

LEGISLATIVE BILL 848

Approved by the Governor February 8, 1994

Introduced by Executive Board: Hall, 7, Chairperson

AN ACT relating to highways; to amend sections 39-1320.01, 39-1320.06, 39-1320.08, 39-1320.10, and 39-1320.11, Reissue Revised Statutes of Nebraska, 1943; to change internal references; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 39-1320.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-1320.01. (1) The Department of Roads is authorized to department may acquire the interest in lands, real or personal property, necessary to exercise the power authorized by subdivision (a) of subsection (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 39-1302 and 39-1320 to 39-1320.03 and 39-1320.06 to 39-1320.11 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 of Roads 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 the provisions of sections 39-1302 and 39-1320 to 39-1320.03 and 39-1320.06 to 39-1320.11 unless and until federal-aid matching funds are made available for this purpose.

Sec. 2. That section 39-1320.06, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-1320.06. (1) Except as provided in this act this section and sections 39-1320 to 39-1320.03 and 39-1320.07 to 39-1320.11, 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 hereby 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 the provisions of this act this section and sections 39-1320 to 39-1320.03 and 39-1320.07 to 39-1320.11, 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 PROVIDED, 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 ~~7~~ PROVIDED, 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 all federal-aid primary roads within the State of Nebraska, except ~~7~~ PROVIDED, that no such signs, displays, or devices shall be permitted in areas in which advertising control easements have been acquired; and

(d) All signs, displays, or devices beyond six hundred sixty feet of the edge of the right-of-way of the federal-aid interstate, federal-aid primary roads, 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 such federal-aid roads or the National System of Interstate and Defense Highways.

~~(2)~~ (3) In the areas described in subdivision (1) 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 subdivision (1) 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 subdivision (1) 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 the provisions of this act this section and sections 39-1320 to 39-1320.03 and 39-1320.07 to 39-1320.11, 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 this act 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 this act such sections shall be construed to prevent the department from acquiring easements for the control of outdoor advertising;

(vi) Nothing contained in this act such sections shall be construed to require the removal of signs in zoned and unzoned commercial and industrial areas, as defined in section 39-1302, lawfully in existence on March 27, 1972, which signs may under this act such sections remain and continue in place even if nonconforming; and

(vii) The powers conferred by this act such sections are supplementary and additional powers, and nothing contained in this act such sections shall be deemed amendatory or in derogation of any other grant of power or authority to the department.

Sec. 3. That section 39-1320.08, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-1320.08. 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 ~~39-1302~~, ~~39-1311~~, and 39-1320 to ~~39-1320.03~~ and ~~39-1320.06~~ to 39-1320.11 or rules and regulations of the department as promulgated from time to time.

Sec. 4. That section 39-1320.10, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-1320.10. Any person, firm, company, or corporation, violating any of the provisions of sections ~~39-1302~~, ~~39-1311~~, and 39-1320 to ~~39-1320.03~~ and ~~39-1320.06~~ to 39-1320.11 shall be guilty of a Class V misdemeanor. In addition to any other available remedies, the Director-State Engineer, for the

department 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 the provisions of Chapter 76, article 7.

Sec. 5. That section 39-1320.11, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-1320.11. Any provision ~~or provisions~~ of sections 39-1302, ~~39-1311, and 39-1320~~ to 39-1320.03 and 39-1320.06 to 39-1320.11 to the contrary notwithstanding, nothing contained in such sections shall be construed to prevent the department from (1) exercising the power of eminent domain to accomplish the removal of any sign or signs, ~~or from or~~ (2) acquiring any interest in ~~lands,~~ real or personal property, necessary to exercise the powers authorized by such sections, whether within or without zoned or unzoned commercial or industrial areas.

Sec. 6. That original sections 39-1320.01, 39-1320.06, 39-1320.08, 39-1320.10, and 39-1320.11, Reissue Revised Statutes of Nebraska, 1943, are repealed.