

60-6,146. Vehicles approaching or entering intersection at same time; right-of-way; entering a highway or roadway.

(1) When two vehicles approach or enter an intersection from different roadways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(2) Notwithstanding the provisions of subsection (1) of this section, a vehicle entering a highway from an acceleration lane, a ramp, or any other approach road shall yield the right-of-way to a vehicle on the main roadway entering such merging area at the same time, regardless of whether the approach road is to the left or the right of the main roadway, unless posted signs indicate otherwise.

(3) The driver of a vehicle about to enter or cross a paved roadway from an unpaved roadway and who is not subject to control by a traffic control device shall yield the right-of-way to all vehicles approaching on such paved roadway.

(4) The right-of-way rules set forth in subsections (1) and (3) of this section are modified at through highways and otherwise as stated in the Nebraska Rules of the Road.

Source: Laws 1973, LB 45, § 35; R.S.1943, (1988), § 39-635; Laws 1993, LB 370, § 242.

At four-way stop signs, no driver has a preferred or favored status, and all have a duty to stop followed by a duty to use ordinary care as they proceed through the intersection. Salazar v. Nemec, 253 Neb. 298, 570 N.W.2d 366 (1997).

Under subsection (1) of this section, when a collision occurs in an ordinary city or country intersection, unless there is evidence that one of the vehicles was traveling at a very much greater rate of speed than the other, it is self-evident that the vehicles were reaching the intersection at approximately the same time. Workman v. Stehlik, 238 Neb. 666, 471 N.W.2d 760 (1991).

When two vehicles approach an intersection at the same time, the vehicle on the right has the immediate use of the intersection. Muirhead v. Gunst, 204 Neb. 1, 281 N.W.2d 207 (1979).

Vehicle on the right has the favored position but does not have an absolute right to proceed regardless of the circumstances. Crink v. Northern Nat. Gas Co., 200 Neb. 460, 263 N.W.2d 857 (1978).

Intersection right-of-way is a qualified, not absolute, right to proceed, exercising due care, in a lawful manner in preference to an opposing vehicle. Reese v. Mayer, 198 Neb. 499, 253 N.W.2d 317 (1977).

60-6,147. Vehicle turning left; yield right-of-way.

The driver of a vehicle who intends to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or approaching so close as to constitute an immediate hazard.

Source: Laws 1973, LB 45, § 36; R.S.1943, (1988), § 39-636; Laws 1993, LB 370, § 243.

In an intersection collision involving a vehicle turning left with a green light and a vehicle subsequently entering the intersection with a green light from the opposite direction, the determination of which vehicle was required to yield to the other pursuant to this section was a question of fact for the jury. Nguyen v. Rezac, 256 Neb. 458, 590 N.W.2d 375 (1999).

A driver is charged with exercising due diligence to determine whether it is safe to turn left on a roadway. Mitchell v. Kesting, 221 Neb. 506, 378 N.W.2d 188 (1985).

The degree of care required by this section was increased by the fact that the sun restricted the visibility of the left-turning driver. Ambrosio v. Price, 495 F.Supp. 381 (D. Neb. 1979).

60-6,148. Preferential right-of-way; stop and yield signs.

(1) Competent authority may provide for preferential right-of-way at an intersection and indicate such by stop signs or yield signs erected by such authorities.

(2) Except when directed to proceed by a peace officer or traffic control signal, every driver of a vehicle approaching an intersection where a stop is indicated by a stop sign shall stop at a clearly marked stop line or shall stop, if there is no such line, before entering the crosswalk on the near side of the intersection or, if no crosswalk is indicated, at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. After having stopped, such driver shall yield the right-of-way to any vehicle which has entered the intersection from another highway or which is

approaching so closely on such highway as to constitute an immediate hazard if such driver moved across or into such intersection.

(3) The driver of a vehicle approaching a yield sign shall slow to a speed reasonable under the existing conditions and, if required for safety to stop, shall stop at a clearly marked stop line or shall stop, if there is no such line, before entering the crosswalk on the near side of the intersection or, if no crosswalk is indicated, at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway. After slowing or stopping, such driver shall yield the right-of-way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard if such driver moved across or into such intersection.

Source: Laws 1973, LB 45, § 37; R.S.1943, (1988), § 39-637; Laws 1993, LB 370, § 244.

At four-way stop signs, no driver has a preferred or favored status, and all have a duty to stop followed by a duty to use ordinary care as they proceed through the intersection. Salazar v. Nemec, 253 Neb. 298, 570 N.W.2d 366 (1997).

60-6,149. Vehicle entering roadway from private road or driveway; yield right-of-way.

The driver of a vehicle emerging from an alley, driveway, private road, or building shall stop such vehicle immediately before driving onto a sidewalk and shall yield the right-of-way to any pedestrian approaching on any sidewalk. Before entering the highway, the driver shall yield the right-of-way to all vehicles approaching on such highway.

The driver of a vehicle entering an alley, building, private road, or driveway shall yield the right-of-way to any pedestrian approaching on any sidewalk.

Source: Laws 1973, LB 45, § 38; R.S.1943, (1988), § 39-638; Laws 1993, LB 370, § 245.

The statute requiring a driver of a vehicle emerging from a driveway onto a highway to yield the right-of-way to vehicles approaching on such highway applies to a 15-year-old boy riding a bicycle. McFarland v. King, 216 Neb. 92, 341 N.W.2d 920 (1983).

Jury damage award to defendant on counterclaim, in auto negligence case, reversed where defendant held negligent as matter of law. Rief v. Foy, 198 Neb. 572, 254 N.W.2d 86 (1977).

An automobile driver is required to see only those approaching vehicles which relative to speed and distance are within the radius which denotes the limit of danger. Laux v. Robinson, 195 Neb. 601, 239 N.W.2d 786 (1976).

A bicyclist "emerging from an alley, driveway, private road, or building" shall stop before entering a highway or road. Luellman v. Ambroz, 2 Neb. App. 855, 516 N.W.2d 627 (1994).

60-6,150. Moving a stopped, standing, or parked vehicle; yield right-of-way.

No person shall move a vehicle which is stopped, standing, or parked without yielding the right-of-way to all other vehicles and pedestrians affected by such movement and in no event until such movement can be made with reasonable safety.

Source: Laws 1973, LB 45, § 39; R.S.1943, (1988), § 39-639; Laws 1993, LB 370, § 246.

At four-way stop signs, no driver has a preferred or favored status, and all have a duty to stop followed by a duty to use ordinary care as they proceed through the intersection. Salazar v. Nemec, 253 Neb. 298, 570 N.W.2d 366 (1997).

60-6,151. Operation of vehicles upon the approach of emergency vehicles.

(1) Upon the immediate approach of an authorized emergency vehicle which makes use of proper audible or visual signals:

(a) The driver of any other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to and as close as possible to the right-hand edge or curb of the roadway or to either edge or curb of a one-way roadway, clear of any intersection, and shall stop and remain in such position until such emergency vehicle passes unless otherwise directed by any peace officer; and

(b) Any pedestrian using such roadway shall yield the right-of-way until such emergency vehicle passes unless otherwise directed by any peace officer.

(2) This section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

Source: Laws 1973, LB 45, § 40; R.S.1943, (1988), § 39-640; Laws 1993, LB 370, § 247.

A police vehicle enjoys privileges as an emergency vehicle as long as the officer operates emergency equipment in good faith belief that he or she is responding to an emergency. Maple v. City of Omaha, 222 Neb. 293, 384 N.W.2d 254 (1986).

Police department standard operating procedures are merely evidence of "proper audible or visual signals." Police officer exercised due regard in operating an emergency vehicle. Maple v. City of Omaha, 222 Neb. 293, 384 N.W.2d 254 (1986).

The trial court did not err in refusing to direct a verdict in favor of the plaintiff, who was injured when he was struck by a police car responding to an emergency call. Stephen v. City of Lincoln, 209 Neb. 792, 311 N.W.2d 889 (1981).

(i) PEDESTRIANS

60-6,152. Pedestrian obedience to traffic control devices and regulations.

(1) A pedestrian shall obey the instructions of any traffic control device specifically applicable to pedestrians unless otherwise directed by a peace officer.

(2) Pedestrians shall be subject to traffic and pedestrian-control signals as provided in the Nebraska Rules of the Road.

(3) At all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions set forth in the rules.

Source: Laws 1973, LB 45, § 41; R.S.1943, (1988), § 39-641; Laws 1993, LB 370, § 248.

Cross References

Duties of driver approaching blind or hearing-impaired person, see section 20-128.
Failure to observe blind person, see section 28-1314.
Failure to yield to pedestrian, assessment of points against operator's license, see section 60-4,182 et seq.

Unlawful use of white cane or guide dog, see section 28-1313.

60-6,152.01. Person operating wheelchair; rights and duties applicable to pedestrian.

Any disabled person operating a manual or motorized wheelchair on a sidewalk or across a roadway or shoulder in a crosswalk shall have all the rights and duties applicable to a pedestrian under the same circumstances.

Source: Laws 2015, LB 641, § 2.

60-6,153. Pedestrians' right-of-way in crosswalk; traffic control devices.

(1) Except at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided, when traffic control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way to a pedestrian crossing the roadway within a crosswalk who is in the lane in which the driver is proceeding or is in the lane immediately adjacent thereto by bringing his or her vehicle to a complete stop.

(2) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to stop.

(3) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

(4) At or adjacent to the intersection of two highways at which a path designated for bicycles and pedestrians is controlled by a traffic control signal, a pedestrian who lawfully enters a highway where the path crosses the highway shall have the right-of-way within the crossing with respect to vehicles and bicycles.

(5) The Department of Transportation and local authorities in their respective jurisdictions may, after an engineering and traffic investigation, designate unmarked crosswalk locations where pedestrian crossing is prohibited or where pedestrians shall yield the right-of-way to vehicles. Such restrictions shall be effective only when traffic control devices indicating such restrictions are in place.

Source: Laws 1973, LB 45, § 42; Laws 1979, LB 395, § 1; R.S.1943, (1988), § 39-642; Laws 1993, LB 370, § 249; Laws 2016, LB 716, § 1; Laws 2017, LB 339, § 203.
Operative Date: July 1, 2017

Cross References

Failure to yield to pedestrian, assessment of points against operator's license, see section 60-4,182 et seq.

The driver of a vehicle shall yield the right-of-way to a pedestrian within a crosswalk. Therkildsen v. Gottsch, 194 Neb. 729, 235 N.W.2d 622 (1975).

Pursuant to subsection (2) of this section, a pedestrian who stepped from the curb into traffic failed to prove causation to withstand a directed verdict because the evidence showed that the driver could not have avoided hitting the pedestrian even if the driver had seen the pedestrian step from the curb. Fidler v. Koster, 8 Neb. App. 884, 603 N.W.2d 165 (1999).

60-6,154. Crossing at other than crosswalks; yield right-of-way.

(1) Every pedestrian who crosses a roadway at any point other than within a marked crosswalk, or within an unmarked crosswalk at an intersection, shall yield the right-of-way to all vehicles upon the roadway.

(2) Any pedestrian who crosses a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(3) Between adjacent intersections at which traffic control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.

(4) Where a path designated for bicycles and pedestrians crosses a highway, a pedestrian who is in the crossing in accordance with the traffic control device shall have the right-of-way within the crossing with respect to vehicles and bicycles.

(5) No pedestrian shall cross a roadway intersection diagonally unless authorized by traffic control devices, and when authorized to cross diagonally, pedestrians shall cross only in accordance with the traffic control devices pertaining to such crossing movements.

(6) Local authorities and the Department of Transportation, by erecting appropriate official traffic control devices, may, within their respective jurisdictions, prohibit pedestrians from crossing any roadway in a business district or any designated highway except in a crosswalk.

Source: Laws 1973, LB 45, § 43; R.S.1943, (1988), § 39-643; Laws 1993, LB 370, § 250; Laws 2016, LB 716, § 2; Laws 2017, LB 339, § 204.

Operative Date: July 1, 2017

Violation of this provision is not determinative of the degree of a pedestrian's negligence, if any. Hennings v. Schufeldt, 222 Neb. 416, 384 N.W.2d 274 (1986).

Pedestrians may cross intersection diagonally when authorized by official traffic-control devices, but only in accordance with devices pertaining to such movements. Therkildsen v. Gottsch, 194 Neb. 729, 235 N.W.2d 622 (1975).

Pursuant to subsection (1) of this section, a pedestrian who stepped from the curb into traffic failed to prove causation to withstand a directed verdict because the evidence showed that the driver could not have avoided hitting the pedestrian even if the driver had seen the pedestrian step from the curb. Fidler v. Koster, 8 Neb. App. 884, 603 N.W.2d 165 (1999).

60-6,155. Pedestrians to use right half of crosswalk.

Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

Source: Laws 1973, LB 45, § 45; R.S.1943, (1988), § 39-645; Laws 1993, LB 370, § 251.

60-6,156. Pedestrians on highways and roadways; sidewalks and shoulders.

(1) Where a sidewalk is provided and its use is practicable, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway or shoulder.

(2) Where a sidewalk is not available and a shoulder is available, any pedestrian walking along and upon a highway shall walk only on the shoulder as far as practicable from the edge of the roadway.

(3) Where neither a sidewalk nor a shoulder is available, any pedestrian who walks along and upon a highway shall walk as near as practicable to the edge of the roadway and, if on a two-way roadway, shall walk only on the left side of such roadway.

Source: Laws 1973, LB 45, § 46; R.S.1943, (1988), § 39-646; Laws 1993, LB 370, § 252.

Violation of a statute is not negligence per se, but is merely evidence of negligence. Vanek v. Prohaska, 233 Neb. 848, 448 N.W.2d 573 (1989).

Where plaintiff is discovered walking on the traveled portion of the highway at the time of an accident, violation of a statute is not negligence per se but merely evidence of negligence. Hurlbut v. Landgren, 200 Neb. 413, 264 N.W.2d 174 (1978).

60-6,157. Pedestrians soliciting rides or business; prohibited acts; ordinance authorizing solicitation of contributions.

(1) Except as otherwise provided in subsection (3) of this section, no person shall stand in a roadway for the purpose of soliciting a ride, employment, contributions, or business from the occupant of any vehicle.

(2) No person shall stand on or in proximity to a highway for the purposes of soliciting the watching or guarding of any vehicle while parked or about to be parked on a highway.

(3)(a) Any municipality may, by ordinance, allow pedestrians over the age of eighteen to enter one or more roadways, except roadways that are part of the state highway system, at specified times and locations and approach vehicles when stopped by traffic control devices or traffic control signals for the purpose of soliciting contributions which are to be devoted to charitable or community betterment purposes.

(b) Any ordinance enacted pursuant to this subsection shall be a general ordinance which shall not exclude or give preference to any individual or the members of any organization, association, or group. Any ordinance whose terms or provisions do not strictly comply with this subsection is void.

Source: Laws 1973, LB 45, § 47; R.S.1943, (1988), § 39-647; Laws 1993, LB 370, § 253; Laws 2009, LB 278, § 1.

60-6,158. Driving through safety zone; prohibited.

The driver of a vehicle shall not at any time drive through or within a safety zone.

Source: Laws 1973, LB 45, § 48; R.S.1943, (1988), § 39-648; Laws 1993, LB 370, § 254.

60-6,159. Required position and method of turning; right-hand and left-hand turns; traffic control devices.

(1) Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(2) The driver of a vehicle intending to turn left at any intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and, after entering the intersection, the left turn shall be made so as to leave the intersection, as nearly as practicable, in the extreme left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered. Whenever practicable, the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(3) The Department of Transportation and local authorities in their respective jurisdictions may cause traffic control devices to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when such devices are so placed, no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such devices.

Source: Laws 1973, LB 45, § 50; R.S.1943, (1988), § 39-650; Laws 1993, LB 370, § 255; Laws 2017, LB 339, § 205.

Operative Date: July 1, 2017

60-6,160. Turning to proceed in opposite direction; limitation.

No vehicle shall be turned so as to proceed in the opposite direction upon any curve, upon the approach to or near the crest of a grade where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet, or at any place where such turns are prohibited by signs. No vehicle, except authorized emergency vehicles, shall be turned at any place on a freeway so as to proceed in the opposite direction.

Source: Laws 1973, LB 45, § 51; R.S.1943, (1988), § 39-651; Laws 1993, LB 370, § 256.

Violation of this section is a criminal offense within the meaning of the double jeopardy provisions of Article I, section 12, Nebraska Constitution. State v. Knoles, 199 Neb. 211, 256 N.W.2d 873 (1977).

60-6,161. Turning or moving right or left upon a roadway; required signals; signals prohibited.

(1) No person shall turn a vehicle or move right or left upon a roadway unless and until such movement can be made with reasonable safety nor without giving an appropriate signal in the manner provided in sections 60-6,162 and 60-6,163.

(2) A signal of intention to turn or move right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning.

(3) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided in such sections to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

(4) The brake and turnsignal lights required on vehicles by section 60-6,226 shall not be flashed on one side only on a disabled vehicle, flashed as a courtesy or do pass signal to operators of other vehicles approaching from the rear, or flashed on one side only of a parked vehicle except as may be necessary for compliance with this section.

Source: Laws 1973, LB 45, § 52; R.S.1943, (1988), § 39-652; Laws 1993, LB 370, § 257.

The giving of the statutorily required turn signal is not enough; one must exercise reasonable care under all the circumstances. Huntwork v. Voss, 247 Neb. 184, 525 N.W.2d 632 (1995).

A driver is charged with exercising due diligence to determine whether it is safe to turn left on a roadway. Mitchell v. Kesting, 221 Neb. 506, 378 N.W.2d 188 (1985).

60-6,162. Signals given by hand and arm or signal lights; signal lights required; exceptions.

(1) Any stop signal or turnsignal required by the Nebraska Rules of the Road shall be given either by means of the hand and arm or by signal lights except as otherwise provided in this section.

(2) With respect to any motor vehicle having four or more wheels manufactured or assembled, whether from a kit or otherwise, after January 1, 1954, designed or used for the purpose of carrying passengers or freight, or any trailer, in use on a highway, any required signal shall be given by the appropriate signal lights when the distance from the center of the top of the steering post to the left outside limit of the body, cab, or load of such motor vehicle or trailer exceeds twenty-four inches. Such measurement shall apply to any single vehicle or trailer and to any combination of vehicles or trailers. This subsection shall not apply during daylight hours to fertilizer trailers as defined in section 60-326 and implements of husbandry designed primarily or exclusively for use in agricultural operations.

(3) Under any condition when a hand and arm signal would not be visible both to the front and rear of the vehicle of such signaling driver for one hundred feet, the required signals shall be given by such a light or device as required by this section.

Source: Laws 1973, LB 45, § 53; Laws 1987, LB 216, § 1; R.S.1943, (1988), § 39-653; Laws 1993, LB 370, § 258; Laws 1995, LB 59, § 1; Laws 2003, LB 238, § 5; Laws 2005, LB 274, § 242.

60-6,163. Hand and arm signals; how given.

(1) Except as provided in subsection (2) of this section, all hand and arm signals required by the Nebraska Rules of the Road shall be given from the left side of the vehicle with the left arm in the following manner and such signals shall indicate as follows:

(a) Left turn—hand and arm extended to the left horizontally;

(b) Right turn—hand and forearm extended upward; and

(c) Stop or decrease speed—hand and arm extended downward.

(2) Any person operating a bicycle may signal a right turn by fully extending the right arm and pointing.

Source: Laws 1973, LB 45, § 54; R.S.1943, (1988), § 39-654; Laws 1993, LB 370, § 259; Laws 1993, LB 575, § 9.

(k) STOPPING, STANDING, PARKING, AND BACKING UP

60-6,164. Stopping, parking, or standing upon a roadway, freeway, or bridge; limitations; duties of driver.

(1) No person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon a roadway outside of a business or residential district when it is practicable to stop, park, or leave such vehicle off such part of a highway, but in any event an unobstructed width of the roadway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicle shall be available from a distance of two hundred feet in each direction upon such highway. Such parking, stopping, or standing shall in no event exceed twenty-four hours.

(2) No person shall stop, park, or leave standing any vehicle on a freeway except in areas designated or unless so directed by a peace officer, except that when a vehicle is disabled or inoperable or the driver of the vehicle is ill or incapacitated, such vehicle shall be permitted to park, stop, or stand on the shoulder facing in the direction of travel with all wheels and projecting parts of such vehicle completely clear of the traveled lanes, but in no event shall such parking, standing, or stopping upon the shoulder of a freeway exceed twelve hours.

(3) No person, except law enforcement, fire department, emergency management, public or private ambulance, or authorized Department of Transportation or local authority personnel, shall loiter or stand or park any vehicle upon any bridge, highway, or structure which is located above or below or crosses over or under the roadway of any highway or approach or exit road thereto.

(4) Whenever a vehicle is disabled or inoperable in a roadway or for any reason obstructs the regular flow of traffic for reasons other than an accident, the driver shall move or cause the vehicle to be moved as soon as practical so as to not obstruct the regular flow of traffic.

(5) This section does not apply to the driver of any vehicle which is disabled while on the roadway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position until such time as it can be removed pursuant to subsection (4) of this section.

Source: Laws 1973, LB 45, § 70; R.S.1943, (1988), § 39-670; Laws 1993, LB 370, § 260; Laws 1996, LB 43, § 11; Laws 2007, LB 561, § 2; Laws 2017, LB 339, § 206.

Operative Date: July 1, 2017

A prima facie violation of this section was shown by presenting evidence that the defendant stopped and left a truck standing on the highway, shifting the burden to the defendant to create a jury question by presenting evidence the truck was not stopped and left standing or it was not practicable to move the truck. Tapp v. Blackmore Ranch, Inc., 254 Neb. 40, 575 N.W.2d 341 (1998).

Evidence of violation of this section is evidence of negligence or contributory negligence. Horst v. Johnson, 237 Neb. 155, 465 N.W.2d 461 (1991).

One who claims that his vehicle was unavoidably stalled and disabled on the highway and that, therefore, the exception of subsection (4) of this section applies had the burden of proving that he comes within that exception. Porter v. Black, 205 Neb. 699, 289 N.W.2d 760 (1980).

Subsection (1) does not apply to disabled vehicles, if the driver thereof observes such requirement so far as he is able and weather permits. Vrba v. Kelly, 198 Neb. 723, 255 N.W.2d 269 (1977).

60-6,165. Persons authorized to remove vehicles; cost of removal; lien.

(1) Whenever any peace officer, or any authorized employee of a law enforcement agency who is employed by a political subdivision of the state and specifically empowered by ordinance to act, finds a vehicle standing upon a highway in violation of any of the provisions of the Nebraska Rules of the Road, such individual may remove the vehicle, have such vehicle removed, or require the driver or other person in charge of the vehicle to move such vehicle to a position off the roadway of such highway or from such highway.

(2) The owner or other person lawfully entitled to the possession of any vehicle towed or stored shall be charged with the reasonable cost of towing and storage fees. Any such towing or storage fee shall be a lien upon the vehicle prior to all other claims. Any person towing or storing a vehicle shall be entitled to retain possession of such vehicle until such charges are paid. The lien provided for in this section shall not apply to the contents of any vehicle.

Source: Laws 1973, LB 45, § 71; Laws 1984, LB 482, § 3; Laws 1988, LB 833, § 2; R.S.1943, (1988), § 39-671; Laws 1993, LB 370, § 261.

60-6,166. Stopping, standing, or parking prohibited; exceptions.

(1) Except when necessary to avoid conflict with other traffic or when in compliance with law or the directions of a peace officer or traffic control device, no person shall:

(a) Stop, stand, or park any vehicle:

(i) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(ii) On a sidewalk;

(iii) Within an intersection;

(iv) On a crosswalk;

(v) Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone unless the Department of Transportation or the local authority indicates a different length by signs or markings;

(vi) Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;

(vii) Upon any bridge or other elevated structure over a highway or within a highway tunnel;

(viii) On any railroad track; or

(ix) At any place where official signs prohibit stopping;

(b) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

(i) In front of a public or private driveway;

(ii) Within fifteen feet of a fire hydrant;

(iii) Within twenty feet of a crosswalk at an intersection;

(iv) Within thirty feet of any flashing signal, stop sign, yield sign, or other traffic control device located at the side of a roadway;

(v) Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of such entrance when properly signposted; or

(vi) At any place where official signs prohibit standing; or

(c) Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers:

(i) Within fifty feet of the nearest rail of a railroad crossing; or

(ii) At any place where official signs prohibit parking.

(2) No person shall move a vehicle not lawfully under his or her control into any such prohibited area or away from a curb such a distance as shall be unlawful.

Source: Laws 1973, LB 45, § 72; R.S.1943, (1988), § 39-672; Laws 1993, LB 370, § 262; Laws 2017, LB 339, § 207.

Operative Date: July 1, 2017

60-6,167. Parking regulations; signs; control by Department of Transportation or local authority.

(1) Except as otherwise provided in this section, any vehicle stopped or parked upon a two-way roadway where parking is permitted shall be so stopped or parked with the right-hand wheels parallel to and within twelve inches of the right-hand curb or edge of such roadway. No vehicle shall be parked upon a roadway when there is a shoulder adjacent to the roadway which is available for parking.

(2) Except when otherwise provided by a local authority, every vehicle stopped or parked upon a one-way roadway shall be so stopped or parked parallel to the curb or edge of such roadway, in the direction of authorized traffic movement, with its right-hand wheels within twelve inches of the right-hand curb or edge of the roadway or its left-hand wheels within twelve inches of the left-hand curb or edge of such roadway.

(3) A local authority may permit angle or center parking on any roadway, except that angle or center parking shall not be permitted on any federal-aid highway or on any part of the state highway system unless the Director-State Engineer has determined that such roadway is of sufficient width to permit angle or center parking without interfering with the free movement of traffic.

(4) The Department of Transportation or a local authority may prohibit or restrict stopping, standing, or parking on highways under its respective jurisdiction outside the corporate limits of any city or village and erect and maintain proper and adequate signs thereon. No person shall stop, stand, or park any vehicle in violation of the restrictions stated on such signs.

Source: Laws 1973, LB 45, § 73; R.S.1943, (1988), § 39-673; Laws 1993, LB 370, § 263; Laws 1993, LB 575, § 18; Laws 2017, LB 339, § 208.

Operative Date: July 1, 2017

60-6,168. Unattended motor vehicles; conditions.

No person having control or charge of a motor vehicle shall allow such vehicle to stand unattended on a highway without first: (1) Stopping the motor of such vehicle; (2) except for vehicles equipped with motor starters that may be actuated without a key, locking the ignition and removing the key from the ignition; (3) effectively setting the brakes thereon; and (4) when standing upon any roadway, turning the front wheels of such vehicle to the curb or side of such roadway.

Source: Laws 1973, LB 45, § 74; R.S.1943, (1988), § 39-674; Laws 1993, LB 370, § 264; Laws 2017, LB 263, § 74.
Operative Date: August 24, 2017

60-6,169. Limitations on backing vehicles.

(1) The driver of a vehicle shall not back such vehicle on any roadway unless such movement can be made with safety and without interfering with other traffic.

(2) The driver of a vehicle shall not back such vehicle upon any roadway or shoulder of any freeway.

Source: Laws 1973, LB 45, § 75; R.S.1943, (1988), § 39-675; Laws 1993, LB 370, § 265.

(l) SPECIAL STOPS

60-6,170. Obedience to signal indicating approach of train; prohibited acts.

(1) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances set forth in this section, the driver of such vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad and shall not proceed until he or she can do so safely. The requirements of this subsection shall apply when:

(a) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;

(b) A crossing gate is lowered or a flagperson gives or continues to give a signal of the approach or passage of a railroad train;

(c) A railroad train approaching within approximately one-quarter mile of the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard; or

(d) An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

(2) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

Source: Laws 1973, LB 45, § 55; R.S.1943, (1988), § 39-655; Laws 1993, LB 370, § 266.

If there is a reasonable excuse for not seeing an approaching train, such as an obstruction preventing one from seeing the train or a distraction diverting the attention, the question whether traversing a railroad crossing is reasonable is a matter for the jury. Crewdson v. Burlington Northern R. Co., 234 Neb. 631, 452 N.W.2d 270 (1990).

Where train was plainly visible and had emitted a signal within approximately one quarter of a mile from grade crossing which was audible from that distance, this section was clearly applicable to action of decedent prior to collision with train. Wyatt v. Burlington Northern, Inc., 209 Neb. 212, 306 N.W.2d 902 (1981).

60-6,171. Railroad crossing stop signs; jurisdiction.

The Department of Transportation and local authorities on highways under their respective jurisdictions may designate particularly dangerous highway grade crossings of railroads and erect stop signs at the crossings. When such stop signs are erected, the driver of any vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad and shall proceed only upon exercising due care.

Source: Laws 1973, LB 45, § 56; R.S.1943, (1988), § 39-656; Laws 1993, LB 370, § 267; Laws 2017, LB 339, § 209.
Operative Date: July 1, 2017

60-6,172. Buses and school buses required to stop at all railroad grade crossings; exceptions.

(1) The driver of any bus carrying passengers for hire or of any school bus, before crossing at grade any track of a railroad, shall stop such vehicle within fifty feet but not less than fifteen feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, except as otherwise provided in the Nebraska Rules of the Road. The driver shall not proceed until he or she can do so safely. After stopping as required by this section and upon proceeding when it is safe to do so, the driver of any such vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such track and the driver shall not shift gears while crossing such track.

(2) No stop shall be made at any such crossing when a peace officer or a flagperson directs traffic to proceed or at an abandoned or exempted grade crossing which is clearly marked as such by or with the consent of competent authority when such markings can be read from the driver's position.

Source: Laws 1973, LB 45, § 57; Laws 1974, LB 863, § 1; R.S.1943, (1988), § 39-657; Laws 1993, LB 370, § 268.

60-6,173. Grade crossings; certain carriers; required to stop; exceptions.

(1) The driver of any vehicle which is required to be placarded pursuant to section 75-364, before crossing at a grade any track of a railroad on streets and highways, shall stop such vehicle

not more than fifty feet nor less than fifteen feet from the nearest rail or railroad and while stopped shall listen and look in both directions along the track for an approaching train. The driver shall not proceed until precaution has been taken to ascertain that the course is clear.

(2) The requirements of subsection (1) of this section shall not apply:

(a) When a peace officer or a flagperson directs traffic to proceed;

(b) At an abandoned or exempted grade crossing which is clearly marked as such by or with the consent of competent authority when such markings can be read from the driver's position; or

(c) At railroad tracks used exclusively for industrial switching purposes within a business district.

(3) Nothing in this section shall be deemed to exempt the driver of any vehicle from compliance with the other requirements contained in the Nebraska Rules of the Road.

Source: Laws 1973, LB 45, § 58; R.S.1943, (1988), § 39-658; Laws 1993, LB 370, § 269; Laws 1998, LB 1056, § 1.

60-6,174. Moving heavy equipment at railroad grade crossings; required to stop.

(1) No person shall operate or move any crawler-type tractor, any steam shovel, any derrick, any roller, or any equipment or structure having a normal operating speed of ten miles per hour or less or a vertical body or load clearance of less than one-half inch per foot of the distance between any two adjacent axles or in any event of less than nine inches, measured above the level surface of a roadway, upon or across any track at a railroad grade crossing without first complying with this section.

(2) Before making any such crossing, the person operating or moving any such vehicle or equipment shall first stop the same not less than fifteen feet nor more than fifty feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train. The person shall not proceed until the crossing can be made safely.

(3) No such crossing shall be made while warning is given by an automatic signal, by crossing gates, by a flagperson, or otherwise of the immediate approach of a railroad train or car. If a flagperson is provided by the railroad, movement over the crossing shall be under his or her direction.

Source: Laws 1973, LB 45, § 59; R.S.1943, (1988), § 39-659; Laws 1993, LB 370, § 270.

60-6,175. School bus; safety requirements; use of stop signal arm; use of warning signal lights; violations; penalty.

(1) Upon meeting or overtaking, from the front or rear, any school bus on which the yellow warning signal lights are flashing, the driver of a motor vehicle shall reduce the speed of such vehicle to not more than twenty-five miles per hour, shall bring such vehicle to a complete stop when the school bus is stopped, the stop signal arm is extended, and the flashing red signal lights are turned on, and shall remain stopped until the flashing red signal lights are turned off, the stop signal arm is retracted, and the school bus resumes motion. This section shall not apply to

approaching traffic in the opposite direction on a divided highway or to approaching traffic when there is displayed a sign as provided in subsection (8) of this section directing traffic to proceed. Any person violating this subsection shall be guilty of a Class IV misdemeanor, shall be fined five hundred dollars, and shall be assessed points on his or her motor vehicle operator's license pursuant to section 60-4,182.

(2) Except as provided in subsection (8) of this section, the driver of any school bus, when stopping to receive or discharge pupils, shall turn on flashing yellow warning signal lights at a distance of not less than three hundred feet when inside the corporate limits of any city or village and not less than five hundred feet nor more than one thousand feet in any area outside the corporate limits of any city or village from the point where such pupils are to be received or discharged from the bus. At the point of receiving or discharging pupils, the bus driver shall bring the school bus to a stop, extend a stop signal arm, and turn on the flashing red signal lights. After receiving or discharging pupils, the bus driver shall turn off the flashing red signal lights, retract the stop signal arm, and then proceed on the route.

(3)(a) Except as provided in subdivision (b) of this subsection, no school bus shall stop to load or unload pupils outside of the corporate limits of any city or village or on any part of the state highway system within the corporate limits of a city or village, unless there is at least four hundred feet of clear vision in each direction of travel.

(b) If four hundred feet of clear vision in each direction of travel is not possible as determined by the school district, a school bus may stop to load or unload pupils if there is proper signage installed indicating that a school bus stop is ahead.

(4) All pupils shall be received and discharged from the right front entrance of every school bus. If such pupils must cross a roadway, the bus driver shall instruct such pupils to cross in front of the school bus and the bus driver shall keep such school bus halted with the flashing red signal lights turned on and the stop signal arm extended until such pupils have reached the opposite side of such roadway.

(5) The driver of a vehicle upon a divided highway need not stop upon meeting or passing a school bus which is on a different roadway or when upon a freeway and such school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

(6) Every school bus shall bear upon the front and rear thereof plainly visible signs containing the words school bus in letters not less than eight inches high.

(7) When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school or school-sponsored activities, all markings thereon indicating school bus shall be covered or concealed. The stop signal arm and system of flashing yellow warning signal lights and flashing red signal lights shall not be operable through the usual controls.

(8) When a school bus is (a) parked in a designated school bus loading area which is out of the flow of traffic and which is adjacent to a school site or (b) parked on a roadway which possesses more than one lane of traffic flowing in the same direction and which is adjacent to a school site, the bus driver shall engage only the hazard warning flasher lights when receiving or discharging pupils if a school bus loading area warning sign is displayed. Such signs shall not be directly attached to any school bus but shall be free standing and placed at the rear of a parked school bus or line of parked school buses. No school district shall utilize a school bus loading area warning sign unless such sign complies with the requirements of section 60-6,176.

Source: Laws 1973, LB 45, § 60; Laws 1974, LB 863, § 2; Laws 1977, LB 41, § 11; Laws 1987, LB 347, § 1; R.S.1943, (1988), § 39-660; Laws 1993, LB 370, § 271; Laws 1993, LB 575, § 10; Laws 2012, LB 1039, § 2; Laws 2013, LB 500, § 1.

60-6,176. School bus loading area warning signs; Department of Transportation; duties.

The Department of Transportation shall by rule and regulation adopt and promulgate uniform standards for school bus loading area warning signs. Such standards shall include requirements for the size, material, construction, and required wording. No school district shall use a school bus loading area warning sign unless such sign complies with all rules and regulations adopted and promulgated by the department. The cost of any sign shall be an obligation of the school district.

Source: Laws 1987, LB 347, § 2; R.S.1943, (1988), § 39-660.01; Laws 1993, LB 370, § 272; Laws 2017, LB 339, § 210.
Operative Date: July 1, 2017

60-6,177. Signs relating to overtaking and passing school buses.

The Department of Transportation shall post on highways of the state highway system outside of business and residential districts signs to the effect that it is unlawful to pass school buses stopped to load or unload children. Such signs shall be adequate in size and number to properly inform the public of the provisions relative to such passing.

Source: Laws 1973, LB 45, § 61; R.S.1943, (1988), § 39-661; Laws 1993, LB 370, § 273; Laws 2017, LB 339, § 211.
Operative Date: July 1, 2017

(m) MISCELLANEOUS RULES

60-6,178. Driving upon sidewalk; prohibited; exception.

No person shall drive any vehicle upon a sidewalk except upon a permanent or duly authorized temporary driveway.

Source: Laws 1973, LB 45, § 76; R.S.1943, (1988), § 39-676; Laws 1993, LB 370, § 274.

60-6,179. Overloading front seat or obstructing driver; prohibited.

(1) No person shall drive a motor vehicle when it is so loaded, or when there is in the front seat such a number of persons, exceeding three, as to obstruct the view of the driver to the front

or sides of the vehicle or to interfere with the driver's control over the driving mechanism of such vehicle.

(2) No passenger in a vehicle shall ride in such a position as to interfere with the driver's view ahead or to the sides or to interfere with the driver's control over the driving mechanism of such vehicle.

Source: Laws 1973, LB 45, § 77; Laws 1975, LB 252, § 1; R.S.1943, (1988), § 39-677; Laws 1993, LB 370, § 275.

60-6,179.01. Use of handheld wireless communication device; prohibited acts; enforcement; violation; penalty.

(1) This section does not apply to an operator of a commercial motor vehicle if section 60-6,179.02 applies.

(2) Except as otherwise provided in subsection (3) of this section, no person shall use a handheld wireless communication device to read a written communication, manually type a written communication, or send a written communication while operating a motor vehicle which is in motion.

(3) The prohibition in subsection (2) of this section does not apply to:

(a) A person performing his or her official duties as a law enforcement officer, a firefighter, an ambulance driver, or an emergency medical technician; or

(b) A person operating a motor vehicle in an emergency situation.

(4) Enforcement of this section by state or local law enforcement agencies shall be accomplished only as a secondary action when a driver of a motor vehicle has been cited or charged with a traffic violation or some other offense.

(5) Any person who violates this section shall be guilty of a traffic infraction. Any person who is found guilty of a traffic infraction under this section shall be assessed points on his or her motor vehicle operator's license pursuant to section 60-4,182 and shall be fined:

(a) Two hundred dollars for the first offense;

(b) Three hundred dollars for a second offense; and

(c) Five hundred dollars for a third and subsequent offense.

(6) For purposes of this section:

(a) Commercial motor vehicle has the same meaning as in section 75-362;

(b)(i) Handheld wireless communication device means any device that provides for written communication between two or more parties and is capable of receiving, displaying, or transmitting written communication.

(ii) Handheld wireless communication device includes, but is not limited to, a mobile or cellular telephone, a text messaging device, a personal digital assistant, a pager, or a laptop computer.

(iii) Handheld wireless communication device does not include an electronic device that is part of the motor vehicle or permanently attached to the motor vehicle or a handsfree wireless communication device; and

(c) Written communication includes, but is not limited to, a text message, an instant message, electronic mail, and Internet web sites.

Source: Laws 2010, LB 945, § 3; Laws 2012, LB 751, § 44; Laws 2014, LB 983, § 55.

60-6,179.02. Operator of commercial motor vehicle; operator of certain passenger motor vehicle; operator of school bus; texting while driving prohibited; exception; use of handheld mobile telephone while driving prohibited; exception; violation; penalty.

(1)(a) Except as otherwise provided in subdivision (1)(b) of this section, no operator of a commercial motor vehicle or a motor vehicle designed or used to transport between nine and fifteen passengers, including the driver, not for direct compensation, if the vehicle does not otherwise meet the definition of a commercial motor vehicle, shall engage in texting while driving such vehicle.

(b) Texting while driving is permissible by an operator of a commercial motor vehicle or a motor vehicle designed or used to transport between nine and fifteen passengers, including the driver, not for direct compensation, if the vehicle does not otherwise meet the definition of a commercial motor vehicle, when necessary to communicate with law enforcement officials or other emergency services.

(2)(a) Except as otherwise provided in subdivision (2)(b) of this section, no operator of a commercial motor vehicle or a motor vehicle designed or used to transport between nine and fifteen passengers, including the driver, not for direct compensation, if the vehicle does not otherwise meet the definition of a commercial motor vehicle, shall use a handheld mobile telephone while driving and no motor carrier shall allow or require its operators to use a handheld mobile telephone while driving such vehicle.

(b) Using a handheld mobile telephone is permissible by an operator of a commercial motor vehicle or a motor vehicle designed or used to transport between nine and fifteen passengers, including the driver, not for direct compensation, if the vehicle does not otherwise meet the definition of a commercial motor vehicle, when necessary to communicate with law enforcement officials or other emergency services.

(3)(a) Except as otherwise provided in subdivision (3)(b) of this section, no operator of a school bus shall engage in texting during school bus operations.

(b) Texting while driving is permissible by an operator of a school bus during school bus operations when necessary to communicate with law enforcement officials or other emergency services.

(4)(a) Except as otherwise provided in subdivision (4)(b) of this section, no operator of a school bus shall use a handheld mobile telephone during school bus operations.

(b) Using a handheld mobile telephone is permissible by an operator of a school bus during school bus operations when necessary to communicate with law enforcement officials or other emergency services.

(5) Any person who violates this section shall be guilty of a traffic infraction. Any person who is found guilty of a traffic infraction under this section shall be subject to disqualification as provided in section 60-4,168, shall be assessed points on his or her motor vehicle operator's license pursuant to section 60-4,182, and shall be fined:

(a) Two hundred dollars for the first offense;

(b) Three hundred dollars for a second offense; and

(c) Five hundred dollars for a third and subsequent offense.

(6) For purposes of this section:

(a) Commercial motor vehicle has the same meaning as in section 75-362;

(b) Driving means operating a commercial motor vehicle, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. Driving does not include operating a commercial motor vehicle when the operator moves the vehicle to the side of, or off, a highway and halts in a location where the vehicle can safely remain stationary;

(c) Electronic device includes, but is not limited to, a cellular telephone; a personal digital assistant; a pager; a computer; or any other device used to input, write, send, receive, or read text;

(d) Mobile telephone means a mobile communication device that falls under or uses any commercial mobile radio service as defined in regulations of the Federal Communications Commission, 47 C.F.R. 20.3. Mobile telephone does not include two-way or citizens band radio services;

(e) School bus operations means the use of a school bus to transport school children or school personnel;

(f)(i) Texting means manually entering alphanumeric text into, or reading text from, an electronic device. This action includes, but is not limited to, short message service, emailing, instant messaging, a command or request to access an Internet web page, pressing more than a single button to initiate or terminate a voice communication using a mobile telephone, or engaging in any other form of electronic text retrieval or entry for present or future communication.

(ii) Texting does not include:

(A) Inputting, selecting, or reading information on a global positioning system or navigation system;

(B) Pressing a single button to initiate or terminate a voice communication using a mobile telephone; or

(C) Using a device capable of performing multiple functions, including, but not limited to, fleet management systems, dispatching devices, smartphones, citizens band radios, and music players, for a purpose other than texting; and

(g) Use a handheld mobile telephone means:

(i) Using at least one hand to hold a mobile telephone to conduct a voice communication;

(ii) Dialing or answering a mobile telephone by pressing more than a single button; or

(iii) Reaching for a mobile telephone in a manner that requires a driver to maneuver so that he or she is no longer in a seated driving position and restrained by a seat belt that is installed in accordance with 49 C.F.R. 393.93 and adjusted in accordance with the vehicle manufacturer's instructions.

Source: Laws 2012, LB 751, § 45; Laws 2014, LB 983, § 56.

60-6,180. Opening and closing vehicle doors; restriction.

No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so and it can be done without interfering with the movement of other traffic, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload property or passengers.

Source: Laws 1973, LB 45, § 78; R.S.1943, (1988), § 39-678; Laws 1993, LB 370, § 276.

60-6,181. Traversing defiles, canyons, or mountain highways; audible warning.

The driver of a motor vehicle traversing defiles, canyons, or mountain highways shall hold such motor vehicle under control and as near the right-hand side of the highway as reasonably possible and, upon approaching any curve where the view is obstructed within a distance of two hundred feet along the highway, shall give audible warning with a horn or other device.

Source: Laws 1973, LB 45, § 79; R.S.1943, (1988), § 39-679; Laws 1993, LB 370, § 277.

60-6,182. Traveling on a downgrade; gears; position.

The driver of a motor vehicle when traveling upon a downgrade upon any highway shall not coast with the gears of such vehicle in neutral.

Source: Laws 1973, LB 45, § 80; R.S.1943, (1988), § 39-680; Laws 1993, LB 370, § 278.

60-6,183. Following fire apparatus in response to an alarm; prohibited.

The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm.

Source: Laws 1973, LB 45, § 81; R.S.1943, (1988), § 39-681; Laws 1993, LB 370, § 279.

60-6,184. Restrictions on driving over unprotected fire hose.

No vehicle shall be driven over unprotected hose of a fire department when laid down on any highway or private road or driveway, in use or to be used at any fire or alarm of fire, without the consent of the fire department official in command.

Source: Laws 1973, LB 45, § 82; R.S.1943, (1988), § 39-682; Laws 1993, LB 370, § 280.

(n) SPEED RESTRICTIONS

60-6,185. Basic rule; speed.

No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing.

A person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hillcrest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

Source: Laws 1993, LB 370, § 281.

Cross References

Operator's license, assessment of points for speeding, see section 60-4,182 et seq.

This section is not unconstitutional. State v. Padley, 195 Neb. 358, 237 N.W.2d 883 (1976).

Unreasonable classification of persons is not created hereby. State ex rel. Douglas v. Gradwohl, 194 Neb. 745, 235 N.W.2d 854 (1975).

60-6,186. Speed; maximum limits; signs.

(1) Except when a special hazard exists that requires lower speed for compliance with section 60-6,185, the limits set forth in this section and sections 60-6,187, 60-6,188, 60-6,305, and 60-6,313 shall be the maximum lawful speeds unless reduced pursuant to subsection (2) of this section, and no person shall drive a vehicle on a highway at a speed in excess of such maximum limits:

(a) Twenty-five miles per hour in any residential district;

(b) Twenty miles per hour in any business district;

(c) Fifty miles per hour upon any highway that is not dustless surfaced and not part of the state highway system;

(d) Fifty-five miles per hour upon any dustless-surfaced highway not a part of the state highway system;

(e) Sixty miles per hour upon any part of the state highway system other than an expressway or a freeway, except that the Department of Transportation may, where existing design and traffic conditions allow, according to an engineering study, authorize a speed limit five miles per hour greater;

(f) Sixty-five miles per hour upon an expressway that is part of the state highway system;

(g) Sixty-five miles per hour upon a freeway that is part of the state highway system but not part of the National System of Interstate and Defense Highways; and

(h) Seventy-five miles per hour upon the National System of Interstate and Defense Highways, except that the maximum speed limit shall be sixty miles per hour for:

(i) Any portion of the National System of Interstate and Defense Highways located in Douglas County; and

(ii) That portion of the National System of Interstate and Defense Highways designated as Interstate 180 in Lancaster County and Interstate 129 in Dakota County.

(2) The maximum speed limits established in subsection (1) of this section may be reduced by the Department of Transportation or by local authorities pursuant to section 60-6,188 or 60-6,190.

(3) The Department of Transportation and local authorities may erect and maintain suitable signs along highways under their respective jurisdictions in such number and at such locations as

they deem necessary to give adequate notice of the speed limits established pursuant to subsection (1) or (2) of this section upon such highways.

Source: Laws 1973, LB 45, § 62; Laws 1974, LB 873, § 1; Laws 1975, LB 381, § 1; Laws 1977, LB 256, § 1; Laws 1987, LB 430, § 1; R.S.1943, (1988), § 39-662; Laws 1993, LB 370, § 282; Laws 1996, LB 901, § 7; Laws 2007, LB 35, § 2; Laws 2017, LB 339, § 212.

Operative Date: July 1, 2017

Cross References

Operator's license, assessment of points for speeding, see section 60-4,182 et seq.

The statute requiring a driver of a vehicle emerging from a driveway onto a highway to yield the right-of-way to vehicles approaching on such highway applies to a 15-year-old boy riding a bicycle. McFarland v. King, 216 Neb. 92, 341 N.W.2d 920 (1983).

This section is not unconstitutional. State v. Padley, 195 Neb. 358, 237 N.W.2d 883 (1976).

Unreasonable classification of persons is not created hereby. State ex rel. Douglas v. Gradwohl, 194 Neb. 745, 235 N.W.2d 854 (1975).

60-6,187. Special speed limitations; motor vehicle towing a mobile home; motor-driven cycle.

(1) No person shall operate any motor vehicle when towing a mobile home at a rate of speed in excess of fifty miles per hour.

(2)(a) A person may operate any motor-driven cycle at a speed in excess of thirty-five miles per hour upon a roadway at nighttime if such motor-driven cycle is equipped with a headlight or headlights capable of revealing a person or vehicle in such roadway at least three hundred feet ahead and with a taillight on the rear exhibiting a red light visible, under normal atmospheric conditions, from a distance of at least five hundred feet to the rear of such motor-driven cycle.

(b) A person may operate any motor-driven cycle at a speed in excess of twenty-five miles per hour, but not more than thirty-five miles per hour, upon a roadway at nighttime if such motor-driven cycle is equipped with a headlight or headlights capable of revealing a person or vehicle in such roadway at least one hundred feet ahead, but less than three hundred feet ahead, and with a taillight on the rear exhibiting a red light visible, under normal atmospheric conditions, from a distance of at least five hundred feet to the rear of such motor-driven cycle.

(c) A person shall not operate any motor-driven cycle upon a roadway at nighttime if the headlight or headlights do not reveal a person or vehicle in such roadway at least one hundred feet ahead, or the taillight is not visible, under normal atmospheric conditions, from a distance of at least five hundred feet to the rear of such motor-driven cycle.

Source: Laws 1973, LB 45, § 66; Laws 1974, LB 873, § 2; Laws 1975, LB 381, § 2; Laws 1977, LB 256, § 2; Laws 1979, LB 23, § 2; Laws 1987, LB 430, § 2; Laws 1987, LB 504, § 2; Laws 1990, LB 369, § 1; R.S.Supp. 1992, § 39-666; Laws 1993, LB 370, § 283; Laws 1996, LB 901, § 8; Laws 2005, LB 80, § 1.

Cross References

Livestock forage vehicles, speed limits, see section 60-6,305.
Mopeds, maximum speed, see section 60-6,313.
Operator's license, assessment of points for speeding, see section 60-4,182 et seq.

Unreasonable classification of persons is not created hereby. State ex rel. Douglas v. Gradwohl, 194 Neb. 745, 235 N.W.2d 854 (1975).

60-6,188. Construction zone; signs; Director-State Engineer; authority.

(1) The maximum speed limit through any maintenance, repair, or construction zone on the state highway system shall be thirty-five miles per hour in rural areas and twenty-five miles per hour in urban areas.

(2) Such speed limits shall take effect only after appropriate signs giving notice of the speed limit are erected or displayed in a conspicuous place in advance of the area where the maintenance, repair, or construction activity is or will be taking place. Such signs shall conform to the manual and shall be regulatory signs imposing a legal obligation and restriction on all traffic proceeding into the maintenance, construction, or repair zone. The signs may be displayed upon a fixed, variable, or movable stand. While maintenance, construction, or repair is being performed, the signs may be mounted upon moving Department of Transportation vehicles displaying such signs well in advance of the maintenance zone.

(3) The Director-State Engineer may increase the speed limit through any highway maintenance, repair, or construction zone in increments of five miles per hour if the speed set does not exceed the maximum speed limits established in sections 60-6,186, 60-6,187, 60-6,189, 60-6,190, 60-6,305, and 60-6,313. The Director-State Engineer may delegate the authority to raise speed limits through any maintenance, repair, or construction zone to any department employee in a supervisory capacity or may delegate such authority to a county, municipal, or local engineer who has the duty to maintain the state highway system in such jurisdiction if the maintenance is performed on behalf of the department by contract with the local authority. Such increased speed limit through a maintenance, repair, or construction zone shall be effective when the Director-State Engineer or any officer to whom authority has been delegated gives a written order for such increase and signs posting such speed limit are erected or displayed.

(4) The Department of Transportation shall post signs in maintenance, repair, or construction zones which inform motorists that the fine for exceeding the posted speed limit in such zones is doubled.

Source: Laws 1993, LB 370, § 284; Laws 1996, LB 901, § 9; Laws 2017, LB 339, § 213.
Operative Date: July 1, 2017

60-6,189. Driving over bridges; maximum speed; determination by Department of Transportation or local authority; effect.

(1) No person shall drive a vehicle over any public bridge, causeway, viaduct, or other elevated structure at a speed which is greater than the maximum speed which can be maintained

with safety thereon when such structure is posted with signs as provided in subsection (2) of this section.

(2) The Department of Transportation or a local authority may conduct an investigation of any bridge or other elevated structure constituting a part of a highway under its jurisdiction, and if it finds that such structure cannot safely withstand vehicles traveling at the speed otherwise permissible, the department or local authority shall determine and declare the maximum speed of vehicles which such structure can safely withstand and shall cause suitable signs stating such maximum speed to be erected and maintained before each end of such structure.

(3) Upon the trial of any person charged with a violation of subsection (1) of this section, proof of such determination of the maximum speed by the department or local authority and the existence of such signs shall constitute conclusive evidence of the maximum speed which can be maintained with safety on such bridge or structure.

Source: Laws 1993, LB 370, § 285; Laws 2017, LB 339, § 214.
Operative Date: July 1, 2017

Cross References

Operator's license, assessment of points for speeding, see section 60-4,182 et seq.

Unreasonable classification of persons is not created hereby. State ex rel. Douglas v. Gradwohl, 194 Neb. 745, 235 N.W.2d 854 (1975).

60-6,190. Establishment of state speed limits; power of Department of Transportation; other than state highway system; power of local authority; signs.

(1) Whenever the Department of Transportation determines, upon the basis of an engineering and traffic investigation, that any maximum speed limit is greater or less than is reasonable or safe under the conditions found to exist at any intersection, place, or part of the state highway system outside of the corporate limits of cities and villages as well as inside the corporate limits of cities and villages on freeways which are part of the state highway system, it may determine and set a reasonable and safe maximum speed limit for such intersection, place, or part of such highway which shall be the lawful speed limit when appropriate signs giving notice thereof are erected at such intersection, place, or part of the highway, except that the maximum rural and freeway limits shall not be exceeded. Such a maximum speed limit may be set to be effective at all times or at such times as are indicated upon such signs.

(2) The speed limits set by the department shall not be a departmental rule, regulation, or order subject to the statutory procedures for such rules, regulations, or orders but shall be an authorization over the signature of the Director-State Engineer and shall be maintained on permanent file at the headquarters of the department. Certified copies of such authorizations shall be available from the department at a reasonable cost for duplication. Any change to such an authorization shall be made by a new authorization which cancels the previous authorization and establishes the new limit, but the new limit shall not become effective until signs showing the new limit are erected as provided in subsection (1) of this section.

(3) On county highways which are not part of the state highway system or within the limits of any state institution or any area under control of the Game and Parks Commission or a natural resources district and which are outside of the corporate limits of cities and villages, county

boards shall have the same power and duty to alter the maximum speed limits as the department if the change is based on an engineering and traffic investigation comparable to that made by the department. The limit outside of a business or residential district shall not be decreased to less than thirty-five miles per hour.

(4) On all highways within their corporate limits, except on state-maintained freeways which are part of the state highway system, incorporated cities and villages shall have the same power and duty to alter the maximum speed limits as the department if the change is based on engineering and traffic investigation, except that no imposition of speed limits on highways which are part of the state highway system in cities and villages under forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census shall be effective without the approval of the department.

(5) The director of any state institution, the Game and Parks Commission, or a natural resources district, with regard to highways which are not a part of the state highway system, which are within the limits of such institution or area under Game and Parks Commission or natural resources district control, and which are outside the limits of any incorporated city or village, shall have the same power and duty to alter the maximum speed limits as the department if the change is based on an engineering and traffic investigation comparable to that made by the department.

(6) Not more than six such speed limits shall be set per mile along a highway, except in the case of reduced limits at intersections. The difference between adjacent speed limits along a highway shall not be reduced by more than twenty miles per hour, and there shall be no limit on the difference between adjacent speed limits for increasing speed limits along a highway.

(7) When the department or a local authority determines by an investigation that certain vehicles in addition to those specified in sections 60-6,187, 60-6,305, and 60-6,313 cannot with safety travel at the speeds provided in sections 60-6,186, 60-6,187, 60-6,189, 60-6,305, and 60-6,313 or set pursuant to this section or section 60-6,188 or 60-6,189, the department or local authority may restrict the speed limit for such vehicles on highways under its respective jurisdiction and post proper and adequate signs.

Source: Laws 1973, LB 45, § 63; Laws 1984, LB 861, § 17; Laws 1986, LB 436, § 1; R.S.1943, (1988), § 39-663; Laws 1993, LB 370, § 286; Laws 1996, LB 901, § 10; Laws 2010, LB 805, § 11; Laws 2017, LB 113, § 50; Laws 2017, LB 339, § 215.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 113, section 50, with LB 339, section 215, to reflect all amendments.

Note: Changes made by LB 339 became operative July 1, 2017. Changes made by LB 113 became effective August 24, 2017.

Cross References

Operator's license, assessment of points for speeding, see section 60-4,182 et seq.

Unreasonable classification of persons is not created hereby. State ex rel. Douglas v. Gradwohl, 194 Neb. 745, 235 N.W.2d 854 (1975).

60-6,191. Repealed. Laws 1993, LB 575, § 55.

60-6,192. Speed determination; use of speed measurement devices; requirements; apprehension of driver; when.

(1) Determinations made regarding the speed of any motor vehicle based upon the visual observation of any peace officer, while being competent evidence for all other purposes, shall be corroborated by the use of a radio microwave, mechanical, or electronic speed measurement device. The results of such radio microwave, mechanical, or electronic speed measurement device may be accepted as competent evidence of the speed of such motor vehicle in any court or legal proceeding when the speed of the vehicle is at issue. Before the state may offer in evidence the results of such radio microwave, mechanical, or electronic speed measurement device for the purpose of establishing the speed of any motor vehicle, the state shall prove the following:

(a) The radio microwave, mechanical, or electronic speed measurement device was in proper working order at the time of conducting the measurement;

(b) The radio microwave, mechanical, or electronic speed measurement device was being operated in such a manner and under such conditions so as to allow a minimum possibility of distortion or outside interference;

(c) The person operating the radio microwave, mechanical, or electronic speed measurement device and interpreting such measurement was qualified by training and experience to properly test and operate the radio microwave, mechanical, or electronic speed measurement device; and

(d) The operator conducted external tests of accuracy upon the radio microwave, mechanical, or electronic speed measurement device, within a reasonable time both prior to and subsequent to an arrest being made, and the device was found to be in proper working order.

(2) The driver of any motor vehicle measured by use of a radio microwave, mechanical, or electronic speed measurement device to be driving in excess of the applicable speed limit may be apprehended if the apprehending officer:

(a) Is in uniform and displays his or her badge of authority; and

(b)(i) Has observed the recording of the speed of the motor vehicle by the radio microwave, mechanical, or electronic speed measurement device; or

(ii) Has received a radio message from a peace officer who observed the speed recorded and the radio message (A) has been dispatched immediately after the speed of the motor vehicle was recorded and (B) gives a description of the vehicle and its recorded speed.

Source: Laws 1973, LB 45, § 64; Laws 1983, LB 88, § 1; R.S.1943, (1988), § 39-664; Laws 1993, LB 370, § 288; Laws 1993, LB 25, § 1.

Before evidence of vehicular speed determined by use of a speed measurement device is admissible, the State must establish with reasonable proof that the equipment was accurate and functioning properly at the time the determination of the speed of the vehicle was made. State v. Jacobson, 273 Neb. 289, 728 N.W.2d 613 (2007).

To present "reasonable proof" that a primary measuring instrument that measures the speed of a vehicle was operating correctly, one must show that such device was tested against a device whose instrumental integrity or reliability had been established. State v. Jacobson, 273 Neb. 289, 728 N.W.2d 613 (2007).

Where evidence of speed is adduced not to establish a driver's rate of travel so as to prove a charge that he or she exceeded a particular speed limit, but, rather, as one piece of evidence tending to establish that the driver operated a vehicle in such a manner as to indicate an indifferent or wanton disregard for the safety of persons or property, the speed is not "at issue", as contemplated by this section and therefore need not be corroborated by a

microwave, mechanical, or electronic speed measurement device. State v. Hill, 254 Neb. 460, 577 N.W.2d 259 (1998).

The speed of a vehicle is not at issue under this section when the crime charged is reckless driving and evidence is adduced to establish the defendant drove in a manner demonstrating indifferent or wanton disregard for the safety of persons or property. State v. Howard, 253 Neb. 523, 571 N.W.2d 308 (1997).

In order to support admission of a VASCAR speed measurement into evidence, the record must reflect compliance with the requirements for the operation and testing of the measuring device as described in subsection (1) of this section. State v. Chambers, 241 Neb. 66, 486 N.W.2d 481 (1992).

The accuracy of a primary measuring device must be tested against a reliable testing device. State v. Chambers, 241 Neb. 60, 486 N.W.2d 219 (1992).

Radar-based evidence of defendant's speed inadmissible where police officer testified that he had tested radar unit using "inscribed" tuning fork which was not shown to be intended or accurate for that purpose. State v. Lomack, 239 Neb. 368, 476 N.W.2d 237 (1991).

Subsection (2) of this section should be read to require a showing of subparts (a) and (c) or a showing of subparts (b) and (c). State v. Kincaid, 235 Neb. 89, 453 N.W.2d 738 (1990).

A battery-operated stopwatch is not an "electronic speed measurement" device within the purview of this section. State v. Chambers, 233 Neb. 235, 444 N.W.2d 667 (1989).

Corroboration of testimony estimating the rate of speed by visual observation of an officer is not needed when the testimony is offered to show that the defendant was driving recklessly rather than that the defendant was speeding. State v. Howard, 5 Neb. App. 596, 560 N.W.2d 516 (1997).

60-6,193. Minimum speed regulation; impeding traffic.

(1) No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

(2) On a freeway no motor vehicle, except emergency vehicles, shall be operated at a speed of less than forty miles per hour or at such a slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for the safe operation of the motor vehicle because of weather, visibility, roadway, or traffic conditions. All vehicles entering or leaving such freeway from an acceleration or deceleration lane shall conform with the minimum speed regulations while they are within the roadway of the freeway. The minimum speed of forty miles per hour may be altered by the Department of Transportation or local authorities on freeways under their respective jurisdictions.

(3) Whenever the department or any local authority within its respective jurisdiction determines on the basis of an engineering and traffic investigation that low speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the department or such local authority may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law.

(4) Vehicular, animal, and pedestrian traffic prohibited on freeways by the Nebraska Rules of the Road shall not travel on any other roadway where minimum speed limits of twenty miles per hour or more are posted.

(5) Any minimum speed limit which is imposed under subsection (2) or (3) of this section shall not be effective until appropriate and adequate signs are erected along the roadway affected by such regulation apprising motorists of such limitation.

(6) On any freeway, or other highway providing for two or more lanes of travel in one direction, vehicles shall not intentionally impede the normal flow of traffic by traveling side by side and at the same speed while in adjacent lanes. This subsection shall not be construed to

prevent vehicles from traveling side by side in adjacent lanes because of congested traffic conditions.

Source: Laws 1973, LB 45, § 65; R.S.1943, (1988), § 39-665; Laws 1993, LB 370, § 289; Laws 2017, LB 339, § 216.

Operative Date: July 1, 2017

Applicability of this section depends on the factual setting; when a motorist's view of a railroad crossing is obstructed, he has no absolute duty to stop before traveling across, but such duty to stop exists where a reasonably prudent person in the exercise of ordinary care would have considered a stop necessary under the circumstances. Anderson v. Union Pacific RR. Co., 229 Neb. 321, 426 N.W.2d 518 (1988).

60-6,194. Charging violations of speed regulation; summons; burden of proof; elements of offense.

(1) In every charge of violation of any speed regulation in the Nebraska Rules of the Road, the complaint and the summons or notice to appear shall specify the speed at which defendant is alleged to have driven and the maximum speed for the type of vehicle involved applicable within the district or at the location. The speed at which defendant is alleged to have driven and the maximum speed are essential elements of the offense and shall be proved by competent evidence.

(2) The provisions of the rules which set maximum speed limitations shall not be construed to relieve the plaintiff in any action from the burden of proving negligence on the part of the defendant as the proximate cause of an accident.

Source: Laws 1973, LB 45, § 67; R.S.1943, (1988), § 39-667; Laws 1993, LB 370, § 290; Laws 1993, LB 26, § 1.

60-6,195. Racing on highways; violation; penalty.

(1) No person shall drive any vehicle on any highway in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration or for the purpose of making a speed record, and no person shall in any manner participate in any such race, competition, contest, test, or exhibition.

(2) For purposes of this section:

(a) Drag race shall mean the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other or the operation of one or more vehicles over a common selected course, each starting at the same point and proceeding to the same point, for the purpose of comparing the relative speeds or power of acceleration of such vehicle or vehicles within a certain distance or time limit; and

(b) Racing shall mean the use of one or more vehicles in an attempt to outgain or outdistance another vehicle, to prevent another vehicle from passing, to arrive at a given destination ahead of another vehicle or vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes.

(3) Any person convicted of violating this section shall be guilty of a Class II misdemeanor.

Source: Laws 1973, LB 45, § 68; Laws 1989, LB 285, § 2; R.S.Supp. 1992, § 39-668; Laws 1993, LB 370, § 291.

Where a person is injured by the racing of two or more other parties on a public highway, all engaged in the race are liable, although only one of the vehicles came in contact with the injured person or the vehicle in which he was riding. Janssen v. Trennepohl, 228 Neb. 6, 421 N.W.2d 4 (1988).

60-6,196. Driving under influence of alcoholic liquor or drug; penalties.

(1) It shall be unlawful for any person to operate or be in the actual physical control of any motor vehicle:

(a) While under the influence of alcoholic liquor or of any drug;

(b) When such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood; or

(c) When such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath.

(2) Any person who operates or is in the actual physical control of any motor vehicle while in a condition described in subsection (1) of this section shall be guilty of a crime and upon conviction punished as provided in sections 60-6,197.02 to 60-6,197.08.

Source: Laws 1919, c. 190, tit. VII, art. IV, § 32, p. 830; C.S.1922, § 8396; Laws 1925, c. 159, § 13, p. 418; Laws 1927, c. 153, § 1, p. 411; Laws 1929, c. 144, § 1, p. 505; C.S.1929, § 39-1106; Laws 1931, c. 103, § 1, p. 275; Laws 1935, c. 134, § 2, p. 484; Laws 1937, c. 140, § 1, p. 504; C.S.Supp. 1941, § 39-1106; R.S.1943, § 39-727; Laws 1947, c. 148, § 1, p. 408; Laws 1949, c. 116, § 1, p. 310; Laws 1951, c. 118, § 1, p. 528; Laws 1953, c. 135, § 1, p. 422; Laws 1953, c. 214, § 1, p. 755; Laws 1961, c. 186, § 1, p. 574; Laws 1971, LB 948, § 1; Laws 1972, LB 1095, § 1; Laws 1973, LB 290, § 1; R.S.Supp. 1973, § 39-727; Laws 1978, LB 748, § 52; Laws 1980, LB 651, § 1; Laws 1982, LB 568, § 5; Laws 1986, LB 153, § 3; Laws 1987, LB 404, § 1; Laws 1988, LB 377, § 1; Laws 1990, LB 799, § 1; Laws 1992, LB 291, § 4; R.S.Supp. 1992, § 39-669.07; Laws 1993, LB 370, § 292; Laws 1993, LB 564, § 7; Laws 1998, LB 309, § 13; Laws 1999, LB 585, § 5; Laws 2000, LB 1004, § 1; Laws 2001, LB 38, § 47; Laws 2001, LB 166, § 4; Laws 2001, LB 773, § 15; Laws 2003, LB 209, § 11; Laws 2004, LB 208, § 10.

Cross References

Applicability of statute to private property, see section 60-6,108.
Conviction of felony involving use of motor vehicle, transmittal of abstract, see section 60-497.02.
Ineligibility for pretrial diversion, see section 29-3604.
Motor vehicle homicide penalty, see section 28-306.
Operator's license, assessment of points and revocation, see sections 60-497.01, 60-498, and 60-4,182 et seq.
Violation of ordinance, prosecuting attorney, consult victim, see section 29-120.

1. Constitutionality

Driving under the influence of alcoholic liquor or drugs is criminalized under this section, and the fact that a defendant has previously been convicted of such offense is irrelevant to the guilt or innocence of the defendant and is relevant only to the defendant's sentence. State v. Neiss, 260 Neb. 691, 619 N.W.2d 222 (2000).

This section is a criminal driving under the influence of alcohol statute and is not part of the statutory scheme for an administrative license revocation. Kalisek v. Abramson, 257 Neb. 517, 599 N.W.2d 834 (1999).

Successive, separate prosecutions under this section for driving while intoxicated and operating a motor vehicle with a suspended license do not violate the Double Jeopardy Clause of the U.S. Constitution. State v. Grimm, 240 Neb. 863, 484 N.W.2d 830 (1992).

This section does not violate equal protection. Proscribing a particular concentration of breath alcohol is not wholly irrelevant to achieving the purpose of prohibiting people from driving while under the influence of drugs or alcohol. The relationship between the classification and its goal is rational. State v. Kubik, 235 Neb. 612, 456 N.W.2d 487 (1990).

Statute is valid exercise of police power, and court in which such conviction is had, is vested with jurisdiction to enforce statutory provisions. Smith v. State, 124 Neb. 587, 247 N.W. 421 (1933).

2. Motor vehicle homicide

When the predicate offense for motor vehicle homicide is drunk driving in violation of this section, drunk driving is a lesser-included offense in motor vehicle homicide. State v. Hoffman, 227 Neb. 131, 416 N.W.2d 231 (1987).

Driving an automobile while under the influence of alcoholic liquor was an unlawful act upon which conviction of motor vehicle homicide could be based. Rimpley v. State, 169 Neb. 171, 98 N.W.2d 868 (1959).

3. Manslaughter

Death arising from violation of this section may constitute manslaughter. Vaca v. State, 150 Neb. 516, 34 N.W.2d 873 (1948).

Operating motor vehicle while under the influence of intoxicating liquor is an unlawful act under manslaughter statute. Anderson v. State, 150 Neb. 116, 33 N.W.2d 362 (1948).

Conviction of manslaughter was sustained where driver was intoxicated. Benton v. State, 124 Neb. 485, 247 N.W. 21 (1933).

Defendant may be tried and punished under general statute relating to manslaughter, though acts charged may be punishable under this section. Crawford v. State, 116 Neb. 125, 216 N.W. 294 (1927).

4. Offense

A half-hour delay in videotaping a licensee suspected of drunk driving was not unreasonable, and the videotape was probative of the driver's condition regarding whether a violation of this section had occurred, such delay going to the weight and not the admissibility of the videotape. A violation of this section is but one offense, which can be proved in different ways. State v. Dake, 247 Neb. 579, 529 N.W.2d 46 (1995).

A violation of this section is one offense, which may be proven in different ways. A person's breath alcohol concentration may be probative of impairment under subsection (1), as well as proof of a violation of this section based solely on breath alcohol concentration pursuant to subsection (3). State v. Kubik, 235 Neb. 612, 456 N.W.2d 487 (1990).

An alcohol violation in this section may be proved in either one of two ways: (1) that a person operated or was in actual physical control of a motor vehicle while under the influence of alcoholic liquor; or (2) that a person while driving a motor vehicle or who was in physical control of a motor vehicle had ten-hundredths of one percent or more by weight of alcohol in his/her body fluid as shown by chemical analysis of his/her blood, breath, or urine. State v. Babcock, 227 Neb. 649, 419 N.W.2d 527 (1988).

The substantive offense is driving while under the influence of alcohol or with more than .10 percent of alcohol in one's body fluid. The number of times a person has previously been convicted of such a charge is not itself a crime but, rather, is a factor which the trial court is to consider in imposing sentence. State v. Jameson, 224 Neb. 38, 395 N.W.2d 744 (1986).

This section defines one offense which can be proved by any of three ways: (1) By proof that the defendant was in physical control of a motor vehicle while under the influence of alcoholic liquor; (2) by proof that the defendant was in physical control of a motor vehicle while under the influence of any drug; or (3) by proof that the defendant was in physical control of a motor vehicle while having ten-hundreths of one percent or more by weight of alcohol in his or her body fluid. State v. Hilker, 210 Neb. 810, 317 N.W.2d 82 (1982).

A violation of this section is either a misdemeanor or a felony and is not a traffic infraction within the meaning of section 39-602(106), R.R.S. 1943 (currently section 60-672). State v. Karel, 204 Neb. 573, 284 N.W.2d 12 (1979).

This section defines but one offense which may result from three conditions. State v. Jablonski, 199 Neb. 341, 258 N.W.2d 918 (1977).

This section is pari materia with section 39-727.03 (transferred to section 60-6,197) and other sections mentioned in opinion. Stevenson v. Sullivan, 190 Neb. 295, 207 N.W.2d 680 (1973).

Operation of motor vehicle while under the influence of intoxicating liquor is a criminal offense. State v. Berg, 177 Neb. 419, 129 N.W.2d 117 (1964).

It is unlawful to operate or be in the actual physical control of any motor vehicle while under the influence of intoxicating liquor. State v. Fox, 177 Neb. 238, 128 N.W.2d 576 (1964).

Operation of motor vehicle while under the influence of intoxicating liquor is a punishable offense. State v. Amick, 173 Neb. 770, 114 N.W.2d 893 (1962).

Only one crime is defined. Uldrich v. State, 162 Neb. 746, 77 N.W.2d 305 (1956).

Statute defines but one crime, that of operating a motor vehicle while under the influence of alcoholic liquor or drug. Haffke v. State, 149 Neb. 83, 30 N.W.2d 462 (1948).

The elements of driving while under the influence which the State must prove beyond a reasonable doubt are (1) that the defendant was operating or in actual physical control of a motor vehicle and (2) that he did so while under the influence of alcoholic liquor. State v. Martin, 18 Neb. App. 338, 782 N.W.2d 37 (2010).

5. Testing/sufficiency of evidence

As used in this section, the phrase "under the influence of alcoholic liquor or of any drug" requires the ingestion of alcohol or drugs in an amount sufficient to impair to any appreciable degree the driver's ability to operate a motor vehicle in a prudent and cautious manner. State v. Daly, 278 Neb. 903, 775 N.W.2d 47 (2009).

Whether impairment is caused by alcohol or drugs, a conviction for a violation of this section may be sustained by either a law enforcement officer's observations of a defendant's intoxicated behavior or the defendant's poor performance on field sobriety tests. State v. Daly, 278 Neb. 903, 775 N.W.2d 47 (2009).

If a test for the presence of alcohol or drugs is utilized, it is one piece of evidence that the defendant's ability to operate a motor vehicle is impaired; it is not conclusive under subsection (1)(a) of this section. State v. Falcon, 260 Neb. 119, 615 N.W.2d 436 (2000).

Pursuant to subsection (1)(a) of this section, impairment can be shown by observations of witnesses, particularly police officers who are trained to make these observations. State v. Falcon, 260 Neb. 119, 615 N.W.2d 436 (2000).

Pursuant to subsection (1)(a) of this section, it is a crime to operate a motor vehicle under the influence of alcoholic liquor or drugs, or both, to a degree that the alcoholic liquor or drugs, or both, appreciably impair the driver's ability to operate the motor vehicle. State v. Falcon, 260 Neb. 119, 615 N.W.2d 436 (2000).

Pursuant to subsection (1)(a) of this section, the phrase "under the influence of alcoholic liquor or of any drug" means the ingestion of alcohol or drugs in an amount sufficient to impair to any appreciable degree the driver's ability to operate a motor vehicle in a prudent and cautious manner. State v. Falcon, 260 Neb. 119, 615 N.W.2d 436 (2000).

Pursuant to subsection (1)(a) of this section, the State is required to prove that the defendant was in actual physical control of a motor vehicle and that the defendant's ability to operate a motor vehicle was impaired by reason of the influence of alcoholic liquor or of drugs. State v. Falcon, 260 Neb. 119, 615 N.W.2d 436 (2000).

A violation of this section is one offense, but it can be proved in more than one way, i.e., excessive blood alcohol content shown through a chemical test or by evidence of physical impairment plus other well-known indicia of intoxication. State v. Blackman, 254 Neb. 941, 580 N.W.2d 546 (1998).

Where the evidence established that the defendant was found behind the wheel of a vehicle which was parked on an Interstate off ramp with the engine running and the headlights on, there was sufficient evidence for the trier of fact to establish that the defendant was operating a motor vehicle. State v. Johnson, 250 Neb. 933, 554 N.W.2d 126 (1996).

A half-hour delay in videotaping a licensee suspected of drunk driving was not unreasonable, and the videotape was probative of the driver's condition regarding whether a violation of this section had occurred, such delay going to the weight and not the admissibility of the videotape. A violation of this section is but one offense, which can be proved in different ways. State v. Dake, 247 Neb. 579, 529 N.W.2d 46 (1995).

It is not necessary for a conviction for driving under the influence of alcoholic liquor that a sample of blood, breath, or urine show a certain concentration of alcohol in a defendant's blood, breath, or urine, as those are alternate offenses under this section. Either a law enforcement officer's observations of the defendant's intoxicated behavior or the defendant's poor performance on field sobriety tests constitutes sufficient evidence to sustain a conviction of driving while under the influence of alcoholic beverages. State v. Green, 238 Neb. 328, 470 N.W.2d 736 (1991).

A test made in compliance with section 39-669.11 (transferred to section 60-6,201) is sufficient to make a prima facie case on the issue of blood alcohol concentration. Matters of driving and testing are properly viewed as going to the weight of the breath test results, rather than to the admissibility of the evidence. A valid breath test given within a reasonable time after the accused was stopped is probative of a violation of this section. State v. Kubik, 235 Neb. 612, 456 N.W.2d 487 (1990).

Circumstantial evidence may be used to establish physical control of a motor vehicle within the meaning of this section. State v. Miller, 226 Neb. 576, 412 N.W.2d 849 (1987).

A breath test result which is subject to a margin of error must be adjusted so as to give the defendant the benefit of that margin. However, when there is a conflict in the evidence as to what that margin of error actually is, we will affirm the decision of the trier of fact so long as there is sufficient evidence in the record, if believed, to sustain its finding of guilt. State v. Hvistendahl, 225 Neb. 315, 405 N.W.2d 273 (1987).

An alcohol-related violation of this provision may be proved by establishing that one was in actual physical control of a motor vehicle while under the influence of alcohol or that one was in actual physical control of a motor vehicle while having ten-hundreths of 1 percent by weight of alcohol in his or her body fluid. State v. Burling, 224 Neb. 725, 400 N.W.2d 872 (1987).

Evidence was sufficient to find defendant guilty of driving while under the influence in violation of this section, where he was found asleep at the wheel of an automobile parked in the roadway and appeared intoxicated when awakened. Circumstantial evidence may serve to establish the operation or actual physical control of a motor vehicle, under the provisions of this section. State v. Baker, 224 Neb. 130, 395 N.W.2d 766 (1986).

Operation or physical control of an auto may be established by circumstantial evidence. State v. Orosco, 199 Neb. 532, 260 N.W.2d 303 (1977).

Instructions given correctly set forth the elements of driving under influence and driving with ten-hundreths of one percent of alcohol in the body fluid. State v. Tripple, 190 Neb. 713, 211 N.W.2d 920 (1973).

Presumption arising from body fluid test applies only to prosecutions under this section. Hoffman v. State, 160 Neb. 375, 70 N.W.2d 314 (1955).

Conviction sustained of drunken driving based in part on evidence of blood test. Schacht v. State, 154 Neb. 858, 50 N.W.2d 78 (1951).

The revocation of an operator's license pursuant to section 60-6,196(2)(c) as it existed prior to July 16, 2004, includes a revocation made under a city or village ordinance enacted in conformance with section 60-6,196(2)(c). State v. Flores, 17 Neb. App. 532, 767 N.W.2d 512 (2009).

Evidence which went before a jury of a defendant's failure to pass a chemical breath test for which he was not properly advised of the consequences was prejudicial and constituted plain error so as to require a reversal of the conviction and a remand for a new trial. State v. Hingst, 4 Neb. App. 768, 550 N.W.2d 686 (1996).

6. Miscellaneous

Criminal liability under this section does not extend to intoxicated persons in control of a vehicle parked on a residential driveway, regardless of whether part of the vehicle crosses a sidewalk. State v. McCave, 282 Neb. 500, 805 N.W.2d 290 (2011).

This section only requires proof that the defendant was under the influence of any drug and does not require the drug to be identified by the arresting officer. State v. Daly, 278 Neb. 903, 775 N.W.2d 47 (2009).

The offense of driving under the influence in violation of this section is a lesser-included offense of driving under the influence causing serious bodily injury in violation of section 60-6,198. State v. Dragoo, 277 Neb. 858, 765 N.W.2d 666 (2009).

A sentence of probation is excessively lenient when record shows a history of alcohol-related motor vehicle offenses spanning more than 30 years, an extreme alcohol addiction, and a lack of respect for court orders. State v. Rice, 269 Neb. 717, 695 N.W.2d 418 (2005).

The Omaha Municipal Code conflicts with this section. State v. Loyd, 265 Neb. 232, 655 N.W.2d 703 (2003).

"Operate," as used in this section, refers to the actual physical handling of the controls of the vehicle while under the influence of intoxicating liquor; therefore, it is unlawful for any person to actually physically handle the controls of any motor vehicle while under the influence of alcohol or while having the prohibited amount of alcohol in one's breath. State v. Baker, 236 Neb. 261, 461 N.W.2d 251 (1990).

As used in this section, the phrase "under the influence of alcoholic liquor" means after the ingestion of alcohol in an amount sufficient to impair to any appreciable degree the ability to operate a motor vehicle in a prudent and cautious manner. State v. Batts, 233 Neb. 776, 448 N.W.2d 136 (1989).

The phrase "under the influence of alcohol" means after the ingestion of alcohol in an amount sufficient to impair to any appreciable degree the ability to operate a motor vehicle in a prudent and cautious manner. State v. Thomte, 226 Neb. 659, 413 N.W.2d 916 (1987).

The phrase "under the influence of alcoholic liquor," as used in this provision, means after the ingestion of alcohol in an amount sufficient to impair to any appreciable degree the ability to operate a motor vehicle in a prudent and cautious manner. State v. Burling, 224 Neb. 725, 400 N.W.2d 872 (1987).

A defendant charged with driving under the influence, pursuant to this section, has only a statutory right to a jury trial, pursuant to section 24-536 (transferred to section 25-2705), for which proper demand is required. State v. Bishop, 224 Neb. 522, 399 N.W.2d 271 (1987).

A complaint for violation of this section need not allege that a defendant operated a motor vehicle on a public highway. State v. Golgert, 223 Neb. 950, 395 N.W.2d 520 (1986).

A jury need only be unanimous in its conclusion that the defendant violated the law by committing the act and need not be unanimous as to which of several consistent theories it believes resulted in the violation. State v. Parker, 221 Neb. 570, 379 N.W.2d 259 (1986).

Conviction upon charge of refusal to submit to a chemical test under section 39-669.08 (transferred to section 60-6,197) did not operate to bar defendant's trial upon charge under this section. State v. Stabler, 209 Neb. 298, 306 N.W.2d 925 (1981).

A defendant charged under this section is entitled to a jury trial as provided under section 24-536, R.R.S. 1943 (transferred to section 25-2705). State v. Karel, 204 Neb. 573, 284 N.W.2d 12 (1979).

It was harmless error, if any, for court to accept defendant's written, all inclusive "Petition to Enter Plea of Guilty" without orally informing him he was waiving a trial by jury. State v. Cooper, 196 Neb. 728, 246 N.W.2d 65 (1976).

This section defines but one offense. State v. Weidner, 192 Neb. 161, 219 N.W.2d 742 (1974).

Under facts in this case, sentence to three years imprisonment was not excessive. State v. Klinkacek, 190 Neb. 293, 207 N.W.2d 524 (1973).

Word operate as used in this section relates to actual physical handling of controls of a motor vehicle. State v. Dubany, 184 Neb. 337, 167 N.W.2d 556 (1969).

Testimony to support conviction may come from a nonexpert witness. State v. Lewis, 177 Neb. 173, 128 N.W.2d 610 (1964).

Instruction given by trial court defining the term under the influence of alcoholic liquor was not erroneous. Langford v. Ritz Taxicab Co., 172 Neb. 153, 109 N.W.2d 120 (1961).

As used in this section, the word operate relates to the actual physical handling of the controls of an automobile. Waite v. State, 169 Neb. 113, 98 N.W.2d 688 (1959).

Instruction defining the meaning of statutory terms was not erroneous. Shanahan v. State, 162 Neb. 676, 77 N.W.2d 234 (1956).

Jury trial for violation of this section could be waived. Peterson v. State, 157 Neb. 618, 61 N.W.2d 263 (1953).

Complaint was not defective because words intoxicating liquor were used instead of words alcoholic liquor. Franz v. State, 156 Neb. 587, 57 N.W.2d 139 (1953).

Driver's license revoked for one year upon plea of guilty, and plea not set aside upon claim of defendant that she was not advised of her constitutional rights. Kissinger v. State, 147 Neb. 983, 25 N.W.2d 829 (1957).

When a person submits to a chemical test of breath, the required recitations in the sworn report are (1) that the person was arrested as described in section 60-6,197(2)—reasonable grounds to believe such person was driving while under the influence of alcoholic liquor or drugs—and the reasons for such arrest, (2) that the person was requested to submit to the required test, and (3) that the person submitted to a test, the type of test to which he or she submitted, and that such test revealed the presence of alcohol in a concentration specified in this section. Teeters v. Neth, 18 Neb. App. 585, 790 N.W.2d 213 (2010); Wilson v. Neth, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

A prior conviction resulting in a sentence of probation, and not actual imprisonment, can be used for enhancement in subsequent proceedings without a showing that the defendant had or waived counsel in the prior proceeding. State v. Wilson, 17 Neb. App. 846, 771 N.W.2d 228 (2009).

The revocation of an operator's license pursuant to subsection (2)(c) of this section as it existed prior to July 16, 2004, includes a revocation made under a city or village ordinance enacted in conformance with subsection (2)(c) of this section. State v. Flores, 17 Neb. App. 532, 767 N.W.2d 512 (2009).

For a prior conviction based on a plea of guilty to be used for enhancement purposes in an action under this section, the record must show that the defendant entered the guilty plea to the charge. State v. Schulte, 12 Neb. App. 924, 687 N.W.2d 411 (2004).

For purposes of this section, substitution of "revocation" with "suspension" has no prejudicial effect. State v. Mulinix, 12 Neb. App. 836, 687 N.W.2d 1 (2004).

Alcohol-related violations of this section may be proved either by establishing that one was in actual physical control of a motor vehicle while under the influence or by establishing that one was in actual physical control of a motor vehicle while having more than the prohibited amount of alcohol in his or her body. State v. Robinson, 10 Neb. App. 848, 639 N.W.2d 432 (2002).

(o) ALCOHOL AND DRUG VIOLATIONS

60-6,196.01. Driving under influence of alcoholic liquor or drug; additional penalty.

In addition to any other penalty provided for operating a motor vehicle in violation of section 60-6,196, if a person has a prior conviction as defined in section 60-6,197.02 for a violation punishable as a felony under section 60-6,197.03 and is subsequently found to have operated or been in the actual physical control of any motor vehicle when such person has (1) a concentration of two-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or (2) a concentration of two-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath, such person shall be guilty of a Class IIIA misdemeanor.

Source: Laws 2011, LB 675, § 7.

60-6,197. Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; when test administered; refusal; advisement; effect; violation; penalty.

(1) Any person who operates or has in his or her actual physical control a motor vehicle in this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine.

(2) Any peace officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village may require any person arrested for any offense arising out of acts alleged to have been committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine when the officer has reasonable grounds to believe that such person was driving or was in the actual physical control of a motor vehicle in this state while under the influence of alcoholic liquor or drugs in violation of section 60-6,196.

(3) Any person arrested as described in subsection (2) of this section may, upon the direction of a peace officer, be required to submit to a chemical test or tests of his or her blood, breath, or urine for a determination of the concentration of alcohol or the presence of drugs. If the chemical test discloses the presence of a concentration of alcohol in violation of subsection (1) of section 60-6,196, the person shall be subject to the administrative license revocation procedures provided in sections 60-498.01 to 60-498.04 and upon conviction be punished as provided in sections 60-6,197.02 to 60-6,197.08. Any person who refuses to submit to such test or tests required pursuant to this section shall be subject to the administrative license revocation procedures provided in sections 60-498.01 to 60-498.04 and shall be guilty of a crime and upon conviction punished as provided in sections 60-6,197.02 to 60-6,197.08.

(4) Any person involved in a motor vehicle accident in this state may be required to submit to a chemical test or tests of his or her blood, breath, or urine by any peace officer if the officer has reasonable grounds to believe that the person was driving or was in actual physical control of a motor vehicle on a public highway in this state while under the influence of alcoholic liquor or drugs at the time of the accident. A person involved in a motor vehicle accident subject to the implied consent law of this state shall not be deemed to have withdrawn consent to submit to a chemical test of his or her blood, breath, or urine by reason of leaving this state. If the person refuses a test under this section and leaves the state for any reason following an accident, he or she shall remain subject to subsection (3) of this section and sections 60-498.01 to 60-498.04 upon return.

(5) Any person who is required to submit to a chemical blood, breath, or urine test or tests pursuant to this section shall be advised that refusal to submit to such test or tests is a separate crime for which the person may be charged. Failure to provide such advisement shall not affect the admissibility of the chemical test result in any legal proceedings. However, failure to provide such advisement shall negate the state's ability to bring any criminal charges against a refusing party pursuant to this section.

(6) Refusal to submit to a chemical blood, breath, or urine test or tests pursuant to this section shall be admissible evidence in any action for a violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section.

Source: Laws 1959, c. 168, § 1, p. 613; Laws 1961, c. 187, § 2, p. 577; Laws 1963, c. 229, § 1, p. 716; Laws 1971, LB 948, § 2; Laws 1972, LB 1095, § 2; R.S.Supp. 1972, § 39-727.03; Laws 1982, LB 568, § 6; Laws 1986, LB 153, § 4; Laws 1987, LB 404, § 2; Laws 1987, LB 224, § 1; Laws 1988, LB 377, § 2; Laws 1990, LB 799, § 2; Laws 1992, LB 872, § 1; Laws 1992, LB 291, § 5; R.S.Supp. 1992, § 39-669.08; Laws 1993, LB 370, § 293; Laws 1993, LB 564, § 8; Laws 1996, LB 939, § 2; Laws 1998, LB 309, § 14; Laws 1999, LB 585, § 6; Laws 2000, LB 1004, § 2; Laws 2001, LB 38, § 48; Laws 2001, LB 773, § 16; Laws 2003, LB 209, § 12; Laws 2004, LB 208, § 11; Laws 2011, LB 667, § 33.

Cross References

Applicability of statute to private property, see section 60-6,108.
Conviction of felony involving use of motor vehicle, transmittal of abstract, see section 60-497.02.
Ineligibility for pretrial diversion, see section 29-3604.
Operator's license, assessment of points and revocation, see sections 60-497.01, 60-498, and 60-4,182 et seq.
Violation of ordinance, prosecuting attorney, consult victim, see section 29-120.

1. Constitutional

Implied Consent Law as amended in 1971 does not involve compulsion within Fifth Amendment; is constitutional; and penalties are as provided in section 39-727 (transferred to section 60-6,196). State v. Manley, 189 Neb. 415, 202 N.W.2d 831 (1972).

Implied Consent Law held constitutional. State v. Williams, 189 Neb. 127, 201 N.W.2d 241 (1972).

2. Effective

The preliminary test referred to in section 60-6,197.04 (formerly subsection (3) of section 60-6,197) is a different procedure and not a chemical test that will satisfy requirements for a conviction under subsection (3) (formerly subsection (4) of this section). State v. Howard, 253 Neb. 523, 571 N.W.2d 308 (1997).

Offering of a preliminary breath test under section 39-669.08 (3) (transferred to section 60-6,197) herein, is not a condition precedent to an arrest under this section. State v. Orosco, 199 Neb. 532, 260 N.W.2d 303 (1977).

For implied consent to be effective, person from whom blood sample is taken must have been arrested or taken into custody before test is given. State v. Baker, 184 Neb. 724, 171 N.W.2d 798 (1969).

For implied consent to be effective, person must have been arrested or taken into custody before the test may be demanded. Prigge v. Johns, 184 Neb. 103, 165 N.W.2d 559 (1969).

For implied consent to be effective, person from whom blood sample is taken must have been arrested or taken into custody before test is given. Otte v. State, 172 Neb. 110, 108 N.W.2d 737 (1961).

3. Test

The validity of a charge for refusing to submit to a chemical test under subsection (3) of this section depends upon the State's showing a valid arrest under subsection (2). If the arrest was invalid because the police officers lacked probable cause, a conviction for refusing to submit to a chemical test is invalid. State v. McCave, 282 Neb. 500, 805 N.W.2d 290 (2011).

The sworn report of the arresting officer must indicate (1) that the person was arrested as described in subsection (2) of this section and the reasons for the arrest, (2) that the person was requested to submit to the required test, and (3) that the person refused to submit to the required test. Nothnagel v. Neth, 276 Neb. 95, 752 N.W.2d 149 (2008).

Any person arrested for suspicion of driving under the influence of alcohol may be directed by an officer to submit to a chemical test to determine the concentration of alcohol in that person's body. Snyder v. Department of Motor Vehicles, 274 Neb. 168, 736 N.W.2d 731 (2007).

An arrested motorist refuses to submit to a chemical test when the motorist's conduct, demonstrated under the circumstances confronting the officer requesting the chemical test, justifies a reasonable person's belief that the motorist understood the officer's request for a test and manifested a refusal or unwillingness to submit to the requested test. Betterman v. Department of Motor Vehicles, 273 Neb. 178, 728 N.W.2d 570 (2007).

A refusal to submit to a chemical test occurs within the meaning of subsection (4) of this section when the licensee, after being asked to submit to a test, so conducts himself as to justify a reasonable person in the requesting officer's position in believing that the licensee understood that he was being asked to submit to a test and manifested an unwillingness to take it. State v. Beerbohm, 229 Neb. 439, 427 N.W.2d 75 (1988).

The choice of whether one's blood or urine shall be tested for determination of alcohol content belongs to the licensee; a licensee who, upon the request of a law enforcement officer to do so, refuses to specify which fluid he or she will produce for such testing has refused to submit to a chemical test in violation of subsection (4) of this section. State v. Beerbohm, 229 Neb. 439, 427 N.W.2d 75 (1988).

It is established that as a condition precedent to a valid request by an officer to submit to a chemical test under the implied consent law, the arresting officer must have "reasonable grounds" to believe that the licensee was either driving a motor vehicle or in actual physical control of same while under the influence of intoxicating liquor. Larson v. Jensen, 228 Neb. 799, 424 N.W.2d 352 (1988).

A person is not exempted from the provisions of the refusal statute merely because he was too intoxicated to take the test. State v. Medina, 227 Neb. 736, 419 N.W.2d 864 (1988).

Anything less than an unqualified, unequivocal assent to an officer's request to submit to a chemical test constitutes a refusal. State v. Medina, 227 Neb. 736, 419 N.W.2d 864 (1988); Clontz v. Jensen, 227 Neb. 191, 416 N.W.2d 577 (1987).

Deputy had reasonable grounds to request that defendant submit to a chemical test of his blood, breath, or urine where the defendant was observed under circumstances from which the trier of fact could find beyond a reasonable doubt that the defendant had driven while under the influence of alcoholic liquor, in violation of section 39-669.07 (transferred to section 60-6,196). State v. Baker, 224 Neb. 130, 395 N.W.2d 766 (1986).

A refusal to submit to a chemical test occurs within the meaning of the implied consent law when the licensee, after being asked to submit to a test, so conducts himself as to justify a reasonable person in the requesting officer's position in believing that the licensee understood he was being asked to submit to a test and manifested an unwillingness to take it. Pollard v. Jensen, 222 Neb. 521, 384 N.W.2d 640 (1986).

Where no issue as to the propriety of an arrest is raised and the evidence of the preliminary breath test is relevant only for the limited purpose of establishing probable cause to require a driver to submit to a test of his blood, urine, or breath, the admissibility of the preliminary breath test is a matter of law and should therefore be admitted into evidence out of the presence of the jury. State v. Klingelhoefer, 222 Neb. 219, 382 N.W.2d 366 (1986).

Reasonable grounds for arrest and arrest are conditions precedent to a valid request to submit to a chemical test. Fulmer v. Jensen, 221 Neb. 582, 379 N.W.2d 736 (1986).

A condition precedent to a valid request by an officer to submit to a chemical test is that the officer must have reasonable grounds to believe that the licensee was either driving a motor vehicle or in the actual physical control of same while under the influence of alcoholic liquor. Emmons v. Jensen, 221 Neb. 444, 378 N.W.2d 147 (1985).

A delay in chemical testing is nonprejudicial unless it materially affects the results of the test. Jamros v. Jensen, 221 Neb. 426, 377 N.W.2d 119 (1985).

Justifiable refusal to take a body fluids test depends on some illegal or unreasonable aspect of the request to submit, the test itself, or both. A conditional refusal is a refusal under Nebraska's implied consent law. A motor vehicle driver is not entitled to consult a lawyer before submitting to a body fluids test because the suspension of a driver's license which results from refusal is a remedial, not strictly punitive, measure. Bapat v. Jensen, 220 Neb. 763, 371 N.W.2d 742 (1985).

Under the Nebraska Implied Consent Law, an officer may provide more than one opportunity to acquire a sufficient breath sample, even though only one chance is necessary. Raymond v. Department of Motor Vehicles, 219 Neb. 821, 366 N.W.2d 758 (1985).

Only tests taken pursuant to class A or B permits are such a chemical test as to comport with the requirement of subsection (1) of this section and a chemical analysis as to comport with section 39-669.07 (transferred to section 60-6,196). The preliminary test referred to in subsection (3) of this section is a different procedure and not such a chemical test or chemical analysis as to satisfy requirements for a conviction under section 39-669.07 (transferred to section 60-6,196). State v. Green, 217 Neb. 70, 348 N.W.2d 429 (1984).

An operator has refused to submit to a test when he conducts himself in a way which would justify a reasonable person in believing that he understood he had been asked to take the test and manifested an unwillingness to take it. Bauer v. Peterson, 212 Neb. 174, 322 N.W.2d 389 (1982).

The results of a test made under the provisions of section 39-669.08 (transferred to section 60-6,197) may be received in evidence only if the requirements of section 39-669.11 (transferred to section 60-6,201) are met. In order to show that the requirements have been met it is necessary to show that the method of performing the test was approved by the Nebraska Department of Health and that the person administering the test was qualified and had a valid license from the Department of Health. State v. Gerber, 206 Neb. 75, 291 N.W.2d 403 (1980).

The revocation of a motorist's license to operate a motor vehicle for his refusal to take test under this section on the ground that he has been denied the services of legal counsel is not a deprivation of a constitutional right. Rusho v. Johns, 186 Neb. 131, 181 N.W.2d 448 (1970).

Test under this section is not required to be delayed at request of arrested motorist until he be permitted to contact legal counsel. State v. Oleson, 180 Neb. 546, 143 N.W.2d 917 (1966). "Chemical test or tests" may refer to a test conducted with chemicals. However, the term also encompasses a test that determines the chemical composition of a person's blood, breath, or urine. State v. Crabtree, 3 Neb. App. 363, 526 N.W.2d 688 (1995).

Subsection (2) of this section, previously codified at subsection (2) of section 39-669.08, does not require and section 60-6,204, previously codified at section 39-669.14, was interpreted as not requiring a valid preliminary breath test as a prerequisite to chemical testing of a person arrested for driving under the influence. In this section, "chemical test," as previously codified at section 39-669.08, was interpreted to be a test to determine the body fluid levels of a certain chemical, as well as a test utilizing chemicals. State v. Cash, 3 Neb. App. 319, 526 N.W.2d 447 (1995).

4. Implied consent

Any person who operates a motor vehicle in Nebraska is deemed to have given consent to submit to chemical tests for the purpose of determining the concentration of alcohol in the blood, breath, or urine. Snyder v. Department of Motor Vehicles, 274 Neb. 168, 736 N.W.2d 731 (2007).

The giving of a sample under this section does not involve a question of involuntariness, want of due process, or self-incrimination. State v. Turner, 263 Neb. 896, 644 N.W.2d 147 (2002).

Under subsection (5) (formerly subsection (10) of this section), a person arrested for driving under the influence must be advised that refusal to submit to a chemical test is a separate crime for which the person may be charged, but he or she need not be advised of any additional consequences of a refusal to submit to a chemical test. State v. Turner, 263 Neb. 896, 644 N.W.2d 147 (2002).

Pursuant to subsection (5) (formerly subsection (10) of this section), substantial compliance with the statute will suffice under certain circumstances. State v. Roucka, 253 Neb. 885, 573 N.W.2d 417 (1998).

Pursuant to subsection (10) of this section (60-6,197 (Reissue 1993)), a driver-arrestee who is required to submit to a chemical blood, breath, or urine test under this section should be advised of the natural and direct legal consequence of submitting to a chemical test. Such consequences include that any incriminating results from such a test may be used against the person in a criminal proceeding. State v. Christner, 251 Neb. 549, 557 N.W.2d 707 (1997).

A sensible reading of subsection (10) of this section (60-6,197 (Reissue 1993)) indicates that the Legislature intended drivers to be advised of the natural and direct legal consequences flowing from submitting to a chemical blood, breath, or urine test and failing it. State v. Emrich, 251 Neb. 540, 557 N.W.2d 674 (1997).

Advisory form under subsection (10) of this section (60-6,197 (Reissue 1993)) must fully advise a motorist of the consequences of both refusing to submit to a chemical breath test and of submitting to and failing such test, and the failure of the advisory form to do so is plain error. Perrine v. State, 249 Neb. 518, 544 N.W.2d 364 (1996).

Pursuant to subsection (10) of this section (60-6,197 (Reissue 1993)), advisory form signed by motorist which failed to mention consequences fails to meet the advisory requirements set forth in this section. Biddlecome v. Conrad, 249 Neb. 282, 543 N.W.2d 170 (1996).

Subsection (10) of this section (60-6,197 (Reissue 1993)) requires an arresting officer to advise the arrestee of the natural and direct legal consequences of refusing to submit to the chemical test or taking the test and failing it. Smith v. State, 248 Neb. 360, 535 N.W.2d 694 (1995).

One cannot evade the effect of this section simply by repeatedly screaming, while the implied consent form is read to him or her, that he or she does not understand. For purposes of enhancement, a knowing and intelligent waiver of counsel may not be inferred from a defendant's pro se appearance at trial in a prior conviction. At a minimum, a sufficiently complete checklist or other docket entry may be used to establish a valid waiver of counsel as to prior convictions for enhancement purposes. State v. Green, 238 Neb. 328, 470 N.W.2d 736 (1991).

Under subsections (3) and (4) of this section, evidence obtained from a driver by testing body fluids in the implied consent context is not testimonial or communicative in nature and does not fall within the constitutional right against self-incrimination. State v. Green, 229 Neb. 493, 427 N.W.2d 304 (1988).

Without an implied consent advisement a motorist cannot be cited for a refusal. Jamros v. Jensen, 221 Neb. 426, 377 N.W.2d 119 (1985).

In the absence of a valid authorizing statute, the results of a test of blood for alcoholic content are inadmissible where the blood sample is taken involuntarily and requirements of the Fourth Amendment to the United States Constitution have not been satisfied. State v. Howard, 193 Neb. 45, 225 N.W.2d 391 (1975).

Implied Consent Law as amended in 1971 does not involve compulsion within Fifth Amendment; is constitutional; and penalties are as provided in section 39-727, 1971 Supp. State v. Manley, 189 Neb. 415, 202 N.W.2d 831 (1972).

This section, by its terms, applies to situations where there is no actual consent. State v. Seager, 178 Neb. 51, 131 N.W.2d 676 (1964).

This section sets forth the implied consent rule. State v. Fox, 177 Neb. 238, 128 N.W.2d 576 (1964).

Any person who operates a motor vehicle upon a public highway thereby gives consent to chemical test of blood or urine. Prucha v. Department of Motor Vehicles, 172 Neb. 415, 110 N.W.2d 75 (1961).

Drawing of blood sample by physician who had been directed to act as coroner's physician from body of fatally injured passenger in automobile did not violate prohibition against unreasonable searches and seizures, and result of tests performed by competent chemist using accepted procedures and facilities were admissible. Gardner v. Meyers, 491 F.2d 1184 (8th Cir. 1974).

5. Miscellaneous

A sentencing court, as part of its judgment of conviction under the implied consent law, in addition to ordering the convicted person not to drive any vehicle in the state for any purpose for 6 months, shall order that the operator's license of such person be revoked for a like period. The proscription that there can be no revocation of one's driver's license and operating privileges if the refusal to submit to a chemical test is reasonable under the circumstances contained in section 39-669.16 (transferred to section 60-498.02), relates only to administrative license revocations by the Director of Motor Vehicles. In a criminal proceeding, however, the inquiry centers on the existence of reasonable grounds for the arresting officer to believe that an operator was driving while under the influence of alcohol. State v. Boyd, 242 Neb. 144, 493 N.W.2d 344 (1992).

An officer can require a driver to submit to a preliminary breath test without proof of intoxication if the officer has reasonable grounds to believe that such person has committed a moving traffic violation and/or has been involved in a traffic accident. State v. Lowrey, 239 Neb. 343, 476 N.W.2d 540 (1991).

Subsection (4)(a) of this section and section 39-669.07(b) (transferred to section 60-6,196) require that the relevant periods of revocation of one's operator's license not run concurrently with any jail term imposed. Revocation of one's operator's license for a period of 180 days does not fulfill the requirement of subsection (4)(a) of this section that revocation be for a period of 6 months. State v. Contreras, 236 Neb. 455, 461 N.W.2d 562 (1990).

Where the elements of a crime defined by statute are set out in an information or complaint, it is sufficient; and if words appear in such information or complaint which might be stricken, leaving a crime sufficiently charged, and such words do not tend to negative any of the essential averments, they may be treated as surplusage and be entirely rejected. State v. Blankenfeld, 229 Neb. 411, 427 N.W.2d 65 (1988).

Officer had reasonable grounds to believe defendant was under influence of alcohol when operating or in control of vehicle. Porter v. Jensen, 223 Neb. 438, 390 N.W.2d 511 (1986).

It is no defense that a licensee asked to submit to a chemical test under the implied consent law does not understand the consequences of refusal or is not able to make a reasoned judgment as to what course of action to take. Pollard v. Jensen, 222 Neb. 521, 384 N.W.2d 640 (1986).

A driver is not entitled to consult with an attorney before submitting to a chemical test under the implied consent law, nor is a delay in the test required due to a driver's request to consult with an attorney. Fulmer v. Jensen, 221 Neb. 582, 379 N.W.2d 736 (1986).

There is no requirement that Miranda warnings be given prior to a request to submit to a chemical analysis of blood, breath, or urine under the Nebraska implied consent law. Fulmer v. Jensen, 221 Neb. 582, 379 N.W.2d 736 (1986).

The trial court must advise a defendant charged with refusal to submit to a chemical test of the penalties for first, second, or third offense. However, when the defendant was charged with, advised of the penalty for, and convicted of first offense refusal, the failure to advise him of the penalties for repeat offenses was not error. State v. Tichota, 218 Neb. 444, 356 N.W.2d 85 (1984).

Conviction under this section did not operate to bar trial upon charge under section 39-669.07 (transferred to section 60-6,196), driving while intoxicated. State v. Stabler, 209 Neb. 298, 306 N.W.2d 925 (1981).

Accused waives his right to choose the type of test by voluntarily taking either the blood or urine test. State v. Wahrman, 199 Neb. 337, 258 N.W.2d 818 (1977).

Single request for chemical test is sufficient, but more than one request may be permissible, and request need not be made at scene of arrest. Stender v. Sullivan, 196 Neb. 810, 246 N.W.2d 643 (1976).

On appeal to district court from order of Director of Motor Vehicles under section 39-669.16 (transferred to section 60-498.02) revoking operator's license, the burden is on licensee to establish ground for reversal. Mackey v. Director of Motor Vehicles, 194 Neb. 707, 235 N.W.2d 394 (1975).

Procedural due process in connection with hearing as to reasonableness of refusal to submit to test was not violated by fact the notice thereof specified the director's office as the place of hearing but the hearing was held in a different room in the same building and party was advised of the change when he appeared in the director's office. Atkins v. Department of Motor Vehicles, 192 Neb. 791, 224 N.W.2d 535 (1974).

Emotional upset due to pending divorce was not good reason for actions indicating intoxication and for refusal to submit to chemical test of body fluids. Duffack v. Kissack, 192 Neb. 634, 223 N.W.2d 484 (1974).

It was not necessary to again advise a person of the consequences of refusing to submit to a test after he had been admonished and refused to submit. State v. Twiss, 192 Neb. 402, 222 N.W.2d 108 (1974).

Refusal of request to contact attorney affords no reasonable ground for refusing to take alcoholic test. Stevenson v. Sullivan, 190 Neb. 295, 207 N.W.2d 680 (1973).

Refusal to submit to test may be shown in prosecution for driving while under influence of intoxicating liquor. State v. Meints, 189 Neb. 264, 202 N.W.2d 202 (1972).

A qualified or conditional consent is not sanctioned nor is a dissent on ground party has taken medicine and doesn't know what effect it will have. Doran v. Johns, 186 Neb. 321, 182 N.W.2d 900 (1971).

Officer had reason to arrest person who was driving under influence of intoxicating liquor. Metschke v. Department of Motor Vehicles, 186 Neb. 197, 181 N.W.2d 843 (1970).

A conditional or qualified refusal to take the test is a refusal to submit to the test within the meaning of the act. State v. Eckert, 186 Neb. 134, 181 N.W.2d 264 (1970).

Section does not sanction qualified or conditional consent; such a consent is in fact a refusal. Preston v. Johns, 186 Neb. 14, 180 N.W.2d 135 (1970).

Plea of guilty under this section does not establish reasonableness of a refusal to submit to a chemical test under Implied Consent Act. Ziemba v. Johns, 183 Neb. 644, 163 N.W.2d 780 (1968).

Conviction of driving while under the influence of intoxicating liquor sustained. State v. Oleson, 180 Neb. 546, 143 N.W.2d 917 (1966).

Sentence imposed was within the limits prescribed by this section. State v. Koziol, 177 Neb. 648, 130 N.W.2d 557 (1964).

When a person submits to a chemical test of breath, the required recitations in the sworn report are (1) that the person was arrested as described in subsection (2) of this section—reasonable grounds to believe such person was driving while under the influence of alcoholic liquor or drugs—and the reasons for such arrest, (2) that the person was requested to submit to the required test, and (3) that the person submitted to a test, the type of test to which he or she submitted, and that such test revealed the presence of alcohol in a concentration specified in section 60-6,196. Teeters v. Neth, 18 Neb. App. 585, 790 N.W.2d 213 (2010); Wilson v. Neth, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

For purposes of an administrative license revocation, including a statement in the sworn report that the individual was arrested pursuant to this section does not provide a factual basis for the arrest, because such is a mere legal conclusion. Yenney v. Nebraska Dept. of Motor Vehicles, 15 Neb. App. 446, 729 N.W.2d 95 (2007).

60-6,197.01. Driving while license has been revoked; driving under influence of alcoholic liquor or drug; second and subsequent violations; restrictions on motor vehicles; additional restrictions authorized.

(1) Upon conviction for a violation described in section 60-6,197.06 or a second or subsequent violation of section 60-6,196 or 60-6,197, the court shall impose either of the following restrictions:

(a)(i) The court shall order all motor vehicles owned by the person so convicted immobilized at the owner's expense for a period of time not less than five days and not more than eight months and shall notify the Department of Motor Vehicles of the period of immobilization. Any immobilized motor vehicle shall be released to the holder of a bona fide lien on the motor vehicle executed prior to such immobilization when possession of the motor vehicle is requested as provided by law by such lienholder for purposes of foreclosing and satisfying such lien. If a person tows and stores a motor vehicle pursuant to this subdivision at the direction of a peace officer or the court and has a lien upon such motor vehicle while it is in his or her possession for reasonable towing and storage charges, the person towing the vehicle has the right to retain such motor vehicle until such lien is paid. For purposes of this subdivision, immobilized or immobilization means revocation or suspension, at the discretion of the court, of the registration of such motor vehicle or motor vehicles, including the license plates; and

(ii)(A) Any immobilized motor vehicle shall be released by the court without any legal or physical restraints to any registered owner who is not the registered owner convicted of a second or subsequent violation of section 60-6,196 or 60-6,197 if an affidavit is submitted to the court by such registered owner stating that the affiant is employed, that the motor vehicle subject to

immobilization is necessary to continue that employment, that such employment is necessary for the well-being of the affiant's dependent children or parents, that the affiant will not authorize the use of the motor vehicle by any person known by the affiant to have been convicted of a second or subsequent violation of section 60-6,196 or 60-6,197, that affiant will immediately report to a local law enforcement agency any unauthorized use of the motor vehicle by any person known by the affiant to have been convicted of a second or subsequent conviction of section 60-6,196 or 60-6,197, and that failure to release the motor vehicle would cause undue hardship to the affiant.

(B) A registered owner who executes an affidavit pursuant to subdivision (1)(a)(ii)(A) of this section which is acted upon by the court and who fails to immediately report an unauthorized use of the motor vehicle which is the subject of the affidavit is guilty of a Class IV misdemeanor and may not file any additional affidavits pursuant to subdivision (1)(a)(ii)(A) of this section.

(C) The department shall adopt and promulgate rules and regulations to implement the provisions of subdivision (1)(a) of this section; or

(b) As an alternative to subdivision (1)(a) of this section, the court shall order the convicted person, in order to operate a motor vehicle, to obtain an ignition interlock permit and install an ignition interlock device on each motor vehicle owned or operated by the convicted person if he or she was sentenced to an operator's license revocation of at least one year. If the person's operator's license has been revoked for at least a one-year period, after a minimum of a forty-five-day no driving period, the person may operate a motor vehicle with an ignition interlock permit and an ignition interlock device pursuant to this subdivision and shall retain the ignition interlock permit and ignition interlock device for not less than a one-year period or the period of revocation ordered by the court, whichever is longer. No ignition interlock permit may be issued until sufficient evidence is presented to the department that an ignition interlock device is installed on each vehicle and that the applicant is eligible for use of an ignition interlock device. If the person has an ignition interlock device installed as required under this subdivision, the person shall not be eligible for reinstatement of his or her operator's license until he or she has had the ignition interlock device installed for the period ordered by the court.

(2) In addition to the restrictions required by subdivision (1)(b) of this section, the court may require a person convicted of a second or subsequent violation of section 60-6,196 or 60-6,197 to use a continuous alcohol monitoring device and abstain from alcohol use for a period of time not to exceed the maximum term of license revocation ordered by the court. A continuous alcohol monitoring device shall not be ordered for a person convicted of a second or subsequent violation unless the installation of an ignition interlock device is also required.

Source: Laws 1999, LB 585, § 7; Laws 2001, LB 38, § 49; Laws 2006, LB 925, § 10; Laws 2008, LB 736, § 7; Laws 2009, LB 497, § 5; Laws 2010, LB 924, § 3; Laws 2013, LB 158, § 3.

60-6,197.02. Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; terms, defined; prior convictions; use; sentencing provisions; when applicable.

(1) A violation of section 60-6,196 or 60-6,197 shall be punished as provided in sections 60-6,196.01 and 60-6,197.03. For purposes of sentencing under sections 60-6,196.01 and 60-6,197.03:

(a) Prior conviction means a conviction for a violation committed within the fifteen-year period prior to the offense for which the sentence is being imposed as follows:

(i) For a violation of section 60-6,196:

(A) Any conviction for a violation of subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,198;

(B) Any conviction for a violation of a city or village ordinance enacted in conformance with section 60-6,196 or 60-6,197; or

(C) Any conviction under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation of subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,198; or

(ii) For a violation of section 60-6,197:

(A) Any conviction for a violation of subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,198;

(B) Any conviction for a violation of a city or village ordinance enacted in conformance with section 60-6,196 or 60-6,197; or

(C) Any conviction under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation of subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,198;

(b) Prior conviction includes any conviction under subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,198, or any city or village ordinance enacted in conformance with section 60-6,196 or 60-6,197, as such sections or city or village ordinances existed at the time of such conviction regardless of subsequent amendments to any of such sections or city or village ordinances; and

(c) Fifteen-year period means the period computed from the date of the prior offense to the date of the offense which resulted in the conviction for which the sentence is being imposed.

(2) In any case charging a violation of section 60-6,196 or 60-6,197, the prosecutor or investigating agency shall use due diligence to obtain the person's driving record from the Department of Motor Vehicles and the person's driving record from other states where he or she is known to have resided within the last fifteen years. The prosecutor shall certify to the court, prior to sentencing, that such action has been taken. The prosecutor shall present as evidence for purposes of sentence enhancement a court-certified copy or an authenticated copy of a prior conviction in another state. The court-certified or authenticated copy shall be prima facie evidence of such prior conviction.

(3) For each conviction for a violation of section 60-6,196 or 60-6,197, the court shall, as part of the judgment of conviction, make a finding on the record as to the number of the convicted person's prior convictions. The convicted person shall be given the opportunity to review the record of his or her prior convictions, bring mitigating facts to the attention of the court prior to sentencing, and make objections on the record regarding the validity of such prior convictions.

(4) A person arrested for a violation of section 60-6,196 or 60-6,197 before January 1, 2012, but sentenced pursuant to section 60-6,197.03 for such violation on or after January 1, 2012, shall be sentenced according to the provisions of section 60-6,197.03 in effect on the date of arrest.

Source: Laws 2004, LB 208, § 12; Laws 2005, LB 594, § 2; Laws 2009, LB 497, § 6; Laws 2011, LB 667, § 34; Laws 2011, LB 675, § 8.

1. Enhancement

The plain and ordinary meaning of this section does not require the State to prove the exact date of the prior offense. State v. Taylor, 286 Neb. 966, 840 N.W.2d 526 (2013).

A defendant's conviction in Colorado for driving while ability impaired could not be used to enhance his conviction in Nebraska for driving under the influence. State v. Mitchell, 285 Neb. 88, 825 N.W.2d 429 (2013).

"Prior conviction" for purposes of enhancing a conviction for driving under the influence is defined in terms of other laws regarding driving under the influence, while a "prior conviction" for purposes of enhancing a conviction for refusing a chemical test is defined in terms of refusal laws. There is no crossover between driving under the influence and refusal convictions for purposes of sentence enhancement. State v. Huff, 282 Neb. 78, 802 N.W.2d 77 (2011). It was not the Legislature's intent to prohibit the consideration of prior out-of-state driving under the influence convictions simply because differing elements of the offense or differing quantums of proof make it merely *possible* that the defendant's behavior would not have resulted in a violation of section 60-6,196, had it occurred in Nebraska. State v. Garcia, 281 Neb. 1, 792 N.W.2d 882 (2011).

The prosecution presents prima facie evidence of a prior driving under the influence conviction by presenting a certified copy of the conviction and evidence that it was counseled; the burden then shifts to the defendant to rebut the presumption that the documents reflect that an "offense for which the person was convicted would have been a violation of section 60-6,196." State v. Garcia, 281 Neb. 1, 792 N.W.2d 882 (2011).

This section (formerly subsection (2) of section 60-6,196) authorizes a trial court to consider prior convictions of a defendant for driving under the influence of alcoholic liquor or drug within the 12 years prior to the offense for which a defendant currently stands trial and is not ex post facto as to a conviction prior to its passage, since an offender subject to enhancement of punishment under this statute is not receiving additional punishment for his or her previous convictions but is being penalized for an offense committed after its passage. This section deals with offenses committed after its passage, permits an inquiry into a defendant's previous convictions, and in fixing the penalty, does not punish the defendant for previous offenses but for persistence in violating this section. State v. Hansen, 258 Neb. 752, 605 N.W.2d 461 (2000).

The language of this section permits a defendant to challenge the validity of a prior driving under the influence conviction offered for purposes of enhancement on the ground that it was obtained in violation of the defendant's Sixth Amendment right to counsel. State v. Louthan, 257 Neb. 174, 595 N.W.2d 917 (1999).

Under the plain language of this section, when sentencing for a driving under the influence conviction, a previous refusal to submit to chemical testing conviction is not in the list of convictions that are prior convictions for the purpose of enhancement, and when sentencing for a refusal conviction, a previous driving under the influence conviction is not in the list of prior convictions which can be used to enhance the refusal conviction. State v. Hansen, 16 Neb. App. 671, 749 N.W.2d 499 (2008).

Legislative amendments to the length of the cleansing period provided by this section will not implicate vested due process rights of individuals with prior convictions used for enhancement. State v. Grant, 9 Neb. App. 919, 623 N.W.2d 337 (2001).

Prior driving under the influence convictions are not necessary elements of a subsequent driving under the influence charge, but, rather, are used to determine the sentence to be imposed for a later driving under the influence conviction. Thus, the district court did not violate the Double Jeopardy Clause when it remanded a conviction for second-offense driving under the influence to the county court with directions to enter a judgment finding the defendant guilty of third-offense driving under the influence and to sentence her accordingly. State v. Werner, 8 Neb. App. 684, 600 N.W.2d 500 (1999).

2. Offense

In a prosecution under this section (formerly subsection (6) of section 60-6,196) for driving when one's operator's license has been revoked pursuant to subdivision (2)(c) of this section, proof of the prior conviction under subdivision (2)(c) is an essential element of the offense, and thus, the State has the burden to prove the prior conviction. A prior third-offense drunk driving conviction may be used as an element of a violation under this section (formerly subsection (6) of section 60-6,196) even though the prior conviction is not subject to a collateral attack. State v. Lee, 251 Neb. 661, 558 N.W.2d 571 (1997).

This section is a continuance and affirmation of the previous section 39-669.07. Convictions under section 39-669.07 can be used for the purpose of sentence enhancements under this section. State v. Sundling, 248 Neb. 732, 538 N.W.2d 749 (1995).

3. Sufficiency of the evidence

Subsection (c) of this section (formerly section 39-669.07 (Reissue 1988)) limits the proof which can be used to establish the defendant's prior driving while under the influence convictions. State v. Jenson, 236 Neb. 869, 464 N.W.2d 326 (1991).

4. Miscellaneous

The time limitations for the use of prior driving under the influence convictions set forth in this section do not apply to the use of prior driving under the influence convictions to section 28-306. State v. Tlamka, 7 Neb. App. 579, 585 N.W.2d 101 (1998).

60-6,197.03. Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; penalties.

Any person convicted of a violation of section 60-6,196 or 60-6,197 shall be punished as follows:

(1) Except as provided in subdivision (2) of this section, if such person has not had a prior conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of six months from the date ordered by the court. The revocation order shall require that the person apply for an ignition interlock permit pursuant to section 60-6,211.05 for the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of sixty days from the date ordered by the court. The court shall order that during the period of revocation the person apply for an ignition interlock permit pursuant to section 60-6,211.05. Such order of probation or sentence suspension shall also include, as one of its conditions, the payment of a five-hundred-dollar fine;

(2) If such person has not had a prior conviction and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of one year from the date ordered by the court. The revocation order shall require that the person apply for an ignition interlock permit pursuant to subdivision (1)(b) of section 60-6,197.01 for the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's

license of such person be revoked for a period of one year from the date ordered by the court. The revocation order shall require that the person apply for an ignition interlock permit pursuant to subdivision (1)(b) of section 60-6,197.01 for the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such order of probation or sentence suspension shall also include, as conditions, the payment of a five-hundred-dollar fine and either confinement in the city or county jail for two days or the imposition of not less than one hundred twenty hours of community service;

(3) Except as provided in subdivision (5) of this section, if such person has had one prior conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of eighteen months from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days and that the person apply for an ignition interlock permit and have an ignition interlock device installed on any motor vehicle he or she owns or operates for at least one year. The court shall also issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. If the person has an ignition interlock device installed as required under this subdivision, the person shall not be eligible for reinstatement of his or her operator's license until he or she has had the ignition interlock device installed for the period ordered by the court. The revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of eighteen months from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days and that the person apply for an ignition interlock permit and installation of an ignition interlock device for not less than a one-year period pursuant to section 60-6,211.05. The court shall also issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. If the person has an ignition interlock device installed as required under this subdivision, the person shall not be eligible for reinstatement of his or her operator's license until he or she has had the ignition interlock device installed for the period ordered by the court. The order of probation or sentence suspension shall also include, as conditions, the payment of a five-hundred-dollar fine and either confinement in the city or county jail for ten days or the imposition of not less than two hundred forty hours of community service;

(4) Except as provided in subdivision (6) of this section, if such person has had two prior convictions, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least two years but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition

interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for thirty days;

(5) If such person has had one prior conviction and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class I misdemeanor, and the court shall, as part of the judgment of conviction, order payment of a one-thousand-dollar fine and revoke the operator's license of such person for a period of at least eighteen months but not more than fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least ninety days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least eighteen months but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days and that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device for not less than a one-year period issued pursuant to section 60-6,211.05. The court shall also issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. If the person has an ignition interlock device installed as required under this subdivision, the person shall not be eligible for reinstatement of his or her operator's license until he or she has had the ignition interlock device installed for the period ordered by the court. The order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for thirty days;

(6) If such person has had two prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class IIIA felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least one hundred eighty days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least five years but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition

interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine, confinement in the city or county jail for sixty days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than sixty days;

(7) Except as provided in subdivision (8) of this section, if such person has had three prior convictions, such person shall be guilty of a Class IIIA felony, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least one hundred eighty days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a two-thousand-dollar fine, confinement in the city or county jail for ninety days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than ninety days;

(8) If such person has had three prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class IIA felony, with a minimum sentence of one year of imprisonment, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a two-thousand-dollar fine, confinement in the city or county jail for one hundred twenty days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than one hundred twenty days;

(9) Except as provided in subdivision (10) of this section, if such person has had four or more prior convictions, such person shall be guilty of a Class IIA felony with a minimum sentence of two years' imprisonment, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a two-thousand-dollar fine, confinement in the city or county jail for one hundred eighty days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than one hundred eighty days; and

(10) If such person has had four or more prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class II felony with a minimum sentence of two years' imprisonment and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a two-thousand-dollar fine, confinement in the city or county jail for one hundred eighty days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than one hundred eighty days.

Source: Laws 2004, LB 208, § 13; Laws 2005, LB 594, § 3; Laws 2006, LB 925, § 11; Laws 2007, LB 578, § 4; Laws 2008, LB 736, § 8; Laws 2009, LB 497, § 7; Laws 2010, LB 924, § 4; Laws 2011, LB 667, § 35; Laws 2011, LB 675, § 9; Laws 2013, LB 158, § 4; Laws 2015, LB 605, § 77; Laws 2016, LB 1094, § 32.

1. Constitutionality

Permanent license revocation upon the third conviction for drunk driving does not deprive a person of equal protection of the law, due process of law, or the right to travel, nor does it constitute cruel and unusual punishment. State v. Michalski, 221 Neb. 380, 377 N.W.2d 510 (1985).

A defendant is not entitled to a jury trial under provisions of Sixth Amendment to Constitution of the United States in trial for second offense drunk driving hereunder. State v. Young, 194 Neb. 544, 234 N.W.2d 196 (1975).

Imposition of greater penalty for subsequent offense is constitutional. Poppe v. State, 155 Neb. 527, 52 N.W.2d 422 (1952).

Legislative amendments to the length of the cleansing period provided by this section will not implicate vested due process rights of individuals with prior convictions used for enhancement. State v. Grant, 9 Neb. App. 919, 623 N.W.2d 337 (2001).

Prior driving under the influence convictions are not necessary elements of a subsequent driving under the influence charge, but, rather, are used to determine the sentence to be imposed for a later driving under the influence conviction. Thus, the district court did not violate the Double Jeopardy Clause when it remanded a conviction for second-offense driving under the influence to the county court with directions to enter a judgment finding the defendant guilty of third-offense driving under the influence and to sentence her accordingly. State v. Werner, 8 Neb. App. 684, 600 N.W.2d 500 (1999).

2. Offense

This section is a continuance and affirmation of the previous section 39-669.07. Convictions under section 39-669.07 can be used for the purpose of sentence enhancements under this section. State v. Sundling, 248 Neb. 732, 538 N.W.2d 749 (1995).

Revocation for 15 years is not an element of the offense of driving with a revoked license under subsection (c) of former section. State v. Reichstein, 233 Neb. 715, 447 N.W.2d 635 (1989).

3. Testing/sufficiency of the evidence

Subsection (c) of this section (formerly section 39-669.07 (Reissue 1988)) limits the proof which can be used to establish the defendant's prior driving while under the influence convictions. State v. Jenson, 236 Neb. 869, 464 N.W.2d 326 (1991).

Under this provision (formerly part of section 60-6,196), a defendant may object to the validity of a prior conviction for enhancement purposes where there is no showing that at the time of the previous conviction he was represented by counsel or knowingly and voluntarily waived the right to counsel. State v. Fraser, 222 Neb. 862, 387 N.W.2d 695 (1986).

4. Enhancement

Under the enhancement provisions of this section (formerly subsection (2) of section 60-6,196), a drunk driving offender is not receiving additional punishment for his or her previous convictions, but, rather, the offender is being penalized for persisting in committing the offense of driving while under the influence of liquor. State v. Neiss, 260 Neb. 691, 619 N.W.2d 222 (2000).

This section (formerly subsection (2) of section 60-6,196) authorizes a trial court to consider prior convictions of a defendant for driving under the influence of alcoholic liquor or drug within the 12 years prior to the offense for which a defendant currently stands trial and is not ex post facto as to a conviction prior to its passage, since an offender subject to enhancement of punishment under this statute is not receiving additional punishment for his or her previous convictions but is being penalized for an offense committed after its passage. This section deals with offenses committed after its passage, permits an inquiry into a defendant's previous convictions, and in fixing the penalty, does not punish the defendant for previous offenses but for persistence in violating this section. State v. Hansen, 258 Neb. 752, 605 N.W.2d 461 (2000).

The language of this section permits a defendant to challenge the validity of a prior driving under the influence conviction offered for purposes of enhancement on the ground that it was obtained in violation of the defendant's Sixth Amendment right to counsel. State v. Louthan, 257 Neb. 174, 595 N.W.2d 917 (1999).

Pursuant to section 60-6,197.06 (formerly subsection (6) of section 60-6,196), the enhancement rules applicable to offenses committed under subdivision (3) of this section (formerly section 60-6,196(2)(c)) are not applicable to license revocation offenses committed under this section. State v. Kennedy, 251 Neb. 337, 557 N.W.2d 33 (1996).

Objections to prior convictions used for enhancement refers only to challenges based on a failure to show that in the prior proceeding defendant had counsel or voluntarily and intelligently waived his or her right to counsel. State v. Wiltshire, 241 Neb. 817, 491 N.W.2d 324 (1992).

In proceedings under subdivision (3) of this section (formerly subdivision (2)(c) of section 60-6,196) for multiple violations of this section, convictions rendered the same day, if imposed for separate offenses, may each constitute a prior conviction so as to warrant an enhanced penalty. For purposes of determining the 10-year period required by subdivision (2)(c) of this section, the time shall be computed from the date of the prior offense to that date of the offense which resulted in the current conviction. State v. Towler, 240 Neb. 103, 481 N.W.2d 151 (1992).

A previous conviction on appeal at the time the second offense is committed may not be considered a conviction for purposes of the punishment enhancement provisions of this section. State v. Estes, 238 Neb. 692, 472 N.W.2d 214 (1991).

This section (formerly part of section 60-6,196) requires only that a violator be properly convicted of two previous violations, whether the prior violation was called first or second offense. State v. Donaldson, 234 Neb. 683, 452 N.W.2d 531 (1990).

An erroneous designation in a complaint of the date on which and the county in which a prior conviction occurred will not preclude a defendant from being sentenced as one who has previously been convicted of driving while under the influence of alcohol, if the record discloses that the defendant could not have been misled or confused. State v. Wakeman, 231 Neb. 66, 434 N.W.2d 549 (1989).

For enhancement purposes under this section (formerly part of section 60-6,196), the sentencing court shall make a finding on the record concerning the number of defendant's prior convictions for drunk driving. State v. Snodgrass, 230 Neb. 119, 430 N.W.2d 55 (1988).

For a prior conviction based on a plea of guilty to be used for enhancement purposes in an action under this section (formerly part of section 60-6,196), the record must show that the defendant entered the guilty plea to the charge. State v. Slezak, 226 Neb. 404, 411 N.W.2d 632 (1987).

Checklist evidences defendant's waiver of counsel and satisfies State's burden in proving validity of conviction in an enhancement hearing. State v. Thompson, 224 Neb. 922, 402 N.W.2d 271 (1987).

The substantive offense is driving while under the influence of alcohol or with more than .10 percent of alcohol in one's body fluid. The number of times a person has previously been convicted of such a charge is not itself a crime but, rather, is a factor which the trial court is to consider in imposing sentence. State v. Jameson, 224 Neb. 38, 395 N.W.2d 744 (1986).

A certified copy of a judgment entered on a prior conviction for drunk driving may be used for enhancement purposes. State v. Hamblin, 223 Neb. 469, 390 N.W.2d 533 (1986).

A defendant may not relitigate a former conviction in an enhancement proceeding. State v. Fraser, 222 Neb. 862, 387 N.W.2d 695 (1986).

Under this provision (formerly part of section 60-6,196), the trial court is required to advise the defendant of his right to review the record of the prior conviction, bring mitigating facts to the attention of the court prior to sentencing, and object to the validity of the prior conviction. State v. Fraser, 222 Neb. 862, 387 N.W.2d 695 (1986).

The state has the burden to show only that defendant had or waived counsel at prior proceedings used for enhancement purposes. State v. Soe, 219 Neb. 797, 366 N.W.2d 439 (1985).

A transcript of conviction which fails to show on its face that counsel was afforded or the right waived cannot be used for enhancement purposes. State v. Baxter, 218 Neb. 414, 355 N.W.2d 514 (1984).

Record of an enhancement proceeding for second or third offense driving while intoxicated must show that the requirements of the statute were met. A defendant may waive the rights provided by this statute with regard to prior convictions. State v. Ziemba, 216 Neb. 612, 346 N.W.2d 208 (1984).

In sentencing under this section (formerly part of section 60-6,196) the record of the trial court must show evidence of prior convictions and whether the defendant was represented by counsel or waived such representation in those prior proceedings. State v. Prichard, 215 Neb. 488, 339 N.W.2d 748 (1983).

Where under this section (formerly part of section 60-6,196), proof has been made of a defendant's conviction on a prior misdemeanor violation of that statute, the defendant cannot raise a collateral attack upon that conviction. State v. Kelly, 212 Neb. 45, 321 N.W.2d 80 (1982).

A defendant may not collaterally attack a prior conviction when proof of that prior conviction is offered in a proceeding on the issue of enhancement of sentence. State v. Voight, 206 Neb. 829, 295 N.W.2d 112 (1980).

Third offender need not have previously been punished as second offender, but must only have been twice previously convicted of driving under the influence. State v. Orosco, 199 Neb. 532, 260 N.W.2d 303 (1977).

Proof of prior convictions was properly made. State v. Ninneman, 179 Neb. 729, 140 N.W.2d 5 (1966).

Compliance with former sentence is not essential to proof of prior conviction. Danielson v. State, 155 Neb. 890, 54 N.W.2d 56 (1952).

Standard waiver forms, once signed by a defendant, are sufficient in an enhancement proceeding to meet the State's burden of proving that defendant knowingly, intelligently, and voluntarily waived his or her right to counsel. State v. Werner, 8 Neb. App. 684, 600 N.W.2d 500 (1999).

The time limitations for the use of prior driving under the influence convictions set forth in this section do not apply to the use of prior driving under the influence convictions to section 28-306. State v. Tlamka, 7 Neb. App. 579, 585 N.W.2d 101 (1998).

Prior convictions of driving under the influence of alcohol under former section 39-669.07 or ordinances thereunder may properly be used to enhance convictions under this section (formerly part of section 60-6,196), as this section is a mere affirmance of the original act. State v. Sundling, 3 Neb. App. 722, 531 N.W.2d 7 (1995).

A defendant's allegation that the State failed to show that the defendant was present at an enhancement proceeding pursuant to a prior conviction under this section (formerly part of section 60-6,196) constituted a collateral attack, which could only be raised in a separate proceeding. State v. Jones, 1 Neb. App. 816, 510 N.W.2d 404 (1993).

5. Miscellaneous

Pursuant to section 29-2262(2)(b), the mandate of subsection (6) of this section that an order of probation "shall also include" 60 days' confinement does not conflict with the provision that a trial court may require the offender to be confined for a period not to exceed 180 days; the minimum jail term for a period granted probation for an offense punishable under subsection (6) of this section is 60 days, and the maximum is 180 days. State v. Dinslage, 280 Neb. 659, 789 N.W.2d 29 (2010).

Under subdivision (3) of this section (formerly subdivision (2)(c) of section 60-6,196) a 15-year revocation is part of the overall punishment of a defendant, in conjunction with the fines and jail terms imposed for the offense under Class W misdemeanors. State v. Bainbridge, 249 Neb. 260, 543 N.W.2d 154 (1996).

Under subdivision (3) of this section (formerly subdivision (2)(c) of section 60-6,196) an order of probation for a person convicted of third-offense driving while under the influence of alcoholic liquor may include a provision not to operate a motor vehicle for any reason whatsoever during the entire term of probation. State v. Seaman, 237 Neb. 916, 468 N.W.2d 121 (1991).

The relevant portion of this section (formerly part of section 60-6,196) directs in clear, plain, simple, and unambiguous words that when one convicted of first-offense driving while intoxicated is placed on probation, he or she shall be ordered not to drive for any purpose for a period of 60 days from the date of the order of probation. State v. Matthews, 237 Neb. 300, 465 N.W.2d 763 (1991).

Revocation of one's operator's license for a period of 365 days will not always fulfill the requirement that revocation be for a period of 1 year. State v. Contreras, 236 Neb. 455, 461 N.W.2d 562 (1990).

Credit against statutory minimum sentence for inpatient treatment was erroneous, and it was within the district court's power to modify the judgment by striking the illegal credit. State v. Oliver, 230 Neb. 864, 434 N.W.2d 293 (1989).

In a case pending appeal when this section was amended, a sentence of lifetime suspension of a driver's license for driving while under the influence should be vacated and in lieu thereof a sentence of suspension for 15 years imposed. State v. Painter, 224 Neb. 905, 402 N.W.2d 677 (1987).

Where the record did not show the defendant knew the penalty for second offense DWI included a mandatory minimum confinement under subsection (2) (of former section 39-669.07) when he entered his plea, the cause was remanded to determine if the defendant had such knowledge in fact. State v. Stastny, 223 Neb. 903, 395 N.W.2d 492 (1986).

Upon revocation of probation, the court may impose such punishment as may have been imposed originally for the crime of which such defendant was convicted. Resultingly, defendant who was convicted of third offense driving while intoxicated in 1980 and who violated his probation in 1984 was subject to sentencing under the penal statute in effect at the time of his conviction. State v. Jacobson, 221 Neb. 639, 379 N.W.2d 772 (1986).

A defendant's operator's license may not be suspended beyond one year from the judgment of conviction; that is, in this case, one year from the date sentence of probation was imposed. State v. Schulz, 221 Neb. 473, 378 N.W.2d 165 (1985).

Under subsection (1) of this section (former section 39-669.07), the court-ordered suspending of driving privileges must be for a continuous period computed from the date the order of probation is entered. State v. Ramirez, 218 Neb. 899, 360 N.W.2d 484 (1984).

A trial court does not have the authority under this section to interrupt the period of suspension or permit one convicted of driving under the influence of alcoholic liquor or drug, first or second offense, to drive for limited work-related purposes. On second offense the period of prohibition against driving must be for a period of six continuous months computed from the date the order of probation is entered. State v. Havorka, 218 Neb. 367, 355 N.W.2d 343 (1984).

A sentence within the statutory maximum will not be disturbed on appeal absent an abuse of discretion. State v. Rosenberry, 209 Neb. 383, 307 N.W.2d 823 (1981).

A sentence validly imposed takes effect from the time it is imposed, and the subsequent order of the same court vacating that sentence was a nullity. State v. Sliva, 208 Neb. 647, 305 N.W.2d 10 (1981).

Maximum sentence under this statute not excessive in view of defendant's record. State v. Phillips, 197 Neb. 343, 248 N.W.2d 773 (1977).

Sentence of imprisonment for one year and revocation of driver's license was not an abuse of discretion by the trial court. State v. Frans, 192 Neb. 641, 223 N.W.2d 490 (1974).

A requirement that one convicted of driving while intoxicated attend and complete and pay for an alcohol abuse course is a valid condition of probation. State v. Muggins, 192 Neb. 415, 222 N.W.2d 289 (1974).

A license revocation ordered pursuant to this section begins at the time appointed in the court's order. State v. Lankford, 17 Neb. App. 123, 756 N.W.2d 739 (2008).

60-6,197.04. Driving under influence of alcoholic liquor or drugs; preliminary breath test; refusal; penalty.

Any peace officer who has been duly authorized to make arrests for violation of traffic laws of this state or ordinances of any city or village may require any person who operates or has in his or her actual physical control a motor vehicle in this state to submit to a preliminary test of his or her breath for alcohol concentration if the officer has reasonable grounds to believe that such person has alcohol in his or her body, has committed a moving traffic violation, or has been involved in a traffic accident. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol concentration in violation of section 60-6,196 shall be placed under arrest. Any person who refuses to submit to such preliminary breath test shall be guilty of a Class V misdemeanor.

Source: Laws 2004, LB 208, § 14.

The preliminary test referred to in this section (formerly subsection (3) of section 60-6,197) is a different procedure and not a chemical test that will satisfy requirements for a conviction under subsection (3) (formerly subsection (4) of section 60-6,197). State v. Howard, 253 Neb. 523, 571 N.W.2d 308 (1997).

60-6,197.05. Driving under influence of alcoholic liquor or drugs; implied consent to chemical test; revocation; effect.

Any period of revocation imposed by the court for a violation of section 60-6,196 or 60-6,197 shall be reduced by any period of revocation imposed under sections 60-498.01 to 60-498.04, including any period during which a person has a valid ignition interlock permit, arising from the same incident.

Source: Laws 2004, LB 208, § 15; Laws 2009, LB 497, § 8; Laws 2011, LB 667, § 36.

60-6,197.06. Operating motor vehicle during revocation period; penalties.

(1) Unless otherwise provided by law pursuant to an ignition interlock permit, any person operating a motor vehicle on the highways or streets of this state while his or her operator's license has been revoked pursuant to section 28-306, section 60-698, subdivision (4), (5), (6), (7), (8), (9), or (10) of section 60-6,197.03, or section 60-6,198, or pursuant to subdivision (2)(c) or (2)(d) of section 60-6,196 or subdivision (4)(c) or (4)(d) of section 60-6,197 as such subdivisions existed prior to July 16, 2004, shall be guilty of a Class IV felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

(2) If such person has had a conviction under this section or under subsection (6) of section 60-6,196 or subsection (7) of section 60-6,197, as such subsections existed prior to July 16, 2004, and operates a motor vehicle on the highways or streets of this state while his or her operator's license has been revoked pursuant to such conviction, such person shall be guilty of a Class IIA felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for an additional period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

Source: Laws 2004, LB 208, § 16; Laws 2006, LB 925, § 12; Laws 2009, LB 497, § 9; Laws 2015, LB 605, § 78; Laws 2016, LB 275, § 1.

1. Constitutionality

A subsequent prosecution of driving while the operator's license was revoked, after defendant had already been convicted of willful reckless driving and operating a motor vehicle while intoxicated, did not violate the double jeopardy clause, because the State did not prove the entire conduct for which defendant had already been convicted. Willful reckless driving and operating a motor vehicle while intoxicated are not lesser-included offenses of operating a motor vehicle while the operator's license was revoked, and a subsequent conviction of driving while the operator's license is revoked would not violate the Blockburger test. State v. Woodfork, 239 Neb. 720, 478 N.W.2d 248 (1991).

2. Offense

An ignition-interlock permitholder who drives a vehicle not equipped with an ignition interlock device may not be charged under this section and must be charged under section 60-6,211.05(5). State v. Hernandez, 283 Neb. 423, 809 N.W.2d 279 (2012).

Starting a vehicle is an act within the meaning of "operating" a motor vehicle under this section (formerly subsection (6) of section 60-6,196). State v. Portsche, 261 Neb. 160, 622 N.W.2d 582 (2001).

Subsection (3) of former section 60-524 does not terminate a court-ordered suspension required as part of a criminal conviction under this section (formerly subsection (6) of section 60-6,196). State v. Portsche, 261 Neb. 160, 622 N.W.2d 582 (2001).

In a prosecution under this section (formerly subsection (6) of section 60-6,196) for driving when one's operator's license has been revoked pursuant to subdivision (2)(c) of this section, proof of the prior conviction under

subdivision (2)(c) is an essential element of the offense, and thus, the State has the burden to prove the prior conviction. A prior third-offense drunk driving conviction may be used as an element of a violation under this section (formerly subsection (6) of section 60-6,196) even though the prior conviction is not subject to a collateral attack. State v. Lee, 251 Neb. 661, 558 N.W.2d 571 (1997).

3. Testing/sufficiency of the evidence

A certified copy from the Department of Motor Vehicles which shows that a defendant's operator's license was revoked is insufficient to show that the defendant either had counsel or waived counsel at the time he was convicted of the prior offense and is therefore insufficient to support a conviction under this section (formerly subsection (6) of section 60-6,196). State v. Watkins, 4 Neb. App. 356, 543 N.W.2d 470 (1996).

4. Enhancement

A felony conviction for driving under a suspended license in violation of this section may not be used either to trigger application of the habitual criminal statute or as a prior offense for purposes of penalty enhancement pursuant thereto. State v. Hittle, 257 Neb. 344, 598 N.W.2d 20 (1999).

Pursuant to this section (formerly subsection (6) of section 60-6,196), the enhancement rules applicable to offenses committed under subsection (3) of section 60-6,197.03 (formerly section 60-6,196(2)(c)) are not applicable to license revocation offenses committed under this section. State v. Kennedy, 251 Neb. 337, 557 N.W.2d 33 (1996).

5. Miscellaneous

This section does not constrain the trial court’s discretion to order when the mandatory 15-year license revocation shall begin. State v. Policky, 285 Neb. 612, 828 N.W.2d 163 (2013).

A 15-year revocation must be part of any sentence for a conviction under this section, including a sentence of probation. State v. Hense, 276 Neb. 313, 753 N.W.2d 832 (2008).

The revocation of an operator's license pursuant to section 60-6,196(2)(c) as it existed prior to July 16, 2004, includes a revocation made under a city or village ordinance enacted in conformance with section 60-6,196(2)(c). State v. Flores, 17 Neb. App. 532, 767 N.W.2d 512 (2009).

60-6,197.07. Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; city or village ordinances; authorized.

Any city or village may enact ordinances in conformance with sections 60-6,196 and 60-6,197. Upon conviction of any person of a violation of such a city or village ordinance, the provisions of sections 60-6,197.02 and 60-6,197.03 with respect to the operator's license of such person shall be applicable the same as though it were a violation of section 60-6,196 or 60-6,197.

Source: Laws 2004, LB 208, § 17.

60-6,197.08. Driving under influence of alcoholic liquor or drugs; presentence evaluation.

Any person who has been convicted of driving while intoxicated shall, during a presentence evaluation, submit to and participate in an alcohol assessment by a licensed alcohol and drug counselor. The alcohol assessment shall be paid for by the person convicted of driving while intoxicated. At the time of sentencing, the judge, having reviewed the assessment results, may then order the convicted person to follow through on the alcohol assessment results at the convicted person's expense in addition to any penalties deemed necessary.

Source: Laws 2004, LB 208, § 18; Laws 2006, LB 925, § 13.

1. Constitutionality

The provision in this section (formerly subsection (8) of section 60-6,196) requiring the convicted person to pay the expense for the treatment which is a portion of the sentencing order is not intended to be a punishment and therefore provides for neither a fine nor a penalty and does not on its face violate the constitutional prohibitions against excessive fines under Neb. Const. art. I, section 9, or disproportionate penalties under Neb. Const. art. I, section 15. State v. Hynek, 263 Neb. 310, 640 N.W.2d 1 (2002).

This section (formerly subsection (8) of section 60-6,196), which authorizes sentencing courts to impose alternative penalties for individuals convicted of certain driving under the influence offenses, when such individuals have undergone an alcohol assessment, does not violate the distribution of powers clause, Neb. Const. art. II, section 1. This section (formerly subsection (8) of section 60-6,196) is held to be harmonious with other sentencing provisions relating to driving under the influence offenses. State v. Divis, 256 Neb. 328, 589 N.W.2d 537 (1999).

2. Miscellaneous

The purpose of this section (formerly subsection (8) of section 60-6,196) is to provide (1) an alcohol assessment to individuals who have not previously been assessed for alcohol abuse and (2) a tool for courts to review alcohol assessment results prior to sentencing in order to aid in an effective sentencing decision. In those cases where the county court orders an alcohol assessment pursuant to subsection (8) of this section, the court shall follow the mandated statutory procedure and order the convicted offender to participate in the alcohol assessment prior to sentencing. State v. Hansen, 259 Neb. 764, 612 N.W.2d 477 (2000).

60-6,197.09. Driving under influence of alcoholic liquor or drugs; not eligible for probation or suspended sentence.

Notwithstanding the provisions of section 60-6,197.03, a person who commits a violation punishable under subdivision (3)(b) or (c) of section 28-306 or subdivision (3)(b) or (c) of section 28-394 or a violation of section 60-6,196, 60-6,197, or 60-6,198 while participating in criminal proceedings for a violation of section 60-6,196, 60-6,197, or 60-6,198, or a city or village ordinance enacted in accordance with section 60-6,196 or 60-6,197, or a law of another state if, at the time of the violation under the law of such other state, the offense for which the person was charged would have been a violation of section 60-6,197, shall not be eligible to receive a sentence of probation or a suspended sentence for either violation committed in this state.

Source: Laws 2006, LB 925, § 14; Laws 2011, LB 667, § 37.

The imposition of the sentence, absent the pendency of an appeal, concludes the "proceedings" referred to in this section. State v. Lamb, 280 Neb. 738, 789 N.W.2d 918 (2010).

A motion to quash is a procedural prerequisite to facially challenge the constitutionality of this section. State v. Albrecht, 18 Neb. App. 402, 790 N.W.2d 1 (2010).

For the purposes of determining whether a defendant was participating in criminal proceedings, once a defendant has pleaded guilty and such plea was accepted to one charge, the defendant was obviously participating in that criminal proceeding at the time he pleaded to the second charge when both pleas were accepted at the same time. State v. Albrecht, 18 Neb. App. 402, 790 N.W.2d 1 (2010).

60-6,197.10. Driving under influence of alcohol or drugs; public education campaign; Department of Motor Vehicles; duties.

The Department of Motor Vehicles shall conduct an ongoing public education campaign to inform the residents of this state about the dangers and consequences of driving under the

influence of alcohol or drugs in this state. Information shall include, but not be limited to, the criminal and administrative penalties for driving under the influence, any related laws, rules, instructions, and any explanatory matter. The department shall use its best efforts to utilize all available opportunities for making public service announcements on television and radio broadcasts for the public education campaign and to obtain and utilize federal funds for highway safety and other grants in conducting the public education campaign. The information may be included in publications containing information related to other motor vehicle laws and shall be given wide distribution by the department.

Source: Laws 2011, LB 667, § 38.

60-6,198. Driving under influence of alcoholic liquor or drugs; serious bodily injury; violation; penalty.

(1) Any person who, while operating a motor vehicle in violation of section 60-6,196 or 60-6,197, proximately causes serious bodily injury to another person or an unborn child of a pregnant woman shall be guilty of a Class IIIA felony and the court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least sixty days and not more than fifteen years from the date ordered by the court and shall order that the operator's license of such person be revoked for the same period.

(2) For purposes of this section, serious bodily injury means bodily injury which involves a substantial risk of death, a substantial risk of serious permanent disfigurement, or a temporary or protracted loss or impairment of the function of any part or organ of the body.

(3) For purposes of this section, unborn child has the same meaning as in section 28-396.

(4) The crime punishable under this section shall be treated as a separate and distinct offense from any other offense arising out of acts alleged to have been committed while the person was in violation of this section.

Source: Laws 1986, LB 153, § 6; Laws 1992, LB 291, § 13; R.S.Supp. 1992, § 39-669.39; Laws 1993, LB 370, § 307; Laws 1997, LB 364, § 17; Laws 2001, LB 38, § 50; Laws 2006, LB 57, § 10; Laws 2011, LB 667, § 39; Laws 2011, LB 675, § 10.

Cross References

Conviction of felony involving use of vehicle, transmittal of abstract, see section 60-497.02.

The offense of driving under the influence in violation of section 60-6,196 is a lesser-included offense of driving under the influence causing serious bodily injury in violation of this section. State v. Dragoo, 277 Neb. 858, 765 N.W.2d 666 (2009).

The material elements of driving under the influence of alcohol and causing serious bodily injury are: (1) the defendant must have been operating a motor vehicle; (2) the defendant must have been operating the vehicle in violation of section 60-6,196 (driving under the influence of alcohol); and (3) the defendant's act of driving under the influence of alcohol, in violation of section 60-6,196, must proximately cause serious bodily injury. State v. Bartlett, 3 Neb. App. 218, 525 N.W.2d 237 (1994).

60-6,199. Driving under influence of alcoholic liquor or drugs; test; additional test; refusal to permit; effect; results of test; available upon request.

The peace officer who requires a chemical blood, breath, or urine test or tests pursuant to section 60-6,197 may direct whether the test or tests shall be of blood, breath, or urine. The person tested shall be permitted to have a physician of his or her choice evaluate his or her condition and perform or have performed whatever laboratory tests he or she deems appropriate in addition to and following the test or tests administered at the direction of the officer. If the officer refuses to permit such additional test to be taken, then the original test or tests shall not be competent as evidence. Upon the request of the person tested, the results of the test or tests taken at the direction of the officer shall be made available to him or her.

Source: Laws 1959, c. 168, § 2, p. 613; Laws 1961, c. 187, § 3, p. 578; Laws 1963, c. 227, § 1, p. 712; Laws 1971, LB 948, § 3; Laws 1972, LB 1095, § 3; R.S.Supp. 1972, § 39-727.04; Laws 1990, LB 799, § 3; R.S.Supp. 1992, § 39-669.09; Laws 1993, LB 370, § 294.

1. Required test

An individual required to take a breath test does not have the option of requesting a blood or urine test. State v. Morse, 211 Neb. 448, 318 N.W.2d 893 (1982).

This section which provides that if an officer directs that a test shall be of the person's blood or urine such person may choose whether the test shall be of blood or of urine, does not require the officer to notify the person of his option and if the person takes one or the other of these tests then he has waived his right to insist that the test to be made by the state be one of his choice. State v. Sommers, 201 Neb. 809, 272 N.W.2d 367 (1978).

An arrest or the taking into custody on a driving offense required before test is administered. State v. Baker, 184 Neb. 724, 171 N.W.2d 798 (1969).

Blood test was properly given and made. State v. Berg, 177 Neb. 419, 129 N.W.2d 117 (1964).

To render blood test admissible in evidence, there must be a compliance with this section. Pierce v. State, 173 Neb. 319, 113 N.W.2d 333 (1962).

Person taken into custody may choose what test shall be given. Purcha v. Department of Motor Vehicles, 172 Neb. 415, 110 N.W.2d 75 (1961).

2. Refusal to take test

If an arrested motorist has refused a chemical test to determine the motorist's blood-alcohol level in accordance with section 39-699.08(4), (transferred to section 60-6,197) the motorist has no right to a physician's evaluation of the motorist's condition or chemical tests in addition to that directed by the law enforcement officer. State v. Clark, 229 Neb. 103, 425 N.W.2d 347 (1988).

An operator has refused to submit to a test when he conducts himself in a way which would justify a reasonable person in believing that he understood he had been asked to take the test and manifested an unwillingness to take it. Bauer v. Peterson, 212 Neb. 174, 322 N.W.2d 389 (1982).

Silence in the face of a direct inquiry as to which test should be administered was equivalent to an express refusal to submit to any test. Johnson v. Dennis, 187 Neb. 95, 187 N.W.2d 605 (1971).

3. Additional test

Permitting a requested independent chemical test is foundational to the admission in evidence of the result of the breath test performed by the State. Under this section, the police cannot hamper a motorist's reasonable efforts to obtain independent chemical testing; however, the police have no statutory duty to transport a licensee for the purpose of obtaining such testing. State v. Dake, 247 Neb. 579, 529 N.W.2d 46 (1995).

Statute does not require officer to inform person of his or her privilege to request an independent test. Heusman v. Jensen, 226 Neb. 666, 414 N.W.2d 247 (1987).

An officer is not required to inform the person to be tested of his privilege to request an independent test. State v. Klingelhoefer, 222 Neb. 219, 382 N.W.2d 366 (1986).

Statute does not require the officer to inform the person to be tested of his privilege to request an independent test. State v. Miller, 213 Neb. 274, 328 N.W.2d 769 (1983).

Lab results of state's blood or urine tests are inadmissible if defendant objects after denial of requests for private physician and tests. State v. Wahrman, 199 Neb. 337, 258 N.W.2d 818 (1977).

Failure of officer to advise motorist he could obtain additional test following one directed by officer is not excuse for motorist's failure to submit to test. Zadina v. Weedlun, 187 Neb. 361, 190 N.W.2d 857 (1971).

4. Miscellaneous

Result of test should be made available to the defendant but request should be made prior to trial. State v. Fox, 177 Neb. 238, 128 N.W.2d 576 (1964).

Registered nurse may withdraw blood for a test only if acting under the direction of a physician. Otte v. State, 172 Neb. 110, 108 N.W.2d 737 (1961).

60-6,200. Driving under influence of alcoholic liquor or drugs; chemical test; consent of person incapable of refusal not withdrawn.

Any person who is unconscious or who is otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn the consent provided by section 60-6,197 and the test may be given.

Source: Laws 1959, c. 168, § 3, p. 614; R.R.S.1943, § 39-727.05; R.S.1943, (1988), § 39-669.10; Laws 1993, LB 370, § 295.

Defendant found incapable of refusing taking of blood sample. Therefore, consent was implied under this statute. State v. Brittain, 212 Neb. 686, 325 N.W.2d 141 (1982).

A refusal to submit to a chemical test for alcohol occurs when the licensee after being asked to submit to a test so conducts himself as to justify a reasonable person in the requesting officer's position in believing that the licensee understood that he was asked to submit to a test and manifested an unwillingness to do so. Wohlgemuth v. Pearson, 204 Neb. 687, 285 N.W.2d 102 (1979).

To constitute a refusal to submit to a chemical test for alcohol requested under this section the only understanding required by the licensee is an understanding that he has been asked to take a test. Wohlgemuth v. Pearson, 204 Neb. 687, 285 N.W.2d 102 (1979).

Where a person is incapable of refusal by reason of injuries the same may be taken provided other conditions of section 39-669.08 (transferred to section 60-6,197) are met. Mackey v. Director of Motor Vehicles, 194 Neb. 707, 235 N.W.2d 394 (1975).

Blood may be drawn from an unconscious person only upon compliance with the requirements of statutes complimentary hereto. State v. Howard, 193 Neb. 45, 225 N.W.2d 391 (1975).

This section authorizes the taking of test for intoxication even when the defendant is unconscious. State v. Seager, 178 Neb. 51, 131 N.W.2d 676 (1964).

Drawing of blood sample by physician who had been directed to act as coroner's physician from body of fatally injured passenger in automobile did not violate prohibition against unreasonable searches and seizures, and result of tests performed by competent chemist using accepted procedures and facilities were admissible. Gardner v. Meyers, 491 F.2d 1184 (8th Cir. 1974).

60-6,201. Driving under influence of alcoholic liquor or drugs; chemical test; violation of statute or ordinance; results; competent evidence; permit; fee.

(1) Any test made under section 60-6,197, if made in conformity with the requirements of this section, shall be competent evidence in any prosecution under a state statute or city or village ordinance involving operating a motor vehicle while under the influence of alcoholic liquor or drugs or involving driving or being in actual physical control of a motor vehicle when the concentration of alcohol in the blood or breath is in excess of allowable levels.

(2) Any test made under section 60-6,211.02, if made in conformity with the requirements of this section, shall be competent evidence in any prosecution involving operating or being in actual physical control of a motor vehicle in violation of section 60-6,211.01.

(3) To be considered valid, tests of blood, breath, or urine made under section 60-6,197 or tests of blood or breath made under section 60-6,211.02 shall be performed according to methods approved by the Department of Health and Human Services and by an individual possessing a valid permit issued by such department for such purpose, except that a physician, registered nurse, or other trained person employed by a licensed health care facility or health care service which is defined in the Health Care Facility Licensure Act or clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as such act existed on September 1, 2001, or Title XVIII or XIX of the federal Social Security Act, as such act existed on September 1, 2001, to withdraw human blood for scientific or medical purposes, acting at the request of a peace officer, may withdraw blood for the purpose of a test to determine the alcohol concentration or the presence of drugs and no permit from the department shall be required for such person to withdraw blood pursuant to such an order. The department may approve satisfactory techniques or methods to perform such tests and may ascertain the qualifications and competence of individuals to perform such tests and issue permits which shall be subject to termination or revocation at the discretion of the department.

(4) A permit fee may be established by regulation by the department which shall not exceed the actual cost of processing the initial permit. Such fee shall be charged annually to each permitholder. The fees shall be used to defray the cost of processing and issuing the permits and other expenses incurred by the department in carrying out this section. The fee shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund as a laboratory service fee.

(5) Relevant evidence shall not be excluded in any prosecution under a state statute or city or village ordinance involving operating a motor vehicle while under the influence of alcoholic liquor or drugs or involving driving or being in actual physical control of a motor vehicle when the concentration of alcohol in the blood or breath is in excess of allowable levels on the ground that the evidence existed or was obtained outside of this state.

Source: Laws 1959, c. 168, § 4, p. 614; Laws 1963, c. 228, § 2, p. 715; Laws 1963, c. 229, § 2, p. 716; Laws 1971, LB 948, § 4; C.S.Supp. 1972, § 39-727.06; Laws 1986, LB 1047, § 1; Laws 1987, LB 224, § 2; Laws 1990, LB 799, § 4; Laws 1992, LB 291, § 6; Laws 1992, LB 872, § 2; R.S.Supp. 1992, § 39-669.11; Laws 1993, LB 370, § 296; Laws 1993, LB 564, § 9; Laws 1996, LB 1044, § 284; Laws 2000, LB 819, § 76; Laws 2000, LB 1115, § 7; Laws 2001, LB 773, § 17; Laws 2007, LB 296, § 234.

Cross References

1. Admissibility of test results

Pursuant to subsection (3) of this section, a prerequisite to the validity of a breath test made under section 60-6,197(3), and consequently a prerequisite to the validity of an arrest, is that the test must be performed in accordance with the procedures approved by the Department of Health and Human Services Regulation and Licensure and "by an individual possessing a valid permit issued by such department for such purpose". McGuire v. Department of Motor Vehicles, 253 Neb. 92, 568 N.W.2d 471 (1997).

It is not necessary for the State to introduce into evidence the actual or a certified copy of an individual's state Department of Health permit to perform a blood, breath, or urine test of a suspect arrested for driving while under the influence of alcoholic liquor. State v. Obermier, 241 Neb. 802, 490 N.W.2d 693 (1992).

A test made in compliance with this section is sufficient to make a prima facie case on the issue of blood alcohol concentration. Matters of driving and testing are properly viewed as going to the weight of the breath test results, rather than to the admissibility of the evidence. A valid breath test given within a reasonable time after the accused was stopped is probative of a violation of section 39-669.07 (transferred to section 60-6,196). State v. Kubik, 235 Neb. 612, 456 N.W.2d 487 (1990).

Compliance with the requirements of this section in the administration of a breath test may affect the admissibility of the test results but does not go to the question of whether a person was justified in refusing to take the test. Raymond v. Department of Motor Vehicles, 219 Neb. 821, 366 N.W.2d 758 (1985).

The requirements of this section are foundational requirements that must be laid before the admission of the test result into evidence; once the court determines that the evidence is to be admitted, weight and credibility are for the jury. State v. West, 217 Neb. 389, 350 N.W.2d 512 (1984).

The results of a test made under the provisions of section 39-669.08 (transferred to section 60-6,197) may be received in evidence only if the requirements of section 39-669.11 (transferred to section 60-6,201) are met. In order to show that the requirements have been met it is necessary to show that the method of performing the test was approved by the Nebraska Department of Health and that the person administering the test was qualified and had a valid license from the Department of Health. State v. Kolar, 206 Neb. 619, 294 N.W.2d 350 (1980); State v. Gerber, 206 Neb. 75, 291 N.W.2d 403 (1980).

Results of chemical tests for alcohol content admissible as evidence under specified conditions. State v. Jablonski, 199 Neb. 341, 258 N.W.2d 918 (1977).

Result of test was competent evidence in prosecution for driving motor vehicle while under the influence of intoxicating liquor. State v. Fox, 177 Neb. 238, 128 N.W.2d 576 (1964).

To be admissible in evidence, tests made must meet the requirements prescribed by statute. Otte v. State, 172 Neb. 110, 108 N.W.2d 737 (1961).

Unlike section 60-6,210(1), subsection (1) of this section does not limit the use of chemical test results to prosecution under a specific statute; rather, it authorizes the use of results of the specified chemical test as competent evidence in "any" prosecution "under" a state statute "involving" operation of a motor vehicle while under the influence of alcoholic liquor or "involving" such operation with an excessive level of alcohol. State v. Guzman-Gomez, 13 Neb. App. 235, 690 N.W.2d 804 (2005).

2. Error or tolerance in testing

Evidence of breath or blood alcohol content over the statutory limit is not necessarily insufficient simply because the defendant's expert testimony as to the margin of error is not specifically rebutted by expert testimony from the State. State v. Kuhl, 276 Neb. 497, 755 N.W.2d 389 (2008).

In order to support a conviction for the offense of drunk driving based solely on a chemical test the result of the chemical test, when taken together with its tolerance for error, must equal or exceed the statutory percentage. State v. Bjornsen, 201 Neb. 709, 271 N.W.2d 839 (1978).

The Legislature having selected a particular percentage of alcohol to be a criminal offense if present in a person operating a motor vehicle, it is not unreasonable to require that a test, designed to show that percent, do so outside of any error or tolerance inherent in the testing process. State v. Bjornsen, 201 Neb. 709, 271 N.W.2d 839 (1978).

3. Effect of evidence

While the Legislature has the right to prescribe acceptable methods of testing for alcohol content in the body fluid, and perhaps the right to prescribe that such evidence is admissible in a court of law as competent evidence, it

is a judicial function to determine whether the evidence, if believed, is sufficient to sustain a conviction. State v. Burling, 224 Neb. 725, 400 N.W.2d 872 (1987).

Evidence admitted pursuant to this section does not create a presumption of guilt but may be sufficient to make out a prima facie case on blood alcohol concentration issue. State v. Dush, 214 Neb. 51, 332 N.W.2d 679 (1983).

4. Effect of recodification

The substance of section 39-669.11, which requires that driving under the influence of alcohol breath tests be performed according to the Department of Health and Human Services rules, did not change in any material way when it was recodified in this section. State v. Engleman, 5 Neb. App. 485, 560 N.W.2d 851 (1997).

60-6,202. Driving under influence of alcoholic liquor or drugs; blood test; withdrawing requirements; damages; liability; when.

(1) Any physician, registered nurse, other trained person employed by a licensed health care facility or health care service defined in the Health Care Facility Licensure Act, a clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act, as amended, to withdraw human blood for scientific or medical purposes, or a hospital shall be an agent of the State of Nebraska when performing the act of withdrawing blood at the request of a peace officer pursuant to sections 60-6,197 and 60-6,211.02. The state shall be liable in damages for any illegal or negligent acts or omissions of such agents in performing the act of withdrawing blood. The agent shall not be individually liable in damages or otherwise for any act done or omitted in performing the act of withdrawing blood at the request of a peace officer pursuant to such sections except for acts of willful, wanton, or gross negligence of the agent or of persons employed by such agent.

(2) Any person listed in subsection (1) of this section withdrawing a blood specimen for purposes of section 60-6,197 or 60-6,211.02 shall, upon request, furnish to any law enforcement agency or the person being tested a certificate stating that such specimen was taken in a medically acceptable manner. The certificate shall be signed under oath before a notary public and shall be admissible in any proceeding as evidence of the statements contained in the certificate. The form of the certificate shall be prescribed by the Department of Health and Human Services and such forms shall be made available to the persons listed in subsection (1) of this section.

Source: Laws 1959, c. 168, § 5, p. 614; Laws 1971, LB 948, § 5; C.S.Supp. 1972, § 39-727.07; Laws 1974, LB 679, § 1; Laws 1975, LB 140, § 1; Laws 1992, LB 291, § 7; R.S.Supp. 1992, § 39-669.12; Laws 1993, LB 370, § 297; Laws 1993, LB 564, § 10; Laws 1997, LB 210, § 5; Laws 2000, LB 819, § 77; Laws 2000, LB 1115, § 8; Laws 2007, LB 296, § 235.

Cross References

Health Care Facility Licensure Act, see section 71-401.

60-6,203. Driving under influence of alcoholic liquor or drug; violation of city or village ordinance; fee for test; court costs.

Upon the conviction of any person for violation of section 60-6,196 or 60-6,211.01 or of driving a motor vehicle while under the influence of alcoholic liquor or of any drug in violation of any city or village ordinance, there shall be assessed as part of the court costs the fee charged by any physician or any agency administering tests pursuant to a permit issued in accordance with section 60-6,201, for the test administered and the analysis thereof under the provisions of sections 60-6,197 and 60-6,211.02, if such test was actually made.

Source: Laws 1961, c. 188, § 1, p. 579; Laws 1971, LB 948, § 6; C.S.Supp. 1972, § 39-727.13; Laws 1978, LB 673, § 1; R.S.1943, (1988), § 39-669.13; Laws 1993, LB 370, § 298; Laws 1993, LB 564, § 11.

60-6,204. Driving under influence of alcoholic liquor or drugs; test without preliminary breath test; when; qualified personnel.

Any person arrested for any offense involving the operation or actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs shall be required to submit to a chemical test or tests of his or her blood, breath, or urine as provided in section 60-6,197 without the preliminary breath test if the arresting peace officer does not have available the necessary equipment for administering a breath test or if the person is unconscious or is otherwise in a condition rendering him or her incapable of testing by a preliminary breath test. Only a physician, registered nurse, or other trained person employed by a licensed health care facility or health care service defined in the Health Care Facility Licensure Act or a clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act to withdraw human blood for scientific or medical purposes, acting at the request of a peace officer, may withdraw blood for the purpose of determining the concentration of alcohol or the presence of drugs, but this limitation shall not apply to the taking of a urine or breath specimen.

Source: Laws 1971, LB 948, § 7; Laws 1972, LB 1095, § 4; C.S.Supp. 1972, § 39-727.15; Laws 1974, LB 679, § 2; Laws 1990, LB 799, § 5; Laws 1992, LB 291, § 8; R.S.Supp. 1992, § 39-669.14; Laws 1993, LB 370, § 299; Laws 2000, LB 819, § 78; Laws 2000, LB 1115, § 9.

Cross References

Health Care Facility Licensure Act, see section 71-401.

While there is no conditional or qualified refusal, if a refusal was reasonable under the circumstances, such refusal cannot be the basis of a revocation of driving privileges. Fear of needles or AIDS does not in and of itself provide a justifiable basis for refusal. If a licensee questions the qualifications of a technician who is to draw blood, the licensee shall be orally or otherwise informed of the technician's training and experience. A licensee's refusal to allow a blood draw is justified and reasonable in the absence of oral or other information about the technician's training and experience after such qualifications have been questioned. Ruch v. Conrad, 247 Neb. 318, 526 N.W.2d 653 (1995).

Certified medical technologist was qualified technician to withdraw blood for purpose of determining alcoholic or drug content therein. State v. Stein, 241 Neb. 225, 486 N.W.2d 921 (1992).

This section is pari materia with section 39-727.03 (transferred to section 60-6,197), and other sections mentioned in opinion. Stevenson v. Sullivan, 190 Neb. 295, 207 N.W.2d 680 (1973).

Implied Consent Law as amended in 1971 does not involve compulsion within Fifth Amendment; is constitutional; and penalties are as provided in section 39-727 (transferred to section 60-6,196). State v. Manley, 189 Neb. 415, 202 N.W.2d 831 (1972).

60-6,205. Transferred to section 60-498.01.

60-6,206. Transferred to section 60-498.02.

60-6,207. Transferred to section 60-498.03.

60-6,208. Transferred to section 60-498.04.

60-6,209. License revocation; reinstatement; conditions; department; Board of Pardons; duties; fee.

(1) Any person whose operator's license has been revoked pursuant to a conviction for a violation of sections 60-6,196, 60-6,197, and 60-6,199 to 60-6,204 for a third or subsequent time for a period of fifteen years may apply to the Department of Motor Vehicles not more often than once per calendar year, on forms prescribed by the department, requesting the department to make a recommendation to the Board of Pardons for reinstatement of his or her eligibility for an operator's license. Upon receipt of the application and a nonrefundable application fee of one hundred dollars, the Director of Motor Vehicles shall review the application and make a recommendation for reinstatement or for denial of reinstatement. The department may recommend reinstatement if such person shows the following:

(a) Such person has completed a state-certified substance abuse program and is recovering or such person has substantially recovered from the dependency on or tendency to abuse alcohol or drugs;

(b) Such person has not been convicted, since the date of the revocation order, of any subsequent violations of section 60-6,196 or 60-6,197 or any comparable city or village ordinance and the applicant has not, since the date of the revocation order, submitted to a chemical test under section 60-6,197 that indicated an alcohol concentration in violation of section 60-6,196 or refused to submit to a chemical test under section 60-6,197;

(c) Such person has not been convicted, since the date of the revocation order, of driving while under suspension, revocation, or impoundment under section 60-4,109;

(d) Such person has abstained from the consumption of alcoholic beverages and the consumption of drugs except at the direction of a licensed physician or pursuant to a valid prescription;

(e) Such person's operator's license is not currently subject to suspension or revocation for any other reason; and

(f) Such person has agreed that, if the Board of Pardons reinstates such person's eligibility to apply for an ignition interlock permit, such person must provide proof, to the satisfaction of the department, that an ignition interlock device has been installed and is maintained on one or more motor vehicles such person operates for the duration of the original fifteen-year revocation period and such person must operate only motor vehicles so equipped for the duration of the original fifteen-year revocation period.

(2) In addition, the department may require other evidence from such person to show that restoring such person's privilege to drive will not present a danger to the health and safety of other persons using the highways.

(3) Upon review of the application, the director shall make the recommendation to the Board of Pardons in writing and shall briefly state the reasons for the recommendations. The recommendation shall include the original application and other evidence submitted by such person. The recommendation shall also include any record of any other applications such person has previously filed under this section.

(4) The department shall adopt and promulgate rules and regulations to govern the procedures for making a recommendation to the Board of Pardons. Such rules and regulations shall include the requirement that the treatment programs and counselors who provide information about such person to the department must be certified or licensed by the state.

(5) If the Board of Pardons reinstates such person's eligibility for an operator's license or an ignition interlock permit or orders a reprieve of such person's motor vehicle operator's license revocation, such reinstatement or reprieve may be conditioned for the duration of the original revocation period on such person's continued recovery and, if such person is a holder of an ignition interlock permit, shall be conditioned for the duration of the original revocation period on such person's operation of only motor vehicles equipped with an ignition interlock device. If such person is convicted of any subsequent violation of section 60-6,196 or 60-6,197, the reinstatement of the person's eligibility for an operator's license shall be withdrawn and such person's operator's license will be revoked by the Department of Motor Vehicles for the time remaining under the original revocation, independent of any sentence imposed by the court, after thirty days' written notice to the person by first-class mail at his or her last-known mailing address as shown by the records of the department.

(6) If the Board of Pardons reinstates a person's eligibility for an operator's license or an ignition interlock permit or orders a reprieve of such person's motor vehicle operator's license revocation, the board shall notify the Department of Motor Vehicles of the reinstatement or reprieve. Such person may apply for an operator's license upon payment of a fee of one hundred twenty-five dollars and the filing of proof of financial responsibility. The fees paid pursuant to this section shall be collected by the department and remitted to the State Treasurer. The State Treasurer shall credit seventy-five dollars of each fee to the General Fund and fifty dollars of each fee to the Department of Motor Vehicles Cash Fund.

Source: Laws 1992, LB 291, § 10; R.S.Supp. 1992, § 39-669.19; Laws 1993, LB 370, § 304; Laws 1998, LB 309, § 18; Laws 2001, LB 38, § 54; Laws 2003, LB 209, § 13; Laws 2004, LB 208, § 12; Laws 2004, LB 1083, § 102; Laws 2008, LB 736, § 9; Laws 2014, LB 998, § 12.

This section (60-6,209 (Reissue 1993)) clearly defines the 15-year revocation as serving as a punishment and is unconstitutional because it permits a judicial commutation of a sentence of punishment. Because this section permits the judicial branch to exercise the power of commutation, a power that clearly belongs to the executive branch, this

section is unconstitutional as a violation of the separation of powers clause of the Nebraska Constitution. State v. Bainbridge, 249 Neb. 260, 543 N.W.2d 154 (1996).

The law does not grant an absolute right to defendant to a reduction of a term of revocation, but provides that the period of revocation "may" be reduced if the provisions of the statute are shown by the applicant to be satisfied by the preponderance of the evidence. State v. Packett, 246 Neb. 888, 523 N.W.2d 695 (1994).

60-6,210. Blood sample; results of chemical test; admissible in criminal prosecution; disclosure required.

(1) If the driver of a motor vehicle involved in an accident is transported to a hospital within or outside of Nebraska and a sample of the driver's blood is withdrawn by a physician, registered nurse, qualified technician, or hospital for the purpose of medical treatment, the results of a chemical test of the sample shall be admissible in a criminal prosecution for a violation punishable under subdivision (3)(b) or (c) of section 28-306 or a violation of section 28-305, 60-6,196, or 60-6,198 to show the alcoholic content of or the presence of drugs or both in the blood at the time of the accident regardless of whether (a) a peace officer requested the driver to submit to a test as provided in section 60-6,197 or (b) the driver had refused a chemical test.

(2) Any physician, registered nurse, qualified technician, or hospital in this state performing a chemical test to determine the alcoholic content of or the presence of drugs in such blood for the purpose of medical treatment of the driver of a vehicle involved in a motor vehicle accident shall disclose the results of the test (a) to a prosecuting attorney who requests the results for use in a criminal prosecution under subdivision (3)(b) or (c) of section 28-306 or section 28-305, 60-6,196, or 60-6,198 and (b) to any prosecuting attorney in another state who requests the results for use in a criminal prosecution for driving while intoxicated, driving under the influence, or motor vehicle homicide under the laws of the other state if the other state requires a similar disclosure by any hospital or person in such state to any prosecuting attorney in Nebraska who requests the results for use in such a criminal prosecution under the laws of Nebraska.

Source: Laws 1992, LB 872, § 3; R.S.Supp. 1992, § 39-669.20; Laws 1993, LB 370, § 305; Laws 2004, LB 208, § 20; Laws 2006, LB 925, § 15.

Admission of evidence of blood test results in a criminal prosecution for manslaughter under section 28-305 is not authorized under this section. State v. Brouillette, 265 Neb. 214, 655 N.W.2d 876 (2003).

Unlike subsection (1) of this section, section 60-6,201(1) does not limit the use of chemical test results to prosecution under a specific statute; rather, it authorizes the use of results of the specified chemical test as competent evidence in "any" prosecution "under" a state statute "involving" operation of a motor vehicle while under the influence of alcoholic liquor or "involving" such operation with an excessive level of alcohol. State v. Guzman-Gomez, 13 Neb. App. 235, 690 N.W.2d 804 (2005).

60-6,211. Lifetime revocation of motor vehicle operator's license; reduction; procedure.

Any person who prior to April 19, 1986, has had his or her motor vehicle operator's license revoked for life pursuant to section 60-6,196 or 60-6,197 may submit an application to the court for a reduction of such lifetime revocation. The court in its discretion may reduce such revocation to a period of fifteen years.

Source: Laws 1986, LB 153, § 5; R.S.1943, (1988), § 39-669.38; Laws 1993, LB 370, § 306.

The commutation of a motor vehicle operator's license suspension by the judiciary is an improper use of a power reserved for the executive branch, and since the thrust of this section is toward that end, it is unconstitutional. State v. Diaz, 266 Neb. 966, 670 N.W.2d 794 (2003).

Where a criminal statute is amended to mitigate punishment, the sentence is that provided by a statute amended before final judgment absent a specific contrary legislative mandate. State v. Thompson, 224 Neb. 922, 402 N.W.2d 271 (1987).

In a case pending appeal when section 39-669.07 (transferred to section 60-6,196) was amended, a sentence of lifetime suspension of a driver's license for driving while under the influence should be vacated and in lieu thereof a sentence of suspension for 15 years imposed. State v. Painter, 224 Neb. 905, 402 N.W.2d 677 (1987).

60-6,211.01. Person under twenty-one years of age; prohibited acts.

It shall be unlawful for any person under twenty-one years of age to operate or be in the actual physical control of any motor vehicle:

(1) When such person has a concentration of two-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood but less than the concentration prescribed under subdivision (1)(b) of section 60-6,196; or

(2) When such person has a concentration of two-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath but less than the concentration prescribed under subdivision (1)(c) of section 60-6,196.

Source: Laws 1993, LB 564, § 2; Laws 1998, LB 309, § 19.

60-6,211.02. Implied consent to submit to chemical test; when test administered; refusal; penalty.

(1) Any person who operates or has in his or her actual physical control a motor vehicle in this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood or breath for the purpose of determining the concentration of alcohol in such blood or breath.

(2) Any peace officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village may require any person under twenty-one years of age to submit to a chemical test or tests of his or her blood or breath for the purpose of determining the concentration of alcohol in such blood or breath when the officer has probable cause to believe that such person was driving or was in the actual physical control of a motor vehicle in this state in violation of section 60-6,211.01. Such peace officer may require such person to submit to a preliminary breath test. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol concentration in violation of section 60-6,211.01 shall be placed under arrest.

(3) Any person arrested as provided in this section may, upon the direction of a peace officer, be required to submit to a chemical test or tests of his or her blood or breath for a determination of the concentration of alcohol. If the chemical test discloses the presence of a concentration of alcohol in violation of section 60-6,211.01, the person shall be found guilty of a traffic infraction

as defined in section 60-672 and upon conviction shall have his or her operator's license impounded by the court for thirty days for each violation of section 60-6,211.01. Any person who refuses to submit to such test or tests required pursuant to this section shall not have the tests taken but shall be found guilty of a traffic infraction as defined in section 60-672 and upon conviction shall have his or her operator's license impounded by the court for ninety days for refusal to submit to such tests required pursuant to this section.

Source: Laws 1993, LB 564, § 3; Laws 1998, LB 309, § 20.

60-6,211.03. Impounded operator's license; operation relating to employment authorized.

Any person whose operator's license is impounded pursuant to section 60-6,211.02 may be allowed by the court to operate a motor vehicle in order to drive to and from his or her place of employment.

Source: Laws 1993, LB 564, § 4; Laws 1998, LB 309, § 21.

60-6,211.04. Applicability of other laws.

Sections 60-6,211.01 to 60-6,211.03 shall not operate to prevent any person, regardless of age, from being prosecuted or having any action taken for a violation of section 60-6,196 or 60-6,197 or having his or her operator's license revoked pursuant to sections 60-498.01 to 60-498.04 for a violation of section 60-6,196 or 60-6,197 or from being prosecuted or having any action taken under any other provision of law. If such person is believed to be under the influence of alcoholic liquor pursuant to section 60-6,196 or 60-6,197, sections 60-6,211.01 to 60-6,211.03 shall not operate to prevent prosecution of such person for a violation of section 60-6,196 or 60-6,197 even if sections 60-6,211.01 to 60-6,211.03 apply.

Source: Laws 1993, LB 564, § 5; Laws 2003, LB 209, § 14; Laws 2004, LB 208, § 21.

60-6,211.05. Ignition interlock device; continuous alcohol monitoring device and abstention from alcohol use; orders authorized; prohibited acts; violation; penalty; costs; Department of Motor Vehicles Ignition Interlock Fund; created; use; investment; prohibited acts relating to tampering with device; hearing.

(1) If an order is granted under section 60-6,196 or 60-6,197 and sections 60-6,197.02 and 60-6,197.03, the court may order that the defendant install an ignition interlock device of a type approved by the Director of Motor Vehicles on each motor vehicle operated by the defendant during the period of revocation. Upon sufficient evidence of installation, the defendant may apply to the director for an ignition interlock permit pursuant to section 60-4,118.06. The device shall, without tampering or the intervention of another person, prevent the defendant from operating the motor vehicle when the defendant has an alcohol concentration greater than three-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her

blood or three-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath. The Department of Motor Vehicles shall issue an ignition interlock permit to the defendant under section 60-4,118.06 only upon sufficient proof that a defendant has installed an ignition interlock device on any motor vehicle that the defendant will operate during his or her release.

(2) If the court orders installation of an ignition interlock device and issuance of an ignition interlock permit pursuant to subsection (1) of this section, the court may also order the use of a continuous alcohol monitoring device and abstention from alcohol use at all times. The device shall, without tampering or the intervention of another person, test and record the alcohol consumption level of the defendant on a periodic basis and transmit such information to probation authorities.

(3) Any order issued by the court pursuant to this section shall not take effect until the defendant is eligible to operate a motor vehicle pursuant to subsection (8) of section 60-498.01. A person shall be eligible to be issued an ignition interlock permit allowing operation of a motor vehicle equipped with an ignition interlock device if he or she is not subject to any other suspension, cancellation, required no-driving period, or period of revocation and has successfully completed the ignition interlock permit application process. The Department of Motor Vehicles shall review its records and the driving record abstract of any person who applies for an ignition interlock permit allowing operation of a motor vehicle equipped with an ignition interlock device to determine (a) the applicant's eligibility for an ignition interlock permit, (b) the applicant's previous convictions under section 60-6,196, 60-6,197, or 60-6,197.06 or any previous administrative license revocation, if any, and (c) if the applicant is subject to any required no-drive periods before the ignition interlock permit may be issued.

(4)(a) If the court orders an ignition interlock device or the Board of Pardons orders an ignition interlock device under section 83-1,127.02, the court or the Board of Pardons shall order the defendant to apply for an ignition interlock permit as provided in section 60-4,118.06 which indicates that the defendant is only allowed to operate a motor vehicle equipped with an ignition interlock device.

(b) Such court order shall remain in effect for a period of time as determined by the court not to exceed the maximum term of revocation which the court could have imposed according to the nature of the violation and shall allow operation by the defendant of only an ignition-interlock-equipped motor vehicle.

(c) Such Board of Pardons order shall remain in effect for a period of time not to exceed any period of revocation the applicant is subject to at the time the application for a reprieve is made.

(5) Any person restricted to operating a motor vehicle equipped with an ignition interlock device, pursuant to a Board of Pardons order, who operates upon the highways of this state a motor vehicle without such device or if the device has been disabled, bypassed, or altered in any way, shall be punished as provided in subsection (3) of section 83-1,127.02.

(6) If a person ordered to use a continuous alcohol monitoring device and abstain from alcohol use pursuant to a court order as provided in subsection (2) of this section violates the provisions of such court order by removing, tampering with, or otherwise bypassing the continuous alcohol monitoring device or by consuming alcohol while required to use such device, he or she shall have his or her ignition interlock permit revoked and be unable to apply for reinstatement for the duration of the revocation period imposed by the court.

(7) The director shall adopt and promulgate rules and regulations regarding the approval of ignition interlock devices, the means of installing ignition interlock devices, and the means of administering the ignition interlock permit program.

(8)(a) The costs incurred in order to comply with the ignition interlock requirements of this section shall be paid directly to the ignition interlock provider by the person complying with an order for an ignition interlock permit and installation of an ignition interlock device.

(b) If the Department of Motor Vehicles has determined the person to be indigent and incapable of paying for the cost of installation, removal, or maintenance of the ignition interlock device in accordance with this section, such costs shall be paid out of the Department of Motor Vehicles Ignition Interlock Fund if such funds are available, according to rules and regulations adopted and promulgated by the department. Such costs shall also be paid out of the Department of Motor Vehicles Ignition Interlock Fund if such funds are available and if the court or the Board of Pardons, whichever is applicable, has determined the person to be indigent and incapable of paying for the cost of installation, removal, or maintenance of the ignition interlock device in accordance with this section. The Department of Motor Vehicles Ignition Interlock Fund is created. Money in the Department of Motor Vehicles Ignition Interlock Fund may be used for transfers to the General Fund at the direction of the Legislature. On October 1, 2017, or as soon thereafter as administratively possible, the State Treasurer shall transfer twenty-five thousand dollars from the Department of Motor Vehicles Ignition Interlock Fund to the Violence Prevention Cash Fund. On October 1, 2018, or as soon thereafter as administratively possible, the State Treasurer shall transfer twenty-five thousand dollars from the Department of Motor Vehicles Ignition Interlock Fund to the Violence Prevention Cash Fund. Any money in the Department of Motor Vehicles Ignition Interlock Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(9)(a)(i) An ignition interlock service facility shall notify the appropriate district probation office or the appropriate court, as applicable, of any evidence of tampering with or circumvention of an ignition interlock device, or any attempts to do so, when the facility becomes aware of such evidence. Failure of the facility to provide notification as provided in this subdivision is a Class V misdemeanor.

(ii) An ignition interlock service facility shall notify the Department of Motor Vehicles, if the ignition interlock permit is issued pursuant to sections 60-498.01 to 60-498.04, of any evidence of tampering with or circumvention of an ignition interlock device, or any attempts to do so, when the facility becomes aware of such evidence. Failure of the facility to provide notification as provided in this subdivision is a Class V misdemeanor.

(b) If a district probation office receives evidence of tampering with or circumvention of an ignition interlock device, or any attempts to do so, from an ignition interlock service facility, the district probation office shall notify the appropriate court of such violation. The court shall immediately schedule an evidentiary hearing to be held within fourteen days after receiving such evidence, either from the district probation office or an ignition interlock service facility, and the court shall cause notice of the hearing to be given to the person operating a motor vehicle pursuant to an order under subsection (1) of this section. If the person who is the subject of such evidence does not appear at the hearing and show cause why the order made pursuant to subsection (1) of this section should remain in effect, the court shall rescind the original order. Nothing in this subsection shall apply to an order made by the Board of Pardons pursuant to section 83-1,127.02.

(10) Notwithstanding any other provision of law, the issuance of an ignition interlock permit by the Department of Motor Vehicles under section 60-498.01 or an order for the installation of an ignition interlock device and ignition interlock permit made pursuant to subsection (1) of this section as part of a conviction, as well as the administration of such court order by the Office of Probation Administration for the installation, maintenance, and removal of such device, as applicable, shall not be construed to create an order of probation when an order of probation has not been issued.

Source: Laws 1993, LB 564, § 6; Laws 1998, LB 309, § 24; Laws 2001, LB 38, § 55; Laws 2003, LB 209, § 15; Laws 2004, LB 208, § 22; Laws 2006, LB 925, § 16; Laws 2008, LB 736, § 10; Laws 2009, LB 497, § 10; Laws 2010, LB 924, § 5; Laws 2011, LB 667, § 40; Laws 2012, LB 751, § 46; Laws 2013, LB 158, § 5; Laws 2013, LB 199, § 27; Laws 2017, LB 331, § 28.

Effective Date: May 16, 2017

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

Under the language of subsection (2) of this section, if the sentencing court orders the use of a continuous alcohol monitoring device, the convicted person using the continuous alcohol monitoring device must abstain from alcohol use at all times. State v. Sikes, 286 Neb. 38, 834 N.W.2d 609 (2013).

An ignition-interlock permitholder who drives a vehicle not equipped with an ignition interlock device may not be charged under section 60-6,197.06 and must be charged under subsection (5) of this section. State v. Hernandez, 283 Neb. 423, 809 N.W.2d 279 (2012).

A trial court's refusal to grant the use of an ignition interlock device under this section was proper where the use of the device was not found to be a condition necessary or likely to ensure that the defendant would lead a law-abiding life. State v. Kuhl, 16 Neb. App. 127, 741 N.W.2d 701 (2007).

60-6,211.06. Implied consent to submit to chemical test violation; court and department records; expungement; when authorized.

(1) An abstract of the court record of every person whose license has been impounded pursuant to section 60-6,211.02 shall be transmitted to the Department of Motor Vehicles. This violation shall become part of the person's record maintained by the department for a period of not longer than ninety days. After ninety days, the department shall expunge the violation from the person's record.

(2) Any person whose license has been impounded pursuant to section 60-6,211.02 and who refused to submit to a chemical test or tests required pursuant to such section shall have the violation become part of the person's record maintained by the department for a period of not longer than one hundred twenty days. After one hundred twenty days, the department shall expunge the violation from the person's record.

Source: Laws 1998, LB 309, § 22.

60-6,211.07. Implied consent to submit to chemical test violation; impounded license; return; prohibited act; effect.

(1) At the end of the impoundment period under section 60-6,211.02, the operator's license shall be returned by the court to the licensee.

(2) Any person who unlawfully operates a motor vehicle during the period of impoundment shall be subject to section 60-4,108.

Source: Laws 1998, LB 309, § 23; Laws 2001, LB 38, § 56.

60-6,211.08. Open alcoholic beverage container; consumption of alcoholic beverages; prohibited acts; applicability of section to certain passengers of limousine or bus.

(1) For purposes of this section:

(a) Alcoholic beverage means (i) beer, ale porter, stout, and other similar fermented beverages, including sake or similar products, of any name or description containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor, (ii) wine of not less than one-half of one percent of alcohol by volume, or (iii) distilled spirits which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced. Alcoholic beverage does not include trace amounts not readily consumable as a beverage;

(b) Highway means a road or street including the entire area within the right-of-way;

(c) Limousine means a luxury vehicle used to provide prearranged passenger transportation on a dedicated basis at a premium fare that has a seating capacity of at least five and no more than fourteen persons behind the driver with a physical partition separating the driver seat from the passenger compartment. Limousine does not include taxicabs, hotel or airport buses or shuttles, or buses;

(d) Open alcoholic beverage container, except as provided in subsection (3) of section 53-123.04 and subdivision (1)(c) of section 53-123.11, means any bottle, can, or other receptacle:

(i) That contains any amount of alcoholic beverage; and

(ii)(A) That is open or has a broken seal or (B) the contents of which are partially removed; and

(e) Passenger area means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including any compartments in such area. Passenger area does not include the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk.

(2) Except as otherwise provided in this section, it is unlawful for any person in the passenger area of a motor vehicle to possess an open alcoholic beverage container while the motor vehicle is located in a public parking area or on any highway in this state.

(3) Except as provided in section 53-186 or subsection (4) of this section, it is unlawful for any person to consume an alcoholic beverage (a) in a public parking area or on any highway in this state or (b) inside a motor vehicle while in a public parking area or on any highway in this state.

(4) This section does not apply to persons who are passengers of, but not drivers of, a limousine or bus being used in a charter or special party service as defined by rules and regulations adopted and promulgated by the Public Service Commission and subject to Chapter 75, article 3. Such passengers may possess open alcoholic beverage containers and may consume alcoholic beverages while such limousine or bus is in a public parking area or on any highway in this state if (a) the driver of the limousine or bus is prohibited from consuming alcoholic liquor and (b) alcoholic liquor is not present in any area that is readily accessible to the driver while in the driver's seat, including any compartments in such area.

Source: Laws 1999, LB 585, § 4; Laws 2006, LB 562, § 6; Laws 2011, LB 281, § 3.

Conviction for possessing an open container of alcohol in a vehicle was invalid when police officers found defendant intoxicated in a vehicle that was parked on a residential driveway and overhanging a public sidewalk. State v. McCave, 282 Neb. 500, 805 N.W.2d 290 (2011).

60-6,211.09. Continuous alcohol monitoring devices; Office of Probation Administration; duties.

The Office of Probation Administration shall adopt and promulgate rules and regulations to approve the use of continuous alcohol monitoring devices by individuals sentenced to probation for violating section 60-6,196 or 60-6,197.

Source: Laws 2006, LB 925, § 17.

60-6,211.10. Repealed. Laws 2009, LB 497, § 12.

60-6,211.11. Prohibited acts relating to ignition interlock device; violation; penalty.

(1) Except as provided in subsection (2) of this section, any person ordered by a court or the Department of Motor Vehicles to operate only motor vehicles equipped with an ignition interlock device is guilty of a Class I misdemeanor if he or she (a) tampers with or circumvents and then operates a motor vehicle equipped with an ignition interlock device installed under the court order or Department of Motor Vehicles order while the order is in effect or (b) operates a motor vehicle which is not equipped with an ignition interlock device in violation of the court order or Department of Motor Vehicles order.

(2) Any person ordered by a court or the Department of Motor Vehicles to operate only motor vehicles equipped with an ignition interlock device is guilty of a Class IV felony if he or she (a)(i) tampers with or circumvents and then operates a motor vehicle equipped with an ignition interlock device installed under the court order or Department of Motor Vehicles order while the order is in effect or (ii) operates a motor vehicle which is not equipped with an ignition interlock device in violation of the court order or Department of Motor Vehicles order and (b) operates the motor vehicle as described in subdivision (a)(i) or (ii) of this subsection when he or she has a concentration of two-hundredths of one gram or more by weight of alcohol per one

hundred milliliters of his or her blood or a concentration of two-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath.

(3) Any person who otherwise operates a motor vehicle equipped with an ignition interlock device in violation of the requirements of the court order or Department of Motor Vehicles order under which the device was installed shall be guilty of a Class III misdemeanor.

Source: Laws 2011, LB 667, § 41; Laws 2014, LB 998, § 13.

(p) OTHER SERIOUS TRAFFIC OFFENSES

60-6,212. Careless driving, defined.

Any person who drives any motor vehicle in this state carelessly or without due caution so as to endanger a person or property shall be guilty of careless driving.

Source: Laws 1979, LB 575, § 1; R.S.1943, (1988), § 39-669; Laws 1993, LB 370, § 308.

Cross References

Applicability of statute to private property, see section 60-6,108.
Operator's license, assessment of points and revocation, see sections 60-497.01, 60-498, and 60-4,182 et seq.

Careless driving is a lesser-included offense of reckless driving. State v. Howard, 253 Neb. 523, 571 N.W.2d 308 (1997).

The failure of this section to limit the proscription as to careless driving to the public roads is not an impermissible, unconstitutional overbreadth. The statutory language, carelessly or without due caution, is not unconstitutionally vague. State v. Merithew, 220 Neb. 530, 371 N.W.2d 110 (1985).

This section, which provides that any person who operates a motor vehicle in a manner so as to endanger or be likely to endanger any person or property, shall be guilty of careless driving, is vague and indefinite, and is thus unconstitutional. State v. Huffman, 202 Neb. 434, 275 N.W.2d 838 (1979). This case applies to section 39-669 as it existed prior to being repealed by Laws 1979, LB 575, section 3.

60-6,213. Reckless driving, defined.

Any person who drives any motor vehicle in such a manner as to indicate an indifferent or wanton disregard for the safety of persons or property shall be guilty of reckless driving.

Source: Laws 1935, c. 134, § 3, p. 485; C.S.Supp. 1941, § 39-11,100; Laws 1943, c. 99, § 1, p. 339; R.S.1943, § 39-7,107; Laws 1947, c. 148, § 3(1), p. 410; R.R.S.1943, § 39-7,107; R.S.1943, (1988), § 39-669.01; Laws 1993, LB 370, § 309.

Cross References

Applicability of statute to private property, see section 60-6,108.
Motor vehicle homicide, penalty, see section 28-306.
Operator's license, assessment of points and revocation, see sections 60-497.01, 60-498, and 60-4,182 et seq.

Speed alone does not support a conviction for reckless driving, but it does have a bearing on whether one was driving dangerously under the surroundings and attendant circumstances of the particular case. State v. Howard, 253 Neb. 523, 571 N.W.2d 308 (1997).

Prosecution for traffic infraction is a criminal action. State v. Knoles, 199 Neb. 211, 256 N.W.2d 873 (1977).

Improper turn by defendant while overtaking complainant's auto, held to be reckless driving. State v. Kufeldt, 197 Neb. 377, 248 N.W.2d 781 (1977).

History of statute reviewed in considering municipal ordinance. State v. Green, 182 Neb. 615, 156 N.W.2d 724 (1968).

Upon conviction, suspension of driver's license is authorized. Kroger v. State, 158 Neb. 73, 62 N.W.2d 312 (1954).

Under certain circumstances, careless driving under section 60-6,212 should be instructed as a lesser-included offense of reckless driving. State v. Howard, 5 Neb. App. 596, 560 N.W.2d 516 (1997).

60-6,214. Willful reckless driving, defined.

Any person who drives any motor vehicle in such a manner as to indicate a willful disregard for the safety of persons or property shall be guilty of willful reckless driving.

Source: Laws 1935, c. 134, § 3, p. 485; C.S.Supp. 1941, § 39-11,100; Laws 1943, c. 99, § 1, p. 339; R.S.1943, § 39-7,107; Laws 1947, c. 148, § 3(3), p. 410; R.R.S.1943, § 39-7,107.02; R.S.1943, (1988), § 39-669.03; Laws 1993, LB 370, § 310.

Cross References

Applicability of statute to private property, see section 60-6,108.
Motor vehicle homicide, penalty, see section 28-306.
Operator's license, assessment of points and revocation, see sections 60-497.01, 60-498, and 60-4,182 et seq.

Willful reckless driving is characterized by a deliberate disregard for the safety of others or their property. For there to be willful reckless driving it is not necessary that there be property damage or injury inflicted. Here, intentional or deliberate disregard for the safety or property of others was lacking, since there was no evidence of the presence of any persons or property subjected to danger in the area, and the defendant was only driving 36 m.p.h. in a 25-m.p.h. zone. State v. Douglas, 239 Neb. 891, 479 N.W.2d 457 (1992).

History of statute reviewed in considering municipal ordinance. State v. Green, 182 Neb. 615, 156 N.W.2d 724 (1968).

The conscious and intentional driving which the driver knows, or should know, creates an unreasonable risk of harm is sufficient to sustain a conviction. State v. DiLorenzo, 181 Neb. 59, 146 N.W.2d 791 (1966).

60-6,215. Reckless driving; first offense; penalty.

Every person convicted of reckless driving shall, upon a first conviction, be guilty of a Class III misdemeanor.

Source: Laws 1935, c. 134, § 3, p. 485; C.S.Supp. 1941, § 39-11,100; Laws 1943, c. 99, § 1, p. 339; R.S.1943, § 39-7,107; Laws 1947, c. 148, § 3(2), p. 410; Laws 1955, c. 154, § 1, p. 455; R.R.S.1943, § 39-7,107.01; R.S.1943, (1988), § 39-669.02; Laws 1993, LB 370, § 311; Laws 1993, LB 575, § 11.

Cross References

Applicability of statute to private property, see section 60-6,108.

60-6,216. Willful reckless driving; first offense; penalty.

Every person convicted of willful reckless driving shall, upon a first conviction, be guilty of a Class III misdemeanor, and the court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of not less than thirty days nor more than one year from the date ordered by the court and shall order that the operator's license of such person be revoked for a like period. The revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

Source: Laws 1935, c. 134, § 3, p. 485; C.S.Supp. 1941, § 39-11,100; Laws 1943, c. 99, § 1, p. 339; R.S.1943, § 39-7,107; Laws 1947, c. 148, § 3(4), p. 410; Laws 1953, c. 214, § 3, p. 757; R.R.S.1943, § 39-7,107.03; R.S.1943, (1988), § 39-669.04; Laws 1993, LB 370, § 312; Laws 1993, LB 575, § 12; Laws 2001, LB 38, § 57.

Cross References

Applicability of statute to private property, see section 60-6,108.

Evidence that a motorist ran at least one stop sign, exceeded the speed limit, and crossed over the road median during a chase by a police officer, was sufficient to sustain his conviction for willful reckless driving even though no property damage was done to other cars and no injuries were sustained. Goodloe v. Parratt, 453 F.Supp. 1380 (D. Neb. 1978).

The imposition of concurrent terms of ten years imposed upon a defendant who was convicted of willful reckless driving and operating a motor vehicle to avoid arrest, and who had been adjudged to be an habitual criminal, does not constitute cruel and unusual punishment. Goodloe v. Parratt, 453 F.Supp. 1380 (D. Neb. 1978).

60-6,217. Reckless driving or willful reckless driving; second offense; penalty.

Upon a second conviction of any person for either reckless driving or willful reckless driving, the person shall be guilty of a Class II misdemeanor, and the court shall order the person so convicted, as part of the judgment of conviction, not to drive a motor vehicle for any purpose for a period of not less than sixty days nor more than two years from the date ordered by the court and shall order that the operator's license of such person be revoked for a like period. The revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the motor vehicle which such person was operating in such reckless or willful reckless manner is registered in the name of such person, the motor vehicle shall be impounded in a reputable garage by the court for a period of not less than two months nor more than one year at the expense and risk of the owner thereof, except that any motor vehicle so impounded shall be released to the holder of a bona fide lien thereon, executed prior to such impounding, when possession of such motor vehicle is requested in writing by such lienholder for the purpose of foreclosing and satisfying the lien.

Source: Laws 1935, c. 134, § 3, p. 485; C.S.Supp. 1941, § 39-11,100; Laws 1943, c. 99, § 1, p. 339; R.S.1943, § 39-7,107; Laws 1947, c. 148, § 3(5), p. 410; Laws 1953,

c. 214, § 4, p. 758; R.R.S.1943, § 39-7,107.04; R.S.1943, (1988), § 39-669.05; Laws 1993, LB 370, § 313; Laws 1993, LB 575, § 13; Laws 2001, LB 38, § 58.

Cross References

Applicability of statute to private property, see section 60-6,108.

60-6,218. Reckless driving or willful reckless driving; third and subsequent offenses; penalty.

Upon a third or subsequent conviction of any person for either reckless driving or willful reckless driving, the person shall be guilty of a Class I misdemeanor. The court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of one year from the date ordered by the court and shall order that the operator's license of such person be revoked for a like period. The revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

Source: Laws 1935, c. 134, § 3, p. 485; C.S.Supp. 1941, § 39-11,100; Laws 1943, c. 99, § 1, p. 339; R.S.1943, § 39-7,107; Laws 1947, c. 148, § 3(6), p. 411; Laws 1953, c. 214, § 5, p. 758; Laws 1957, c. 366, § 21, p. 1258; R.R.S.1943, § 39-7,107.05; Laws 1991, LB 420, § 1; R.S.Supp. 1992, § 39-669.06; Laws 1993, LB 370, § 314; Laws 1993, LB 31, § 16; Laws 1993, LB 575, § 14; Laws 2001, LB 38, § 59.

Cross References

Applicability of statute to private property, see section 60-6,108.

Defendant found guilty of third offense willful reckless driving, avoiding arrest, and habitual criminal charge received two concurrent ten-year sentences. State v. Goodloe, 197 Neb. 632, 250 N.W.2d 606 (1977).

(q) LIGHTING AND WARNING EQUIPMENT

60-6,219. Motor vehicle; autocycle or motorcycle; lights; requirements; prohibited acts.

(1) Every motor vehicle upon a highway within this state during the period from sunset to sunrise and at any other time when there is not sufficient light to render clearly discernible persons or vehicles upon the highway at a distance of five hundred feet ahead shall be equipped with lighted headlights and taillights as respectively required in this section for different classes of vehicles.

(2) Every motor vehicle, other than an autocycle, a motorcycle, a road roller, or road machinery, shall be equipped with two or more headlights, at the front of and on opposite sides of the motor vehicle. The headlights shall comply with the requirements and limitations set forth in sections 60-6,221 and 60-6,223.

(3) Every motor vehicle and trailer, other than an autocycle, a motorcycle, a road roller, or road machinery, shall be equipped with one or more taillights, at the rear of the motor vehicle or

trailer, exhibiting a red light visible from a distance of at least five hundred feet to the rear of such vehicle.

(4) Every autocycle or motorcycle shall be equipped with at least one and not more than two headlights and with a taillight exhibiting a red light visible from a distance of at least five hundred feet to the rear of such autocycle or motorcycle. The headlights shall comply with the requirements and limitations set forth in sections 60-6,221 and 60-6,223.

(5) The requirement in this section as to the distance from which lights must render obstructions visible or within which lights must be visible shall apply during the time stated in this section upon a straight, level, unlighted highway under normal atmospheric conditions.

(6) It shall be unlawful for any owner or operator of any motor vehicle to operate such vehicle upon a highway unless:

(a) The condition of the lights and electric circuit is such as to give substantially normal light output;

(b) Each taillight shows red directly to the rear, the lens covering each taillight is unbroken, each taillight is securely fastened, and the electric circuit is free from grounds or shorts;

(c) There is no more than one spotlight except for law enforcement personnel, government employees, and public utility employees;

(d) There are no more than two auxiliary driving lights and every such auxiliary light meets the requirements for auxiliary driving lights provided in section 60-6,225;

(e) If equipped with any lighting device, other than headlights, spotlights, or auxiliary driving lights, which projects a beam of light of an intensity greater than twenty-five candlepower, such lighting device meets the requirements of subsection (4) of section 60-6,225; and

(f) If equipped with side cowl or fender lights, there are no more than two such lights and each such side cowl or fender light emits an amber or white light.

Source: Laws 1931, c. 110, § 43, p. 319; Laws 1935, c. 134, § 8, p. 488; Laws 1939, c. 78, § 4, p. 319; C.S.Supp. 1941, § 39-1174; R.S.1943, § 39-778; Laws 1955, c. 152, § 1, p. 450; Laws 1957, c. 366, § 6, p. 1249; R.R.S.1943, § 39-778; Laws 1975, LB 11, § 2; Laws 1981, LB 544, § 2; Laws 1987, LB 224, § 6; Laws 1989, LB 283, § 2; R.S.Supp. 1992, § 39-6,138; Laws 1993, LB 370, § 315; Laws 1993, LB 575, § 32; Laws 1995, LB 59, § 2; Laws 2015, LB 231, § 31.

Cross References

Motor-driven cycles, light requirements, see section 60-6,187.

1. Violations

Statute applied as to driving in fog in daytime. Becker v. Hasebroock, 157 Neb. 353, 59 N.W.2d 560 (1953).

If truck had no lights burning, it violated this section. Davis v. Spindler, 156 Neb. 276, 56 N.W.2d 107 (1952).

It is unlawful to operate automobile on highway at night without appropriate lights. Segebart v. Gregory, 156 Neb. 261, 55 N.W.2d 678 (1952).

Where truck was involuntarily stopped on highway and driver left same without lights more than one-half hour after sunset, there was evidence of negligence. Plumb v. Burnham, 151 Neb. 129, 36 N.W.2d 612 (1949).

Leaving car standing on highway at night without lights constitutes violation of this section. Remmenga v. Selk, 150 Neb. 401, 34 N.W.2d 757 (1948).

Where a vehicle is equipped with two taillights, subsection (6) of this section requires both taillights to give substantially normal light output and to show red directly to the rear. State v. Burns, 16 Neb. App. 630, 747 N.W.2d 635 (2008).

2. Not violations

This section did not apply where automobile was disabled because of reasons beyond control of operator. Haight v. Nelson, 157 Neb. 341, 59 N.W.2d 576 (1953).

Road rollers and road machinery are specifically exempted from displaying red lights. Miller v. Abel Construction Co., 140 Neb. 482, 300 N.W. 405 (1941).

Act does not require display of red tail light on parked automobile. McGaffey v. Blosser, 129 Neb. 371, 261 N.W. 565 (1935).

3. Miscellaneous

Evidence of violation of this section is evidence of negligence or contributory negligence. Horst v. Johnson, 237 Neb. 155, 465 N.W.2d 461 (1991).

Trial court did not err in failing to give instruction upon effect of this section. Clark v. Smith, 181 Neb. 461, 149 N.W.2d 425 (1967).

Violation of statute is evidence of negligence. Guerin v. Forburger, 161 Neb. 824, 74 N.W.2d 870 (1956).

Instruction on particular requirements of this section was not required. Segebart v. Gregory, 160 Neb. 64, 69 N.W.2d 315 (1955).

Death arising from violation of this section may constitute manslaughter. Vaca v. State, 150 Neb. 516, 34 N.W.2d 873 (1948).

Failure to display clearance lights and a tail light on rear of truck was not a contributory cause of accident when truck was seen by driver of other car in ample time to avoid collision. Hief v. Roberts Dairy Co., 138 Neb. 885, 296 N.W. 331 (1941).

60-6,220. Lights; vehicle being driven; vehicle parked on freeway.

Whenever a motor vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the times mentioned in section 60-6,219, such vehicle shall be equipped with one or more lights which shall exhibit a light in such color as designated by the Department of Motor Vehicles on the roadway side visible from a distance of five hundred feet to the front of such vehicle and a red light visible from a distance of five hundred feet to the rear, except that a local authority may provide by ordinance that no lights need be displayed upon any such vehicle when stopped or parked in accordance with local parking regulations upon a highway where there is sufficient light to reveal any person or obstruction within a distance of five hundred feet upon such highway.

Any lighted headlights upon a parked vehicle shall be depressed or dimmed and turnsignals shall not be flashed on one side only. On a freeway, the operator of any parked vehicle shall also turn on its interior lights if operable and vehicles equipped with an emergency switch for flashing all directional turnsignals simultaneously shall exhibit such turnsignals.

Source: Laws 1935, c. 134, § 9, p. 489; C.S.Supp. 1941, § 39-11,105; R.S.1943, § 39-7,112; Laws 1961, c. 184, § 32, p. 564; Laws 1961, c. 192, § 2, p. 590; R.R.S.1943, § 39-7,112; R.S.1943, (1988), § 39-670.01; Laws 1993, LB 370, § 316.

Evidence of violation of this section is evidence of negligence or contributory negligence. Horst v. Johnson, 237 Neb. 155, 465 N.W.2d 461 (1991).

Instruction on requirements of this section covered parking and lights. Segebart v. Gregory, 160 Neb. 64, 69 N.W.2d 315 (1955).

Prohibition against parking without lights did not apply to motor vehicle temporarily disabled. Haight v. Nelson, 157 Neb. 341, 59 N.W.2d 576 (1953).

It is unlawful to park automobile on highway at night without appropriate lights. Segebart v. Gregory, 156 Neb. 261, 55 N.W.2d 678 (1952).

Violation of this section is not negligence per se but evidence of negligence. Anderson v. Robbins Incubator Co., 143 Neb. 40, 8 N.W.2d 446 (1943).

60-6,221. Headlights; construction; adjustment; requirements.

(1) The headlights of motor vehicles shall be so constructed, arranged, and adjusted that, except as provided in subsection (2) of this section, they will at all times mentioned in section 60-6,219 produce a driving light sufficient to render clearly discernible a person two hundred feet ahead, but the headlights shall not project a glaring or dazzling light to persons in front of such headlights.

(2) Headlights shall be deemed to comply with the provisions prohibiting glaring and dazzling lights if none of the main bright portion of the headlight beam rises above a horizontal plane passing through the light centers parallel to the level road upon which the loaded vehicle stands and in no case higher than forty-two inches, seventy-five feet ahead of the vehicle.

Source: Laws 1931, c. 110, § 45, p. 320; Laws 1939, c. 78, § 5, p. 321; C.S.Supp. 1941, § 39-1176; R.S.1943, § 39-780; R.S.1943, (1988), § 39-6,140; Laws 1993, LB 370, § 317.

1. General requirements

This section requires a driving light sufficient to render a pedestrian two hundred feet away clearly discernible. Beck v. Trustin, 177 Neb. 788, 131 N.W.2d 425 (1964).

Motorist has duty to have headlights throwing a beam at least two hundred feet ahead. Bailey v. Spindler, 161 Neb. 563, 74 N.W.2d 344 (1956).

The standard for a lawful headlight, and, by extension, a lawful auxiliary driving light, is found in this section. State v. Carnicle, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

The terms of section 60-6,225(2) require reference to this section, which provides that headlights shall produce a driving light sufficient to render clearly discernible a person 200 feet ahead, but the headlights shall not project a glaring or dazzling light to persons in front of such headlights. State v. Carnicle, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

2. Glaring or dazzling lights

Where a headlight or auxiliary driving light is so glaring or dazzling that an officer reasonably believes the light violates this section, such subjective belief could provide probable cause for a traffic stop. State v. Carnicle, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

Whether a vehicle's front lights are unlawfully glaring or dazzling requires, at least for a conviction of the associated crime, an objective measurement under subsection (2) of this section. State v. Carnicle, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

3. Miscellaneous

Instruction on particular requirements of this section was not required. Segebart v. Gregory, 160 Neb. 64, 69 N.W.2d 315 (1955).

If truck had no lights burning, it violated this section. Davis v. Spindler, 156 Neb. 276, 56 N.W.2d 107 (1952).

Where headlights substantially fail to conform to requirements of this section, the presence of the vehicle on highway is unlawful. Nichols v. Havlat, 140 Neb. 723, 1 N.W.2d 829 (1942), reversed on rehearing, 142 Neb. 534, 7 N.W.2d 84 (1942).

Where driver's lights are on high beam as he approaches an unlighted truck with bulk of its body above the high beam, the failure of driver to see the truck does not necessarily constitute gross negligence. Holberg v. McDonald, 137 Neb. 405, 289 N.W. 542 (1940).

Failure to have head lamps complying with this section is evidence of negligence, but does not necessarily preclude recovery by guest riding in car having defective lights. Gleason v. Baack, 137 Neb. 272, 289 N.W. 349 (1939).

A red rear light or tail light formed no part of equipment prescribed by statute. McGaffey v. Blosser, 129 Neb. 371, 261 N.W. 565 (1935).

Auxiliary driving lights are defined by section 60-6,225(2), and under that subsection, if they do not meet the criteria for headlights set forth in this section, it is a Class III misdemeanor under section 60-6,222. State v. Carnicle, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

60-6,222. Violations; penalty.

Any person who violates any provision of section 60-6,219 or 60-6,221 shall be guilty of a Class III misdemeanor. In the event of such conviction, as a part of the judgment of conviction, the trial judge shall direct the person to produce in court or submit to the prosecuting attorney, before such person again operates the motor vehicle upon a highway, satisfactory proof showing that the light equipment involved in such person's conviction has been made to conform with the requirements of such sections. The failure, refusal, or neglect of such convicted person to abide by such direction in the judgment of conviction shall be deemed an additional offense for which such person shall be prosecuted.

Source: Laws 1939, c. 78, § 9, p. 322; C.S.Supp. 1941, § 39-11,120; R.S.1943, § 39-7,126; Laws 1977, LB 41, § 13; R.S.1943, (1988), § 39-669.21; Laws 1993, LB 370, § 318.

Auxiliary driving lights are defined by section 60-6,225(2), and under that subsection, if they do not meet the criteria for headlights set forth in section 60-6,221, it is a Class III misdemeanor under this section. State v. Carnicle, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

60-6,223. Acetylene headlights; number; construction; requirements.

Motor vehicles may be equipped with two acetylene headlights of approximately equal candlepower when equipped with clear, plain glass fronts, bright six-inch spherical mirrors, and standard acetylene five-eighths-foot burners, no more and no less.

Source: Laws 1931, c. 110, § 46, p. 320; C.S.Supp. 1941, § 39-1177; R.S.1943, § 39-781; R.S.1943, (1988), § 39-6,142; Laws 1993, LB 370, § 319.

60-6,224. Headlights; glare; duty of operator; penalty.

Notwithstanding any other provision of the Nebraska Rules of the Road:

(1) Whenever any person operating a motor vehicle on any highway in this state meets another person operating a motor vehicle, proceeding in the opposite direction and equipped with headlights constructed and adjusted to project glaring or dazzling light to persons in front of such headlights, upon signal of either person, the other shall dim the headlights of his or her motor vehicle or tilt the beams of glaring or dazzling light projecting therefrom downward so as not to blind or confuse the vision of the operator in front of such headlights; and

(2) Whenever any person operating a motor vehicle on any highway in this state follows another vehicle within two hundred feet to the rear, he or she shall dim the headlights of his or her motor vehicle or tilt the beams of glaring or dazzling light projecting therefrom downward.

Any person who violates any provision of this section shall be guilty of a Class V misdemeanor.

Source: Laws 1931, c. 106, § 1, p. 279; C.S.Supp. 1941, § 39-1121; R.S.1943, § 39-733; Laws 1963, c. 231, § 1, p. 720; R.R.S.1943, § 39-733; Laws 1974, LB 593, § 6; Laws 1977, LB 41, § 10; R.S.1943, (1988), § 39-628.01; Laws 1993, LB 370, § 320.

The specific duty of a driver to dim a vehicle's lights in response to a signal from an oncoming driver is set forth in this section. State v. Carnicle, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

60-6,225. Spotlights; auxiliary driving lights; signal lights; other devices; intensity and direction.

(1) Any motor vehicle may be equipped with spotlights as specified in section 60-6,219, and every lighted spotlight shall be so aimed and used upon approaching another vehicle that no part of the beam will be directed to the left of the center of the highway nor more than one hundred feet ahead of the vehicle.

(2) Any motor vehicle may be equipped with not to exceed two auxiliary driving lights mounted on the front at a height not less than twelve inches nor more than forty-two inches above the level surface on which the vehicle stands, and every such auxiliary driving light shall meet the requirements and limitations set forth in section 60-6,221. The restrictions on mounting height provided in this subsection shall not apply to any motor vehicle equipped with a blade, plow, or any other device designed for the movement of snow. Auxiliary driving lights shall be turned off at the same time the motor vehicle's headlights are required to be dimmed when approaching another vehicle from either the front or the rear.

(3) Whenever a motor vehicle is equipped with a signal light, the signal light shall be so constructed and located on the vehicle as to give a signal which shall be plainly visible in normal sunlight from a distance of one hundred feet to the rear of the vehicle but shall not project a glaring or dazzling light.

(4) Any device, other than headlights, spotlights, or auxiliary driving lights, which projects a beam of light of an intensity greater than twenty-five candlepower shall be so directed that no part of the beam will strike the level of the surface on which the vehicle stands at a distance of more than fifty feet from the vehicle.

Source: Laws 1931, c. 110, § 44, p. 319; C.S.Supp. 1941, § 39-1175; R.S.1943, § 39-779; Laws 1957, c. 366, § 7, p. 1251; Laws 1961, c. 192, § 1, p. 589; R.R.S.1943, § 39-

779; Laws 1978, LB 816, § 1; Laws 1981, LB 544, § 3; Laws 1987, LB 224, § 7; R.S.1943, (1988), § 39-6,139; Laws 1993, LB 370, § 321; Laws 1995, LB 59, § 3.

Auxiliary driving lights are defined by subsection (2) of this section, and under that subsection, if they do not meet the criteria for headlights set forth in section 60-6,221, it is a Class III misdemeanor under section 60-6,222. State v. Carnicle, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

If fog lamps are contemplated under subsection (4) of this section as any device, other than headlights, spotlights, or auxiliary driving lights, which projects a beam of light of an intensity greater than 25 candlepower, then such fog lamps must be so directed that no part of the beam will strike the level of the surface on which the vehicle stands at a distance of more than 50 feet from the vehicle. State v. Carnicle, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

The terms of subsection (2) of this section require reference to section 60-6,221, which provides that headlights shall produce a driving light sufficient to render clearly discernible a person 200 feet ahead, but the headlights shall not project a glaring or dazzling light to persons in front of such headlights. State v. Carnicle, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

60-6,226. Brake and turnsignal light requirements; exceptions; signaling requirements.

(1) Any motor vehicle having four or more wheels which is manufactured or assembled, whether from a kit or otherwise, after January 1, 1954, designed or used for the purpose of carrying passengers or freight, any autocycle, or any trailer, in use on a highway, shall be equipped with brake and turnsignal lights in good working order.

(2) Motorcycles, motor-driven cycles, motor scooters, bicycles, electric personal assistive mobility devices, vehicles used solely for agricultural purposes, vehicles not designed and intended primarily for use on a highway, and, during daylight hours, fertilizer trailers as defined in section 60-326 and implements of husbandry designed primarily or exclusively for use in agricultural operations shall not be required to have or maintain in working order signal lights required by this section, but they may be so equipped. The operator thereof shall comply with the requirements for utilizing hand and arm signals or for utilizing such signal lights if the vehicle is so equipped.

Source: Laws 1993, LB 370, § 322; Laws 1995, LB 59, § 4; Laws 2002, LB 1105, § 458; Laws 2003, LB 238, § 6; Laws 2005, LB 274, § 243; Laws 2015, LB 231, § 32.

Cross References

Hand and arm signals, see sections 60-6,162 and 60-6,163.

60-6,227. Repealed. Laws 2008, LB 756, § 34.

60-6,228. Vehicle proceeding in forward motion; backup lights on; prohibited; violation; penalty.

No vehicle shall be operated while proceeding in a forward motion with the backup lights on when the vehicle is being operated on the highways. Any person who violates this section shall be guilty of a Class III misdemeanor.

Source: Laws 1969, c. 327, § 8, p. 1172; C.S.Supp. 1972, § 39-788.07; R.S.1943, (1988), § 39-6,154; Laws 1993, LB 370, § 324.

60-6,229. Lights, red or green, in front of vehicle prohibited; exceptions.

Except as provided in sections 60-6,230 to 60-6,233, it shall be unlawful for any person to drive or move any vehicle upon a highway with any red or green light thereon visible from directly in front thereof. This section shall not apply to police or fire department or fire patrol vehicles or school buses.

Source: Laws 1931, c. 110, § 49, p. 323; C.S.Supp. 1941, § 39-1180; R.S.1943, § 39-788; Laws 1969, c. 327, § 1, p. 1170; C.S.Supp. 1972, § 39-788; R.S.1943, (1988), § 39-6,147; Laws 1993, LB 370, § 325.

60-6,230. Lights; rotating or flashing; colored lights; when permitted.

(1) Except as provided in this section and sections 60-6,231 to 60-6,233, no person shall operate any motor vehicle or any equipment of any description on any highway in this state with any rotating or flashing light.

(2) Except for stop lights and directional signals, which may be red, yellow, or amber, no person shall display any color of light other than red on the rear of any motor vehicle or any equipment of any kind on any highway within this state.

(3) Amber rotating or flashing lights shall be displayed on vehicles of the Military Department for purpose of convoy control when on any state emergency mission.

(4) A single flashing white light may be displayed on the roof of school transportation vehicles during extremely adverse weather conditions.

(5) Blue and amber rotating or flashing lights may be displayed on (a) vehicles when operated by the Department of Transportation or any local authority for the inspection, construction, repair, or maintenance of highways, roads, or streets or (b) vehicles owned and operated by any public utility for the construction, maintenance, and repair of utility infrastructure on or near any highway.

Source: Laws 1969, c. 327, § 2, p. 1170; C.S.Supp. 1972, § 39-788.01; Laws 1979, LB 127, § 1; R.S.1943, (1988), § 39-6,148; Laws 1993, LB 370, § 326; Laws 1995, LB 59, § 6; Laws 2008, LB 196, § 3; Laws 2015, LB 181, § 1; Laws 2016, LB 977, § 24; Laws 2017, LB 339, § 217.

Operative Date: July 1, 2017

The use of hazard lights while driving is proscribed by the plain language of subsection (1) of this section. State v. Warriner, 267 Neb. 424, 675 N.W.2d 112 (2004).

60-6,231. Flashing or rotating lights; authorized emergency vehicles; colors permitted.

A flashing or rotating red light or red and white light shall be displayed on any authorized emergency vehicle whenever operated in this state. A blue light may also be displayed with such flashing or rotating red light or red and white light. For purposes of this section, an authorized emergency vehicle shall include funeral escort vehicles.

Source: Laws 1969, c. 327, § 3, p. 1171; C.S.Supp. 1972, § 39-788.02; Laws 1989, LB 416, § 1; R.S.Supp. 1992, § 39-6,149; Laws 1993, LB 370, § 327; Laws 2008, LB 196, § 4.

60-6,232. Rotating or flashing amber light; when permitted.

A rotating or flashing amber light or lights shall be displayed on the roof of any motor vehicle being operated by any rural mail carrier outside the corporate limits of any municipality in this state on or near any highway in the process of delivering mail.

A rotating or flashing amber light or lights may be displayed on (1) any vehicle of the Military Department while on any state emergency mission, (2) any motor vehicle being operated by any public utility, vehicle service, or towing service or any publicly or privately owned construction or maintenance vehicle while performing its duties on or near any highway, (3) any motor vehicle being operated by any member of the Civil Air Patrol, (4) any pilot vehicle escorting an overdimensional load, (5) any vehicle while actually engaged in the moving of houses, buildings, or other objects of extraordinary bulk, including unbaled livestock forage as authorized by subdivision (2)(f) of section 60-6,288, (6) any motor vehicle owned by or operated on behalf of a railroad carrier that is stopped to load or unload passengers, or (7) any motor vehicle operated by or for an emergency management worker as defined in section 81-829.39 or a storm spotter as defined in section 81-829.67 who is activated by a local emergency management organization.

Source: Laws 1969, c. 327, § 4, p. 1171; Laws 1971, LB 365, § 1; R.S.Supp. 1972, § 39-788.03; Laws 1977, LB 427, § 1; R.S.1943, (1988), § 39-6,150; Laws 1993, LB 370, § 328; Laws 1995, LB 59, § 7; Laws 2000, LB 1361, § 4; Laws 2005, LB 471, § 1; Laws 2011, LB 573, § 1.

60-6,233. Rotating or flashing red light or red and blue lights; when permitted; application; permit; expiration.

(1)(a) A rotating or flashing red light or lights or such light or lights in combination with a blue light or lights may be displayed on any motor vehicle operated by any volunteer firefighter or peace officer anywhere in this state while actually en route to the scene of a fire or other

emergency requiring his or her services as a volunteer firefighter or peace officer but only after its use has been authorized in writing by the county sheriff.

(b) Application for a permit to display such light shall be made in writing to the sheriff on forms to be prescribed and furnished by the Superintendent of Law Enforcement and Public Safety. The application shall be accompanied by a statement that the applicant is a volunteer firefighter or peace officer and is requesting issuance of the permit. The statement shall be signed by the applicant's superior.

(c) The permit shall be carried at all times in the vehicle named in the permit. Each such permit shall expire on December 31 of each year and shall be renewed in the same manner as it was originally issued.

(d) The sheriff may at any time revoke such permit upon a showing of abuse thereof or upon receipt of notice from the applicant's superior that the holder thereof is no longer an active volunteer firefighter or peace officer. Any person whose permit has been so revoked shall upon demand surrender it to the sheriff or his or her authorized agent.

(2) A rotating or flashing red light or lights or such light or lights in combination with a blue light or lights may be displayed on any motor vehicle being used by rescue squads actually en route to, at, or returning from any emergency requiring their services, or by any privately owned wrecker when engaged in emergency services at the scene of an accident, or at a disabled vehicle, located outside the city limits of a city of the metropolitan or primary class, but only after its use has been authorized in writing by the county sheriff. Applications shall be made and may be revoked in the same manner as for volunteer firefighters as provided in subsection (1) of this section.

Source: Laws 1969, c. 327, § 5, p. 1171; Laws 1971, LB 365, § 2; R.S.Supp. 1972, § 39-788.04; Laws 1981, LB 64, § 2; Laws 1989, LB 416, § 2; R.S.Supp. 1992, § 39-6,151; Laws 1993, LB 370, § 329.

60-6,234. Rotating or flashing lights; violation; penalty.

Any person who violates any provision of sections 60-6,230 to 60-6,233 shall be guilty of a Class III misdemeanor and shall also be ordered to remove from any vehicle or equipment any light found to be in violation of such sections.

Source: Laws 1969, c. 327, § 6, p. 1172; R.S.Supp. 1972, § 39-788.05; Laws 1977, LB 41, § 23; R.S.1943, (1988), § 39-6,152; Laws 1993, LB 370, § 330.

60-6,235. Clearance lights; requirements; substitution; violations; penalty.

Every vehicle, including road rollers, road machinery, combines, farm machinery, wagons, racks, and farm tractors, (1) having a width, including load, of eighty inches or more or (2) having any part thereof or having any load thereupon which extends forty inches or more to the left of the center of the chassis shall display, when driven, pulled, operated, or propelled upon any highway during the period from sunset to sunrise and at all other times when there is not

sufficient light to render such vehicle clearly discernible, two clearance lights on the left side of such vehicle.

One clearance light shall be located at the front and display an amber light which is visible, under normal atmospheric conditions, from a distance of three hundred feet to the front of such vehicle. The other clearance light shall be located at the rear and display a red light which is visible, under normal atmospheric conditions, from a distance of three hundred feet to the rear of the vehicle. The light at the rear shall be so located as not to be confused with the taillight by those approaching from the rear.

Such lights shall be located on a line with the extreme outer point of such vehicle or the load on the vehicle. The installation of the lights shall be made in such a manner that no hazard will be created by their use on the highway.

Suitable reflectors of like color and equal visibility may be substituted for such clearance lights.

Any person who violates any provision of this section shall be guilty of a Class III misdemeanor. In the event of such a conviction, as part of the judgment of conviction, the trial judge shall direct the person to produce in court or submit to the prosecuting attorney, before such person again operates the vehicle upon a highway, satisfactory proof showing that the light equipment involved in the person's conviction has been made to conform with the requirements of this section. The failure, refusal, or neglect of the convicted person to abide by such direction in the judgment of conviction shall be deemed an additional offense for which the person shall be prosecuted.

Source: Laws 1931, c. 106, § 2, p. 280; Laws 1939, c. 78, § 3, p. 319; C.S.Supp. 1941, § 39-1122; R.S.1943, § 39-735; Laws 1945, c. 92, § 1, p. 314; Laws 1949, c. 117, § 1, p. 313; Laws 1953, c. 131, § 13, p. 409; Laws 1955, c. 152, § 2, p. 452; Laws 1957, c. 366, § 3, p. 1246; R.R.S.1943, § 39-735; Laws 1977, LB 211, § 2; Laws 1977, LB 393, § 1; Laws 1987, LB 224, § 4; R.S.1943, (1988), § 39-6,127; Laws 1993, LB 370, § 331; Laws 1993, LB 575, § 27.

Clearance lights are required at both front and rear of vehicle. Egenberger v. National Alfalfa Dehydrating & Milling Co., 164 Neb. 704, 83 N.W.2d 523 (1957).

Truck was required to have clearance lights turned on and operating. Guerin v. Forburger, 161 Neb. 824, 74 N.W.2d 870 (1956).

Where headlights on motor vehicle are insufficient to make highway signals of a railroad crossing visible from cab of truck before running into it, guest riding in motor vehicle without protest cannot recover from railroad company. Fischer v. Megan, 138 Neb. 420, 293 N.W. 287 (1940).

Failure to comply with statutory requirements is not actionable negligence as matter of law, but may be considered with other facts tending to establish negligence. LaFleur v. Poesch, 126 Neb. 263, 252 N.W. 902 (1934).

60-6,236. Vehicles required to have clearance lights; flares; reflectors; when required as equipment.

Any vehicle required by section 60-6,235 to have clearance lights, while operating on the highways during the period from sunset to sunrise, shall at all times be equipped with at least three portable flares, or red emergency reflectors referred to in section 60-6,237, which may be plainly visible for a distance of five hundred feet.

Source: Laws 1935, c. 129, § 1, p. 460; C.S.Supp. 1941, § 39-11,112; R.S.1943, § 39-7,118; Laws 1949, c. 121, § 1(1), p. 318; Laws 1961, c. 193, § 1, p. 591; R.R.S.1943, § 39-7,118; R.S.1943, (1988), § 39-6,162; Laws 1993, LB 370, § 332; Laws 1993, LB 575, § 33.

Where truck was left on highway after dark without flares, there was evidence of negligence. Plumb v. Burnham, 151 Neb. 129, 36 N.W.2d 612 (1949).

Violation of this section may constitute manslaughter. Vaca v. State, 150 Neb. 516, 34 N.W.2d 873 (1948).

Passenger car, with trailer attached, does not come within class of vehicles required to be equipped with flares. Anderson v. Robbins Incubator Co., 143 Neb. 40, 8 N.W.2d 446 (1943).

Charges of negligence of bus company in blocking highway should have been submitted to jury, together with question of whether under such circumstances agent was negligent in the manner of giving signals. McClelland v. Interstate Transit Lines, 142 Neb. 439, 6 N.W.2d 384 (1942).

Evidence of failure to set up flares, together with other acts of negligence, was sufficient to make case for jury. Grantham v. Watson Bros. Transp. Co., 142 Neb. 362, 6 N.W.2d 372 (1942).

60-6,237. Vehicles required to have clearance lights; flares; reflectors; how and when displayed.

The operator of any vehicle required by section 60-6,235 to have clearance lights shall, immediately upon bringing his or her vehicle to a stop upon or immediately adjacent to the traveled portion of the highway at any time during the period from sunset to sunrise, (1) place one lighted flare or one red emergency reflector at the side of such vehicle just inside the white line marking the center of paved highways and near the center of dirt or gravel highways, (2) place one lighted flare or one red emergency reflector approximately one hundred feet to the rear of such vehicle, and (3) place one lighted flare or one red emergency reflector approximately one hundred feet to the front of such vehicle. The operator shall maintain such lighted flares or red emergency reflectors in such positions during the time such vehicle remains parked, except that motor vehicles transporting flammables shall be required to use two flares or two red emergency reflectors to be placed as described in this section to the front and rear but shall not be permitted to place open flame flares adjacent to such vehicles.

Source: Laws 1935, c. 129, § 1, p. 460; C.S.Supp. 1941, § 39-11,112; R.S.1943, § 39-7,118; Laws 1949, c. 121, § 1(2), p. 319; Laws 1957, c. 366, § 23, p. 1259; Laws 1961, c. 189, § 4, p. 581; Laws 1961, c. 193, § 2, p. 592; Laws 1961, c. 181, § 5, p. 538; R.R.S.1943, § 39-7,118.01; Laws 1987, LB 224, § 11; R.S.1943, (1988), § 39-6,163; Laws 1993, LB 370, § 333; Laws 1993, LB 575, § 34.

The term immediately, as used in this section, means with reasonable and prompt diligence, under all of the facts and circumstances shown. Gleason v. Baack, 137 Neb. 272, 289 N.W. 349 (1939).

60-6,238. Vehicles; red flags; red emergency reflectors; when required as equipment; how and when displayed.

(1) Except as provided in subsection (2) of this section, between one-half hour before sunrise and one-half hour after sunset, any vehicle described in section 60-6,236 shall be equipped with

two red flags, and when the vehicle is parked, one flag shall be placed one hundred feet behind and the other one hundred feet ahead of such vehicle and in such position as to be visible to all approaching traffic during the daylight hours.

(2) In lieu of the requirements of subsection (1) of this section, such a vehicle may be equipped with three red emergency reflectors. One of the reflectors shall be placed alongside the vehicle on the traffic side and within ten feet of the front or rear of the vehicle. When there is two-way traffic, one reflector shall be placed one hundred feet ahead of the vehicle and one shall be placed one hundred feet behind the vehicle. When there is only one-way traffic, one reflector shall be placed one hundred feet and one two hundred feet behind the vehicle.

Source: Laws 1935, c. 129, § 2, p. 460; Laws 1941, c. 77, § 1, p. 313; C.S.Supp. 1941, § 39-11,113; R.S.1943, § 39-7,119; Laws 1977, LB 393, § 2; Laws 1987, LB 224, § 12; R.S.1943, (1988), § 39-6,164; Laws 1993, LB 370, § 334.

Where truck was left parked on highway in daytime without flags, there was evidence of negligence. Plumb v. Burnham, 151 Neb. 129, 36 N.W.2d 612 (1949).

60-6,239. Clearance lights, flares, and reflector requirements; violations; penalty.

Any person who violates any provision of sections 60-6,236 to 60-6,238 shall be guilty of a Class V misdemeanor.

Source: Laws 1935, c. 129, § 5, p. 461; C.S.Supp. 1941, § 39-11,116; R.S.1943, § 39-7,120; Laws 1977, LB 41, § 26; R.S.1943, (1988), § 39-6,165; Laws 1993, LB 370, § 335.

60-6,240. Removing flares or flags; penalty.

Any person who willfully removes any flares or red flags placed upon the highways under the provisions of sections 60-6,236 to 60-6,238 before the driver of such vehicle is ready to proceed immediately on the highway shall be guilty of a Class V misdemeanor.

Source: Laws 1935, c. 129, § 6, p. 461; C.S.Supp. 1941, § 39-11,117; R.S.1943, § 39-7,121; Laws 1977, LB 41, § 27; R.S.1943, (1988), § 39-6,166; Laws 1993, LB 370, § 336.

60-6,241. Vehicles; slow moving; emblem required; when used.

(1) It shall be unlawful for any person to operate on the roadway of any highway any slow-moving vehicle or equipment, any animal-drawn vehicle, or any other machinery, designed for use at speeds less than twenty-five miles per hour, including all road construction or maintenance machinery except when engaged in actual construction or maintenance work either guarded by a flagperson or clearly visible warning signs, which normally travels or is normally used at a speed of less than twenty-five miles per hour unless there is displayed on the rear thereof an emblem as

described in and displayed as provided in subsection (2) of this section. The requirement of such emblem shall be in addition to any lighting devices required by law. The emblem shall not be displayed on objects which are customarily stationary in use except while being transported on the roadway of any highway.

(2) The emblem shall be of substantial construction and shall be a base-down equilateral triangle of fluorescent yellow-orange film with a base of fourteen inches and an altitude of twelve inches. Such triangle shall be bordered with reflective red strips having a minimum width of one and three-fourths inches, with the vertices of the overall triangle truncated such that the remaining altitude shall be a minimum of fourteen inches. The emblem shall comply with the current standards and specifications for slow-moving vehicle emblems of the American Society of Agricultural Engineers. Such emblem shall be mounted on the rear of such vehicle at a height of two to six feet above the roadway and shall be maintained in a clean, reflective condition. This section shall not apply to an electric personal assistive mobility device.

Source: Laws 1965, c. 210, § 1, p. 618; Laws 1967, c. 230, § 1, p. 607; R.R.S.1943, § 39-723.10; Laws 1977, LB 211, § 1; R.S.1943, (1988), § 39-6,125; Laws 1993, LB 370, § 337; Laws 1993, LB 575, § 26; Laws 2002, LB 1105, § 462.

60-6,242. Vehicles; slow moving; equipped with bracket.

All vehicles, equipment, or machinery sold in this state and required to display the emblem provided for in section 60-6,241 shall be equipped with a bracket on which such emblem may be mounted.

Source: Laws 1967, c. 230, § 2, p. 607; R.R.S.1943, § 39-723.11; R.S.1943, (1988), § 39-6,126; Laws 1993, LB 370, § 338.

60-6,243. Load projecting to rear; red flag or red light required.

Whenever the load on any vehicle extends more than four feet beyond the rear of the bed or body thereof, there shall be displayed at the end of such load in such position as to be clearly visible at all times from the rear of such load a red flag not less than twelve inches both in length and width, except that between sunset and sunrise, there shall be displayed at the end of any such load a red light plainly visible under normal atmospheric conditions at least two hundred feet from the rear of such vehicle.

Source: Laws 1931, c. 110, § 34, p. 316; C.S.Supp. 1941, § 39-1165; R.S.1943, § 39-769; R.S.1943, (1988), § 39-6,130; Laws 1993, LB 370, § 339; Laws 1993, LB 575, § 29.

Failure of driver to display lights on overhanging load when it is dark, as required by law, is evidence of negligence. Moore v. Nisley, 133 Neb. 474, 275 N.W. 827 (1937).

A failure to comply with requirements of this section is not negligence per se, but is evidence of negligence. LaFleur v. Poesch, 126 Neb. 263, 252 N.W. 902 (1934).

(r) BRAKES

60-6,244. Motor vehicles; brakes; requirements.

(1) Every motor vehicle when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and to hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels and so constructed that no part which is liable to failure shall be common to the two, except that a motorcycle shall be required to be equipped with only one brake. All such brakes shall be maintained at all times in good working order.

(2) It shall be unlawful for any owner or operator of any motor vehicle, other than a motorcycle, to operate such motor vehicle upon a highway unless the brake equipment thereon qualifies with regard to maximum stopping distances from a speed of twenty miles per hour on dry asphalt or concrete pavement free from loose materials as follows:

(a) Two-wheel brakes, maximum stopping distance, forty feet;

(b) Four or more wheel brakes, vehicles up to seven thousand pounds gross weight, maximum stopping distance, thirty feet;

(c) Four or more wheel brakes, vehicles seven thousand pounds or more gross weight, maximum stopping distance, thirty-five feet;

(d) All hand, parking, or emergency brakes, vehicles up to seven thousand pounds gross weight, maximum stopping distance, fifty-five feet; and

(e) All hand, parking, or emergency brakes, vehicles seven thousand pounds or more gross weight, maximum stopping distance, sixty-five feet.

(3) All braking distances specified in this section shall apply to all vehicles whether unloaded or loaded to the maximum capacity permitted by law.

(4) The retarding force of one side of the vehicle shall not exceed the retarding force on the opposite side so as to prevent the vehicle stopping in a straight line.

Source: Laws 1931, c. 110, § 38, p. 317; Laws 1939, c. 78, § 2, p. 318; C.S.Supp. 1941, § 39-1169; R.S.1943, § 39-773; Laws 1977, LB 314, § 2; R.S.1943, (1988), § 39-6,133; Laws 1993, LB 370, § 340.

Under circumstances in this case, defendant was guilty of negligence as a matter of law for failure to utilize second braking system when first failed. Ritchie v. Davidson, 183 Neb. 94, 158 N.W.2d 275 (1968).

Condition of brakes, even if defective, was not a proximate cause of accident. Odom v. Willms, 177 Neb. 699, 131 N.W.2d 140 (1964).

Violation of this section was not negligence as matter of law and plaintiff had burden of proving negligence and proximate cause. Starns v. Jones, 500 F.2d 1233 (8th Cir. 1974).

60-6,245. Violations; penalties.

Any person who violates any provision of section 60-6,244 shall be guilty of a Class III misdemeanor. In the event of such conviction, as a part of the judgment of conviction, the trial judge shall direct the person so convicted to produce in court or submit to the prosecuting attorney, before such person again operates the motor vehicle upon a highway, satisfactory proof

showing that the brake equipment involved in the person's conviction has been made to conform with the requirements of such section. The failure, refusal, or neglect of the convicted person to abide by such direction in the judgment of conviction shall be deemed an additional offense for which the person shall be prosecuted.

Source: Laws 1993, LB 370, § 341.

60-6,246. Trailers; brake requirements; safety chains; when required.

(1) All commercial trailers with a carrying capacity of more than ten thousand pounds and semitrailers shall be equipped on each wheel with brakes that can be operated from the driving position of the towing vehicle.

(2) Cabin trailers and recreational trailers having a gross loaded weight of three thousand pounds or more but less than six thousand five hundred pounds shall be equipped with brakes on at least two wheels, and such trailers with a gross loaded weight of six thousand five hundred pounds or more shall be equipped with brakes on each wheel. The brakes shall be operable from the driving position of the towing vehicle. Such trailers shall also be equipped with a breakaway, surge, or impulse switch on the trailer so that the trailer brakes are activated if the trailer becomes disengaged from the towing vehicle.

(3) Cabin trailers, recreational trailers, and utility trailers, when being towed upon a highway, shall be securely connected to the towing vehicle by means of two safety chains or safety cables in addition to the hitch or other primary connecting device. Such safety chains or safety cables shall be so attached and shall be of sufficient breaking load strength so as to prevent any portion of such trailer drawbar from touching the roadway if the hitch or other primary connecting device becomes disengaged from the towing vehicle.

(4) For purposes of this section:

(a) Recreational trailer means a vehicular unit without motive power primarily designed for transporting a motorboat as defined in section 37-1204 or a vessel as defined in section 37-1203; and

(b) Utility trailer has the same meaning as in section 60-358.

Source: Laws 1959, c. 165, § 2, p. 604; Laws 1972, LB 1164, § 1; Laws 1973, LB 368, § 1; R.S.Supp. 1972, § 39-773.01; Laws 1989, LB 695, § 2; R.S.Supp. 1992, § 39-6,134; Laws 1993, LB 370, § 342; Laws 1993, LB 575, § 30; Laws 1995, LB 6, § 1; Laws 2005, LB 274, § 244.

60-6,247. Trucks and buses; brake requirements; violation; penalty.

It shall be unlawful for any person to operate or cause to be operated on the highways in the State of Nebraska buses or trucks having a gross weight of the truck and load exceeding twelve thousand pounds unless such bus or truck is equipped with power brakes, auxiliary brakes, or some standard booster brake equipment. Any person who violates this section shall be guilty of a Class V misdemeanor.

Source: Laws 1935, c. 134, § 10, p. 489; C.S.Supp. 1941, § 39-11,106; R.S.1943, § 39-7,113; Laws 1974, LB 593, § 8; Laws 1977, LB 41, § 25; R.S.1943, (1988), § 39-6,161; Laws 1993, LB 370, § 343; Laws 1993, LB 121, § 206; Laws 1994, LB 884, § 80.

In order to constitute evidence of negligence, failure to have auxiliary brake equipment must have some causal relation between violation of this section and an accident. Herman v. Firestine, 146 Neb. 730, 21 N.W.2d 444 (1946).

When petition charges negligence in that defendant failed to have truck equipped with proper brakes, the evidence must sustain such allegations. Knoche v. Pease Grain & Seed Co., 134 Neb. 130, 277 N.W. 798 (1938).

60-6,248. Hydraulic brake fluids; requirements; violation; penalty.

In order to promote highway safety by providing the public with safe and efficient hydraulic fluids for motor vehicle braking systems, it shall be unlawful for any person to sell, offer to sell, or display for sale any hydraulic fluids for use in motor vehicle braking systems that do not equal or exceed the specifications for types SAE 70R1 or SAE 70R3 brake fluids as set forth in 49 C.F.R. 571.116.

Any person who violates this section shall be guilty of a Class V misdemeanor.

Source: Laws 1963, c. 217, § 1, p. 689; R.R.S.1943, § 39-7,123.06; R.S.1943, (1988), § 39-6,172; Laws 1993, LB 370, § 344.

(s) TIRES

60-6,249. Pneumatic tires; when required.

The wheels of all vehicles, including trailers, except vehicles operated at twenty miles per hour or less, shall be equipped with pneumatic tires.

Source: Laws 1993, LB 370, § 345.

60-6,250. Tires; requirements; cleats or projections prohibited; exceptions; permissive uses; special permits; exceptions.

(1) Every solid rubber tire on a vehicle moved on any highway shall have rubber on its entire traction surface at least one inch thick above the edge of the flange of the entire periphery.

(2) No tire on a vehicle moved on a highway shall have on its periphery any clock, stud, flange, cleat, or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that:

(a) This prohibition shall not apply to pneumatic tires with metal or metal-type studs not exceeding five-sixteenths of an inch in diameter inclusive of the stud-casing with an average protrusion beyond the tread surface of not more than seven sixty-fourths of an inch between

November 1 and April 1, except that school buses, mail carrier vehicles, and emergency vehicles shall be permitted to use metal or metal-type studs at any time during the year;

(b) It shall be permissible to use farm machinery with tires having protuberances which will not injure the highway; and

(c) It shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other condition tending to cause a vehicle to slide or skid.

(3) No person shall operate or move on any highway any motor vehicle, trailer, or semitrailer (a) having any metal tire in contact with the roadway or (b) equipped with solid rubber tires, except that this subsection shall not apply to farm vehicles having a gross weight of ten thousand pounds or less or to implements of husbandry.

(4) The Department of Transportation and local authorities in their respective jurisdictions may, in their discretion, issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks or farm tractors or other farm machinery.

Source: Laws 1931, c. 110, § 36, p. 317; C.S.Supp. 1941, § 39-1167; R.S.1943, § 39-771; Laws 1965, c. 217, § 1, p. 633; Laws 1971, LB 678, § 2; R.S.Supp. 1972, § 39-771; Laws 1980, LB 619, § 3; Laws 1983, LB 50, § 1; Laws 1987, LB 504, § 3; R.S.1943, (1988), § 39-6,131; Laws 1993, LB 370, § 346; Laws 2017, LB 339, § 218.

Operative Date: July 1, 2017

60-6,251. Pneumatic tires; regrooving prohibited; exception.

(1) No person shall alter the traction surface of pneumatic tires by regrooving.

(2) No person shall knowingly operate on any highway in this state any motor vehicle on which the traction surface of any pneumatic tire thereof has been regrooved. No person shall sell, exchange, or offer for sale or exchange such a tire.

(3) This section shall not apply to regrooved commercial vehicle tires which are designed and constructed in such a manner that any regrooving complies with the parts, subparts, and sections of Title 49 of the Code of Federal Regulations adopted pursuant to section 75-363.

Source: Laws 1987, LB 504, § 4; R.S.1943, (1988), § 39-6,131.08; Laws 1993, LB 370, § 347; Laws 2006, LB 1007, § 10.

60-6,252. Tire condition; requirements.

(1) No person shall drive or move a motor vehicle on any highway unless such vehicle is equipped with tires in safe operating condition in accordance with subsection (2) of this section.

(2) A tire shall be considered unsafe if it has:

(a) Any bump, bulge, or knot affecting the tire structure;

(b) A break which exposes a tire body cord or is repaired with a boot or patch;

(c) A tread depth of less than two thirty-seconds of an inch measured in any two tread grooves at three locations equally spaced around the circumference of the tire or, on those tires with tread wear indicators, been worn to the point that the tread wear indicators contact the road in any two thread grooves at three locations equally spaced around the circumference of the tire, except that this subdivision shall not apply to truck tires with ten or more cord plies which are mounted on dual wheels; or

(d) Such other conditions as may be reasonably demonstrated to render the tire unsafe.

(3) No tire shall be used on any motor vehicle which is driven or moved on any highway in this state if such tire was designed or manufactured for nonhighway use.

(4) No person shall destroy, alter, or deface any marking on a new or usable tire which indicates whether the tire has been manufactured for highway or nonhighway use.

(5) No person shall sell any motor vehicle for highway use unless the vehicle is equipped with tires that are in compliance with this section.

Source: Laws 1987, LB 504, § 5; R.S.1943, (1988), § 39-6,131.09; Laws 1993, LB 370, § 348.

(t) WINDSHIELDS, WINDOWS, AND MIRRORS

60-6,253. Trucks; rearview mirror.

Each truck shall be equipped with a rearview mirror which shall be kept clean, repaired, and installed.

Source: Laws 1933, c. 105, § 5, p. 426; Laws 1939, c. 47, § 1, p. 208; Laws 1941, c. 125, § 2, p. 481; C.S.Supp. 1941, § 39-1193; R.S.1943, § 39-723; Laws 1947, c. 147, § 2(5), p. 406; R.R.S.1943, § 39-723.04; R.S.1943, (1988), § 39-6,123; Laws 1993, LB 370, § 349; Laws 1993, LB 575, § 25.

60-6,254. Operator; view to rear required; outside mirrors authorized.

No person shall drive a motor vehicle, other than a motorcycle, on a highway when the motor vehicle is so constructed or loaded as to prevent the driver from obtaining a view of the highway to the rear by looking backward from the driver's position unless such vehicle is equipped with a right-side and a left-side outside mirror so located as to reflect to the driver a view of the highway for a distance of at least two hundred feet to the rear of such vehicle. Temporary outside mirrors and attachments used when towing a vehicle shall be removed from such motor vehicle or retracted within the outside dimensions thereof when it is operated upon the highway without such trailer.

Source: Laws 1931, c. 110, § 40, p. 318; C.S.Supp. 1941, § 39-1171; R.S.1943, § 39-775; Laws 1971, LB 396, § 3; R.S.Supp. 1972, § 39-775; Laws 1977, LB 314, § 1; R.S.1943, (1988), § 39-6,124; Laws 1993, LB 370, § 350.

60-6,255. Windshield and windows; nontransparent material prohibited; windshield equipment; requirements.

(1) Every motor vehicle registered pursuant to the Motor Vehicle Registration Act, except motorcycles, shall be equipped with a front windshield.

(2) It shall be unlawful for any person to drive any vehicle upon a highway with any sign, poster, or other nontransparent material upon the front windshield, side wing vents, or side or rear windows of such motor vehicle other than a certificate or other paper required to be so displayed by law. The front windshield, side wing vents, and side or rear windows may have a visor or other shade device which is easily moved aside or removable, is normally used by a motor vehicle operator during daylight hours, and does not impair the driver's field of vision.

(3) Every windshield on a motor vehicle, other than a motorcycle, shall be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

Source: Laws 1931, c. 110, § 41, p. 318; C.S.Supp. 1941, § 39-1172; R.S.1943, § 39-776; Laws 1977, LB 314, § 3; Laws 1987, LB 504, § 7; Laws 1989, LB 155, § 1; R.S.Supp. 1992, § 39-6,136; Laws 1993, LB 370, § 351; Laws 2005, LB 274, § 245.

Cross References

Motor Vehicle Registration Act, see section 60-301.

Officer properly stopped vehicle bearing both Missouri plates and intransit sticker, and when driver failed to produce identification, and upon noticing scratches around vehicle identification number checked to determine whether vehicle was stolen, upon learning it was, was justified in making arrest. United States v. Harris, 528 F.2d 1327 (8th Cir. 1975).

60-6,256. Objects placed or hung to obstruct or interfere with view of operator; unlawful; enforcement; penalty.

(1) It shall be unlawful for any person to operate a motor vehicle with any object placed or hung in or upon the motor vehicle, except required or permitted equipment of the motor vehicle, in such a manner as to significantly and materially obstruct or interfere with the view of the operator through the windshield or to prevent the operator from having a clear and full view of the road and condition of traffic behind the motor vehicle. Any sticker or identification authorized or required by the federal government or any agency thereof or the State of Nebraska or any political subdivision thereof may be placed upon the windshield of the motor vehicle without violating this section.

(2) Enforcement of this section by state or local law enforcement agencies shall be accomplished only as a secondary action when a driver of a motor vehicle has been cited or charged with a traffic violation or some other offense.

(3) Any person who violates this section is guilty of a traffic infraction. Any person who is found guilty of a traffic infraction under this section shall be assessed points on his or her motor vehicle operator's license pursuant to section 60-4,182 and shall be fined:

(a) Fifty dollars for the first offense;
(b) One hundred dollars for a second offense; and
(c) One hundred fifty dollars for a third and subsequent offense.

Source: Laws 1959, c. 173, § 1, p. 624; R.R.S.1943, § 39-7,123.04; Laws 1977, LB 41, § 30; R.S.1943, (1988), § 39-6,170; Laws 1993, LB 370, § 352; Laws 2011, LB 500, § 2.

Cross References

Interference with view of driver by passengers or load prohibited, see section 60-6,179.

60-6,257. Windshield and windows; tinting; sunscreening; prohibited acts; terms, defined.

(1) It shall be unlawful for a person to drive a motor vehicle required to be registered in this state upon a highway:

(a) If the windows in such motor vehicle are tinted so that the driver's clear view through the windshield or side or rear windows is reduced or the ability to see into the motor vehicle is substantially impaired;

(b) If the windshield has any sunscreening material that is not clear and transparent below the AS-1 line or if it has a sunscreening material that is red, yellow, or amber in color above the AS-1 line;

(c) If the front side windows have any sunscreening or other transparent material that has a luminous reflectance of more than thirty-five percent or has light transmission of less than thirty-five percent;

(d) If the rear window or side windows behind the front seat have sunscreening or other transparent material that has a luminous reflectance of more than thirty-five percent or has light transmission of less than twenty percent except for the rear window or side windows behind the front seat on a multipurpose vehicle, van, or bus; or

(e) If the windows of a camper, motor home, pickup cover, slide-in camper, or other motor vehicle do not meet the standards for safety glazing material specified by federal law in 49 C.F.R. 571.205.

(2) For purposes of this section and sections 60-6,258 and 60-6,259:

(a) AS-1 line shall mean a line extending from the letters AS-1, found on most motor vehicle windshields, running parallel to the top of the windshield or shall mean a line five inches below and parallel to the top of the windshield, whichever is closer to the top of the windshield;

(b) Camper shall mean a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle with motive power for the purpose of providing shelter for persons;

(c) Glass-plastic glazing material shall mean a laminate of one or more layers of glass and one or more layers of plastic in which a plastic surface of the glazing faces inward when the glazing is installed in a vehicle;

(d) Light transmission shall mean the ratio of the amount of total light, expressed in percentages, which is allowed to pass through the sunscreening or transparent material to the amount of total light falling on the motor vehicle window;

(e) Luminous reflectance shall mean the ratio of the amount of total light, expressed in percentages, which is reflected outward by the sunscreening or transparent material to the amount of total light falling on the motor vehicle window;

(f) Motor home shall mean a multipurpose passenger vehicle that provides living accommodations;

(g) Multipurpose vehicle shall mean a motor vehicle designed to carry ten or fewer passengers that is constructed on a truck chassis or with special features for occasional off-road use;

(h) Pickup cover shall mean a camper having a roof and sides but without a floor designated to be mounted on and removable from the cargo area of a truck by the user;

(i) Slide-in camper shall mean a camper having a roof, floor, and sides designed to be mounted on and removable from the cargo area of a truck by the user; and

(j) Sunscreening material shall mean a film, material, tint, or device applied to motor vehicle windows for the purpose of reducing the effects of the sun.

Source: Laws 1989, LB 155, § 2; Laws 1990, LB 1119, § 1; R.S.Supp. 1992, § 39-6,136.01; Laws 1993, LB 370, § 353.

60-6,258. Windshield and windows; violations; penalty.

Any person owning or operating a motor vehicle in violation of section 60-6,257 shall be guilty of a Class V misdemeanor.

Source: Laws 1989, LB 155, § 3; R.S.Supp. 1992, § 39-6,136.02; Laws 1993, LB 370, § 354.

60-6,259. Windshield and windows; applicator; prohibited acts; penalty.

Any person who applies a sunscreening material or a glass-plastic glazing material in a manner which results in a motor vehicle having a window which violates the requirements prescribed in subsection (1) of section 60-6,257 shall be guilty of a Class III misdemeanor.

Source: Laws 1989, LB 155, § 4; R.S.Supp. 1992, § 39-6,136.03; Laws 1993, LB 370, § 355.

60-6,260. Windshield and windows; waiver of standards; conditions.

The Nebraska State Patrol or local law enforcement agency may grant a waiver of the standards in section 60-6,257 for reasons of safety or security or for medical reasons based on an affidavit signed by a licensed physician. Such waiver shall be in writing and shall include the date issued, the vehicle identification number, the registration number, or other description to clearly identify the motor vehicle to which the waiver applies, the name of the owner of the vehicle, the reason for granting the waiver, the dates the waiver will be effective, and the

signature of the head of the law enforcement agency granting the waiver. Such agency shall keep a copy of the waiver until the waiver expires.

Source: Laws 1989, LB 155, § 5; R.S.Supp. 1992, § 39-6,136.04; Laws 1993, LB 370, § 356.

60-6,261. Windshield and windows; funeral vehicles; exception.

Sections 60-6,257 to 60-6,259 shall not apply to the side or rear windows of funeral coaches, hearses, or other vehicles operated in the normal course of business by a funeral establishment licensed under section 38-1419.

Source: Laws 1989, LB 155, § 6; R.S.Supp. 1992, § 39-6,136.05; Laws 1993, LB 370, § 357; Laws 2007, LB 463, § 1175.

60-6,262. Safety glass, defined.

For purposes of section 60-6,263, safety glass shall mean any product composed of glass or such other or similar products as will successfully withstand discoloration due to exposure to sunlight or abnormal temperatures over an extended period of time and is so manufactured, fabricated, or treated as substantially to prevent or reduce in comparison with ordinary sheet glass or plate glass, when struck or broken, the likelihood of injury to persons.

Source: Laws 1933, c. 101, § 3, p. 413; Laws 1937, c. 145, § 3, p. 554; C.S.Supp. 1941, § 39-1196; R.S.1943, § 39-7,102; Laws 1972, LB 1058, § 3; R.S.Supp. 1972, § 39-7,102; Laws 1987, LB 224, § 8; R.S.1943, (1988), § 39-6,156; Laws 1993, LB 370, § 358.

The enactment of this section did not abrogate existing municipal ordinances on the same subject and did not deprive municipalities of the power to legislate thereon in the future. State v. Hauser, 137 Neb. 138, 288 N.W. 518 (1939).

60-6,263. Safety glass; requirements; vehicles built after January 1, 1935; motorcycle windshield; requirements; violation; penalty.

It shall be unlawful to operate on any highway in this state any motor vehicle, other than a motorcycle, manufactured or assembled, whether from a kit or otherwise, after January 1, 1935, which is designed or used for the purpose of carrying passengers unless such vehicle is equipped in all doors, windows, and windshields with safety glass. Any windshield attached to a motorcycle shall be manufactured of products which will successfully withstand discoloration due to exposure to sunlight or abnormal temperatures over an extended period of time.

The owner or operator of any motor vehicle operated in violation of this section shall be guilty of a Class III misdemeanor.

Source: Laws 1933, c. 101, § 2, p. 413; Laws 1937, c. 145, § 2, p. 554; C.S.Supp. 1941, § 39-1195; R.S.1943, § 39-7,101; Laws 1977, LB 314, § 4; R.S.1943, (1988), § 39-6,155; Laws 1993, LB 370, § 359; Laws 2003, LB 238, § 7.

60-6,264. Violation by common carrier; permit revoked or suspended.

In case of any violation of section 60-6,263 by any common carrier or person operating a motor vehicle under a permit issued by the Director of Motor Vehicles, the Public Service Commission, or any other authorized body or officer, such permit shall be revoked or, in the discretion of such authorized department, commission, body, or officer, suspended until the provisions of such section are satisfactorily complied with.

Source: Laws 1933, c. 101, § 6, p. 414; Laws 1937, c. 145, § 6, p. 556; C.S.Supp. 1941, § 39-1199; R.S.1943, § 39-7,106; Laws 1957, c. 366, § 20, p. 1258; Laws 1972, LB 1058, § 7; R.S.Supp. 1972, § 39-7,106; Laws 1987, LB 224, § 10; R.S.1943, (1988), § 39-6,160; Laws 1993, LB 370, § 360.

(u) OCCUPANT PROTECTION SYSTEMS

60-6,265. Occupant protection system and three-point safety belt system, defined.

For purposes of sections 60-6,266 to 60-6,273:

(1) Occupant protection system means a system utilizing a lap belt, a shoulder belt, or any combination of belts installed in a motor vehicle which (a) restrains drivers and passengers and (b) conforms to Federal Motor Vehicle Safety Standards, 49 C.F.R. 571.207, 571.208, 571.209, and 571.210, as such standards existed on January 1, 2009, or to the federal motor vehicle safety standards for passenger restraint systems applicable for the motor vehicle's model year; and

(2) Three-point safety belt system means a system utilizing a combination of a lap belt and a shoulder belt installed in a motor vehicle which restrains drivers and passengers.

Source: Laws 1993, LB 370, § 361; Laws 2004, LB 227, § 1; Laws 2006, LB 853, § 19; Laws 2007, LB 239, § 6; Laws 2008, LB 756, § 21; Laws 2009, LB 331, § 11; Laws 2015, LB 231, § 33.

60-6,266. Occupant protection system; 1973 year model and later motor vehicles; requirements; three-point safety belt system; violation; penalty.

(1) Every motor vehicle designated by the manufacturer as 1973 year model or later operated on any highway, road, or street in this state, except farm tractors and implements of husbandry designed primarily or exclusively for use in agricultural operations, autocycles, motorcycles, motor-driven cycles, mopeds, and buses, shall be equipped with an occupant protection system of a type which:

(a) Meets the requirements of 49 C.F.R. 571.208, 571.209, and 571.210 as such regulations currently exist or as the regulations existed when the occupant protection system was originally installed by the manufacturer; or

(b) If the occupant protection system has been replaced, meets the requirements of 49 C.F.R. 571.208, 571.209, and 571.210 that applied to the originally installed occupant protection system or of a more recently issued version of such regulations. The purchaser of any such vehicle may designate the make or brand of or furnish such occupant protection system to be installed.

(2) Every autocycle shall be equipped with a three-point safety belt system.

(3) Any person selling a motor vehicle in this state not in compliance with this section shall be guilty of a Class V misdemeanor.

Source: Laws 1963, c. 214, § 1, p. 687; R.R.S.1943, § 39-7,123.05; Laws 1977, LB 41, § 31; Laws 1985, LB 496, § 3; Laws 1992, LB 958, § 8; R.S.Supp. 1992, § 39-6,171; Laws 1993, LB 370, § 362; Laws 2015, LB 231, § 34.

60-6,267. Use of restraint system, occupant protection system, or three-point safety belt system; when; information and education program.

(1) Any person in Nebraska who drives any motor vehicle which has or is required to have an occupant protection system or a three-point safety belt system shall ensure that all children up to six years of age being transported by such vehicle use a child passenger restraint system of a type which meets Federal Motor Vehicle Safety Standard 213 as developed by the National Highway Traffic Safety Administration, as such standard existed on January 1, 2009, and which is correctly installed in such vehicle.

(2) Any person in Nebraska who drives any motor vehicle which has or is required to have an occupant protection system or a three-point safety belt system shall ensure that all children six years of age and less than eighteen years of age being transported by such vehicle use an occupant protection system.

(3) Subsections (1) and (2) of this section apply to autocycles and to every motor vehicle which is equipped with an occupant protection system or is required to be equipped with restraint systems pursuant to Federal Motor Vehicle Safety Standard 208, as such standard existed on January 1, 2009, except taxicabs, mopeds, motorcycles, and any motor vehicle designated by the manufacturer as a 1963 year model or earlier which is not equipped with an occupant protection system.

(4) Whenever any licensed physician determines, through accepted medical procedures, that use of a child passenger restraint system by a particular child would be harmful by reason of the child's weight, physical condition, or other medical reason, the provisions of subsection (1) or (2) of this section shall be waived. The driver of any vehicle transporting such a child shall carry on his or her person or in the vehicle a signed written statement of the physician identifying the child and stating the grounds for such waiver.

(5) The drivers of authorized emergency vehicles shall not be subject to the requirements of subsection (1) or (2) of this section when operating such authorized emergency vehicles pursuant to their employment.

(6) A driver of a motor vehicle shall not be subject to the requirements of subsection (1) or (2) of this section if the motor vehicle is being operated in a parade or exhibition and the parade

or exhibition is being conducted in accordance with applicable state law and local ordinances and resolutions.

(7) The Department of Transportation shall develop and implement an ongoing statewide public information and education program regarding the use of child passenger restraint systems and occupant protection systems and the availability of distribution and discount programs for child passenger restraint systems.

(8) All persons being transported by a motor vehicle operated by a holder of a provisional operator's permit or a school permit shall use such motor vehicle's occupant protection system or a three-point safety belt system.

Source: Laws 1983, LB 306, § 2; Laws 1985, LB 259, § 1; Laws 1990, LB 958, § 1; Laws 1992, LB 958, § 3; R.S.Supp. 1992, § 39-6,103.01; Laws 1993, LB 370, § 363; Laws 2000, LB 410, § 1; Laws 2002, LB 1073, § 1; Laws 2004, LB 227, § 2; Laws 2006, LB 853, § 20; Laws 2007, LB 239, § 7; Laws 2008, LB 756, § 22; Laws 2009, LB 219, § 1; Laws 2009, LB 331, § 12; Laws 2011, LB 67, § 1; Laws 2015, LB 231, § 35; Laws 2017, LB 339, § 219.

Operative Date: July 1, 2017

60-6,268. Use of restraint system or occupant protection system; violations; penalty; enforcement; when.

(1) A person violating any provision of subsection (1) or (2) of section 60-6,267 shall be guilty of an infraction as defined in section 29-431 and shall be fined twenty-five dollars for each violation. The failure to provide a child restraint system for more than one child in the same vehicle at the same time, as required in such subsection, shall not be treated as a separate offense.

(2) Enforcement of subsection (2) or (8) of section 60-6,267 shall be accomplished only as a secondary action when an operator of a motor vehicle has been cited or charged with a violation or some other offense unless the violation involves a person under the age of eighteen years riding in or on any portion of the vehicle not designed or intended for the use of passengers when the vehicle is in motion.

Source: Laws 1983, LB 306, § 3; R.S.1943, (1988), § 39-6,103.02; Laws 1993, LB 370, § 364; Laws 2000, LB 410, § 2; Laws 2002, LB 1073, § 2; Laws 2004, LB 227, § 3; Laws 2011, LB 67, § 2.

60-6,269. Violation of child passenger restraint requirements; how construed.

Violations of the provisions of sections 60-6,267 and 60-6,268 shall not constitute prima facie evidence of negligence nor shall compliance with such sections constitute a defense to any claim for personal injuries to a child or recovery of medical expenses for injuries sustained in any motor vehicle accident. Violation of such sections by a driver shall not constitute a defense for another person to any claim for personal injuries to a child or recovery of medical expenses for injuries sustained in any motor vehicle accident.

Source: Laws 1983, LB 306, § 4; R.S.1943, (1988), § 39-6,103.03; Laws 1993, LB 370, § 365.

60-6,270. Occupant protection system; three-point safety belt system; use required; when; exceptions.

(1) Except as provided in subsection (2) or (3) of this section, no driver shall operate a motor vehicle upon a highway or street in this state unless the driver and each front-seat occupant in the vehicle are wearing occupant protection systems and all occupant protection systems worn are properly adjusted and fastened.

(2) Except as otherwise provided in subsection (3) of this section, no driver shall operate an autocycle upon a highway or street of this state unless the driver is wearing a three-point safety belt system and it is properly adjusted and fastened.

(3) The following persons shall not be required to wear an occupant protection system or a three-point safety belt system:

(a) A person who possesses written verification from a physician that the person is unable to wear an occupant protection system or a three-point safety belt system for medical reasons;

(b) A rural letter carrier of the United States Postal Service while performing his or her duties as a rural letter carrier between the first and last delivery points; and

(c) A member of an emergency medical service while involved in patient care.

(4) For purposes of this section, motor vehicle means a vehicle required by section 60-6,266 to be equipped with an occupant protection system or a three-point safety belt system.

Source: Laws 1985, LB 496, § 6; Laws 1992, LB 958, § 6; R.S.Supp. 1992, § 39-6,103.07; Laws 1993, LB 370, § 366; Laws 1993, LB 575, § 23; Laws 1997, LB 138, § 41; Laws 2015, LB 231, § 36.

60-6,271. Enforcement of occupant protection system requirements; when.

Enforcement of section 60-6,270 by state or local law enforcement agencies shall be accomplished only as a secondary action when a driver of a motor vehicle has been cited or charged with a violation or some other offense.

Source: Laws 1985, LB 496, § 4; Laws 1992, LB 958, § 4; R.S.Supp. 1992, § 39-6,103.05; Laws 1993, LB 370, § 367.

60-6,272. Occupant protection system; three-point safety belt system; violation; penalty.

Any person who violates section 60-6,270 shall be guilty of a traffic infraction and shall be fined twenty-five dollars, but no court costs shall be assessed against him or her nor shall any points be assessed against the driving record of such person. Regardless of the number of persons in such vehicle not wearing an occupant protection system or a three-point safety belt system

pursuant to such section, only one violation shall be assessed against the driver of such motor vehicle for each time the motor vehicle is stopped and a violation of such section is found.

Source: Laws 1985, LB 496, § 5; Laws 1992, LB 958, § 5; R.S.Supp. 1992, § 39-6,103.06; Laws 1993, LB 370, § 368; Laws 1993, LB 575, § 22; Laws 2015, LB 231, § 37.

60-6,273. Occupant protection system; three-point safety belt system; violation; evidence; when admissible.

Evidence that a person was not wearing an occupant protection system or a three-point safety belt system at the time he or she was injured shall not be admissible in regard to the issue of liability or proximate cause but may be admissible as evidence concerning mitigation of damages, except that it shall not reduce recovery for damages by more than five percent.

Source: Laws 1985, LB 496, § 7; Laws 1992, LB 958, § 7; R.S.Supp. 1992, § 39-6,103.08; Laws 1993, LB 370, § 369; Laws 2015, LB 231, § 38.

A court should apply this section before applying a statutory cap on damages. Werner v. County of Platte, 284 Neb. 899, 824 N.W.2d 38 (2012).

Under this section, evidence that a person was not wearing a seatbelt is admissible only as evidence concerning the mitigation of damages and cannot be used with respect to the issue of liability or proximate cause. Fickle v. State, 273 Neb. 990, 735 N.W.2d 754 (2007).

Evidence of seatbelt misuse or nonuse was not admissible under this section where the plaintiff had dropped her claim that the seatbelt was faulty and stipulated before trial to a 5-percent reduction in the judgment. The trial court's reduction of the jury's award by 5 percent represented the full mitigation of damages available. Shipler v. General Motors Corp., 271 Neb. 194, 710 N.W.2d 807 (2006).

Evidence of plaintiff's failure to wear a seatbelt may be introduced for mitigation of damages if defendant has demonstrated a causal connection between plaintiff's failure to wear an available seatbelt and the damages sustained by plaintiff. Jury instruction on plaintiff's failure to wear a seatbelt is proper to reduce damages by 5 percent or less, but only when defendant has demonstrated a causal connection between plaintiff's failure to wear an available seatbelt and the damages sustained by plaintiff. Vredeveld v. Clark, 244 Neb. 46, 504 N.W.2d 292 (1993).

(v) RADAR TRANSMISSION DEVICES

60-6,274. Terms, defined.

For purposes of sections 60-6,274 to 60-6,277:

(1) Radar transmission device shall mean any mechanism designed to interfere with the reception of radio microwaves in the electromagnetic spectrum, which microwaves, commonly referred to as radar, are employed by law enforcement officials to measure the speed of motor vehicles;

(2) Possession shall mean to have a radar transmission device in a motor vehicle if such device is not (a) disconnected from all power sources and (b) in the rear trunk, which shall include the spare tire compartment, or any other compartment which is not accessible to the driver or any other person in the vehicle while such vehicle is in operation. If no such compartment exists in a vehicle, then such device must be disconnected from all power sources

and be placed in a position not readily accessible to the driver or any other person in the vehicle; and

(3) Transceiver shall mean an apparatus contained in a single housing, functioning alternately as a radio transmitter and receiver.

Source: Laws 1982, LB 32, § 2; R.S.1943, (1988), § 39-6,206; Laws 1993, LB 370, § 370.

60-6,275. Radar transmission device; operation; possession; unlawful; violation; penalty.

It shall be unlawful for any person to operate or possess any radar transmission device while operating a motor vehicle on any highway in this state. Any person who violates this section shall be guilty of a Class IIIA misdemeanor.

Source: Laws 1982, LB 32, § 1; R.S.1943, (1988), § 39-6,205; Laws 1993, LB 370, § 371.

60-6,276. Authorized devices.

Section 60-6,275 shall not apply to (1) any transmitter, transceiver, or receiver of radio waves which has been lawfully licensed by the Federal Communications Commission or (2) any device being used by law enforcement officials in their official duties.

Source: Laws 1982, LB 32, § 3; R.S.1943, (1988), § 39-6,207; Laws 1993, LB 370, § 372.

60-6,277. Prohibited device; seizure; disposal.

Any device prohibited by sections 60-6,275 and 60-6,276 found as the result of an arrest made under such sections shall be seized, and when no longer needed as evidence, such device shall, if the owner was convicted of an offense under such sections, be considered as contraband and disposed of pursuant to section 29-820.

Source: Laws 1982, LB 32, § 5; R.S.1943, (1988), § 39-6,209; Laws 1993, LB 370, § 373.

(w) HELMETS

60-6,278. Legislative findings.

The Legislature hereby finds and declares that head injuries that occur to motorcyclists and moped operators which could be prevented or lessened by the wearing of helmets are a societal problem and that the financial and emotional costs of such injuries cannot be viewed solely on a personal level. It is the intent of the Legislature to prevent injuries and fatalities which occur due to motorcycle and moped accidents and to prevent the subsequent damage to society which

results due to the cost of caring for injured people, the pain and suffering which accompanies such injuries and fatalities, and the loss of productive members of society from such injuries.

Source: Laws 1988, LB 428, § 1; R.S.1943, (1988), § 39-6,210; Laws 1993, LB 370, § 374.

60-6,279. Protective helmets; required; when.

A person shall not operate or be a passenger on a motorcycle or moped on any highway in this state unless such person is wearing a protective helmet of the type and design manufactured for use by operators of such vehicles and unless such helmet is secured properly on his or her head with a chin strap while the vehicle is in motion. All such protective helmets shall be designed to reduce injuries to the user resulting from head impacts and shall be designed to protect the user by remaining on the user's head, deflecting blows, resisting penetration, and spreading the force of impact. Each such helmet shall consist of lining, padding, and chin strap and shall meet or exceed the standards established in the United States Department of Transportation's Federal Motor Vehicle Safety Standard No. 218, 49 C.F.R. 571.218, for motorcycle helmets.

Source: Laws 1988, LB 428, § 2; R.S.1943, (1988), § 39-6,211; Laws 1993, LB 370, § 375.

The list required by section 39-6,212 (transferred to section 60-6,280) acts as a limiting construction of this section by enumerating some of those helmets which meet the criteria of this section; when taken together, the helmet law and list are not vague. Claims that this section violates constitutional rights to due process and equal protection are without merit, since the helmet law implicates neither a fundamental right nor a suspect classification and is rationally related to a legitimate legislative aim. Although the State may promulgate and enforce motorcycle helmet standards only if the state standards are identical to those promulgated by the federal Department of Transportation, the helmet law is constitutional, since the visor requirement is properly severable from the remainder of this section. Robotham v. State, 241 Neb. 379, 488 N.W.2d 533 (1992).

60-6,280. Approved protective helmets.

The Department of Motor Vehicles shall publish a list of approved protective helmets which meet the requirements of section 60-6,279. Such list shall not be inclusive. Any person wearing a protective helmet which meets the requirements established pursuant to such section shall be deemed to be in compliance with such section.

Source: Laws 1988, LB 428, § 3; R.S.1943, (1988), § 39-6,212; Laws 1993, LB 370, § 376.

Since the list required by this section is noninclusive, it does not improperly delegate to the Department of Motor Vehicles the authority to define the essential elements of a crime. Robotham v. State, 241 Neb. 379, 488 N.W.2d 533 (1992).

60-6,281. Protective helmets; conformance with federal standards; effect.

Any person using a protective helmet purchased prior to July 9, 1988, which is labeled to show that it conforms with applicable federal motor vehicle safety standards shall be deemed to be in compliance with section 60-6,279.

Source: Laws 1988, LB 428, § 4; R.S.1943, (1988), § 39-6,213; Laws 1993, LB 370, § 377.

60-6,282. Violation; penalty.

Any person who violates section 60-6,279 shall be guilty of a traffic infraction and shall be fined fifty dollars.

Source: Laws 1988, LB 428, § 5; R.S.1943, (1988), § 39-6,214; Laws 1993, LB 370, § 378.

(x) MISCELLANEOUS EQUIPMENT PROVISIONS

60-6,283. Splash aprons; requirements.

Every new motor vehicle or semitrailer purchased after January 1, 1956, and operated on any highway in this state shall be equipped with fenders, covers, or devices, including flaps or splash aprons, unless the body of the vehicle affords adequate protection to effectively minimize the spray or splash of water or mud to the rear of the motor vehicle or semitrailer.

Source: Laws 1955, c. 160, § 1, p. 464; R.R.S.1943, § 39-735.01; R.S.1943, (1988), § 39-6,128; Laws 1993, LB 370, § 379.

60-6,284. Towing; drawbars or other connections; length; red flag required, when.

The drawbar or other connection between any two vehicles, one of which is towing or drawing the other on a highway, shall not exceed fifteen feet in length from one vehicle to the other, except a vehicle being towed with a connection device that is an integral component of the vehicle and is designed to attach to a lead unit with construction in such a manner as to allow articulation at the attachment point on the chassis of the towed vehicle but not to allow lateral or side-to-side movement. Such connecting device shall meet the safety standards for towbar failure or disconnection in the parts, subparts, and sections of Title 49 of the Code of Federal Regulations adopted pursuant to section 75-363 and shall have displayed at approximately the halfway point between the towing vehicle and the towed vehicle on the connecting mechanism a red flag or other signal or cloth not less than twelve inches both in length and width that shall be at least five feet and not more than ten feet from the level of the paving and shall be displayed along the outside line on both sides of the towing and towed vehicles. Whenever such connection

consists of a chain, rope, or cable, there shall be displayed upon such connection a red flag or other signal or cloth not less than twelve inches both in length and width.

Source: Laws 1931, c. 110, § 37, p. 317; C.S.Supp. 1941, § 39-1168; R.S.1943, § 39-772; Laws 1980, LB 785, § 1; R.S.1943, (1988), § 39-6,132; Laws 1993, LB 370, § 380; Laws 2006, LB 1007, § 11.

60-6,285. Horn; requirements; prohibited acts.

Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet. Except as otherwise provided in this section, it shall be unlawful for any vehicle to be equipped with or for any person to use upon a vehicle any siren, exhaust, compression, or spark plug whistle or for any person at any time to use a horn, otherwise than as a reasonable warning, or to make any unnecessary or unreasonably loud or harsh sound by means of a horn or other warning device. Every police and fire department and fire patrol vehicle and every ambulance used for emergency calls shall be equipped with a bell, siren, or exhaust whistle.

Source: Laws 1931, c. 110, § 39, p. 318; C.S.Supp. 1941, § 39-1170; R.S.1943, § 39-774; Laws 1957, c. 366, § 5, p. 1248; R.R.S.1943, § 39-774; Laws 1987, LB 224, § 5; R.S.1943, (1988), § 39-6,135; Laws 1993, LB 370, § 381.

Where evidence is not sufficient to support finding there was a duty to sound a horn, court could not properly submit that issue. Merritt v. Reed, 186 Neb. 561, 185 N.W.2d 261 (1971).

The duty to sound a signal, warning of the approach of a motor vehicle, depends largely on the circumstances of the particular case. Tews v. Bamrick and Carroll, 148 Neb. 59, 26 N.W.2d 499 (1947).

Before backing a motor vehicle, operator must give signal of intention. Chew v. Coffin, 144 Neb. 170, 12 N.W.2d 839 (1944).

Failure of trial court to supplement its instructions to include provisions of this section was not erroneous. Bern v. Evans, 349 F.2d 282 (8th Cir. 1965).

60-6,286. Muffler or noise-suppressing system; prevention of fumes and smoke; requirements.

Every vehicle shall be equipped, maintained, and operated so as to prevent excessive or unusual noise. No person shall drive a motor vehicle on a highway unless such motor vehicle is equipped with a muffler or other effective noise-suppressing system in good working order and in constant operation. It shall be unlawful to use a muffler cutout, bypass, or similar device on any motor vehicle upon a highway.

The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

Source: Laws 1931, c. 110, § 42, p. 318; C.S.Supp. 1941, § 39-1173; R.S.1943, § 39-777; Laws 1967, c. 232, § 1, p. 617; R.R.S.1943, § 39-777; R.S.1943, (1988), § 39-6,137; Laws 1993, LB 370, § 382; Laws 1993, LB 575, § 31.

60-6,287. Television set; equipping motor vehicle with screen visible to driver; unlawful; penalty.

It shall be unlawful to operate upon any public highway in this state a motor vehicle which is equipped with or in which is located a television set so placed that the viewing screen is visible to the driver while operating such vehicle. Any person violating this section shall be guilty of a Class V misdemeanor.

Source: Laws 1951, c. 113, § 1, p. 522; R.R.S.1943, § 39-7,123.01; Laws 1977, LB 41, § 29; R.S.1943, (1988), § 39-6,169; Laws 1993, LB 370, § 383.

60-6,287.01. Nitrous oxide use prohibited.

It is unlawful to use nitrous oxide in any motor vehicle operated on any highway in this state.

Source: Laws 2002, LB 1303, § 11.

(y) SIZE, WEIGHT, AND LOAD

60-6,288. Vehicles; width limit; exceptions; conditions; Director-State Engineer; powers.

(1) No vehicle which exceeds a total outside width of one hundred two inches, including any load but excluding designated safety devices, shall be permitted on any portion of the National System of Interstate and Defense Highways. The Director-State Engineer shall adopt and promulgate rules and regulations, consistent with federal requirements, designating safety devices which shall be excluded in determining vehicle width.

(2) No vehicle which exceeds a total outside width of one hundred two inches, including any load but excluding designated safety devices, shall be permitted on any highway which is not a portion of the National System of Interstate and Defense Highways, except that such prohibition shall not apply to:

(a) Farm equipment in temporary movement, during daylight hours or during hours of darkness when the clearance light requirements of section 60-6,235 are fully complied with, in the normal course of farm operations;

(b) Combines eighteen feet or less in width, while in the normal course of farm operations and while being driven during daylight hours or during hours of darkness when the clearance light requirements of section 60-6,235 are fully complied with;

(c) Combines in excess of eighteen feet in width, while in the normal course of farm operations, while being driven during daylight hours for distances of twenty-five miles or less on highways and while preceded by a well-lighted pilot vehicle or flagperson, except that such combines may be driven on highways while in the normal course of farm operations for distances of twenty-five miles or less and while preceded by a well-lighted pilot vehicle or

flagperson during hours of darkness when the clearance light requirements of section 60-6,235 are fully complied with;

(d) Combines and vehicles used in transporting combines or other implements of husbandry, and only when transporting combines or other implements of husbandry, to be engaged in harvesting or other agricultural work, while being transported into or through the state during daylight hours, when the total width including the width of the combine or other implement of husbandry being transported does not exceed fifteen feet, except that vehicles used in transporting combines or other implements of husbandry may, when necessary to the harvesting operation or other agricultural work, travel unloaded for distances not to exceed twenty-five miles, while the combine or other implement of husbandry to be transported is engaged in a harvesting operation or other agricultural work;

(e) Farm equipment dealers or their representatives as authorized under section 60-6,382 driving, delivering, or picking up farm equipment, including portable livestock buildings not exceeding fourteen feet in width, or implements of husbandry during daylight hours;

(f) Livestock forage vehicles loaded or unloaded that comply with subsection (2) of section 60-6,305;

(g) During daylight hours only, vehicles en route to pick up, delivering, or returning unloaded from delivery of baled livestock forage which, including the load if any, may be twelve feet in width;

(h) Mobile homes or prefabricated livestock buildings not exceeding sixteen feet in width and with an outside tire width dimension not exceeding one hundred twenty inches moving during daylight hours;

(i) Self-propelled specialized mobile equipment with a fixed load when:

(i) The self-propelled specialized mobile equipment will be transported on a state highway, excluding any portion of the National System of Interstate and Defense Highways, on a city street, or on a road within the corporate limits of a city;

(ii) The city in which the self-propelled specialized mobile equipment is intended to be transported has authorized a permit pursuant to section 60-6,298 for the transportation of the self-propelled specialized mobile equipment, specifying the route to be used and the hours during which the self-propelled specialized mobile equipment can be transported, except that no permit shall be issued by a city for travel on a state highway containing a bridge or structure which is structurally inadequate to carry the self-propelled specialized mobile equipment as determined by the Department of Transportation;

(iii) The self-propelled specialized mobile equipment's gross weight does not exceed ninety-four thousand pounds if the self-propelled specialized mobile equipment has four axles or seventy-two thousand pounds if the self-propelled specialized mobile equipment has three axles; and

(iv) If the self-propelled specialized mobile equipment has four axles, the maximum weight on each set of tandem axles does not exceed forty-seven thousand pounds, or if the self-propelled specialized mobile equipment has three axles, the maximum weight on the front axle does not exceed twenty-five thousand pounds and the total maximum weight on the rear tandem axles does not exceed forty-seven thousand pounds;

(j) Vehicles which have been issued a permit pursuant to section 60-6,299; or

(k) A motor home or travel trailer, as those terms are defined in section 71-4603, which may exceed one hundred and two inches if such excess width is attributable to an appurtenance that extends no more than six inches beyond the body of the vehicle. For purposes of this subdivision,

the term appurtenance includes (i) an awning and its support hardware and (ii) any appendage that is intended to be an integral part of a motor home or travel trailer and that is installed by the manufacturer or dealer. The term appurtenance does not include any item that is temporarily affixed or attached to the exterior of the motor home or travel trailer for purposes of transporting the vehicular unit from one location to another. Appurtenances shall not be considered in calculating the gross trailer area as defined in section 71-4603.

(3) The Director-State Engineer, with respect to highways under his or her jurisdiction, may designate certain highways upon which vehicles of no more than ninety-six inches in width may be permitted to travel. Highways so designated shall be limited to one or more of the following:

(a) Highways with traffic lanes of ten feet or less;

(b) Highways upon which are located narrow bridges; and

(c) Highways which because of sight distance, surfacing, unusual curves, topographic conditions, or other unusual circumstances would not in the opinion of the Director-State Engineer safely accommodate vehicles of more than ninety-six inches in width.

Source: Laws 1933, c. 105, § 1, p. 425; C.S.Supp. 1941, § 39-1032; R.S.1943, § 39-719; Laws 1957, c. 156, § 1, p. 563; Laws 1961, c. 182, § 1, p. 544; Laws 1963, c. 219, § 1, p. 691; Laws 1963, c. 220, § 1, p. 693; Laws 1963, c. 221, § 1, p. 697; Laws 1965, c. 212, § 1, p. 621; Laws 1969, c. 308, § 2, p. 1101; Laws 1973, LB 491, § 1; R.S.Supp. 1973, § 39-719; Laws 1974, LB 593, § 1; Laws 1975, LB 306, § 1; Laws 1977, LB 427, § 2; Laws 1978, LB 576, § 1; Laws 1978, LB 750, § 2; Laws 1980, LB 284, § 1; Laws 1981, LB 285, § 2; Laws 1982, LB 417, § 1; Laws 1983, LB 244, § 1; Laws 1985, LB 553, § 3; Laws 1990, LB 369, § 3; R.S.Supp. 1992, § 39-6,177; Laws 1993, LB 370, § 384; Laws 1993, LB 413, § 1; Laws 1993, LB 575, § 35; Laws 1997, LB 226, § 1; Laws 1999, LB 704, § 47; Laws 2000, LB 1361, § 5; Laws 2001, LB 376, § 3; Laws 2008, LB 756, § 23; Laws 2014, LB 1039, § 3; Laws 2017, LB 339, § 220.

Operative Date: July 1, 2017

Cross References

Weighing stations, see sections 60-1301 to 60-1309.

Under the exemption to the width limitations prescribed by subdivision (2)(f) of this section, the language "access to points on (dustless-surfaced) highways" means that if there is no other route available, one may move the qualified equipment over a dustless-surfaced highway. State v. Quandt, 234 Neb. 402, 451 N.W.2d 272 (1990).

Violation of a statute is evidence of negligence, but not negligence per se. Clark Bilt, Inc. v. Wells Dairy Co., 200 Neb. 20, 261 N.W.2d 772 (1978).

Exception in this section for unbaled livestock forage applied to load only and not to vehicle. State v. Sabin, 184 Neb. 784, 172 N.W.2d 89 (1969).

Width of vehicle may not exceed eight feet unless special permit is obtained. Frasier v. Gilchrist, 165 Neb. 450, 86 N.W.2d 65 (1957).

Where truck loaded with combine exceeded statutory permissible width and was over centerline of the highway, it was evidence of negligence. Novak v. Laptad, 152 Neb. 87, 40 N.W.2d 331 (1949).

60-6,288.01. Person moving certain buildings or objects; notice required; contents; violation; penalty.

(1) Any person moving a building or an object that, in combination with the transporting vehicle, is over fifteen feet six inches high or wider than the roadway on a county or township road shall notify the local authority and the electric utility responsible for the infrastructure, including poles, wires, substations, and underground residential distribution cable boxes adjacent to or crossing the roadway along the route over which such building or object is being transported. Notification shall be made at least ten days prior to the move. Notification shall specifically describe the transporting vehicle, the width, length, height, and weight of the building or object to be moved, the route to be used, and the date and hours during which the building or object will be transported. Complying with the notification requirement of this section does not exempt the person from complying with any other federal, state, or local authority permit or notification requirements.

(2) Proof of the notification required under subsection (1) of this section must be carried by any person moving a building or an object as described in this section.

(3) Any person who fails to comply with the notification requirements of this section shall be guilty of a Class II misdemeanor.

Source: Laws 2011, LB 164, § 2; Laws 2016, LB 973, § 3.

60-6,289. Vehicles; height; limit; height of structure; damages.

(1) No vehicle unladen or with load shall exceed a height of fourteen feet, six inches, except:

(a) Combines or vehicles used in transporting combines, to be engaged in harvesting within or without the state, moving into or through the state during daylight hours when the overall height does not exceed fifteen feet, six inches;

(b) Livestock forage vehicles with or without load that comply with subsection (2) of section 60-6,305;

(c) Farm equipment or implements of husbandry being driven, picked up, or delivered during daylight hours by farm equipment dealers or their representatives as authorized under section 60-6,382 shall not exceed fifteen feet, six inches;

(d) Self-propelled specialized mobile equipment with a fixed load when the requirements of subdivision (2)(i) of section 60-6,288 are met;

(e) Vehicles which have been issued a permit pursuant to section 60-6,299; or

(f) Vehicles with a baled livestock forage load that comply with subsection (4) of section 60-6,305 when the overall height does not exceed fifteen feet, six inches.

(2) No person shall be required to raise, alter, construct, or reconstruct any underpass, bridge, wire, or other structure to permit the passage of any vehicle having a height, unladen or with load, in excess of twelve feet, six inches. The owners, lessees, and operators, jointly and severally, of vehicles exceeding twelve feet, six inches, in height shall assume the risk of loss to the vehicle or its load and shall be liable for any damages that result to overhead obstructions from operation of a vehicle exceeding twelve feet, six inches, in height.

Source: Laws 1933, c. 105, § 2, p. 425; C.S.Supp. 1941, § 39-1033; Laws 1943, c. 133, § 1, p. 446; R.S.1943, § 39-720; Laws 1951, c. 117, § 1, p. 526; Laws 1957, c. 156, § 2, p. 563; Laws 1969, c. 308, § 3, p. 1102; Laws 1973, LB 491, § 2; R.S.Supp. 1973, § 39-720; Laws 1974, LB 593, § 2; Laws 1977, LB 211, § 3; Laws 1978, LB 750, § 3; Laws 1980, LB 284, § 2; Laws 1985, LB 553, § 4; R.S.1943, (1988), § 39-6,178; Laws 1993, LB 370, § 385; Laws 2000, LB 1361, § 6; Laws 2008, LB 756, § 24; Laws 2010, LB 820, § 1; Laws 2014, LB 1039, § 4.

60-6,290. Vehicles; length; limit; exceptions.

(1)(a) No vehicle shall exceed a length of forty feet, extreme overall dimensions, inclusive of front and rear bumpers including load, except that:

(i) A bus or a motor home, as defined in section 71-4603, may exceed the forty-foot limitation but shall not exceed a length of forty-five feet;

(ii) A truck-tractor may exceed the forty-foot limitation;

(iii) A semitrailer operating in a truck-tractor single semitrailer combination, which semitrailer was actually and lawfully operating in the State of Nebraska on December 1, 1982, may exceed the forty-foot limitation;

(iv) A semitrailer operating in a truck-tractor single semitrailer combination, which semitrailer was not actually and lawfully operating in the State of Nebraska on December 1, 1982, may exceed the forty-foot limitation but shall not exceed a length of fifty-three feet including load;

(v) A semitrailer operating in a truck-tractor single semitrailer combination, while transporting baled livestock forage, may exceed the forty-foot limitation but shall not exceed a length of fifty-nine feet six inches including load; and

(vi) An articulated bus vehicle operated by a transit authority created pursuant to section 14-1803 may exceed the forty-foot limitation. For purposes of this subdivision (vi), an articulated bus vehicle shall not exceed sixty-five feet in length.

(b) No combination of vehicles shall exceed a length of sixty-five feet, extreme overall dimensions, inclusive of front and rear bumpers and including load, except:

(i) One truck and one trailer, loaded or unloaded, used in transporting implements of husbandry to be engaged in harvesting, while being transported into or through the state during daylight hours if the total length does not exceed seventy-five feet including load;

(ii) A truck-tractor single semitrailer combination;

(iii) A truck-tractor semitrailer trailer combination, but the semitrailer trailer portion of such combination shall not exceed sixty-five feet inclusive of connective devices; and

(iv) A driveaway saddlemount vehicle transporter combination and driveaway saddlemount with fullmount vehicle transporter combination, but the total overall length shall not exceed ninety-seven feet.

(c) A truck shall be construed to be one vehicle for the purpose of determining length.

(d) A trailer shall be construed to be one vehicle for the purpose of determining length.

(2) Subsection (1) of this section shall not apply to:

(a) Extra-long vehicles which have been issued a permit pursuant to section 60-6,292;

(b) Vehicles which have been issued a permit pursuant to section 60-6,299;

(c) The temporary moving of farm machinery during daylight hours in the normal course of farm operations;

(d) The movement of unbaled livestock forage vehicles, loaded or unloaded;

(e) The movement of public utility or other construction and maintenance material and equipment at any time;

(f) Farm equipment dealers or their representatives as authorized under section 60-6,382 driving, delivering, or picking up farm equipment or implements of husbandry within the county in which the dealer maintains his or her place of business, or in any adjoining county or counties, and return;

(g) The overhang of any motor vehicle being hauled upon any lawful combination of vehicles, but such overhang shall not exceed the distance from the rear axle of the hauled motor vehicle to the closest bumper thereof;

(h) The overhang of a combine to be engaged in harvesting, while being transported into or through the state driven during daylight hours by a truck-tractor semitrailer combination, but the length of the semitrailer, including overhang, shall not exceed sixty-three feet and the maximum semitrailer length shall not exceed fifty-three feet;

(i) Any self-propelled specialized mobile equipment with a fixed load when the requirements of subdivision (2)(i) of section 60-6,288 are met; or

(j) One truck-tractor two trailer combination or one truck-tractor semitrailer trailer combination used in transporting equipment utilized by custom harvesters under contract to agricultural producers to harvest wheat, soybeans, or milo during the months of April through November but the length of the property-carrying units, excluding load, shall not exceed eighty-one feet six inches.

(3) The length limitations of this section shall be exclusive of safety and energy conservation devices such as rearview mirrors, turnsignal lights, marker lights, steps and handholds for entry and egress, flexible fender extensions, mudflaps and splash and spray suppressant devices, load-induced tire bulge, refrigeration units or air compressors, and other devices necessary for safe and efficient operation of commercial motor vehicles, except that no device excluded from the limitations of this section shall have by its design or use the capability to carry cargo.

Source: Laws 1933, c. 102, § 1, p. 414; Laws 1933, c. 105, § 3, p. 425; Laws 1935, c. 86, § 1, p. 277; Laws 1939, c. 50, § 1, p. 217; C.S.Supp. 1941, § 39-1034; R.S.1943, § 39-721; Laws 1947, c. 146, § 1, p. 402; Laws 1951, c. 117, § 2, p. 527; Laws 1953, c. 133, § 1, p. 413; Laws 1957, c. 156, § 3, p. 564; Laws 1959, c. 164, § 1, p. 599; Laws 1959, c. 165, § 1, p. 603; Laws 1961, c. 309, § 1, p. 980; Laws 1963, c. 220, § 2, p. 694; Laws 1963, c. 222, § 1, p. 699; Laws 1963, c. 223, § 1, p. 701; Laws 1965, c. 213, § 1, p. 625; Laws 1971, LB 530, § 1; C.S.Supp. 1972, § 39-721; Laws 1974, LB 920, § 2; Laws 1979, LB 112, § 1; Laws 1980, LB 284, § 3; Laws 1980, LB 785, § 2; Laws 1982, LB 383, § 1; Laws 1983, LB 411, § 1; Laws 1984, LB 983, § 3; Laws 1985, LB 553, § 5; Laws 1987, LB 224, § 13; R.S.1943, (1988), § 39-6,179; Laws 1993, LB 370, § 386; Laws 1993, LB 575, § 36; Laws 1996, LB 1104, § 3; Laws 1997, LB 720, § 18; Laws 2000, LB 1361, § 7; Laws 2001, LB 376, § 4; Laws 2006, LB 853, § 21; Laws 2008, LB 756, § 25; Laws 2012, LB 740, § 1; Laws 2014, LB 1039, § 5; Laws 2016, LB 735, § 1.

Reception in evidence of special trip permit was not error. Frasier v. Gilchrist, 165 Neb. 450, 86 N.W.2d 65 (1957).

Legislative definition of vehicle or trailer, made for purposes of classification for licensing or taxing, does not change the common meaning of words used in matters disconnected therewith. Moffitt v. State Automobile Ins. Assn., 140 Neb. 578, 300 N.W. 837 (1941), vacating on rehearing, 139 Neb. 512, 297 N.W. 918 (1941).

If a driver does not display lights on a projecting load when it is dark, it is evidence of negligence. Moore v. Nisley, 133 Neb. 474, 275 N.W. 827 (1937).

60-6,291. Violations; penalty.

Except as provided in subsection (3) of section 60-6,288.01, any person who violates any provision of sections 60-6,288 to 60-6,290 or who drives, moves, causes, or knowingly permits to be moved on any highway any vehicle or vehicles which exceed the limitations as to width, length, or height as provided in such sections for which a penalty is not elsewhere provided shall be guilty of a Class III misdemeanor.

Source: Laws 1933, c. 105, § 8, p. 431; Laws 1941, c. 76, § 1, p. 312; C.S.Supp. 1941, § 39-1037; R.S.1943, § 39-725; Laws 1949, c. 115, § 1, p. 309; Laws 1953, c. 134, § 6, p. 421; Laws 1955, c. 151, § 2, p. 449; R.R.S.1943, § 39-725; Laws 1974, LB 593, § 4; Laws 1977, LB 41, § 35; R.S.1943, (1988), § 39-6,188; Laws 1993, LB 370, § 387; Laws 1993, LB 121, § 207; Laws 1994, LB 884, § 81; Laws 2011, LB 164, § 3; Laws 2016, LB 973, § 4.

Omission of reference to section on speed did not preclude general penalty. Hyslop v. State, 159 Neb. 802, 68 N.W.2d 698 (1955).

In addition to punishment under this section, driver's license may be suspended. Kroger v. State, 158 Neb. 73, 62 N.W.2d 312 (1954).

60-6,292. Extra-long vehicle combinations; permit; conditions; fee; rules and regulations; violation; penalty.

(1) The Department of Transportation may issue permits for the use of extra-long vehicle combinations. Such permits shall allow the extra-long vehicle combinations to operate only on the National System of Interstate and Defense Highways and only if such vehicles are empty and are being delivered for the manufacturer or retailer, except that a highway located not more than six miles from the National System of Interstate and Defense Highways may also be designated in such permits if it is determined by the Director-State Engineer that such designation is necessary for the permitholder to have access to the National System of Interstate and Defense Highways. An annual permit for such use may be issued to each qualified carrier company or individual. The carrier company or individual shall maintain a copy of such annual permit in each truck-tractor operating as a part of an extra-long vehicle combination. The fee for such permit shall be two hundred fifty dollars per year.

(2) The permit shall allow operation of the following extra-long vehicle combinations of not more than three cargo units and not fewer than six axles nor more than nine axles:

(a) A truck-tractor, a semitrailer, and two trailers having an overall combination length of not more than one hundred five feet. Semitrailers and trailers shall be of approximately equal lengths;

(b) A truck-tractor, semitrailer, and single trailer having an overall length of not more than one hundred five feet. Semitrailers and trailers shall be of approximately equal lengths; and

(c) A truck-tractor, semitrailer, or single trailer, one trailer of which is not more than forty-eight feet long, the other trailer of which is not more than twenty-eight feet long nor less than twenty-six feet long, and the entire combination of which is not more than ninety-five feet long. The shorter trailer shall be operated as the rear trailer.

For purposes of this subsection, a semitrailer used with a converter dolly shall be considered a trailer.

(3) The department shall adopt and promulgate rules and regulations governing the issuance of the permits, including, but not limited to, selection of carriers, driver qualifications, equipment selection, hours of operations, weather conditions, road conditions, and safety considerations.

(4) Any person who violates this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1984, LB 983, § 1; R.S.1943, (1988), § 39-6,179.01; Laws 1993, LB 370, § 388; Laws 2017, LB 339, § 221.

Operative Date: July 1, 2017

60-6,293. Truck-trailer combination; warning decal, when.

A warning decal shall be attached to every truck-trailer combination, except trailers subject to section 60-6,243, having a connection device between such vehicles which is more than twelve feet in length. Such decal shall be made of red reflectorized material and contain the words:

LONG VEHICLE

PASS WITH CARE

The letters shall be of white reflectorized material and shall be not less than three inches in height.

The decal shall be affixed to the sides and rear parts of the trailer at a height of not less than forty-eight inches nor more than seventy-four inches from the ground level.

Source: Laws 1974, LB 806, § 1; R.S.1943, (1988), § 39-6,130.01; Laws 1993, LB 370, § 389.

60-6,294. Vehicles; weight limit; further restrictions by Department of Transportation, when authorized; axle load; load limit on bridges; overloading; liability.

(1) Every vehicle, whether operated singly or in a combination of vehicles, and every combination of vehicles shall comply with subsections (2) and (3) of this section except as provided in sections 60-6,294.01, 60-6,297, and 60-6,383. The limitations imposed by this section shall be supplemental to all other provisions imposing limitations upon the size and weight of vehicles.

(2) No wheel of a vehicle or trailer equipped with pneumatic or solid rubber tires shall carry a gross load in excess of ten thousand pounds on any highway nor shall any axle carry a gross load in excess of twenty thousand pounds on any highway. An axle load shall be defined as the

total load transmitted to the highway by all wheels the centers of which may be included between two parallel transverse vertical planes forty inches apart extending across the full width of the vehicle.

(3) No group of two or more consecutive axles shall carry a load in pounds in excess of the value given in the following table corresponding to the distance in feet between the extreme axles of the group, measured longitudinally to the nearest foot, except that the maximum load carried on any group of two or more axles shall not exceed eighty thousand pounds on the National System of Interstate and Defense Highways unless the Director-State Engineer pursuant to section 60-6,295 authorizes a greater weight.

Distance in feet between the extremes of any group of two or more consecutive axles	Maximum load in pounds carried on any group of two or more consecutive axles					
	Two Axles	Three Axles	Four Axles	Five Axles	Six Axles	Seven Axles
4	34,000					
5	34,000					
6	34,000					
7	34,000					
8	34,000	42,000				
9	39,000	42,500				
10	40,000	43,500				
11		44,000				
12		45,000	50,000			
13		45,500	50,500			
14		46,500	51,500			
15		47,000	52,000			
16		48,000	52,500	58,000		
17		48,500	53,500	58,500		
18		49,500	54,000	59,000		
19		50,000	54,500	60,000		
20		51,000	55,500	60,500		
21		51,500	56,000	61,000		
22		52,500	56,500	61,500		
23		53,000	57,500	62,500		
24		54,000	58,000	63,000		
25		54,500	58,500	63,500	69,000	
26		55,500	59,500	64,000	69,500	
27		56,000	60,000	65,000	70,000	
28		57,000	60,500	65,500	71,000	
29		57,500	61,500	66,000	71,500	
30		58,500	62,000	66,500	72,000	

31	59,000	62,500	67,500	72,500	
32	60,000	63,500	68,000	73,000	
33		64,000	68,500	74,000	
34		64,500	69,000	74,500	
35		65,500	70,000	75,000	
36		66,000	70,500	75,500	
37		66,500	71,000	76,000	81,500
38		67,500	72,000	77,000	82,000
39		68,000	72,500	77,500	82,500
40		68,500	73,000	78,000	83,500
41		69,500	73,500	78,500	84,000
42		70,000	74,000	79,000	84,500
43		70,500	75,000	80,000	85,000
44		71,500	75,500	80,500	85,500
45		72,000	76,000	81,000	86,000
46		72,500	76,500	81,500	87,000
47		73,500	77,500	82,000	87,500
48		74,000	78,000	83,000	88,000
49		74,500	78,500	83,500	88,500
50		75,500	79,000	84,000	89,000
51		76,000	80,000	84,500	89,500
52		76,500	80,500	85,000	90,500
53		77,500	81,000	86,000	91,000
54		78,000	81,500	86,500	91,500
55		78,500	82,500	87,000	92,000
56		79,500	83,000	87,500	92,500
57		80,000	83,500	88,000	93,000
58			84,000	89,000	94,000
59			85,000	89,500	94,500
60			85,500	90,000	95,000

(4) The distance between axles shall be measured to the nearest foot. When a fraction is exactly one-half foot, the next larger whole number shall be used, except that:

(a) Any group of three axles shall be restricted to a maximum load of thirty-four thousand pounds unless the distance between the extremes of the first and third axles is at least ninety-six inches in fact; and

(b) The maximum gross load on any group of two axles, the distance between the extremes of which is more than eight feet but less than eight feet six inches, shall be thirty-eight thousand pounds.

(5) The limitations of subsections (2) through (4) of this section shall apply as stated to all main, rural, and intercity highways but shall not be construed as inhibiting heavier axle loads in metropolitan areas, except on the National System of Interstate and Defense Highways, if such loads are not prohibited by city ordinance.

(6) The weight limitations of wheel and axle loads as defined in subsections (2) through (4) of this section shall be restricted to the extent deemed necessary by the Department of

Transportation for a reasonable period when road subgrades or pavements are weak or are materially weakened by climatic conditions.

(7) Two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each when the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six, thirty-seven, or thirty-eight feet except as provided in section 60-6,297. Such vehicles shall be subject to section 60-6,301.

(8) If any vehicle crosses a bridge with a total gross load in excess of the posted capacity of such bridge and as a result of such crossing any damage results to the bridge, the owner of such vehicle shall be responsible for all of such damage.

(9) Vehicles equipped with a greater number of axles than provided in the tables in subsection (3) of this section shall be legal if they do not exceed the maximum load upon any wheel or axle, the maximum load upon any group of two or more consecutive axles, and the total gross weight, or any of such weights as provided in subsections (2) and (3) of this section.

(10) Subsections (1) through (9) of this section shall not apply to a vehicle which has been issued a permit pursuant to section 60-6,299, self-propelled specialized mobile equipment with a fixed load when the requirements of subdivision (2)(i) of section 60-6,288 are met, or an emergency vehicle when the requirements of subdivision (1)(a)(v) of section 60-6,298 are met.

(11) Any two consecutive axles the centers of which are more than forty inches and not more than ninety-six inches apart, measured to the nearest inch between any two adjacent axles in the series, shall be defined as tandem axles, and the gross weight transmitted to the road surface through such series shall not exceed thirty-four thousand pounds. No axle of the series shall exceed the maximum weight permitted under this section for a single axle.

(12) Dummy axles shall be disregarded in determining the lawful weight of a vehicle or vehicle combination for operation on the highway. Dummy axle shall mean an axle attached to a vehicle or vehicle combination in a manner so that it does not articulate or substantially equalize the load and does not carry at least the lesser of eight thousand pounds or eight percent of the gross weight of the vehicle or vehicle combination.

(13) The maximum gross weight limit and the axle weight limit for any vehicle or combination of vehicles equipped with idle reduction technology may be increased by an amount necessary to compensate for the additional weight of the idle reduction technology as provided in 23 U.S.C. 127(a)(12), as such section existed on July 18, 2008. The additional amount of weight allowed by this subsection shall not exceed four hundred pounds and shall not be construed to be in addition to the five-percent-in-excess-of-maximum-load provision of subdivision (1) of section 60-6,301.

Source: Laws 1933, c. 105, § 4, p. 426; Laws 1939, c. 50, § 2, p. 218; C.S.Supp. 1941, § 39-1035; Laws 1943, c. 133, § 2, p. 446; R.S.1943, § 39-722; Laws 1945, c. 91, § 1, p. 312; Laws 1947, c. 147, § 1, p. 403; Laws 1953, c. 131, § 9, p. 404; Laws 1953, c. 134, § 1, p. 416; Laws 1959, c. 164, § 2, p. 600; Laws 1969, c. 318, § 1, p. 1150; C.S.Supp. 1972, § 39-722; Laws 1980, LB 284, § 4; Laws 1982, LB 383, § 2; Laws 1984, LB 726, § 1; Laws 1985, LB 553, § 6; Laws 1987, LB 132, § 1; Laws 1990, LB 369, § 4; R.S.Supp. 1992, § 39-6,180; Laws 1993, LB 370, § 390; Laws 1995, LB 186, § 1; Laws 1996, LB 1104, § 4; Laws 2000, LB 1361, § 8; Laws 2005, LB 82, § 3; Laws 2008, LB 756, § 26; Laws 2016, LB 977, § 25; Laws 2017, LB 339, § 222.

Operative Date: July 1, 2017

Cross References

Special load restrictions, rules and regulations of Department of Transportation, adoption, penalty, see sections 39-102 and 39-103.
Weighing stations, see sections 60-1301 to 60-1309.

The term "original limitations" as used in section 60-6,298 means the original statutory restrictions listed in this section. State v. Halverstadt, 282 Neb. 736, 809 N.W.2d 480 (2011).

Complaint charging violation of this section was within jurisdiction of justice of the peace. Conkling v. DeLany, 167 Neb. 4, 91 N.W.2d 250 (1958).

Limitation of weight on group of axles was proper exercise of police power. State v. Luttrell, 159 Neb. 641, 68 N.W.2d 332 (1955).

An absolute liability arises when truck in excess of posted weight causes bridge to collapse. Central Neb. Public Power & Irrigation Dist. v. Boettcher, 154 Neb. 815, 49 N.W.2d 690 (1951).

60-6,294.01. Agricultural floater-spreader implements; weight limit; exception; speed limit.

(1) The Legislature finds that highway and roadway travel by agricultural floater-spreader implements is incidental to their designed purpose and use and that their use is essential to the agricultural industry of the State of Nebraska.

(2) Agricultural floater-spreader implement means self-propelled equipment which is designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil and crops and which has a gross laden weight of forty-eight thousand pounds or less and is equipped with floatation tires.

(3) Subsections (2) and (3) of section 60-6,294 shall not apply to agricultural floater-spreader implements. This exemption does not include travel upon the National System of Interstate and Defense Highways.

(4) When operated upon any highway, an agricultural floater-spreader implement shall not be operated at a speed in excess of forty miles per hour.

Source: Laws 1996, LB 1104, § 5; Laws 2003, LB 103, § 1.

60-6,295. National System of Interstate and Defense Highways; Director-State Engineer; authorize weight limits.

Upon finding that no loss to the state of federal highway-user funds would result therefrom, the Director-State Engineer may authorize the carrying on the National System of Interstate and Defense Highways of the weights set forth in the table of weights in section 60-6,294 or such part thereof as would result in no loss to the state of such funds.

Source: Laws 1973, LB 463, § 1; R.S.Supp. 1973, § 39-722.02; Laws 1980, LB 785, § 3; Laws 1984, LB 726, § 2; R.S.1943, (1988), § 39-6,180.01; Laws 1993, LB 370, § 391.

60-6,296. Motor vehicles; trailers; overloading; violation; penalty.

(1) Any person operating any motor vehicle, semitrailer, or trailer, when the weight of the vehicle and load is in violation of the provisions of section 60-6,294 and the vehicle and load do not qualify for the exceptions permitted by section 60-6,301, shall be guilty of a traffic infraction and shall, upon conviction thereof, be fined:

(a) Twenty-five dollars for carrying a gross load of five percent or less over the maximum;

(b) One hundred dollars for carrying a gross load of more than five percent but not more than ten percent over the maximum;

(c) Two hundred dollars for carrying a gross load of more than ten percent but not more than fifteen percent over the maximum;

(d) Three hundred fifty dollars for carrying a gross load of more than fifteen percent but not more than twenty percent over the maximum;

(e) Six hundred dollars for carrying a gross load of more than twenty percent but not more than twenty-five percent over the maximum;

(f) One thousand dollars for carrying a gross load of more than twenty-five percent over the maximum;

(g) Twenty-five dollars for carrying a load on a single axle or a group of axles of five percent or less over the maximum;

(h) Seventy-five dollars for carrying a load on a single axle or a group of axles of more than five percent but not more than ten percent over the maximum;

(i) One hundred fifty dollars for carrying a load on a single axle or a group of axles of more than ten percent but not more than fifteen percent over the maximum;

(j) Three hundred twenty-five dollars for carrying a load on a single axle or a group of axles of more than fifteen percent but not more than twenty percent over the maximum;

(k) Five hundred dollars for carrying a load on a single axle or a group of axles of more than twenty percent but not more than twenty-five percent over the maximum;

(l) Seven hundred fifty dollars for carrying a load on a single axle or group of axles of more than twenty-five percent but not more than thirty percent over the maximum;

(m) Nine hundred fifty dollars for carrying a load on a single axle or group of axles of more than thirty percent but not more than thirty-five percent over the maximum;

(n) One thousand one hundred fifty dollars for carrying a load on a single axle or group of axles of more than thirty-five percent but not more than forty percent over the maximum;

(o) Fifteen hundred fifty dollars for carrying a load on a single axle or group of axles of more than forty percent but not more than forty-five percent over the maximum;

(p) Two thousand dollars for carrying a load on a single axle or group of axles of more than forty-five percent but not more than fifty percent over the maximum; and

(q) Twenty-five hundred dollars for carrying a load on a single axle or group of axles of more than fifty percent over the maximum.

(2) No person shall be guilty of multiple offenses when the violations (a) involve the excess weight of an axle or a group of axles and the excess weight of the gross load of a single vehicle or (b) occur on the National System of Interstate and Defense Highways.

Source: Laws 1953, c. 134, § 4, p. 420; Laws 1963, c. 226, § 2, p. 710; Laws 1969, c. 318, § 3, p. 1155; Laws 1973, LB 491, § 4; R.S.Supp. 1973, § 39-723.06; Laws 1974, LB 920, § 4; Laws 1977, LB 41, § 33; Laws 1979, LB 112, § 2; Laws 1984, LB

726, § 5; Laws 1985, LB 553, § 7; R.S.1943, (1988), § 39-6,184; Laws 1993, LB 370, § 392.

Complaints filed were within jurisdiction of the justice court. Conkling v. DeLany, 167 Neb. 4, 91 N.W.2d 250 (1958).

60-6,297. Disabled vehicles; length, load, width, height limitations; exception; special single trip permit; liability.

(1) Subdivision (1)(b) of section 60-6,290 and subsections (2) and (3) of section 60-6,294 shall not apply to a vehicle or combination of vehicles disabled or wrecked on a highway or right-of-way when the vehicle or combination of vehicles is towed to a place of secure safekeeping by any wrecker or tow truck performing a wrecker or towing service.

(2) Subdivision (1)(b) of section 60-6,290 and subsections (2) and (3) of section 60-6,294 shall not apply to a single vehicle that is disabled or wrecked when the single vehicle is towed by any wrecker or tow truck to a place for repair or to a point of storage.

(3)(a) Section 60-6,288, subsection (1) of section 60-6,289, subdivision (1)(b) of section 60-6,290, and subsections (2) and (3) of section 60-6,294 shall not apply to a vehicle or combination of vehicles permitted by the Department of Transportation for overwidth, overheight, overlength, or overweight operation that is disabled or wrecked on a highway or right-of-way when the vehicle or combination of vehicles is towed if the vehicle or combination of vehicles is towed by any wrecker or tow truck performing a wrecker or towing service to the first or nearest place of secure safekeeping off the traveled portion of the highway that can accommodate the parking of such disabled vehicle or combination of vehicles.

(b) After the vehicle or combination of vehicles has been towed to a place of secure safekeeping, such vehicle or combination of vehicles shall then be operated in compliance with section 60-6,288, subsection (1) of section 60-6,289, subdivision (1)(b) of section 60-6,290, and subsections (2) and (3) of section 60-6,294, or the vehicle or combination of vehicles shall acquire a special single trip permit from the department for the movement of the overwidth, overheight, overlength, or overweight vehicle or combination of vehicles beyond the first or nearest place of secure safekeeping to its intended destination.

(4) The owners, lessees, and operators of any wrecker or tow truck exceeding the width, height, length, or weight restrictions while towing a disabled or wrecked vehicle or combination of vehicles shall be jointly and severally liable for any injury or damages that result from the operation of the wrecker or tow truck while exceeding such restrictions.

(5) If a disabled or wrecked vehicle or combination of vehicles is towed, the wrecker or tow truck shall be connected with the air brakes and brake lights of the towed vehicle or combination of vehicles.

(6) For purposes of this section:

(a) Place of secure safekeeping means a location off the traveled portion of the highway that can accommodate the parking of the disabled or wrecked vehicle or combination of vehicles in order for the vehicle or combination of vehicles to be repaired or moved to a point of storage; and

(b) Wrecker or tow truck means an emergency commercial vehicle equipped, designed, and used to assist or render aid and transport or tow a disabled vehicle or combination of vehicles from a highway or right-of-way to a place of secure safekeeping.

Source: Laws 1982, LB 383, § 3; R.S.1943, (1988), § 39-6,180.02; Laws 1993, LB 370, § 393; Laws 2003, LB 137, § 1; Laws 2005, LB 82, § 4; Laws 2011, LB 35, § 1; Laws 2017, LB 339, § 223.

Operative Date: July 1, 2017

60-6,298. Vehicles; size; weight; load; overweight; special, continuing, or continuous permit; issuance discretionary; conditions; penalty; continuing permit; fees.

(1)(a) The Department of Transportation or the Nebraska State Patrol, with respect to highways under its jurisdiction including the National System of Interstate and Defense Highways, and local authorities, with respect to highways under their jurisdiction, may in their discretion upon application and good cause being shown therefor issue a special, continuing, or continuous permit in writing authorizing the applicant or his or her designee:

(i) To operate or move a vehicle, a combination of vehicles, or objects of a size or weight of vehicle or load exceeding the maximum specified by law when such permit is necessary:

(A) To further the national defense or the general welfare;

(B) To permit movement of cost-saving equipment to be used in highway or other public construction or in agricultural land treatment; or

(C) Because of an emergency, an unusual circumstance, or a very special situation;

(ii) To operate vehicles, for a distance up to one hundred twenty miles, loaded up to fifteen percent greater than the maximum weight specified by law, or up to ten percent greater than the maximum length specified by law, or both, except that any combination with two or more cargo-carrying units, not including the truck-tractor, also known as a longer combination vehicle, may only operate for a distance up to seventy miles loaded up to fifteen percent greater than the maximum weight specified by law, or up to ten percent greater than the maximum length specified by law, or both, when carrying grain or other seasonally harvested products from the field where such grain or products are harvested to storage, market, or stockpile in the field or from stockpile to market or factory when failure to move such grain or products in abundant quantities would cause an economic loss to the person or persons whose grain or products are being transported or when failure to move such grain or products in as large quantities as possible would not be in the best interests of the national defense or general welfare. The distance limitation may be waived for vehicles when carrying dry beans from the field where harvested to storage or market when dry beans are not normally stored, purchased, or used within the permittee's local area and must be transported more than one hundred twenty miles to an available marketing or storage destination. No permit shall authorize a weight greater than twenty thousand pounds on any single axle;

(iii) To transport an implement of husbandry which does not exceed twelve and one-half feet in width during daylight hours, except that the permit shall not allow transport on holidays;

(iv) To operate one or more recreational vehicles, as defined in section 71-4603, exceeding the maximum width specified by law if movement of the recreational vehicles is prior to retail sale and the recreational vehicles comply with subdivision (2)(k) of section 60-6,288; or

(v) To operate an emergency vehicle for purposes of sale, demonstration, exhibit, or delivery, if the applicant or his or her designee is a manufacturer or sales agent of the emergency vehicle.

No permit shall be issued for an emergency vehicle which weighs over sixty thousand pounds on the tandem axle.

(b) No permit shall be issued under subdivision (a)(i) of this subsection for a vehicle carrying a load unless such vehicle is loaded with an object which exceeds the size or weight limitations, which cannot be dismantled or reduced in size or weight without great difficulty, and which of necessity must be moved over the highways to reach its intended destination. No permit shall be required for the temporary movement on highways other than dustless-surfaced state highways and for necessary access to points on such highways during daylight hours of cost-saving equipment to be used in highway or other public construction or in agricultural land treatment when such temporary movement is necessary and for a reasonable distance.

(2) The application for any such permit shall specifically describe the vehicle, the load to be operated or moved, whenever possible the particular highways for which permit to operate is requested, and whether such permit is requested for a single trip or for continuous or continuing operation. The permit shall include a signed affirmation under oath that, for any load sixteen feet high or higher, the applicant has contacted any and all electric utilities that have high voltage conductors and infrastructure that cross over the roadway affected by the move and made arrangements with such electric utilities for the safe movement of the load under any high voltage conductors owned by such electric utilities.

(3) The department or local authority is authorized to issue or withhold such permit at its discretion or, if such permit is issued, to limit the number of days during which the permit is valid, to limit the number of trips, to establish seasonal or other time limitations within which the vehicles described may be operated on the highways indicated, or to issue a continuous or continuing permit for use on all highways, including the National System of Interstate and Defense Highways. The permits are subject to reasonable conditions as to periodic renewal of such permit and as to operation or movement of such vehicles. The department or local authority may otherwise limit or prescribe conditions of operation of such vehicle or vehicles, when necessary to assure against undue damage to the road foundations, surfaces, or structures or undue danger to the public safety. The department or local authority may require such undertaking or other security as may be deemed necessary to compensate for any injury to any roadway or road structure.

(4) Every such permit shall be carried in the vehicle to which it refers and shall be open to inspection by any peace officer, carrier enforcement officer, or authorized agent of any authority granting such permit. Each such permit shall state the maximum weight permissible on a single axle or combination of axles and the total gross weight allowed. No person shall violate any of the terms or conditions of such special permit. In case of any violation, the permit shall be deemed automatically revoked and the penalty of the original limitations shall be applied unless:

(a) The violation consists solely of exceeding the size or weight specified by the permit, in which case only the penalty of the original size or weight limitation exceeded shall be applied; or

(b) The total gross load is within the maximum authorized by the permit, no axle is more than ten percent in excess of the maximum load for such axle or group of axles authorized by the permit, and such load can be shifted to meet the weight limitations of wheel and axle loads authorized by such permit. Such shift may be made without penalty if it is made at the state or commercial scale designated in the permit. The vehicle may travel from its point of origin to such designated scale without penalty, and a scale ticket from such scale, showing the vehicle to be properly loaded and within the gross and axle weights authorized by the permit, shall be reasonable evidence of compliance with the terms of the permit.

(5) The department or local authority issuing a permit as provided in this section may adopt and promulgate rules and regulations with respect to the issuance of permits provided for in this section.

(6) The department shall make available applications for permits authorized pursuant to subdivisions (1)(a)(ii) and (1)(a)(iii) of this section in the office of each county treasurer. The department may make available applications for all other permits authorized by this section to the office of the county treasurer and may make available applications for all permits authorized by this section to any other location chosen by the department.

(7) The department or local authority issuing a permit may require a permit fee of not to exceed twenty-five dollars, except that:

(a) The fee for a continuous or continuing permit may not exceed twenty-five dollars for a ninety-day period, fifty dollars for a one-hundred-eighty-day period, or one hundred dollars for a one-year period; and

(b) The fee for permits issued pursuant to subdivision (1)(a)(ii) of this section shall be twenty-five dollars. Permits issued pursuant to such subdivision shall be valid for thirty days and shall be renewable four times for a total number of days not to exceed one hundred fifty days per calendar year.

A vehicle or combination of vehicles for which an application for a permit is requested pursuant to this section shall be registered under section 60-3,147 or 60-3,198 for the maximum gross vehicle weight that is permitted pursuant to section 60-6,294 before a permit shall be issued.

Source: Laws 1957, c. 156, § 4, p. 565; Laws 1961, c. 183, § 1, p. 546; Laws 1963, c. 220, § 3, p. 695; Laws 1963, c. 226, § 1, p. 708; Laws 1965, c. 214, § 1, p. 627; Laws 1967, c. 235, § 1, p. 627; Laws 1972, LB 1337, § 1; Laws 1973, LB 152, § 1; R.S.Supp. 1973, § 39-722.01; Laws 1975, LB 306, § 2; Laws 1979, LB 287, § 1; Laws 1980, LB 842, § 1; Laws 1981, LB 285, § 3; Laws 1986, LB 122, § 1; Laws 1986, LB 833, § 1; R.S.1943, (1988), § 39-6,181; Laws 1993, LB 176, § 1; Laws 1993, LB 370, § 394; Laws 1994, LB 1061, § 4; Laws 1995, LB 467, § 15; Laws 1996, LB 1306, § 2; Laws 1997, LB 122, § 1; Laws 1997, LB 261, § 1; Laws 2000, LB 1361, § 9; Laws 2001, LB 376, § 5; Laws 2003, LB 563, § 33; Laws 2005, LB 82, § 5; Laws 2005, LB 274, § 246; Laws 2010, LB 820, § 2; Laws 2011, LB 35, § 2; Laws 2012, LB 841, § 1; Laws 2012, LB 997, § 4; Laws 2013, LB 117, § 1; Laws 2017, LB 339, § 224.

Operative Date: July 1, 2017

Cross References

Rules and regulations of Department of Transportation, adoption, penalty, see sections 39-102 and 39-103.

The phrase "exceeding the size or weight specified by the permit" used in subsection (4)(a) of this section clearly refers to either exceeding axle weights or exceeding gross weights. State v. Halverstadt, 282 Neb. 736, 809 N.W.2d 480 (2011).

The term "original limitations" as used in this section means the original statutory restrictions listed in section 60-6,294. State v. Halverstadt, 282 Neb. 736, 809 N.W.2d 480 (2011).

Under the permit exemption contained in subsection (1) of this section, the language "access to points on (dustless-surfaced) highways" means that if there is no other route available, one may move the qualified equipment over a dustless-surfaced highway. State v. Quandt, 234 Neb. 402, 451 N.W.2d 272 (1990).

60-6,299. Permit to move building; limitations; application; Department of Transportation; rules and regulations; violation; penalty.

(1) The Department of Transportation may issue permits for vehicles moving a building or objects requiring specialized moving dollies. Such permits shall allow the vehicles transporting buildings or objects requiring specialized dollies to operate on highways under the jurisdiction of the department, excluding any portion of the National System of Interstate and Defense Highways. Such permit shall specify the maximum allowable width, length, height, and weight of the building to be transported, the route to be used, and the hours during which such building or object may be transported. Such permit shall clearly state that the applicant is not authorized to manipulate overhead high voltage lines or conductors or other such components, including electric utility poles, and that the applicant shall be guilty of a Class II misdemeanor for any violation of this section or of the notification requirements of section 60-6,288.01. Any vehicle moving a building or object requiring specialized moving dollies shall be escorted by another vehicle or vehicles in the manner determined by the department. Such vehicles shall travel at a speed which is not in excess of five miles per hour when carrying loads which are in excess of the maximum gross weight specified by law by more than twenty-five percent. The permit shall not be issued for travel on a state highway containing a bridge or structure which is structurally inadequate to carry such building or object as determined by the department. The department may prescribe conditions of operation of such vehicle when necessary to assure against damage to the road foundations, surfaces, or structures and require such security as may be deemed necessary to compensate for any injury to any roadway or road structure.

(2) The application for any such permit shall (a) specifically describe the vehicle, (b) specifically describe the load to be moved, (c) include a signed affirmation under oath that, for any load sixteen feet high or higher, the applicant has contacted any and all electric utilities that have high voltage conductors and infrastructure that cross over the roadway affected by the move and made arrangements with such electric utilities for the safe movement of the load under any high voltage conductors owned by such electric utilities, and (d) whenever possible, describe the particular highways for which the permit is requested. The company or individual shall maintain a copy of the permit in each vehicle moving a building or object requiring specialized moving dollies which shall be open to inspection by any peace officer, carrier enforcement officer, or authorized agent of any authority granting such permit. The fee for such permit shall be ten dollars.

(3) The department shall adopt and promulgate rules and regulations governing the issuance of the permits. Such rules and regulations shall include, but not be limited to, driver qualifications, equipment selection, hours of operation, weather conditions, road conditions, determination of any damage caused to highways or bridges, cutting or trimming of trees, removal or relocation of signs or other property of the state, raising or lowering of electric supply and communication lines, and such other safety considerations as the department deems necessary.

(4) Any person who violates the terms of a permit issued pursuant to this section or otherwise violates this section shall be guilty of a Class II misdemeanor.

Source: Laws 1985, LB 553, § 1; R.S.1943, (1988), § 39-6,181.01; Laws 1993, LB 370, § 395; Laws 2012, LB 997, § 5; Laws 2016, LB 973, § 5; Laws 2017, LB 339, § 225.

Operative Date: July 1, 2017

60-6,300. Vehicles; excess load prohibited; exception; violation; penalty.

(1) It shall be unlawful to operate upon the public highways of this state any truck, truck-tractor, or trailer that weighs in excess of the gross weight for which the registration fee on such vehicle has been paid plus one thousand pounds, but this section shall not apply to any truck, truck-tractor, or trailer being operated under a special permit issued pursuant to section 60-6,298 if the vehicle is properly registered pursuant to such section.

(2)(a) Any person operating any truck, truck-tractor, or trailer in violation of this section shall be guilty of a traffic infraction and shall, upon conviction, be fined twenty-five dollars for each one thousand pounds or fraction thereof in excess of the weight allowed to be carried under this section with tolerance.

(b) In lieu of issuing a citation to an operator under subdivision (2)(a) of this section, the Superintendent of Law Enforcement and Public Safety may assess the owner of the vehicle a civil penalty for each violation of this section in an amount equal to twenty-five dollars for each one thousand pounds or fraction thereof in excess of the gross weight for which the registration fee on such vehicle has been paid plus one thousand pounds. The superintendent shall issue an order imposing a penalty under this subdivision in the same manner as an order issued under section 75-369.04 and any rules and regulations adopted and promulgated under section 75-368 and any applicable federal rules and regulations.

Source: Laws 1933, c. 105, § 5, p. 426; Laws 1939, c. 47, § 1, p. 208; Laws 1941, c. 125, § 2, p. 481; C.S.Supp. 1941, § 39-1193; R.S.1943, § 39-723; Laws 1947, c. 147, § 2(4), p. 406; Laws 1953, c. 134, § 2, p. 418; Laws 1969, c. 318, § 2, p. 1155; C.S.Supp. 1972, § 39-723.03; Laws 1979, LB 287, § 2; Laws 1984, LB 726, § 3; Laws 1986, LB 783, § 1; R.S.1943, (1988), § 39-6,182; Laws 1993, LB 370, § 396; Laws 2013, LB 398, § 1.

Section applies to any motor truck carrying a load. Aulner v. State, 160 Neb. 741, 71 N.W.2d 305 (1955).

Where load exceeds maximum allowed plus tolerance, penalty is based on overload. State v. Luttrell, 159 Neb. 641, 68 N.W.2d 332 (1955).

60-6,301. Vehicles; overload; reduce or shift load; exceptions; permit fee; warning citation; when.

When any motor vehicle, semitrailer, or trailer is operated upon the highways of this state carrying a load in excess of the maximum weight permitted by section 60-6,294, the load shall be reduced or shifted to within such maximum tolerance before being permitted to operate on any public highway of this state, except that:

(1) If any motor vehicle, semitrailer, or trailer exceeds the maximum load on only one axle, only one tandem axle, or only one group of axles when (a) the distance between the first and last

axle of such group of axles is twelve feet or less, (b) the excess axle load is no more than five percent in excess of the maximum load for such axle, tandem axle, or group of axles permitted by such section, while the vehicle or combination of vehicles is within the maximum gross load, and (c) the load on such vehicle is such that it can be shifted or the configuration of the vehicle can be changed so that all axles, tandem axle, or groups of axles are within the maximum permissible limit for such axle, tandem axle, or group of axles, such shift or change of configuration may be made without penalty;

(2) Any motor vehicle, semitrailer, or trailer carrying only a load of livestock may exceed the maximum load as permitted by such section on only one axle, only one tandem axle, or only one group of axles when the distance between the first and last axle of the group of axles is six feet or less if the excess load on the axle, tandem axle, or group of axles is caused by a shifting of the weight of the livestock by the livestock and if the vehicle or combination of vehicles is within the maximum gross load as permitted by such section;

(3) With a permit issued by the Department of Transportation or the Nebraska State Patrol, a truck with an enclosed body and a compacting mechanism, designed and used exclusively for the collection and transportation of garbage or refuse, may exceed the maximum load as permitted by such section by no more than twenty percent on only one axle, only one tandem axle, or only one group of axles when the vehicle is laden with garbage or refuse if the vehicle is within the maximum gross load as permitted by such section. There shall be a permit fee of ten dollars per month or one hundred dollars per year. The permit may be issued for one or more months up to one year, and the term of applicability shall be stated on the permit;

(4) Any motor vehicle, semitrailer, or trailer carrying any kind of a load, including livestock, which exceeds the legal maximum gross load by five percent or less may proceed on its itinerary and unload the cargo carried thereon to the maximum legal gross weight at the first unloading facility on the itinerary where the cargo can be properly protected. All material so unloaded shall be cared for by the owner or operator of such vehicle at the risk of such owner or operator; and

(5) Any motor vehicle, semitrailer, or trailer carrying grain or other seasonally harvested products may operate from the field where such grain or products are harvested to storage, market, or stockpile in the field or from stockpile to market or factory up to seventy miles with a load that exceeds the maximum load permitted by section 60-6,294 by fifteen percent on any tandem axle, group of axles, and gross weight. Any truck with no more than a single rear axle carrying grain or other seasonally harvested products may operate from the field where such grain or products are harvested to storage, market, or stockpile in the field or from stockpile to market or factory up to seventy miles with a load that exceeds the maximum load permitted by section 60-6,294 by fifteen percent on any single axle and gross weight. The owner or a representative of the owner of the agricultural product shall furnish the driver of the loaded vehicle a signed statement of origin and destination.

Nothing in this section shall be construed to permit to be operated on the National System of Interstate and Defense Highways any vehicle or combination of vehicles which exceeds any of the weight limitations applicable to such system as contained in section 60-6,294.

If the maximum legal gross weight or axle weight of any vehicle is exceeded by five percent or less and the arresting peace officer or carrier enforcement officer has reason to believe that such excessive weight is caused by snow, ice, or rain, the officer may issue a warning citation to the operator.

Source: Laws 1953, c. 134, § 5, p. 420; Laws 1955, c. 150, § 1, p. 446; Laws 1963, c. 226, § 3, p. 710; Laws 1969, c. 318, § 4, p. 1156; Laws 1973, LB 491, § 5; R.S.Supp. 1973, § 39-723.07; Laws 1974, LB 920, § 5; Laws 1976, LB 823, § 1; Laws 1977, LB 427, § 3; Laws 1980, LB 785, § 4; Laws 1984, LB 726, § 6; Laws 1986, LB 833, § 2; R.S.1943, (1988), § 39-6,185; Laws 1993, LB 370, § 397; Laws 2000, LB 1361, § 10; Laws 2007, LB 148, § 1; Laws 2017, LB 339, § 226.

Operative Date: July 1, 2017

60-6,302. Connection device; unlawful repositioning; violation; penalty.

Except for fifth-wheel repositioning done pursuant to section 60-6,301, it shall be unlawful to reposition the fifth-wheel connection device of a truck-tractor and semitrailer combination while such combination is carrying cargo and on the state highway system. Any person violating this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1987, LB 39, § 1; R.S.1943, (1988), § 39-6,185.01; Laws 1993, LB 370, § 398.

60-6,303. Vehicles; overloading; powers of peace officer or carrier enforcement officer; violation; penalty.

Any peace officer or carrier enforcement officer having reason to believe that the weight of a vehicle and load is unlawful is authorized to require the driver to stop and submit to a weighing of the vehicle and load. Upon weighing a vehicle and load, if the officer determines that the weight on any axle exceeds the lawful weight, that the weight on any group of two consecutive axles exceeds their lawful weight, or that the weight is unlawful on any axle or group of consecutive axles on any road restricted in accordance with section 60-6,294, the officer may require the driver to stop the vehicle in a suitable place and remain standing until such portion of the load is removed as may be necessary to reduce the gross weight of such vehicle to such limit as permitted under such section. All material so unloaded shall be cared for by the owner or driver of such vehicle at the risk of such owner or driver.

For purposes of this section, lawful weight shall mean the maximum weight permitted by section 60-6,294.

Any driver of a vehicle who refuses to stop and submit the vehicle and load to a weighing or who refuses, when directed by a peace officer or carrier enforcement officer upon a weighing of the vehicle, to stop the vehicle and otherwise comply with the provisions of this section shall be guilty of a Class III misdemeanor.

Source: Laws 1953, c. 131, § 10, p. 407; Laws 1969, c. 318, § 5, p. 1157; R.R.S.1943, § 39-723.08; Laws 1984, LB 726, § 7; R.S.1943, (1988), § 39-6,186; Laws 1993, LB 370, § 399.

60-6,304. Load; contents; requirements; vehicle that contained livestock; spill prohibited; violation; penalty.

(1)(a) Except as provided in subsection (2) of this section for a vehicle that contained livestock, but still contains the manure or urine of such livestock, no vehicle shall be driven or moved on any highway unless the vehicle is so constructed or loaded as to prevent its contents from dropping, sifting, leaking, or otherwise escaping from the vehicle.

(b) Except as provided in subsection (2) of this section for a vehicle that contained livestock, but still contains the manure or urine of such livestock, no person shall transport any sand, gravel, rock less than two inches in diameter, or refuse in any vehicle on any hard-surfaced state highway if such material protrudes above the sides of that part of the vehicle in which it is being transported unless such material is enclosed or completely covered with canvas or similar covering.

(c) No person shall drive or move a motor vehicle, trailer, or semitrailer upon any highway unless the cargo or contents carried by the motor vehicle, trailer, or semitrailer are properly distributed and adequately secured to prevent the falling of cargo or contents from the vehicle. The tailgate, doors, tarpaulins, and any other equipment used in the operation of the motor vehicle, trailer, or semitrailer or in the distributing or securing of the cargo or contents carried by the motor vehicle, trailer, or semitrailer shall be secured to prevent cargo or contents falling from the vehicle. The means of securement to the motor vehicle, trailer, or semitrailer must be either tiedowns and tiedown assemblies of adequate strength or sides, sideboards, or stakes and a rear endgate, endboard, or stakes strong enough and high enough to assure that cargo or contents will not fall from the vehicle.

(d) Any person who violates any provision of this subsection is guilty of a Class IV misdemeanor.

(2)(a) No person operating any vehicle that contained livestock, but still contains the manure or urine of livestock, on any highway located within the corporate limits of a city of the metropolitan class, shall spill manure or urine from the vehicle.

(b) Any person who violates this subsection is guilty of a Class IV misdemeanor and shall be assessed a minimum fine of at least two hundred fifty dollars.

Source: Laws 1969, c. 304, § 1, p. 1095; C.S.Supp. 1972, § 39-735.02; Laws 1974, LB 593, § 7; Laws 1977, LB 41, § 21; R.S.1943, (1988), § 39-6,129; Laws 1993, LB 370, § 400; Laws 1993, LB 575, § 28; Laws 2002, LB 1105, § 463; Laws 2007, LB 147, § 1; Laws 2014, LB 174, § 2.

(z) SPECIAL RULES FOR LIVESTOCK FORAGE VEHICLES

60-6,305. Livestock forage vehicle; restrictions; permit; fee.

(1) For purposes of this section, livestock forage vehicle shall mean a vehicle with chassis which has a special implement bolted, mounted, or attached thereto for loading, unloading, and moving livestock forage.

(2) All livestock forage vehicles shall:

(a) Not exceed a length of sixty-five feet, extreme overall dimensions inclusive of bumpers and load;

(b) Not exceed a width of eighteen feet;

(c) Not exceed a height of eighteen feet, either for equipment alone or for equipment and load combined. Such vehicles shall comply with subsection (2) of section 60-6,289; and

(d) Only be operated during hours of daylight.

(3) No person shall operate a livestock forage vehicle which carries unbaled livestock forage at a speed in excess of the following limits:

(a) Twenty-five miles per hour in any residential district;

(b) Twenty miles per hour in any business district; and

(c) Fifty miles per hour while upon any highway other than a freeway outside a business or residential district.

The speed limits provided in this section may be altered as provided in section 60-6,190.

(4) The load of baled livestock forage shall be securely fastened to the vehicle at all times while it is on a highway. Any person who transports unbaled or baled livestock forage shall be responsible for all damages occurring to other persons or property as a result of his or her negligence during the transportation of the livestock forage and shall also be responsible for cleaning a highway of unbaled or baled livestock forage which falls or is dropped from the load onto a highway during the moving of the livestock forage.

(5) Any person who uses equipment which exceeds the length, width, and height provisions set forth in subsection (2) of this section shall first obtain a permit from the county sheriff of the county in which he or she resides. The permit shall be valid to carry loads twenty feet wide in such county and in adjacent counties. Such permit shall be furnished to the sheriff's office by the Department of Motor Vehicles and shall be valid for one calendar year. The fee for such permit shall be ten dollars. Any person securing such a permit shall keep a record of all activity covered by such permit, which record shall be available to the issuing sheriff, his or her deputies and agents, or members of the Nebraska State Patrol at all times. The record shall include dates, items moved, route, and other pertinent information.

Source: Laws 1973, LB 45, § 100; Laws 1978, LB 750, § 1; Laws 1989, LB 21, § 1; Laws 1990, LB 369, § 2; R.S.Supp. 1992, § 39-6,100; Laws 1993, LB 370, § 401.

(aa) SPECIAL RULES FOR MOTORCYCLES

60-6,306. Nebraska Rules of the Road; applicability to persons operating motorcycles.

Any person who operates a motorcycle shall have all of the rights and shall be subject to all of the duties applicable to the driver of any other vehicle under the Nebraska Rules of the Road except for special motorcycle regulations in the rules and except for those provisions of the rules which by their nature can have no application.

Source: Laws 1973, LB 45, § 92; R.S.1943, (1988), § 39-692; Laws 1993, LB 370, § 402.

Cross References

Helmet requirements, see sections 60-6,278 to 60-6,282.

60-6,307. Restrictions on operating motorcycles.

(1) Any person who operates a motorcycle shall ride only upon a permanent and regular seat attached to the motorcycle. A person operating a motorcycle shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat, if designed for two persons, or upon another seat firmly attached to the motorcycle to the rear or side of the operator.

(2) A person shall ride upon a motorcycle only while sitting astride the seat, facing forward.

(3) No person shall operate a motorcycle while carrying any package, bundle, or other article which prevents him or her from keeping both hands on the handlebars.

(4) No operator shall carry any person, nor shall any person ride, in a position that interferes with the operation or control of the motorcycle or the view of the operator.

(5) Any motorcycle which carries a passenger, other than in a sidecar or enclosed cab, shall be equipped with footrests for such passenger.

(6) No person shall operate any motorcycle with handlebars more than fifteen inches above the mounting point of the handlebars.

Source: Laws 1973, LB 45, § 93; R.S.1943, (1988), § 39-693; Laws 1993, LB 370, § 403.

60-6,308. Operating motorcycles on roadways laned for traffic; prohibited acts.

(1) A motorcycle shall be entitled to full use of a traffic lane of any highway, and no vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of such lane, except that motorcycles may be operated two abreast in a single lane.

(2) The operator of a motorcycle shall not overtake and pass in the same lane occupied by a vehicle being overtaken.

(3) No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles.

(4) Motorcycles shall not be operated more than two abreast in a single lane.

(5) Subsections (2) and (3) of this section shall not apply to peace officers in the performance of their official duties.

(6) No person who rides upon a motorcycle shall attach himself, herself, or the motorcycle to any other vehicle on a roadway.

Source: Laws 1973, LB 45, § 94; R.S.1943, (1988), § 39-694; Laws 1993, LB 370, § 404.

(bb) SPECIAL RULES FOR MOPEDS

60-6,309. Moped; statutes; applicable.

Mopeds, their owners, and their operators shall be subject to the Motor Vehicle Operator's License Act, but shall be exempt from the requirements of the Motor Vehicle Certificate of Title Act, the Motor Vehicle Registration Act, and the Motor Vehicle Safety Responsibility Act.

Source: Laws 1979, LB 23, § 3; Laws 1986, LB 731, § 2; R.S.1943, (1988), § 39-6,196; Laws 1993, LB 370, § 405; Laws 2005, LB 274, § 247; Laws 2005, LB 276, § 104.

Cross References

Motor Vehicle Certificate of Title Act, see section 60-101.
Motor Vehicle Operator's License Act, see section 60-462.
Motor Vehicle Registration Act, see section 60-301.
Motor Vehicle Safety Responsibility Act, see section 60-569.

60-6,310. Moped; operation; license required.

No person shall operate a moped upon a highway unless such person has a valid operator's license.

Source: Laws 1979, LB 23, § 4; R.S.1943, (1988), § 39-6,197; Laws 1993, LB 370, § 406; Laws 2008, LB 756, § 27.

60-6,311. Moped; operator; Nebraska Rules of the Road; applicable.

(1) Any person who rides a moped upon a roadway shall have all of the rights and shall be subject to all of the duties applicable to the driver of a motor vehicle under the Nebraska Rules of the Road except for special moped regulations in the rules and except for those provisions of the rules which by their nature can have no application.

(2) Regulations applicable to mopeds shall apply whenever a moped is operated upon any highway or upon any path set aside by the Department of Transportation or a local authority for the use of mopeds.

Source: Laws 1979, LB 23, § 5; R.S.1943, (1988), § 39-6,198; Laws 1993, LB 370, § 407; Laws 2017, LB 339, § 227.
Operative Date: July 1, 2017

60-6,312. Moped; restrictions on operation.

(1) Any person who operates a moped shall ride only upon a permanent and regular seat attached to the moped. A person operating a moped shall not carry any other person nor shall any

other person ride on a moped unless such moped is designed by the manufacturer to carry more than one person.

(2) A person shall ride upon a moped only while sitting astride the seat, facing forward.

(3) No person shall operate a moped while carrying any package, bundle, or other article which prevents him or her from keeping both hands on the handlebars.

(4) No operator shall carry any person, nor shall any person ride, in a position that interferes with the operation or control of the moped or the view of the operator.

(5) Any moped which carries a passenger shall be equipped with footrests for such passenger.

(6) No person shall operate any moped with handlebars more than fifteen inches above the mounting point of the handlebars.

Source: Laws 1979, LB 23, § 6; R.S.1943, (1988), § 39-6,199; Laws 1993, LB 370, § 408.

60-6,313. Operating mopeds on roadways laned for traffic; prohibited acts.

(1) A moped shall be entitled to full use of a traffic lane of any highway with an authorized speed limit of forty-five miles per hour or less, and no vehicle shall be operated in such a manner as to deprive any moped of the full use of such lane, except that mopeds and motorcycles may be operated two abreast in a single lane.

(2) No person shall operate a moped between lanes of traffic or between adjacent lines or rows of vehicles.

(3) Mopeds shall not be operated more than two abreast in a single lane.

(4) Any person who operates a moped on a roadway with an authorized speed limit of more than forty-five miles per hour shall ride as near to the right side of the roadway as practicable and shall not ride more than single file.

(5) No person who rides upon a moped shall attach himself, herself, or the moped to any other vehicle on a roadway.

(6) Mopeds shall not be operated on the National System of Interstate and Defense Highways or on sidewalks.

(7) Notwithstanding the maximum speed limits in excess of twenty-five miles per hour established in section 60-6,186, no person shall operate any moped at a speed in excess of thirty miles per hour.

Source: Laws 1979, LB 23, § 7; R.S.1943, (1988), § 39-6,200; Laws 1993, LB 370, § 409.

(cc) SPECIAL RULES FOR BICYCLES

60-6,314. Nebraska Rules of the Road; applicability to persons operating bicycles.

(1) Any person who operates a bicycle upon a highway shall have all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle under the Nebraska Rules of the Road except for special bicycle regulations in the rules, except for those provisions of the rules which by their nature can have no application, and except as provided in section 60-6,142.

(2) Regulations applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any path set aside by the Department of Transportation or a local authority for the exclusive use of bicycles.

Source: Laws 1973, LB 45, § 86; R.S.1943, (1988), § 39-686; Laws 1993, LB 370, § 410; Laws 1993, LB 575, § 19; Laws 2017, LB 339, § 228.

Operative Date: July 1, 2017

Cross References

Hand and arm signals, see sections 60-6,162 and 60-6,163.

The statute requiring a driver of a vehicle emerging from a driveway onto a highway to yield the right-of-way to vehicles approaching on such highway applies to a 15-year-old boy riding a bicycle. McFarland v. King, 216 Neb. 92, 341 N.W.2d 920 (1983).

A bicyclist, pursuant to this section, is entitled to all the rights and subject to all the rules of the road governing the driver of a vehicle. Luellman v. Ambroz, 2 Neb. App. 855, 516 N.W.2d 627 (1994).

60-6,315. Riding of bicycles; prohibited acts.

(1) Any person who rides a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.

(2) Any person who rides a bicycle shall not remove his or her feet from the pedals and shall have at least one hand on the handlebars at all times.

(3) Any person who operates a bicycle shall not carry any package, bundle, or article which prevents such operator from keeping at least one hand upon the handlebars.

(4) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

Source: Laws 1973, LB 45, § 88; R.S.1943, (1988), § 39-688; Laws 1993, LB 370, § 411.

60-6,316. Bicycles; clinging to vehicles; prohibited.

Any person who rides upon any bicycle shall not attach himself, herself, or the bicycle to any vehicle upon a roadway.

Source: Laws 1973, LB 45, § 89; R.S.1943, (1988), § 39-689; Laws 1993, LB 370, § 412.

60-6,317. Bicycles on roadways and bicycle paths; general rules; regulation by local authority.

(1)(a) Any person who operates a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under conditions then existing shall ride as near to the right-hand curb or right-hand edge of the roadway as practicable except when:

(i) Overtaking and passing another bicycle or vehicle proceeding in the same direction;

(ii) Preparing for a left turn onto a private road or driveway or at an intersection;

(iii) Reasonably necessary to avoid conditions that make it unsafe to continue along the right-hand curb or right-hand edge of the roadway, including fixed or moving objects, stopped or moving vehicles, bicycles, pedestrians, animals, or surface hazards;

(iv) Riding upon a lane of substandard width which is too narrow for a bicycle and a vehicle to travel safely side by side within the lane; or

(v) Lawfully operating a bicycle on the paved shoulders of a highway included in the state highway system as provided in section 60-6,142.

(b) Any person who operates a bicycle upon a roadway with a posted speed limit of thirty-five miles per hour or less on which traffic is restricted to one direction of movement and which has two or more marked traffic lanes may ride as near to the left-hand curb or left-hand edge of the roadway as practicable.

(c) Whenever a person operating a bicycle leaves the roadway to ride on the paved shoulder or leaves the paved shoulder to enter the roadway, the person shall clearly signal his or her intention and yield the right-of-way to all other vehicles.

(2) No bicyclist shall suddenly leave a curb or other place of safety and walk or ride into the path of a vehicle which is so close that it is impossible for the driver to stop.

(3) Any person who operates a bicycle upon a highway shall not ride more than single file except on paths or parts of highways set aside for the exclusive use of bicycles.

(4) A bicyclist riding a bicycle on a sidewalk or across a roadway or shoulder in a crosswalk shall have all the rights and duties applicable to a pedestrian under the same circumstances but shall yield the right-of-way to pedestrians. Nothing in this subsection relieves the bicyclist or the driver of a vehicle from the duty to exercise care.

(5) A local authority may by ordinance further regulate the operation of bicycles and may provide for the registration and inspection of bicycles.

Source: Laws 1973, LB 45, § 90; R.S.1943, (1988), § 39-690; Laws 1993, LB 370, § 413; Laws 1993, LB 575, § 20; Laws 2016, LB 716, § 3.

60-6,318. Equipment on bicycles; lights; brakes.

(1) When in use at nighttime, a bicycle shall be equipped with a light visible from a distance of at least five hundred feet to the front on a clear night and with a red reflector on the rear of a type which is approved by the Department of Motor Vehicles or a local authority and which is visible on a clear night from all distances between one hundred feet and six hundred feet to the rear when directly in front of lawful lower beams of headlights on a motor vehicle. A red light visible from a distance of five hundred feet to the rear may be used in addition to such red reflector.

(2) Any bicycle used on a highway shall be equipped with a brake or brakes which will enable the operator to stop the bicycle within twenty-five feet of the point of braking when moving at a speed of ten miles per hour on dry, level, clean pavement.

Source: Laws 1973, LB 45, § 91; R.S.1943, (1988), § 39-691; Laws 1993, LB 370, § 414; Laws 1993, LB 575, § 21.

60-6,319. Bicycles; reflective device or material; retail sale; requirements; violation; penalty.

No commercial dealer shall sell or offer to sell at retail any bicycle unless such bicycle is equipped with pedals which display a white or amber reflective device or material on both the front and rear surfaces of the pedal and such reflective surface is visible during the hours of darkness from four hundred feet when viewed from the front or rear under low beam headlights of a motor vehicle under normal atmospheric conditions.

All bicycles shall also be equipped with tires bearing a white or silver retroreflective material on each side or a wide-angle reflector mounted on the spokes of each wheel. Such retroreflective material shall be at least three-sixteenths of an inch wide, shall be affixed as an integral part of the tire or wheel, and shall remain effective for the life of the tire or wheel. The spoke-mounted, wide-angle reflector devices shall have a reflective surface of at least two square inches and shall be clear, amber, or red in color. Both the retroreflective tires and wide-angle spoke reflectors shall be visible during the hours of darkness from four hundred feet when viewed under low beam headlights of a motor vehicle under normal atmospheric conditions when the bicycle is traveling at a ninety degree right angle to the direction of travel of the motor vehicle and is directly in front of such motor vehicle. Such reflective devices shall remain visible when the bicycle is turned forty degrees in either direction from such angle and crosses directly in front of such motor vehicle at a distance of four hundred feet.

No commercial dealer shall sell or offer to sell at retail any bicycle which does not comply with this section. Any person who violates this section shall be guilty of a Class V misdemeanor.

Source: Laws 1974, LB 827, § 1; Laws 1976, LB 628, § 1; R.S.1943, (1988), § 39-6,138.01; Laws 1993, LB 370, § 415.

(dd) SPECIAL RULES FOR SNOWMOBILES

60-6,320. Snowmobiles; operate, defined.

For purposes of sections 60-6,320 to 60-6,346, operate means to ride in or on and control the operation of a snowmobile.

Source: Laws 1971, LB 330, § 1; Laws 1972, LB 1149, § 1; R.S.1943, (1988), § 60-2001; Laws 1993, LB 121, § 392; Laws 1993, LB 370, § 416; Laws 2005, LB 274, § 248.

60-6,321. Repealed. Laws 2005, LB 274, § 286.

60-6,322. Repealed. Laws 2005, LB 274, § 286.

60-6,323. Repealed. Laws 2005, LB 274, § 286.

60-6,324. Repealed. Laws 2005, LB 274, § 286.

60-6,325. Repealed. Laws 2005, LB 274, § 286.

60-6,326. Repealed. Laws 2005, LB 274, § 286.

60-6,327. Repealed. Laws 2005, LB 274, § 286.

60-6,328. Repealed. Laws 2005, LB 274, § 286.

60-6,329. Repealed. Laws 2005, LB 274, § 286.

60-6,330. Repealed. Laws 2005, LB 274, § 286.

60-6,331. Repealed. Laws 2005, LB 274, § 286.

60-6,332. Repealed. Laws 2005, LB 274, § 286.

60-6,333. Repealed. Laws 2005, LB 274, § 286.

60-6,334. Snowmobile operation; Game and Parks Commission; rules and regulations.

The Game and Parks Commission shall establish rules and regulations for:(1) The operation of snowmobiles upon designated state-controlled or state-operated lakes within the State of Nebraska during the period of time when the lake is frozen and safe for the use of snowmobiles; and

(2) The operation of snowmobiles on established snowmobile courses or trails within public parks or on public land in this state owned or leased by the state.

Source: Laws 1977, LB 230, § 10; R.S.1943, (1988), § 60-2012.01; Laws 1993, LB 370, § 430.

60-6,335. Snowmobile operation; regulation; equipment; permission of landowner.

(1) No person shall operate a snowmobile upon any highway except as provided in sections 60-6,320 to 60-6,346. Subject to regulation by the Department of Transportation and by local authorities, in their respective jurisdictions, a snowmobile may be operated on the roadway of any highway, on the right-hand side of such roadway and in the same direction as the highway traffic, except that no snowmobile shall be operated at any time within the right-of-way of any controlled-access highway within this state.

(2) A snowmobile may make a direct crossing of a highway at any hour of the day if:

(a) The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;

(b) The snowmobile is brought to a complete stop before crossing the shoulder or roadway of the highway;

(c) The driver yields the right-of-way to all oncoming traffic which constitutes an immediate hazard;

(d) In crossing a divided highway, the crossing is made only at an intersection of such highway with another highway; and

(e) When the crossing is made between sunset and sunrise or in conditions of reduced visibility, both the headlights and taillights are on.

(3) No snowmobile shall be operated upon a highway unless equipped with at least one headlight and one taillight, with reflector material of a minimum area of sixteen square inches mounted on each side forward of the handlebars, and with brakes.

(4) A snowmobile may be operated upon a highway other than as provided by subsection (2) of this section in an emergency during the period of time when and at locations where snow upon the roadway renders travel by automobile impractical.

(5) Unless otherwise provided in sections 60-6,320 to 60-6,346, all other provisions of Chapter 60 shall apply to the operation of snowmobiles upon highways except for those relating to required equipment and those which by their nature have no application.

(6) No person shall operate a snowmobile upon any private lands without first having obtained permission of the owner, lessee, or operator of such lands.

Source: Laws 1971, LB 330, § 13; Laws 1972, LB 1149, § 2; Laws 1977, LB 230, § 11; R.S.1943, (1988), § 60-2013; Laws 1993, LB 370, § 431; Laws 1993, LB 575, § 49; Laws 1995, LB 459, § 4; Laws 2017, LB 339, § 229.

Operative Date: July 1, 2017

Cross References

Operation of snowmobile during public emergency or in parades, see section 60-6,348.

60-6,336. Snowmobile contests; requirements; violation; penalty.

Nothing in sections 60-6,320 to 60-6,346 shall prohibit the use of snowmobiles within the right-of-way of any highway in any international or other sponsored contest, except that prior written permission for such contests shall first be obtained by the sponsoring persons or group from the official or board having jurisdiction over the highway upon which the contest is to be held. Any person holding a snowmobile contest on any right-of-way of a highway without first obtaining written permission therefor shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished as provided by section 60-6,343. In permitting such contest, the official or board having jurisdiction may prescribe such restrictions or conditions as may be deemed advisable.

Source: Laws 1971, LB 330, § 14; R.S.1943, (1988), § 60-2014; Laws 1993, LB 370, § 432.

60-6,337. Snowmobiles; prohibited acts.

It shall be unlawful for any person to drive or operate any snowmobile on any public land, ice, snow, park, right-of-way, trail, or course in the following unsafe or harassing ways:

(1) At a rate of speed greater than reasonable or proper under all the surrounding circumstances;

(2) In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage thereto;

(3) While under the influence of alcoholic liquor or of any drug;

(4) Without a lighted headlight and taillight when required for safety; and

(5) In any tree nursery or planting in a manner which damages or destroys growing stock.

Source: Laws 1971, LB 330, § 15; Laws 1977, LB 230, § 12; R.S.1943, (1988), § 60-2015; Laws 1993, LB 370, § 433.

60-6,338. Snowmobiles; political subdivisions; regulation; notice; restrictions.

(1) A county board may by resolution permit the operation of snowmobiles upon the roadway, shoulder, or inside bank or slope of any county highway if safe operation in the ditch or outside bank or slope thereof is impossible, in which case the county board shall cause appropriate notice thereof to be given.

(2) Any county, city, or village may regulate the operation of snowmobiles on public lands, waters, and property under its jurisdiction and on highways within its boundaries by resolution or ordinance of the governing body and by giving appropriate notice. Such resolutions or ordinances shall not be inconsistent with other provisions of law or with sections 60-6,320 to 60-6,346 and rules and regulations promulgated thereunder, and no such governmental unit may adopt an ordinance which (a) imposes a fee for the use of public land or water under the jurisdiction of either the state or any agency of the state or for the use of any access thereto owned by the state, a county, a city, or a village or (b) requires a snowmobile operator to possess an operator's license while operating a snowmobile.

Source: Laws 1971, LB 330, § 16; Laws 1977, LB 230, § 13; R.S.1943, (1988), § 60-2016; Laws 1993, LB 370, § 434.

60-6,339. Snowmobile; operation; muffler, when required.

Except as provided in this section, every snowmobile shall be equipped at all times with a muffler in good working order which blends the exhaust noise into the overall snowmobile noise and is in constant operation to prevent excessive or unusual noise. The exhaust system shall not emit or produce a sharp popping or crackling sound.

This section shall not apply to organized races or similar competitive events held on (1) private lands, with the permission of the owner, lessee, or custodian of the land, or (2) public lands, with the consent of the public agency owning the land.

Source: Laws 1971, LB 330, § 17; R.S.1943, (1988), § 60-2017; Laws 1993, LB 370, § 435; Laws 1995, LB 459, § 5.

60-6,340. Operation by person under twelve years of age; operation by person under sixteen years of age; restrictions; snowmobile safety certificate.

(1) No person under the age of twelve years shall operate a snowmobile in this state unless accompanied by a parent, guardian, or other person over eighteen years of age.

(2) No person over the age of twelve years and under the age of sixteen years shall operate a snowmobile in this state unless such person (a) holds a valid snowmobile safety certificate, (b) is accompanied by a person fourteen years of age or over who holds a valid snowmobile safety certificate, or (c) is accompanied by a person over the age of eighteen years.

(3) The operator of a snowmobile shall not be required to hold an operator's license.

Source: Laws 1971, LB 330, § 18; Laws 1977, LB 230, § 14; R.S.1943, (1988), § 60-2018; Laws 1993, LB 370, § 436.

60-6,341. Snowmobile safety certificate; application; contents; when issued.

(1) Application for a snowmobile safety certificate shall be made on uniform blanks prepared by the Director of Motor Vehicles.

(2) Such application shall contain all information and questions deemed necessary by the director to insure that the applicant is qualified and possesses reasonable ability to operate a snowmobile.

(3) No snowmobile safety certificate shall be issued until the applicant has appeared before an examiner and satisfied the examiner that the applicant possesses adequate vision and physical ability to operate a snowmobile.

(4) For purposes of this section, examiner shall refer to an examiner of the Department of Motor Vehicles.

Source: Laws 1977, LB 230, § 15; R.S.1943, (1988), § 60-2018.01; Laws 1993, LB 370, § 437.

60-6,342. Snowmobiles; carrying firearms; hunting; unlawful.

It shall be unlawful for any person to shoot, take, hunt, or kill or attempt to shoot, take, hunt, or kill any wild animal or bird from or with a snowmobile or for any person to carry or possess any shotgun or rimfire rifle while operating or riding on a snowmobile, or for any person to carry or possess any firearm, bow and arrow, or other projectile device on a snowmobile unless such bow and arrow or projectile device is enclosed in a car carrying case or such firearm is unloaded and enclosed in a carrying case.

Source: Laws 1971, LB 330, § 20; R.S.1943, (1988), § 60-2020; Laws 1993, LB 370, § 439.

60-6,343. Snowmobiles; violations; penalty.

(1) Any person who violates any provision of sections 60-6,320 to 60-6,346 or any rule or regulation promulgated pursuant to such sections shall be guilty of a Class III misdemeanor, and if such person is convicted of a second or subsequent offense within any period of one year, he or she shall be guilty of a Class II misdemeanor.

(2) Any violation of such sections which is also a violation under any other provision of Chapter 60 may be punished under the penalty provisions thereof.

Source: Laws 1971, LB 330, § 21; Laws 1977, LB 230, § 16; Laws 1979, LB 149, § 3; R.S.1943, (1988), § 60-2021; Laws 1993, LB 370, § 440.

60-6,344. Snowmobile owner; prohibited acts.

It shall be unlawful for the owner of a snowmobile to permit such snowmobile to be operated contrary to the provisions of sections 60-6,320 to 60-6,346 or for purposes of carrying a shotgun or rifle thereon unless such shotgun or rifle is unloaded and encased.

Source: Laws 1971, LB 330, § 19; R.S.1943, (1988), § 60-2019; Laws 1993, LB 370, § 438.

60-6,345. Snowmobile; confiscation; sale; proceeds; disposition.

A peace officer shall seize any snowmobile used for the purpose of gaining access to property for the purpose of committing a felony thereon. Any snowmobile seized pursuant to this section shall be held, subject to the order of the district court of the county in which such felony was committed, and shall be confiscated after conviction of the person from whom the snowmobile was seized and disposed of by public auction which shall be conducted by the sheriff of the county in which such conviction occurred. The proceeds from the sale of a confiscated snowmobile shall be remitted to the State Treasurer for credit to the permanent school fund.

Source: Laws 1971, LB 330, § 22; Laws 1977, LB 230, § 17; R.S.1943, (1988), § 60-2022; Laws 1993, LB 370, § 441.

60-6,346. Snowmobile operation; accident; requirements.

(1) The operator of a snowmobile involved in a collision, accident, or other casualty occurring on any public land, ice, snow, park, right-of-way, trail, or course shall give his or her

name and address and the number of such snowmobile in writing to any injured person and to the owner of any property damaged in such collision, accident, or other casualty.

(2) When a collision, accident, or other casualty involving a snowmobile results in death or injury to a person or damage to property in excess of one hundred dollars, the operator of such snowmobile shall within ten days file with the Director of Motor Vehicles a full report of such collision, accident, or other casualty in such form and detail as the director by regulation may prescribe.

Source: Laws 1971, LB 330, § 23; Laws 1977, LB 230, § 18; R.S.1943, (1988), § 60-2023; Laws 1993, LB 370, § 442.

(ee) SPECIAL RULES FOR MINIBIKES AND OTHER OFF-ROAD VEHICLES

60-6,347. Minibikes; exemptions from certain requirements.

Minibikes, their owners, and their operators shall be exempt from the requirements of the Motor Vehicle Operator's License Act, the Motor Vehicle Registration Act, and the Motor Vehicle Safety Responsibility Act.

Source: Laws 1972, LB 1196, § 5; Laws 1981, LB 285, § 8; Laws 1986, LB 731, § 3; Laws 1989, LB 285, § 132; R.S.Supp. 1992, § 60-2101.01; Laws 1993, LB 370, § 443; Laws 2004, LB 812, § 1; Laws 2005, LB 274, § 249.

Cross References

Motor Vehicle Operator's License Act, see section 60-462.
Motor Vehicle Registration Act, see section 60-301.
Motor Vehicle Safety Responsibility Act, see section 60-569.

60-6,348. Minibikes and off-road designed vehicles; use; emergencies; parades.

Minibikes and all off-road designed vehicles not authorized by law for use on a highway, including, but not limited to, go-carts, riding lawnmowers, garden tractors, and snowmobiles, shall be exempt from the provisions of sections 60-678, 60-6,351 to 60-6,353, 60-6,380, and 60-6,381 during any public emergency or while being used in parades by regularly organized units of any recognized charitable, social, educational, or community service organization.

Source: Laws 1971, LB 644, § 7; Laws 1972, LB 1196, § 6; Laws 1987, LB 80, § 12; R.S.1943, (1988), § 60-2102; Laws 1993, LB 370, § 444; Laws 2011, LB 289, § 33; Laws 2012, LB 1155, § 21.

60-6,349. Minibikes and similar vehicles; sale; notice.

All minibikes and similar two-wheeled, three-wheeled, and four-wheeled miniature vehicles offered for sale in this state shall bear the following notice to the customer and user: This vehicle

as manufactured or sold is for off-road use only. This section shall not apply to a golf car vehicle or a low-speed vehicle, as applicable to its design, or to an electric personal assistive mobility device.

Source: Laws 1971, LB 644, § 8; Laws 1972, LB 1196, § 7; R.S.1943, (1988), § 60-2103; Laws 1993, LB 370, § 445; Laws 2002, LB 1105, § 464; Laws 2011, LB 289, § 34; Laws 2012, LB 1155, § 22.

60-6,350. Moving across streets or a turnaround; authorized.

Nothing in sections 60-678 and 60-6,348 to 60-6,351 shall prohibit occasional necessary movement of vehicles described in section 60-6,349 on streets for purposes of moving the vehicle across streets or a turnaround on the streets. All such vehicles when used under this section shall be exempt from all motor vehicle legal requirements.

Source: Laws 1971, LB 644, § 9; Laws 1989, LB 285, § 133; R.S.Supp. 1992, § 60-2104; Laws 1993, LB 370, § 446.

60-6,351. Legislative intent.

It is the intent of the Legislature to remove from street use and operation minibikes and similar two-wheeled, three-wheeled, or four-wheeled miniature vehicles, the visibility, power, and equipment of which are inadequate for mixing with normal vehicular traffic upon streets and highways. This section shall not apply to an electric personal assistive mobility device.

Source: Laws 1971, LB 644, § 10; Laws 1972, LB 1196, § 9; Laws 1989, LB 285, § 134; R.S.Supp. 1992, § 60-2105; Laws 1993, LB 370, § 447; Laws 2002, LB 1105, § 465.

60-6,352. Violations; penalty.

It shall be unlawful for any person to operate a minibike on any state highway except as permitted pursuant to section 60-6,353. Any person who violates this section shall be guilty of a Class III misdemeanor.

Source: Laws 1972, LB 1196, § 8; Laws 1977, LB 39, § 103; R.S.1943, (1988), § 60-2107; Laws 1993, LB 370, § 448.

60-6,353. Operation; rules and regulations; violations; penalty.

Any department, board, or commission of the State of Nebraska with jurisdiction over state parks and state recreation areas as defined in section 37-338 and state wayside areas as described

in section 81-711, in which motor vehicles of any type are permitted, may adopt and promulgate rules and regulations permitting and controlling the operation of minibikes and designating the place, time, and manner of such operation in the public recreation area under its control. In designating the manner of such operation within a specific location and during a specific time, the department, board, or commission may establish speed limits and restrictions on the age of the operator, noise emission levels, and number of minibikes permitted to be operated within a specific area at the same time. The other provisions of the Nebraska Rules of the Road not inconsistent with sections 60-678 and 60-6,347 to 60-6,353 shall apply to the public area.

Such department, board, or commission may further authorize the supervising official of any area under its ownership or control to prohibit operation of any minibike in emergency situations by personal or posted notice.

Any person operating a minibike in a place, at a time, or in a manner not permitted by the department, board, or commission having control over the area shall be guilty of a Class III misdemeanor.

Any political subdivision of the State of Nebraska with jurisdiction over highways may adopt and promulgate rules, regulations, ordinances, or resolutions in conformity with such sections.

Source: Laws 1972, LB 1196, § 10; Laws 1977, LB 39, § 104; Laws 1989, LB 285, § 135; R.S.Supp. 1992, § 60-2108; Laws 1993, LB 370, § 449; Laws 1998, LB 922, § 406.

60-6,354. Coaster, roller skates, sled, skis, or toy vehicle; prohibited acts.

Any person who rides upon any coaster, roller skates, sled, skis, or toy vehicle shall not attach such or himself or herself to any vehicle upon a roadway.

Source: Laws 1993, LB 370, § 450.

(ff) SPECIAL RULES FOR ALL-TERRAIN VEHICLES

60-6,355. All-terrain vehicle, defined; utility-type vehicle, defined.

(1) For purposes of sections 60-6,355 to 60-6,362:

(a) All-terrain vehicle means any motorized off-highway vehicle which (i) is fifty inches or less in width, (ii) has a dry weight of twelve hundred pounds or less, (iii) travels on three or more nonhighway tires, and (iv) is designed for operator use only with no passengers or is specifically designed by the original manufacturer for the operator and one passenger.

(b)(i) Utility-type vehicle means any motorized off-highway vehicle which (A) is seventy-four inches in width or less, (B) is not more than one hundred eighty inches, including the bumper, in length, (C) has a dry weight of two thousand pounds or less, (D) travels on four or more nonhighway tires.

(ii) Utility-type vehicle does not include all-terrain vehicles, golf car vehicles, or low-speed vehicles.

(2) All-terrain vehicles and utility-type vehicles which have been modified or retrofitted with after-market parts to include additional equipment not required by sections 60-6,357 and 60-6,358 shall not be registered under the Motor Vehicle Registration Act, nor shall such modified or retrofitted vehicles be eligible for registration in any other category of vehicle defined in the act.

Source: Laws 1987, LB 80, § 1; R.S.1943, (1988), § 60-2801; Laws 1993, LB 370, § 451; Laws 2003, LB 333, § 33; Laws 2005, LB 274, § 250; Laws 2010, LB 650, § 39; Laws 2012, LB 1155, § 24; Laws 2013, LB 223, § 3; Laws 2014, LB 814, § 7.

Cross References

Motor Vehicle Registration Act, see section 60-301.

60-6,356. All-terrain vehicle; utility-type vehicle; operation; restrictions; city or village ordinance; county board resolution.

(1) An all-terrain vehicle or a utility-type vehicle shall not be operated on any controlled-access highway with more than two marked traffic lanes. The crossing of any controlled-access highway with more than two marked traffic lanes shall not be permitted except as provided in subsection (9) of this section. Subsections (2), (3), and (5) through (8) of this section authorize and apply to operation of an all-terrain vehicle or a utility-type vehicle only on a highway other than a controlled-access highway with more than two marked traffic lanes.

(2) An all-terrain vehicle or a utility-type vehicle may be operated in accordance with the operating requirements of subsection (3) of this section:

(a) Outside the corporate limits of a city, village, or unincorporated village if incidental to the vehicle's use for agricultural purposes;

(b) Within the corporate limits of a city or village if authorized by the city or village by ordinance adopted in accordance with this section; or

(c) Within an unincorporated village if authorized by the county board of the county in which the unincorporated village is located by resolution in accordance with this section.

(3) An all-terrain vehicle or a utility-type vehicle may be operated as authorized in subsection (2) of this section when such operation occurs only between the hours of sunrise and sunset. Any person operating an all-terrain vehicle or a utility-type vehicle as authorized in subsection (2) of this section shall have a valid Class O operator's license or a farm permit as provided in section 60-4,126, shall have liability insurance coverage for the all-terrain vehicle or a utility-type vehicle while operating the all-terrain vehicle or a utility-type vehicle on a highway, and shall not operate such vehicle at a speed in excess of thirty miles per hour. The person operating the all-terrain vehicle or a utility-type vehicle shall provide proof of such insurance coverage to any peace officer requesting such proof within five days of such a request. When operating an all-terrain vehicle or a utility-type vehicle as authorized in subsection (2) of this section, the headlight and taillight of the vehicle shall be on and the vehicle shall be equipped with a bicycle safety flag which extends not less than five feet above ground attached to the rear of such vehicle. The bicycle safety flag shall be triangular in shape with an area of not less than thirty square inches and shall be day-glow in color.

(4) All-terrain vehicles and utility-type vehicles may be operated without complying with subsection (3) of this section on highways in parades which have been authorized by the State of Nebraska or any department, board, commission, or political subdivision of the state.

(5) The crossing of a highway other than a controlled-access highway with more than two marked traffic lanes shall be permitted by an all-terrain vehicle or a utility-type vehicle without complying with subsection (3) of this section only if:

(a) The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;

(b) The vehicle is brought to a complete stop before crossing the shoulder or roadway of the highway;

(c) The operator yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard;

(d) In crossing a divided highway, the crossing is made only at an intersection of such highway with another highway; and

(e) Both the headlight and taillight of the vehicle are on when the crossing is made.

(6) All-terrain vehicles and utility-type vehicles may be operated outside the corporate limits of any municipality by electric utility personnel within the course of their employment in accordance with the operation requirements of subsection (3) of this section, except that the operation of the vehicle pursuant to this subsection need not be limited to the hours between sunrise and sunset.

(7) A city or village may adopt an ordinance authorizing the operation of all-terrain vehicles and utility-type vehicles within the corporate limits of the city or village if the operation is in accordance with subsection (3) of this section. The city or village may place other restrictions on the operation of all-terrain vehicles and utility-type vehicles within its corporate limits.

(8) A county board may adopt a resolution authorizing the operation of all-terrain vehicles and utility-type vehicles within any unincorporated village within the county if the operation is in accordance with subsection (3) of this section. The county may place other restrictions on the operation of all-terrain vehicles and utility-type vehicles within the unincorporated village.

(9) The crossing of a controlled-access highway with more than two marked traffic lanes shall be permitted by a utility-type vehicle if the operation is in accordance with the operation requirements of subsection (3) of this section and if the following requirements are met:

(a) The crossing is made at an intersection that:

(i) Is controlled by a traffic control signal; or

(ii) For any intersection located outside the corporate limits of a city or village, is controlled by stop signs;

(b) The crossing at such intersection is made in compliance with the traffic control signal or stop signs; and

(c) The crossing at such intersection is specifically authorized as follows:

(i) If such intersection is located within the corporate limits of a city or village, by ordinance of such city or village;

(ii) If such intersection is located within an unincorporated village, by resolution of the county board of the county in which such unincorporated village is located; or

(iii) If such intersection is located outside the corporate limits of a city or village and outside any unincorporated village, by resolution of the county board of the county in which such intersection is located.

Source: Laws 1987, LB 80, § 2; Laws 1989, LB 114, § 1; Laws 1989, LB 285, § 138; R.S.Supp. 1992, § 60-2802; Laws 1993, LB 370, § 452; Laws 2007, LB 307, § 1; Laws 2010, LB 650, § 40; Laws 2015, LB 122, § 1.

60-6,357. All-terrain vehicle; utility-type vehicle; lights required; when.

Every all-terrain vehicle and utility-type vehicle shall display a lighted headlight and taillight during the period of time from sunset to sunrise and at any time when visibility is reduced due to insufficient light or unfavorable atmospheric conditions.

Source: Laws 1987, LB 80, § 3; R.S.1943, (1988), § 60-2803; Laws 1993, LB 370, § 453; Laws 1993, LB 575, § 50; Laws 2010, LB 650, § 41.

60-6,358. All-terrain vehicle; utility-type vehicle; equipment required.

Every all-terrain vehicle and utility-type vehicle shall be equipped with:
(1) A brake system maintained in good operating condition;
(2) An adequate muffler system in good working condition; and
(3) A United States Forest Service qualified spark arrester.

Source: Laws 1987, LB 80, § 4; R.S.1943, (1988), § 60-2804; Laws 1993, LB 370, § 454; Laws 2010, LB 650, § 42.

60-6,359. Modification of all-terrain vehicle or utility-type vehicle; prohibited.

No person shall:
(1) Equip the exhaust system of an all-terrain vehicle or a utility-type vehicle with a cutout, bypass, or similar device;
(2) Operate an all-terrain vehicle or a utility-type vehicle with an exhaust system so modified; or
(3) Operate an all-terrain vehicle or a utility-type vehicle with the spark arrester removed or modified except for use in closed-course competition events.

Source: Laws 1987, LB 80, § 5; R.S.1943, (1988), § 60-2805; Laws 1993, LB 370, § 455; Laws 2010, LB 650, § 43.

60-6,360. All-terrain vehicle; utility-type vehicle; competitive events; exemptions.

All-terrain vehicles and utility-type vehicles participating in competitive events may be exempted from sections 60-6,357 to 60-6,359 at the discretion of the Director of Motor Vehicles.

Source: Laws 1987, LB 80, § 6; R.S.1943, (1988), § 60-2806; Laws 1993, LB 370, § 456; Laws 2010, LB 650, § 44.

60-6,361. All-terrain vehicle; utility-type vehicle; accident; report required.

If an accident results in the death of any person or in the injury of any person which requires the treatment of the person by a physician, the operator of each all-terrain vehicle or utility-type vehicle involved in the accident shall give notice of the accident in the same manner as provided in section 60-699.

Source: Laws 1987, LB 80, § 7; R.S.1943, (1988), § 60-2807; Laws 1993, LB 370, § 457; Laws 1993, LB 575, § 51; Laws 2010, LB 650, § 45.

60-6,362. Violations; penalty.

(1) Any person who violates sections 60-6,356 to 60-6,361 shall be guilty of a Class III misdemeanor, except that if such person is convicted of a second or subsequent offense within any period of one year, he or she shall be guilty of a Class II misdemeanor.

(2) Any violation of such sections which is also a violation under any other provision of Chapter 60 may be punished under the penalty provisions of such chapter.

Source: Laws 1987, LB 80, § 8; R.S.1943, (1988), § 60-2808; Laws 1993, LB 370, § 458.

(gg) SMOKE EMISSIONS AND NOISE

60-6,363. Terms, defined.

For purposes of sections 60-6,363 to 60-6,374:

(1) Diesel-powered motor vehicle shall mean a self-propelled vehicle which is designed primarily for transporting persons or property on a highway and which is powered by an internal combustion engine of the compression ignition type;

(2) Motor vehicle shall mean a self-propelled vehicle with a gross unloaded vehicle weight of ten thousand pounds or more or any combination of vehicles of a type subject to registration which is towed by such a vehicle;

(3) Smoke shall mean the solid or liquid matter, except water, discharged from a motor vehicle engine which obscures the transmission of light;

(4) Smokemeter shall mean a full-flow, light-extinction smokemeter of a type approved by the Department of Environmental Quality and operating on the principles described in the federal standards;

(5) Opacity shall mean the degree to which a smoke plume emitted from a diesel-powered motor vehicle engine will block the passage of a beam of light expressed as a percentage; and

(6) Smoke control system shall mean a system consisting of one or more devices and adjustments designed to control the discharge of smoke from diesel-powered motor vehicles.

Source: Laws 1972, LB 1360, § 1; Laws 1976, LB 823, § 3; R.S.1943, (1988), § 60-2201; Laws 1993, LB 370, § 459; Laws 1993, LB 3, § 35.

60-6,364. Applicability of sections.

Sections 60-6,363 to 60-6,374 shall apply to all diesel-powered motor vehicles operated within this state with the exception of the following:

(1) Emergency vehicles operated by federal, state, and local governmental authorities;

(2) Vehicles which are not required to be registered in accordance with the Motor Vehicle Registration Act;

(3) Vehicles used for research and development which have been approved by the Director of Environmental Quality;

(4) Vehicles being operated while undergoing maintenance;

(5) Vehicles operated under emergency conditions;

(6) Vehicles being operated in the course of training programs which have been approved by the director; and

(7) Other vehicles expressly exempted by the director.

Source: Laws 1972, LB 1360, § 2; R.S.1943, (1988), § 60-2202; Laws 1993, LB 370, § 460; Laws 2005, LB 274, § 251.

Cross References

Motor Vehicle Registration Act, see section 60-301.

60-6,365. Diesel-powered motor vehicle; smoke; shade, density, or opacity.

No one shall operate a diesel-powered motor vehicle on any highway in this state in such a manner that smoke discharged from the exhaust is of a shade or density equal to or darker than that designated as Number 1 of the Ringelmann Chart or equivalent opacity of twenty percent for ten consecutive seconds or longer.

Source: Laws 1972, LB 1360, § 3; Laws 1976, LB 823, § 4; R.S.1943, (1988), § 60-2203; Laws 1993, LB 370, § 461.

60-6,366. Smoke control system; removal or change; prohibited; exception.

No one shall intentionally make a change or other alteration to any diesel-powered motor vehicle equipped by its manufacturer with a smoke control system, including the basic fuel system, that may limit the ability of the system to control smoke, and no one shall remove such a smoke control system except for repair or installation of a proper replacement.

Source: Laws 1972, LB 1360, § 4; Laws 1976, LB 823, § 5; R.S.1943, (1988), § 60-2204; Laws 1993, LB 370, § 462.

60-6,367. Enforcement of sections; citations; use of smokemeter; results; admissible as evidence.

(1) Officials of the Department of Environmental Quality and local enforcement officials shall have the authority to issue citations to suspected violators of sections 60-6,363 to 60-6,374 on the basis of their visual evaluation of the smoke emitted from a diesel-powered motor vehicle. A citation shall give the suspected violator a reasonable time to furnish evidence to the department that such alleged violation has been corrected or else such suspected violator shall be subject to the penalties set out in section 60-6,373. A suspected violator may demand that the suspected vehicle be tested by an approved smokemeter prior to a trial on the alleged violation.

(2) Smokemeter tests shall be conducted (a) by or under the supervision of a person or testing facility authorized by the Director of Environmental Quality to conduct such tests and (b) by installing an approved smokemeter on the exhaust pipe and operating the suspected vehicle at engine revolutions per minute equivalent to the engine revolutions per minute at the time of the alleged violation.

(3) The results of smokemeter tests run in accordance with this section and after the alleged violation shall be admissible as evidence in legal proceedings.

Source: Laws 1972, LB 1360, § 5; Laws 1976, LB 823, § 6; R.S.1943, (1988), § 60-2205; Laws 1993, LB 370, § 463; Laws 1993, LB 3, § 36.

60-6,368. Director of Environmental Quality; powers; rules and regulations; control of noise or emissions.

(1) The Director of Environmental Quality shall have the power, after public hearings on due notice, to adopt and promulgate, consistent with and in furtherance of the provisions of sections 60-6,363 to 60-6,374, rules and regulations in accordance with which he or she will carry out his or her responsibilities and obligations under such sections.

(2) Any rules or regulations promulgated by the director shall be consistent with the provisions of the federal standards, if any, relating to control of emissions from the diesel-powered motor vehicles affected by such rules and regulations. The director shall not require, as a condition for the sale of any diesel-powered motor vehicle covered by sections 60-6,363 to 60-6,374, the inspection, certification, or other approval of any feature or equipment designed for the control of noise or emissions from such diesel-powered motor vehicles if such feature or equipment has been certified, approved, or otherwise authorized pursuant to laws or regulations of any federal governmental body as sufficient to make lawful the sale of any diesel-powered motor vehicle covered by such sections.

Source: Laws 1972, LB 1360, § 6; Laws 1976, LB 823, § 7; R.S.1943, (1988), § 60-2206; Laws 1993, LB 370, § 464.

60-6,369. Noise; restrictions.

No person shall sell, or offer for sale, a new motor vehicle with a gross vehicle weight of ten thousand pounds or more that produces a maximum noise exceeding a noise limit of 80dB(A) at a distance of fifty feet from the centerline of travel under test procedures established by section 60-6,372.

Source: Laws 1972, LB 1360, § 7; Laws 1979, LB 140, § 1; R.S.1943, (1988), § 60-2207; Laws 1993, LB 370, § 465.

60-6,370. Operation; noise; limitation.

No person shall operate within the speed limits specified in this section either a motor vehicle with a gross vehicle weight of ten thousand pounds or more or any combination of vehicles of a type subject to registration, towed by such motor vehicle, at any time or under any condition of grade, load, acceleration, or deceleration in such manner as to exceed the following noise limit based on a distance of not less than fifty feet from the centerline of travel under test procedures established by section 60-6,372: When the posted speed limit is thirty-five miles per hour or less, the noise limit shall not exceed 86dB(A), and when the posted speed limit is more than thirty-five miles per hour, the noise limit shall not exceed 90dB(A). This section shall apply to the total noise from a vehicle or combination of vehicles and shall not be construed as limiting or precluding the enforcement of any other provisions of sections 60-6,363 to 60-6,374 relating to motor vehicle mufflers for noise control.

Source: Laws 1972, LB 1360, § 8; Laws 1976, LB 823, § 8; R.S.1943, (1988), § 60-2208; Laws 1993, LB 370, § 466.

60-6,371. Exhaust or intake muffler; change; increase of noise; prohibited.

No person shall modify or change the exhaust muffler, the intake muffler, or any other noise-abatement device of a motor vehicle in a manner such that the noise emitted by the motor vehicle is increased above that emitted by the vehicle as originally manufactured. Procedures used to establish compliance with this section shall be those used to establish compliance of a new motor vehicle with the requirements of sections 60-6,363 to 60-6,374.

Source: Laws 1972, LB 1360, § 9; R.S.1943, (1988), § 60-2209; Laws 1993, LB 370, § 467.

60-6,372. Noise measurement tests; manner conducted; conditions; enumerated.

(1) Noise measurements shall be made at a test site which is adjacent to and includes a portion of a roadway. A microphone target point shall be established on the centerline of the

roadway, and a microphone location point shall be established on the ground surface at a distance of fifty feet from the microphone target point and on a line that is perpendicular to the centerline of the roadway and that passes through the microphone target point. The microphone shall be placed such that it is at a height of not less than two feet and not more than six feet above the plane of the roadway surface. The test area shall include an open site within a fifty-foot radius of both the microphone target point and the microphone location point. The test site shall be essentially free of large sound-reflecting objects.

(2) Noise measurement conditions shall be as follows:

(a) Noise measurements may only be made if the measured average wind velocity is twelve miles per hour or less. Gust wind measurements of up to twenty miles per hour shall be allowed;

(b) Measurements shall be prohibited under any condition of precipitation, but measurements may be made with snow on the ground. The ground surface within the measurement area shall be free of standing water; and

(c) Road conditions shall be such that they would not cause a motor vehicle to emit irregular tire, body, or chassis-impact noise.

(3) In accordance with this section, a measurement shall be made of the sound level generated by a motor vehicle operating through the measurement area on the traveled portion of the highway within the test site, regardless of the highway grade, load, acceleration, or deceleration. The sound level generated by the motor vehicle shall be the highest reading observed on the sound level measurement system as the vehicle passes through the measurement area.

Source: Laws 1972, LB 1360, § 10; Laws 1976, LB 823, § 9; R.S.1943, (1988), § 60-2210; Laws 1993, LB 370, § 468.

60-6,373. Standards; violations; penalty.

Every person who operates a diesel-powered or other motor vehicle in this state in violation of the standards established by sections 60-6,363 to 60-6,374 shall be guilty of a Class V misdemeanor, and every day that the diesel-powered or other motor vehicle is so operated shall be deemed to be a separate offense.

Source: Laws 1972, LB 1360, § 11; Laws 1977, LB 39, § 105; R.S.1943, (1988), § 60-2211; Laws 1993, LB 370, § 469.

60-6,374. Sections; exclusive treatment.

The provisions of sections 60-6,363 to 60-6,374 shall be exclusive and prevail over other provisions of law in this state or any of its subdivisions applied to smoke from diesel-powered motor vehicles.

Source: Laws 1972, LB 1360, § 12; R.S.1943, (1988), § 60-2212; Laws 1993, LB 370, § 470.

(hh) SPECIAL RULES FOR ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES

60-6,375. Electric personal assistive mobility device; exemptions from certain requirements.

An electric personal assistive mobility device, its owner, and its operator shall be exempt from the requirements of the Motor Vehicle Certificate of Title Act, the Motor Vehicle Operator's License Act, the Motor Vehicle Registration Act, and the Motor Vehicle Safety Responsibility Act.

Source: Laws 2002, LB 1105, § 459; Laws 2005, LB 274, § 252; Laws 2005, LB 276, § 105.

Cross References

Motor Vehicle Certificate of Title Act, see section 60-101.
Motor Vehicle Operator's License Act, see section 60-462.
Motor Vehicle Registration Act, see section 60-301.
Motor Vehicle Safety Responsibility Act, see section 60-569.

60-6,376. Electric personal assistive mobility device; operation; violation; penalty.

(1) Any person who operates an electric personal assistive mobility device on a highway shall have all of the rights and shall be subject to all of the duties applicable to the operator of a vehicle under the Nebraska Rules of the Road except (a) as provided in special electric personal assistive mobility device regulations adopted pursuant to the Nebraska Rules of the Road, (b) any provisions of the Nebraska Rules of the Road which by their nature can have no application, and (c) as provided in section 60-6,142 with respect to operating an electric personal assistive mobility device on a shoulder of a highway.

(2) An electric personal assistive mobility device may be operated on any highway, alley, sidewalk, bike trail, path, or any other area where persons travel, except as provided by the Department of Transportation or local authority. Regulations applicable to an electric personal assistive mobility device shall apply whenever an electric personal assistive mobility device is so operated.

(3) An operator of an electric personal assistive mobility device shall yield to pedestrian traffic and any human-powered or animal-powered vehicle at all times. An operator of an electric personal assistive mobility device shall give an audible signal before overtaking and passing any pedestrian or human-powered or animal-powered vehicle. A person violating this subsection shall be fined ten dollars for the first offense. A person violating this subsection shall have his or her electric personal assistive mobility device impounded for up to thirty days for each subsequent offense.

Source: Laws 2002, LB 1105, § 460; Laws 2017, LB 339, § 230.
Operative Date: July 1, 2017

60-6,377. Electric personal assistive mobility device; operation at nighttime.

When in use at nighttime, an electric personal assistive mobility device or the operator of an electric personal assistive device shall be equipped with a light visible from a distance of at least five hundred feet to the front on a clear night and with a red reflector on the rear of a type which is visible on a clear night from all distances between one hundred feet and six hundred feet to the rear when directly in front of lawful lower beams of headlights on a motor vehicle. A red light visible from a distance of five hundred feet to the rear may be used in addition to such red reflector.

Source: Laws 2002, LB 1105, § 461.

(ii) EMERGENCY VEHICLE OR ROAD ASSISTANCE VEHICLE

60-6,378. Stopped authorized emergency vehicle or road assistance vehicle; driver; duties; violation; penalty.

(1)(a) A driver in a vehicle on a controlled-access highway approaching or passing a stopped authorized emergency vehicle or road assistance vehicle which makes use of proper audible or visual signals shall proceed with due care and caution as described in subdivision (b) of this subsection.

(b) On a controlled-access highway with at least two adjacent lanes of travel in the same direction on the same side of the highway where a stopped authorized emergency vehicle or road assistance vehicle is using proper audible or visual signals, the driver of the vehicle shall proceed with due care and caution and yield the right-of-way by moving into a lane at least one moving lane apart from the stopped authorized emergency vehicle or road assistance vehicle unless directed otherwise by a peace officer or other authorized emergency personnel. If moving into another lane is not possible because of weather conditions, road conditions, or the immediate presence of vehicular or pedestrian traffic or because the controlled-access highway does not have two available adjacent lanes of travel in the same direction on the same side of the highway where such a stopped authorized emergency vehicle or road assistance vehicle is located, the driver of the approaching or passing vehicle shall reduce his or her speed, maintain a safe speed with regard to the location of the stopped authorized emergency vehicle or road assistance vehicle, the weather conditions, the road conditions, and vehicular or pedestrian traffic, and proceed with due care and caution or proceed as directed by a peace officer or other authorized emergency personnel or road assistance personnel.

(c) Any person who violates this subsection is guilty of a traffic infraction for a first offense and Class IIIA misdemeanor for a second or subsequent offense.

(2) The Department of Transportation shall erect and maintain or cause to be erected and maintained signs giving notice of subsection (1) of this section along controlled-access highways.

(3) Enforcement of subsection (1) of this section shall not be accomplished using simulated situations involving an authorized emergency vehicle or a road assistance vehicle.

(4) This section does not relieve the driver of an authorized emergency vehicle or a road assistance vehicle from the duty to drive with due regard for the safety of all persons using the highway.

(5) For purposes of this section, road assistance vehicle includes a vehicle operated by the Nebraska Department of Transportation, a Nebraska State Patrol motorist assistance vehicle, a United States Department of Transportation registered towing or roadside assistance vehicle, and a utility service vehicle operated by a utility company. A road assistance vehicle shall emit a warning signal utilizing properly displayed emergency indicators such as strobe, rotating, or oscillating lights when stopped along a highway.

Source: Laws 2009, LB 92, § 2; Laws 2013, LB 154, § 1; Laws 2017, LB 339, § 231.
Operative Date: July 1, 2017

(jj) SPECIAL RULES FOR MINITRUCKS

60-6,379. Minitrucks; restrictions on use.

(1) A minitruck shall not be operated on the National System of Interstate and Defense Highways, on expressways, or on freeways.
(2) A minitruck shall be operated with its headlights and taillights on.

Source: Laws 2010, LB 650, § 38.

(kk) SPECIAL RULES FOR LOW-SPEED VEHICLES

60-6,380. Low-speed vehicle; restrictions on use.

A low-speed vehicle may be operated on any highway on which the speed limit is not more than thirty-five miles per hour. A low-speed vehicle may cross a highway on which the speed limit is more than thirty-five miles per hour. Nothing in this section shall prevent a county, city, or village from adopting more stringent ordinances governing low-speed vehicle operation if the governing body of the county, city, or village determines that such ordinances are necessary in the interest of public safety. Any person operating a low-speed vehicle as authorized under this section shall have a valid Class O operator's license and shall have liability insurance coverage for the low-speed vehicle. The Department of Transportation may prohibit the operation of low-

speed vehicles on any highway under its jurisdiction if it determines that the prohibition is necessary in the interest of public safety.

Source: Laws 2011, LB 289, § 32; Laws 2017, LB 339, § 232.
Operative Date: July 1, 2017

(ll) SPECIAL RULES FOR GOLF CAR VEHICLES

60-6,381. Golf car vehicles; city, village, or county; operation authorized; restrictions; liability insurance.

(1)(a) A city or village may adopt an ordinance authorizing the operation of golf car vehicles within the corporate limits of the city or village if the operation is on streets adjacent and contiguous to a golf course.

(b) A county board may adopt an ordinance pursuant to section 23-187 authorizing the operation of golf car vehicles within the county if the operation is on roads adjacent and contiguous to a golf course.

(c) Any person operating a golf car vehicle as authorized under this subsection shall have a valid Class O operator's license, and the owner of the golf car vehicle shall have liability insurance coverage for the golf car vehicle. The person operating the golf car vehicle shall provide proof of such insurance coverage to any peace officer requesting such proof within five days after such a request.

(d) The restrictions of subsection (2) of this section do not apply to ordinances adopted under this subsection.

(2)(a) A city or village may adopt an ordinance authorizing the operation of golf car vehicles on streets within the corporate limits of the city or village if the operation is (i) between sunrise and sunset and (ii) on streets with a posted speed limit of thirty-five miles per hour or less. When operating a golf car vehicle as authorized under this subsection, the operator shall not operate such vehicle at a speed in excess of twenty miles per hour. A golf car vehicle shall not be operated at any time on any state or federal highway but may be operated upon such a highway in order to cross a portion of the highway system which intersects a street as directed in subsection (3) of this section. A city or village may, as part of such ordinance, implement standards for operation of golf car vehicles that are more stringent than the restrictions of this subsection for the safety of the operator and the public.

(b) A county board may adopt an ordinance pursuant to section 23-187 authorizing the operation of golf car vehicles on roads within the county if the operation is (i) between sunrise and sunset and (ii) on roads with a posted speed limit of thirty-five miles per hour or less. When operating a golf car vehicle as authorized under this subsection, the operator shall not operate such vehicle at a speed in excess of twenty miles per hour. A golf car vehicle shall not be operated at any time on any state or federal highway but may be operated upon such highway in order to cross a portion of the highway system which intersects a road as directed in subsection (3) of this section. A county may, as part of such ordinance, implement standards for operation of golf car vehicles that are more stringent than the restrictions of this subsection for the safety of the operator and the public.

(c) Any person operating a golf car vehicle as authorized under this subsection shall have a valid Class O operator's license, and the owner of the golf car vehicle shall have liability insurance coverage for the golf car vehicle. The person operating the golf car vehicle shall provide proof of such insurance coverage to any peace officer requesting such proof within five days after such a request. The liability insurance coverage shall be subject to limits, exclusive of interest and costs, as follows: Twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to such limit for one person, fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars because of injury to or destruction of property of others in any one accident.

(3) The crossing of a highway shall be permitted by a golf car vehicle only if:

(a) The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;

(b) The golf car vehicle is brought to a complete stop before crossing the shoulder or roadway of the highway;

(c) The operator yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard; and

(d) In crossing a divided highway, the crossing is made only at an intersection of such highway with a street or road, as applicable.

(4) For purposes of this section:

(a) Road means a public way for the purposes of vehicular travel, including the entire area within the right-of-way; and

(b) Street means a public way for the purposes of vehicular travel in a city or village and includes the entire area within the right-of-way.

Source: Laws 2012, LB 1155, § 23; Laws 2015, LB 570, § 1.

(mm) FARM EQUIPMENT DEALERS

60-6,382. Farm equipment dealers; farm equipment haulers act as representative; conditions; signed statement; contents.

Farm equipment dealers may allow farm equipment haulers to act as their representative when hauling farm equipment to or from the dealer's place of business. Farm equipment haulers shall carry in the motor vehicle hauling the farm equipment a signed statement from the farm equipment dealer stating that they are acting as a representative of the farm equipment dealer. The statement shall be dated and valid for ninety days and shall be subject to inspection by any peace officer. The statement shall indicate the name of the farm equipment dealer, the name of the hauler, and that the dealer authorizes the hauler to act as its representative for purposes of complying with width, height, and length limitations. Nothing in this section shall require farm equipment dealers to provide insurance coverage for farm equipment haulers.

Source: Laws 2014, LB 1039, § 2.

60-6,383. Implement of husbandry; weight and load limitations; operation restrictions.

(1) An implement of husbandry being operated on any highway of this state, except the National System of Interstate and Defense Highways, shall be exempt from the weight and load limitations of subsections (2), (3), and (4) of section 60-6,294 but shall be subject to any ordinances or resolutions enacted by local authorities pursuant to section 60-681.

(2) An implement of husbandry being operated on any highway of this state shall not cross any bridge or culvert if the vehicle axle, axle groupings, or gross weight exceeds the limits established in subsections (2), (3), and (4) of section 60-6,294 or weight limits established by bridge postings.

(3) For purposes of this section, an implement of husbandry includes (a) a farm tractor with or without a towed farm implement, (b) a self-propelled farm implement, (c) self-propelled equipment designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil or crops, (d) an agricultural floater-spreader implement as defined in section 60-303, (e) a fertilizer spreader, nurse tank, or truck permanently mounted with a spreader used for spreading or injecting water, dust, or liquid fertilizers or agricultural chemicals, (f) a truck mounted with a spreader used or manufactured to spread or inject animal manure, and (g) a mixer-feed truck owned and used by a livestock-raising operation designed for and used for the feeding of livestock.

Source: Laws 2016, LB 977, § 22.

CHAPTER 81

ARTICLE 7
DEPARTMENT OF TRANSPORTATION

81-701. Repealed. Laws 1955, c. 148, § 63.

81-701.01. Department of Transportation; Director-State Engineer; control, management, supervision, administration.

The Director-State Engineer shall have full control, management, supervision, administration, and direction of the Department of Transportation. All powers and duties lawfully conferred upon the department shall be exercised under the direction of the Director-State Engineer.

Source: Laws 1955, c. 338, § 1, p. 1050; Laws 1957, c. 365, § 11, p. 1238; Laws 2017, LB339, § 276.

Operative Date: July 1, 2017

81-701.02. Director-State Engineer; powers; duties.

The Director-State Engineer, for the Department of Transportation, shall:

(1) Have charge of the records of the department;

(2) Cause accurate and complete books of account to be kept;

(3) Supervise the signing of vouchers and orders for supplies, materials, and any other expenditures;

(4) Contract for consulting services;

(5) Employ all engineers, assistants, clerks, agents, and other employees required for the proper transaction of the business of the office or of the department and fix their titles, determine their duties and compensation, and discharge them in his or her discretion; and

(6) Sign and execute or supervise the signing and executing of all documents and papers, including contracts and agreements for highway construction and the purchase of machinery, materials, and supplies.

Source: Laws 1955, c. 338, § 2, p. 1050; Laws 1957, c. 365, § 12, p. 1238; Laws 2017, LB339, § 277.

Operative Date: July 1, 2017

Cross References

Geographic Information Systems Council, member of, see section 86-570.
Salary, see section 81-103.
State Emergency Response Commission, member of, see section 81-15,210.
State Highway Commission, member of, see section 39-1101.

81-701.03. Department of Transportation; assume highway safety program of Department of Motor Vehicles; reference to Department of Roads in contracts or other documents; actions and proceedings; how treated; provisions of law; how construed.

(1) The Department of Transportation shall assume responsibility for the powers and duties of the highway safety program of the Department of Motor Vehicles, except that the Department of Motor Vehicles shall retain jurisdiction over the Motorcycle Safety Education Act.

(2) On and after July 1, 2017, whenever the Department of Roads is referred to or designated by any contract or other document in connection with the duties and functions of the Department of Transportation, such reference or designation shall apply to the Department of Transportation. All contracts entered into by the Department of Roads prior to July 1, 2017, are hereby recognized, with the Department of Transportation retaining all rights and obligations under such contracts. Any cash funds, custodial funds, gifts, trusts, grants, and any appropriations of funds from prior fiscal years available to satisfy obligations incurred under such contracts shall be appropriated to the Department of Transportation for the payments of such obligations. All documents and records transferred, or copies of the same, may be authenticated or certified by the Department of Transportation for all legal purposes.

(3) No suit, action, or other proceeding, judicial or administrative, lawfully commenced prior to July 1, 2017, or which could have been commenced prior to that date, by or against the Department of Roads, or the Director-State Engineer or any employee thereof in such Director-State Engineer's or employee's official capacity or in relation to the discharge of his or her

official duties, shall abate by reason of the change of name of the Department of Roads to the Department of Transportation.

(4) On and after July 1, 2017, unless otherwise specified, whenever any provision of law refers to the Department of Roads in connection with duties and functions of the Department of Transportation, such law shall be construed as referring to the Department of Transportation.

Source: Laws 2009, LB219, § 2; Laws 2017, LB339, § 278.
Operative Date: July 1, 2017

Cross References

Motorcycle Safety Education Act, see section 60-2120.

81-701.04. Department of Transportation; fees; deposited with State Treasurer; credited to Highway Cash Fund.

There shall be paid to the Department of Transportation in advance for the services of the department, or any officer or employee thereof by the party demanding or necessitating the service, the following fees: For typing a transcript or copy of any instrument recorded or filed in any office of the department, fifteen cents for each one hundred words; for blueprint copy of any map or drawing, or photostatic copy of any record, a reasonable sum to be fixed by the department in an amount estimated to cover the actual cost of preparing such a reproduction; for other copies of drawing, two dollars per hour for the time actually employed; and for certificate and seal, one dollar. The Director-State Engineer shall keep a record of all fees received. Such fees shall be currently deposited with the State Treasurer by the Director-State Engineer for the use of the Highway Cash Fund and the Director-State Engineer shall take his or her receipt therefor and file the same with the records of his or her office.

Source: Laws 1957, c. 365, § 23, p. 1241; Laws 1961, c. 181, § 12, p. 543; Laws 2017, LB339, § 279.
Operative Date: July 1, 2017

Cross References

For other provisions for fees, see section 25-1280.

81-701.05. Nebraska Railway Council agreement with railroad; oversight.

The Department of Transportation shall oversee any outstanding agreement between a railroad and the Nebraska Railway Council as of August 27, 2011, including making any outstanding payment due to a railroad.

Source: Laws 2011, LB259, § 2; Laws 2017, LB339, § 280.
Operative Date: July 1, 2017

81-701.06. Repealed. Laws 1995, LB 15, § 6.

81-702. Transferred to section 46-801.

81-703. Transferred to section 46-802.

81-704. Transferred to section 46-803.

81-705. Transferred to section 46-804.

81-706. Transferred to section 46-805.

81-707. Transferred to section 46-806.

81-708. Transferred to section 46-807.

81-709. Repealed. Laws 1955, c. 148, § 63.

81-710. State wayside areas; powers and duties of department; rules and regulations; contracts authorized.

The Department of Transportation shall establish, operate, and maintain state wayside areas. Pursuant to the Administrative Procedure Act, the department may adopt and promulgate rules and regulations necessary to govern the use of state wayside areas and may establish fees for services, including overnight camping.

The department may contract with public or private entities for the operation and maintenance of state wayside areas.

If the department determines that an area is no longer suited or needed as a state wayside area, the department may close such area or any part thereof and declare such area or facilities as surplus. The department shall offer to convey the surplus land or facilities to all local political subdivisions in the vicinity, and if such offers are rejected, the department may sell such lands and facilities.

Source: Laws 1983, LB 610, § 7; Laws 2014, LB757, § 2; Laws 2017, LB339, § 281.
Operative Date: July 1, 2017

Cross References

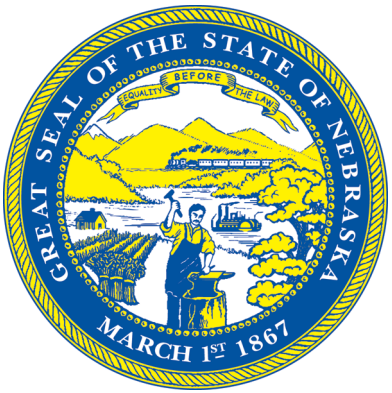
Administrative Procedure Act, see section 84-920.

81-711. State wayside areas; requirements.

State wayside areas shall be areas appropriate in size and located at strategic intervals adjacent to main traveled highways to provide safe rest and picnic stops for travelers, which sites shall be selected for scenic or historical interest when possible, equipped with safe approach and

departure lanes, and be developed in a manner and with such facilities as are appropriate to their purpose, including overnight camping.

Source: Laws 1983, LB 610, § 6.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