

LEGISLATIVE BILL 10

Approved by the Governor February 24, 1983

Introduced by Kahle, 37

AN ACT relating to highways and roads; to amend sections 23-2410, 23-2411, 39-2124, and 39-2125, Reissue Revised Statutes of Nebraska, 1943, and sections 39-2103, 39-2105, 39-2109, and 39-2113, Revised Statutes Supplement, 1982; to define minimum maintenance roads and detail their applicability to the Political Subdivisions Tort Claims Act; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 23-2410, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-2410. If any person suffers personal injury or loss of life, or damage to his or her property by means of insufficiency or want of repair of a highway or bridge or other public thoroughfare, which a political subdivision is liable to keep in repair, the person sustaining the loss or damage, or his or her personal representative, may recover in an action against the political subdivision, and if damages accrue in consequence of the insufficiency or want of repair of a road or bridge or other public thoroughfare, erected and maintained by two or more political subdivisions, the action can be brought against all of the political subdivisions liable for the repairs of the same; and damages and costs shall be paid by the political subdivisions in proportion as they are liable for the repairs; PROVIDED, the procedure for filing such claims and bringing suit shall be the same for claims under this section as for other claims under this act; AND PROVIDED FURTHER, no political subdivision shall be liable for damages occasioned by defects in state highways and bridges thereon which the Department of Roads is required to maintain, but the political subdivision shall not be relieved of liability until the state has actually undertaken construction or maintenance of such highways. It is the intent of the

Legislature that minimum maintenance highways and roads shall not be deemed to be insufficient or in want of repair when they meet the minimum standards for such highways and roads pursuant to section 39-2109.

Sec. 2. That section 23-2411, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-2411. In enacting section 23-2410, it is the intent of the Legislature that the liability of all political subdivisions based on the alleged insufficiency or want of repair of any highway or bridge or other public thoroughfare shall be the same liability that previously has been imposed upon counties pursuant to section 23-2410. The Legislature further declares that judicial interpretations of section 23-2410 governing the liability of counties on January 1, 1970, also shall be controlling on the liability of all political subdivisions for the alleged insufficiency or want of repair of any highway or bridge or other public thoroughfare. Notwithstanding other provisions of this act, sections 23-2410, and 23-2411, and section 7 of this act shall be the only sections governing determination of liability of political subdivisions for the alleged insufficiency or want of repair of highways, or bridges or other public thoroughfares. As used in sections 23-2410 and 23-2411, public thoroughfares shall include all streets, alleys, and roads designed, intended, and primarily used for the movement of vehicular traffic and dedicated to public use.

Sec. 3. That section 39-2103, Revised Statutes Supplement, 1982, be amended to read as follows:

39-2103. Rural highways are hereby divided into eight ~~seven~~ functional classifications as follows:

(1) Interstate, which shall consist of the ~~federally-designated~~ 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 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; and

(7) Local, which shall consist of all remaining rural roads, except minimum maintenance roads; and generally described as land-access roads providing service to adjacent land and dwellings.

(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.

The rural highways classified under subdivisions (1) to (3) of this section should, combined, serve every incorporated municipality having a minimum population of one hundred inhabitants 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 shall mean a minimum of two hundred thousand dollars of gross receipts under the Nebraska Revenue Act of 1967.

Sec. 4. That section 39-2105, Revised Statutes Supplement, 1982, be amended to read as follows:

39-2105. 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; PROVIDED, if such a connecting link has not been improved and sufficient study by the Department of Roads 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, and local, and minimum maintenance 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 act.

Sec. 5. That section 39-2109, Revised Statutes Supplement, 1982, be amended to read as follows:

39-2109. (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 six months from July 19, 1980, the Board of Public Roads Classifications and Standards shall adopt and promulgate the specific criteria for

scenic-recreation roads and highways pursuant to this act.

(3) Within six months from the effective date of this act, the Board of Public Roads Classifications and Standards shall adopt and promulgate the specific criteria for minimum maintenance roads and highways.

Sec. 6. That section 39-2113, Revised Statutes Supplement, 1982, be amended to read as follows:

39-2113. (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. The board may stipulate that speed limits consistent with scenic-recreation use apply to any such highway or road.

(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 current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways in effect on the effective date of this act.

(4) The board shall by rule provide for the relaxation of such standards for any functional classification in those instances in which their application is not feasible because of peculiar, special, or unique local situations.

(5) Any county or municipality which believes that the application of such 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 such 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 this act, may request the board to relax the standards for such segment. The Department of Roads, when it believes that the application of such 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 such request made pursuant to this section and either grant or deny it in whole or in part. The provisions of 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.

Sec. 7. For purposes of sections 23-2410 to 23-2411, no minimum maintenance road or highway shall be deemed to be in want of repair or insufficient if it complies with the standards and level of minimum maintenance developed pursuant to section 39-2113.

Sec. 8. That section 39-2124, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-2124. It is the intent of the Legislature to recognize the responsibilities of the Department of Roads, 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 39-2101 to 39-2125 and section 7 of this act 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 39-2101 to 39-2125 and section 7 of this act 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.

Sec. 9. That section 39-2125, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-2125. Sections 39-2101 to 39-2125 and section 7 of this act shall be construed as an independent act, complete in itself, and in the event of conflict between any provisions of sections 39-2101 to 39-2125 and section 7 of this act and any other statutes, the provisions of sections 39-2101 to 39-2125 and section 7 of this act shall control.

Sec. 10. That original sections 23-2410, 23-2411, 39-2124, and 39-2125, Reissue Revised Statutes of Nebraska, 1943, and sections 39-2103, 39-2105, 39-2109, and 39-2113, Revised Statutes Supplement, 1982, are repealed.