

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 408

Introduced by Vrtiska, 1; Byars, 30; Cudaback, 36; Hartnett, 45;
Janssen, 15; Matzke, 47; Dw. Pedersen, 39; D.
Pederson, 42; Raikes, 25; Schimek, 27

Read first time January 13, 1999

Committee: Judiciary

A BILL

1 FOR AN ACT relating to political subdivisions; to amend section
2 28-522, Reissue Revised Statutes of Nebraska; to provide
3 for entry upon property as prescribed; to provide for
4 damages; to provide an affirmative defense to criminal
5 trespass; and to repeal the original section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) A representative designated by any
2 county, city, or village displaying the proper identification or
3 written authorization may enter upon any property during daylight
4 hours to make surveys, examinations, investigations, and tests and
5 to acquire other necessary and relevant data in contemplation of
6 establishing a location of a necessary or authorized public work,
7 acquiring property therefor, or performing other operations
8 incident to construction, reconstruction, or maintenance of the
9 public work. Entry upon any property pursuant to this section
10 shall not be considered a trespass, and no damages shall be
11 recoverable on that account alone. In case of any actual or
12 demonstrable damages to the property, the county, city, or village
13 shall pay the landowner the amount of the damages. Upon the
14 failure of the landowner and the political subdivision to agree
15 upon the amount of the damages, the landowner, in addition to any
16 other available remedy, may file a petition as provided for in
17 section 76-705. Before entry is made pursuant to this section,
18 notice shall be given to the landowner and the occupant of the
19 property. The notice shall be in writing and delivered by
20 certified or registered mail, fifteen days before entry is to be
21 made. The written notice shall state the purpose of the entry, the
22 date of the entry, and the date of departure.

23 (2) Nothing in this section shall be construed to
24 restrict the right of a representative of a county, city, or
25 village to enter upon property to carry out duties and
26 responsibilities pursuant to specific statutory requirements.

27 Sec. 2. Section 28-522, Reissue Revised Statutes of
28 Nebraska, is amended to read:

1 28-522. It is an affirmative defense to prosecution
2 under sections 28-520 and 28-521 that:

3 (1) A building or occupied structure involved in an
4 offense under section 28-520 was abandoned; ~~or~~

5 (2) The premises were at the time open to members of the
6 public and the actor complied with all lawful conditions imposed on
7 access to or remaining in the premises; ~~or~~

8 (3) The actor reasonably believed that the owner of the
9 premises or other person empowered to license access thereto would
10 have licensed him or her to enter or remain; ~~or~~

11 (4) The actor was in the process of navigating or
12 attempting to navigate with a nonpowered vessel any stream or river
13 in this state and found it necessary to portage or otherwise
14 transport the vessel around any fence or obstructions in such
15 stream or river; or

16 (5) The actor was entering the premises pursuant to
17 section 1 of this act.

18 Sec. 3. Original section 28-522, Reissue Revised
19 Statutes of Nebraska, is repealed.