

LEGISLATIVE BILL 1181

Approved by the Governor March 27, 1972

Introduced by Legislative Council Committee on Control of Outdoor Advertising, William H. Hasebroock, 18th District, Chairman; Sam Klaver, 9th District; E. Thome Johnson, 15th District; Richard Maresh, 32nd District; Eugene T. Mahoney, 5th District

AN ACT to amend sections 39-1311, 39-1320.01, and 39-1320.03, Reissue Revised Statutes of Nebraska, 1943, sections 39-1302 and 39-1320, Revised Statutes Supplement, 1969, and section 39-1320.02, Reissue Revised Statutes of Nebraska, 1943, as amended by section 11, Legislative Bill 1058, Eighty-second Legislature, Second Session, 1972, relating to highways; to define terms; to provide for the control of advertising along the right-of-way of the National System of Interstate and Defense Highways and all federal-aid primary roads as prescribed; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 39-1302, Revised Statutes Supplement, 1969, be amended to read as follows:

39-1302. As used in sections 39-1301 to 39-1362, 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) Arterial highway shall mean a highway primarily for through traffic, usually on a continuous route;

(4) Channel shall mean a natural or artificial watercourse;

(5) 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;

(6) 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;

(7) Department shall mean the Department of Roads of the State of Nebraska;

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

(9) Expressway shall mean a divided arterial highway for through traffic with full or partial control of access and generally with grade separations at intersections;

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

(11) 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;

(12) 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;

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

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

(15) Parking lane shall mean an auxiliary lane primarily for the parking of vehicles;

(16) 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;

(17) Person shall include bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, joint stock companies, and associations;

(18) 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;

(19) 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;

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

(21) 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;

(22) 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;

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

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

(25) 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 department 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;

(26) 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;

(27) 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;

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

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

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

(31) 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;

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

(33) 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;

(34) 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; and

(35) 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; =

(36) 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 department and approved by the Secretary of Transportation of the United States, and shown on the maps provided for in section 9 of this act:

(37) 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 but not limited to, 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;

(38) 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; Provided, 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, storage and processing areas constituting an integral part of such commercial or industrial activity; and

(39) 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 National System of Interstate and Defense Highways and all federal-aid

primary roads, zoned by state or local authorities for industrial or commercial activities.

Sec. 2. That section 39-1311, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-1311. 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. All changes in designation or location of highways constituting the state highway system, or additions thereto, shall be indicated upon the map. There shall also be maintained by the department two separate and additional maps, one showing the current roads, highways and streets which have been designated as federal-aid primary roads, and the other map showing the roads, highways and streets designated as federal-aid primary roads as of the effective date of this act. At all times such map shall be available for public inspection at the offices of the State Engineer and shall be filed with the Legislature of the State of Nebraska at each biennium.

Sec. 3. That section 39-1320, Revised Statutes Supplement, 1969, be amended to read as follows:

39-1320. (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, 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, offices, 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 outside outdoor advertising within the area adjacent to and within six hundred sixty feet of the nearest edge of the right-of-way of the National System of Interstate and Defense Highways ~~constructed upon any part of right-of-way the entire width of which is acquired subsequent to July 4, 1956, and all federal aid primary roads,~~ to the end that this state may ~~qualify for and accept~~ comply with the provisions of 23 United States Code 131, as amended; and

(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.

(3) The procedure to condemn property, authorized by subsection (1) of this section or elsewhere in sections 39-1301 to 39-1362 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.

Sec. 4. 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 acquire the interest in lands, real or personal property, necessary to exercise the power authorized by subdivision (a) of subsection (2) of section 39-1320, and to pay just compensation upon removal of the following outdoor advertising signs, displays, and devices:

(a) Those lawfully erected or in existence prior to the effective date of this act, and not conforming to the provisions of this act except as otherwise authorized by this act; and

(b) Those lawfully erected after the effective date of this act, 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.

The department shall not be required to expend any funds under the provisions of this act unless and until federal-aid matching funds are made available for this purpose. The department is hereby required to report to the Legislature annually, on or before January 15, commencing in 1973, the status of the program provided for in this act. Such report shall include the number of signs, displays or devices removed and the cost thereof, federal and matching funds expended or obligated, an estimate for the succeeding year, and such other information as the Legislature or the Legislative Council shall officially order the department to provide.

Sec. 5. That section 39-1320.02, Beissue Revised Statutes of Nebraska, 1943, as amended by section 11, Legislative Bill 1058, Eighty-second Legislature, Second Session, 1972, be amended to read as follows:

39-1320.02. (1) In order that this state may qualify for the payments authorized in 23 United States Code 131 (c) and (e), and to comply with the provisions of 23 United States Code 131 as revised and amended on October 22, 1965 by Public Law 89-285, the Department of Roads, 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 United States Code 131 (1) 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 United States Code 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 department shall be and is hereby empowered and directed to make rules and regulations in accord with the agreement between the department and the Department of Transportation dated October 29, 1968.

Sec. 6. That section 39-1320.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-1320.03. Whenever advertising rights are acquired by the department pursuant to subdivision (m) of subsection (2) of section 39-1320, or an agreement has been entered into as authorized by section 39-1320.02, 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; subsection, which rules and regulations shall have as their minimum requirements the provisions of 23 United States Code 131 and regulations adopted pursuant thereto, as amended on the date of the effective date of this act.

Sec. 7. Except as provided in this act, the erection or maintenance of any advertising sign, display, or device within the area adjacent to and within six hundred sixty feet of the right-of-way of the National System of Interstate and Defense Highways, and the system of federal-aid primary roads of the State of Nebraska, and visible from the main-travelled way of such highway or road is hereby prohibited. On-premise signs and directional or other official signs as defined and controlled in the department's rules and regulations shall be permitted.

(1) Other signs controlled in accordance with the federal-state agreement shall be permitted, if conforming to the provisions of this act, 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 and which are within six hundred sixty feet of the nearest edge of the right-of-way of any portion of the National System of Interstate and Defense Highways in which outdoor advertising signs, displays, and devices may be visible from the main-travelled way of such system; 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 within six hundred sixty feet of the nearest edge of the right-of-way 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, in which outdoor advertising signs, displays, and devices may be visible from the main-travelled way of such system; Provided, that no such signs, displays, or devices shall be permitted in areas in which advertising control easements have been acquired; and

(c) All zoned and unzoned commercial and industrial areas within six hundred sixty feet of the nearest edge of the right-of-way of all portions of all federal-aid primary roads within the State of Nebraska in which outdoor advertising signs, displays, and devices may be visible from the main-travelled way of such roads; Provided, that no such signs, displays, or devices shall be permitted in areas in which advertising control easements have been acquired.

(2) In the areas described in subdivision (1) 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) 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) 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, 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 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;

(v) Nothing contained in this act shall be construed to prevent the department from acquiring easements for the control of outdoor advertising;

(vi) Nothing contained in this act 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 the effective date of this act, which signs may under this act remain and continue in place even if nonconforming; and

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

Sec. 8. It shall be unlawful for any person to place or cause to be placed, within six hundred sixty feet of the nearest edge of the right-of-way of any state highway, portion of the state highway system, or federal-aid primary road, upon land not owned by such person, any advertising sign, display, or device, without first procuring from the owner of such land a written lease authorizing the erection or emplacement of such advertising sign, display, or device.

Sec. 9. Outdoor advertising signs, displays, and devices erected prior to the effective date of this act 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 this act or regulations of the department as promulgated from time to time.

Sec. 10. No advertising signs shall be placed along or upon any interstate or primary highway at any point controlled and permitted by the department without a written permit. Each sign shall bear upon it 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 ten dollars for each individual sign. 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 of small size shall not require a permit if otherwise conforming.

Sec. 11. Any person, firm, company, or corporation, violating any of the provisions of this act shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be fined in any sum not less than ten dollars nor more than one hundred dollars.

Sec. 12. Any provision or provisions of this act to the contrary notwithstanding, nothing contained in this act shall be construed to prevent the department from exercising the power of eminent domain to accomplish the removal of any sign or signs, or from acquiring any interest in lands, real or personal property, necessary to exercise the powers authorized by this act, whether within or without zoned or unzoned commercial or industrial areas.

Sec. 13. That original sections 39-1311, 39-1320.01, and 39-1320.03, Reissue Revised Statutes of Nebraska, 1943, sections 39-1302 and 39-1320, Revised Statutes Supplement, 1969, and section 39-1320.02, Reissue Revised Statutes of Nebraska, 1943, as amended by section 11, Legislative Bill 1058, Eighty-second Legislature, Second Session, 1972, are repealed.

Sec. 14. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.