

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1040

Introduced by Schilz, 47.

Read first time January 18, 2012

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to state highways; to amend section 39-1344,
2 Reissue Revised Statutes of Nebraska, and section
3 39-1359, Revised Statutes Supplement, 2011; to change
4 provisions relating to snow removal and encroachments and
5 regulation of state rights-of-way; and to repeal the
6 original sections.

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

1 Section 1. Section 39-1344, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 39-1344 (1) The department shall keep the highways,
4 except the connecting links, sufficiently clear of snow and ice so as
5 to be reasonably safe for travel. For purposes of this section, the
6 department shall adhere to the following guidelines with regard to
7 snow removal:

8 (a) No snow removal operations shall be conducted until
9 after an accumulation of at least four inches of snow;

10 (b) Snow removal operations shall only be conducted
11 between the hours of 9:00 p.m. and 4:00 a.m. Snow removal operations
12 outside of such hours shall only be conducted when storm conditions
13 threaten life and property of the public or inhibit emergency
14 response personnel and equipment from reaching a destination; and

15 (c) The department may deviate from the guidelines
16 provided in this section only in emergency situations or upon a
17 showing of necessity for the public safety or welfare.

18 (2) The department shall have the authority to enter upon
19 private and public property adjacent to any highway and place and
20 maintain thereon snow fences wherever it is deemed necessary in order
21 to prevent snow drifting upon the traveled way of the highway. Such
22 snow fences shall be erected in such a manner as to provide the most
23 protection to the highway and shall not be placed on such property
24 prior to October 15, nor remain on such property after April 1,
25 without the consent of the property owner. In case of any damage to

1 such property, the department shall pay the amount of such damage to
2 the owner of the property.

3 Sec. 2. Section 39-1359, Revised Statutes Supplement,
4 2011, is amended to read:

5 39-1359 (1) The rights-of-way acquired by the department
6 shall be held inviolate for state highway and departmental purposes
7 and no physical or functional encroachments, structures, or uses
8 shall be permitted within such right-of-way limits, except by written
9 consent of the department or as otherwise provided in subsections (2)
10 ~~and (3) through (5)~~ of this section.

11 (2) A temporary use of the state highway system, other
12 than a freeway, by a county, city, or village, including full and
13 partial lane closures, shall be allowed for special events, as
14 designated by a county, city, or village, under the following
15 conditions:

16 (a) The roadway is located within the official corporate
17 limits or zoning jurisdiction of the county, city, or village;

18 (b) A county, city, or village making use of the state
19 highway system for a special event shall have the legal duty to
20 protect the highway property from any damage that may occur arising
21 out of the special event and the state shall not have any such duty
22 during the time the county, city, or village is in control of the
23 property as specified in the notice provided pursuant to subsection
24 (3) of this section;

25 (c) Any existing statutory or common law duty of the

1 state to protect the public from damage, injury, or death shall
2 become the duty of the county, city, or village making use of the
3 state highway system for the special event, and the state shall not
4 have such statutory or common law duty during the time the county,
5 city, or village is in control of the property as specified in the
6 notice provided pursuant to subsection (3) of this section; and

7 (d) The county, city, or village using the state highway
8 system for a special event shall formally, by official governing body
9 action, acknowledge that it accepts the duties set out in this
10 subsection and, if a claim is made against the state, shall
11 indemnify, defend, and hold harmless the state from all claims,
12 demands, actions, damages, and liability, including reasonable
13 attorney's fees, that may arise as a result of the special event.

14 (3) If a county, city, or village has met the
15 requirements of subsection (2) of this section for holding a special
16 event and has provided thirty days' advance written notice of the
17 special event to the department, the county, city, or village may
18 proceed with its temporary use of the state highway system. The
19 notice shall specify the date and time the county, city, or village
20 will assume control of the state highway property and relinquish
21 control of such state highway property to the state.

22 (4) Reasonable physical or functional encroachments,
23 structures, or uses shall be allowed on or about those state rights-
24 of-way that encompass any sidewalk, or any other pedestrian path, or
25 that are within the corporate boundaries of any city or village. For

1 purposes of this subsection, physical or functional encroachments,
2 structures, or uses shall be presumed reasonable unless the state can
3 demonstrate by clear and convincing evidence that a physical or
4 functional encroachment, structure, or use under this subsection is
5 unreasonable, unsafe, or contrary to the health or welfare of
6 another.

7 (5) The department shall utilize the least restrictive
8 means possible to regulate the use or boundaries of state rights-of-
9 way. No reflector pole, flag, post, stick, fence, sign, or other
10 physical marking shall be utilized by the department to regulate the
11 use of, or delineate the boundaries of, any state rights-of-way until
12 the department demonstrates, in writing, that all other reasonable
13 efforts and less restrictive means to regulate state rights-of-way
14 have been exhausted.

15 ~~(4)-(6)~~ The Political Subdivisions Tort Claims Act shall
16 apply to any claim arising during the time specified in a notice
17 provided by a political subdivision pursuant to subsection (3) of
18 this section.

19 Sec. 3. Original section 39-1344, Reissue Revised
20 Statutes of Nebraska, and section 39-1359, Revised Statutes
21 Supplement, 2011, are repealed.