

# LPA ENCROACHMENT POLICY

## FEDERAL-AID PROJECTS

May 9, 2014

### PURPOSE

To prescribe policy and procedures for removing or permitting encroachments, structures, or uses of federal-aid public street, road or transportation rights-of-way (hereinafter called "Public ROW") of Local Public Agencies (LPA).

### AUTHORITY

Generally, cities, counties and other LPAs have the necessary authority to acquire property rights for transportation projects. Title to existing Public ROW typically ranges from permanent county road easements to fee simple title depending on when or under what circumstances the right-of-way was acquired. LPAs have general authority to prohibit adjoining property owners from making use of the Public ROW when those uses compete or conflict with the LPAs transportation use. Various utilities have the right by statute to occupy Public ROW. LPA personnel should contact the LPA's legal counsel if a question arises concerning a utilities right to occupy LPA's Public ROW.

Finally, pursuant to Neb. Rev. Stat. § 39-1404, an adjoining property owner or other person cannot obtain any title or interest in Public ROW by use, adverse possession, or prescription. Please refer to the text of this section in the appendix.

In instances in which the LPA owns only an easement for street, road, trail or transportation purposes, an adjoining property owner has the right to make certain non-competing uses of the land on which the easement is located. LPA personnel should contact the LPA's legal office if a question arises as to an adjoining owner's right to use the land in such instances.

In order to undertake a federal-aid project, an LPA may be required to acquire additional property rights, remove or permit encroachments or other uses of right of way, or to lease LPA's property for encroachments or other uses, before a project will be allowed to go to bid letting.

### DEFINITIONS

**Easement:** an easement is a right of use over the property of another.

**Encroachment:** an encroachment shall have its commonly understood meaning and includes any non-LPA use or occupancy of the area above, below, or on the surface of LPA's Public ROW that has not been permitted in writing, leased by the LPA or allowed

by statute or case law, by any object or structure including but not limited to real property, fixtures or personal property. A structure or use allowed by statute or case law, or for which a permit has been granted, or a lease given, is not an encroachment, for purposes of this policy.

**Permit:** a permit is written permission to use or encroach upon LPA's property.

**POLICY**

It is the responsibility of the LPA to keep LPA's federal-aid Public ROW clear of private uses and encroachments. The LPA must recognize that there are non-street, road, trail or transportation uses of Public ROW allowed by State statute. The LPA must also acknowledge that there are private encroachments and uses which pose no threat to the public use, construction and maintenance of the public ROW, the removal of which would impose an unreasonable hardship on the owner. These encroachments may be allowed to remain in place by permit. Further, if the value of an adjoining property is increased because of the encroachment upon or use of LPA's Public ROW, and if LPA determines such use or encroachment can be allowed or permitted to remain in place, LPA shall contact NDOR's Right-of-Way Division to determine whether fair rental value or fair market value must be paid by the owner of the encroachment or user of Public ROW. Encroachments not allowed by statute or case law, leased or issued a permit by the LPA must be removed from LPA's federal-aid Public ROW by orderly process.

**JURISDICTION**

This policy applies to streets, roads, trails and transportation facilities under the jurisdiction of a local public agency. This policy does not apply to state highways located within a county, city or village. The State of Nebraska Department of Roads Encroachment Policy applies to all state highways.

**PROCEDURES**

The following procedures will apply whenever a non-permitted or allowed encroachment is present upon, under, or overhanging the Public ROW. The LPA may utilize its own procedures in lieu of the procedures outlined below when such procedures provide sufficient process for the encroachment owner.

**PROJECT RELATED**

The public right-of-way for an LPA federal-aid project must be used exclusively for the specific purpose of the project. When LPA programs a project on streets, roads, highways or other transportation facilities under its jurisdiction, and not later than the time of the project Plan-In-Hand meeting, LPA shall inspect the entire project to identify all private or public encroachments, structures, occupations or uses of the entire existing right-of-way that are not devoted to the use contemplated by the project. LPA shall develop and implement a plan to notify the owners and ease the removal of such

encroachments or structures or cause the person or entity using or occupying the right-of-way to cease such use or occupation. LPA shall complete all such actions by the time the project plans become final. LPA shall not advertise for bids on any project until all encroachment issues have been resolved and the existing right-of-way is available for construction of the project.

### **NON-PROJECT RELATED**

1. Immediate Hazard. The encroachment shall be removed immediately when it is determined by the appropriate LPA official or their designee that the encroachment creates an immediate hazard to the traveling public, the LPA's employees, or others.
  - a. The LPA Official shall personally meet with the owner of the encroachment, if reasonably possible, prior to removing the encroachment. The owner will be given the opportunity to remove the encroachment, if the encroachment can be promptly removed.
  - b. Photographs of the encroachment shall be taken before and after it is moved.
  - c. The LPA Official shall remove the encroachment by moving it to a location that alleviates the immediate hazard.
  - d. The LPA Official should complete a full report of the events related to the discovery and removal of the encroachment including:
    - (i) a description of the encroachment, including when it was discovered and where it was located in relation to the Public ROW;
    - (ii) any pertinent weather conditions;
    - (iii) the reason for, and the methods used to remove the encroachment;
    - (iv) names, addresses, and phone numbers of known witnesses;
    - (v) the equipment and employees used to remove the encroachment;
    - (vi) an explanation of the attempts made to contact the owner of the encroachment;
    - (vii) to where the encroachment was moved.
  - e. As soon as reasonably possible, the LPA Official shall follow up the personal contact with the owner with a letter sent by First Class Mail to the owner, setting forth the reasons why the encroachment was moved, how it was moved, to where it was moved, and a statement listing the LPA's costs in

moving the encroachment with a request that the owner reimburse the LPA for its costs in moving the encroachment.

2. Non-Immediate Hazard. If it is determined that the encroachment does not constitute an immediate hazard to the traveling public, LPA employees or others, the appropriate LPA Official shall take appropriate steps to have the owner remove the encroachment, and the following procedure shall apply:
  - a. The LPA Official shall determine whether the encroachment is actually located on Public ROW. In making this determination, the LPA Official should obtain a survey and may also use the LPA's right-of-way plans, city plat maps, surveys or right-of-way markers, and other similar information. Without additional corroborating information, fence lines should not be used to make this determination.
  - b. If the encroachment is found to be on Public ROW, the LPA Official shall make all reasonable efforts to identify and locate the owner of the encroachment.
  - c. The LPA Official shall make a personal contact, if at all possible, with the owner of the encroachment, and attempt to confirm the following information:
    - (i) Ownership of the encroachment;
    - (ii) The encroachment is located, at least in part, on Public ROW;
    - (iii) The owner does not have permission, in writing, from the LPA for the location of the encroachment on Public ROW.
  - d. If sections c(i), (ii) and (iii) are confirmed by the owner, the LPA Official shall request that the owner remove the encroachment except in those instances when it appears that a permit could be granted or a lease entered into to leave the encroachment in place.
  - e. When it is determined that the encroachment must be removed, the LPA Official shall meet with the owner in person, if at all possible. LPA shall inform the owner that the encroachment must be removed within a reasonable time, typically 60 to 120 days, depending on the circumstances. The owner shall be informed that the encroachment will be considered abandoned, if not removed by that date, and will be removed by the LPA and the owner charged for the LPA's cost in removing the encroachment.
  - f. The LPA Official shall follow up this personal contact with a letter sent by First Class Mail to the owner, setting forth the items described above in paragraph e.

- g. The encroachment or structure should only be removed by the LPA when the owner refuses to remove the encroachment and when it can be removed without going on the adjoining property to remove it and when it can be removed without damaging the adjoining property.
  - h. LPA shall obtain a court order to remove the encroachment when the conditions of 2.g. cannot be met.
3. Legal Assistance. The LPA's legal office should be consulted when the owner refuses to remove or seek a permit for the encroachment, and when it is determined for whatever reason that the encroachment cannot be removed without legal assistance. The appropriate LPA Official should contact the LPA's legal counsel and provide the legal counsel with the following information:
- a. All information, including photographs, plan sheets, surveys, and drawings, establishing that the encroachment is actually located on Public ROW.
  - b. A detailed description of the encroachment.
  - c. The name and address of the owner of the encroachment.
  - d. The deed(s) showing who is the present owner(s) of the property adjoining the encroachment.
  - e. All documents regarding any tenants on the property adjoining the encroachment.
  - f. All reports, letters, notes, and other correspondence related to the encroachment.

<b>PERMITTING ENCROACHMENTS</b>
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The appropriate LPA Official, with governing board or council authority, may grant a permit if it is determined that leaving the encroachment in place will not create a danger to the traveling public, to the LPA employees or to others, and that requiring the removal of the encroachment would place an unjust burden on the owner. Examples of typical items that can be permitted are set out in several of the following sections. A permit may be denied in any instance when requiring the removal of the encroachment is in the public's best interest.

Permits shall not be granted for the following uses of Public ROW:

- 1. The storage of personal property, including but not limited to vehicles, signs, equipment, hay or other farm products, and any part of an adjoining owners fence unless associated with a use such as a permitted cattle crossing.

2. The display of new or used vehicles, equipment, or business inventory for sale, or the overhanging or parking for commercial or other adjoining uses.
3. Business or commercial use of the right-of-way, except those allowed by this policy or those instances where the LPA has leased the right-of-way for business purposes.
4. A use which adversely affects threatened or endangered species of wildlife or wild plants.
5. Any use of Public ROW, except for those uses allowed by the State Department of Roads' Policy for Accommodating Utilities on State Highway Right Way.
6. A Commercial Advertising sign.
7. A use within the roadway clear zone or lateral obstacle clearance area that could affect the safety of the public.

<b>PERMITS FOR USE OF LPA PUBLIC ROW</b>
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#### **GENERAL REQUIREMENTS FOR ALL PERMITABLE ENCROACHMENTS**

1. **Application.** The applicant must complete the appropriate application form.
2. **Plans.** Four sets of plans, no larger than 12 inches by 18 inches, detailing the proposed work that is to take place in the right-of-way must accompany the application form.
3. **Performance Guarantee.** The LPA may require a performance guarantee from individuals and contractors. Major power companies, utility districts and governmental subdivisions will generally not be required to post a performance guarantee unless special circumstances prevail. The LPA shall determine the amount of the performance guarantee.
4. **Restrictions and Specific Instructions.** The LPA may prescribe and define any terms and conditions deemed necessary and/or in the best interest of the public.
5. **Approved Permit.** The applicant must have an approved permit before commencing any work on the right-of-way. The applicant shall notify the LPA at least 48 hours in advance of the time the applicant expects to begin any work within the limits of the Public ROW. All construction under the permit shall be under the supervision of the LPA and at the expense of the applicant.

6. **Completion of Work.** The applicant shall immediately notify the LPA when the work has been completed. The LPA will inspect the work and if satisfactorily completed, the performance guarantee, if any, will be returned to the applicant.

### **LPA STREET BEAUTIFICATION PROJECTS**

LPAs governing body may permit the use of public right of way, by ordinance, for street beautification projects. Such project may include, but not limited to, bus and transit facilities, public seating or benches, landscaping, planters, and other uses when determined by LPAs governing body to be appropriate and within the public interesting.

### **ACCOMMODATION OF UTILITIES**

The LPA has somewhat limited authority to regulate utility occupancy on all Public ROW because most utilities are permitted to occupy Public ROW in accordance with state statutes. LPA shall make all reasonable efforts to encourage utilities to install facilities so as to not conflict with the use of the public ROW for transportation purposes.

### **APPROACH ROADS**

Approach roads and driveways are not encroachments unless LPA has acquired the right to control or limit access to roads and streets. The LPA has limited authority to regulate the location and placement of driveways and approach roads on all Public ROW. Driveways and approach roads are permitted to occupy Public ROW in accordance with state statutes.

### **SIGNS, AWNINGS, CANOPIES, MARQUEES**

Where a Public ROW passes through an established business district, and the buildings are at, or near, the right-of-way line, overhanging encroachments in the nature of signs, awnings, canopies, marquees, etc. may be permitted subject to the following conditions:

1. Awnings, canopies, marquees or signs advertising on premise activities, or which give public service messages, or similar installations may be permitted provided the encroachment meets the following conditions:
  - a. It must be supported wholly from the face of the building.
  - b. In a curbed area, it shall be at least three feet back of the face of the curb and ten feet above the elevation of the sidewalk or ground.
  - c. For a two-lane public road in an area without curbs, it can overhang the right-of-way provided it is not closer than 24 feet from the centerline of the Public ROW and ten feet above the elevation of the sidewalk or ground.

2. That the owner of the business makes application for a permit and submits a sketch or drawing of the new or existing encroachment showing its use, size, lighting, construction, materials, advertisement and distance from curb and height from sidewalk or ground.
3. That where the permit is granted, no other uses can be made of the structure other than as displayed on the permit. When required, the permit number will appear on the structure as directed by the LPA.
4. All encroachments which contain, include or are illuminated by any flashing, intermittent or moving light or lights are prohibited except for signs which change their message at reasonable intervals by electronic process or by remote control giving public service information such as time, date, temperature, weather or on premise signs advertising goods or services available on the premises provided that such signs shall not contain or be illuminated by beacons, strobe lights or bright flashing lights.
5. In the event the encroachments referred to above, by reason of color, illumination, or placement, obscure or in any way detract from the effectiveness of roadway or street signs or traffic signals, or so distract the driver of a motor vehicle, the LPA shall cause the removal of such encroachments or take appropriate measures so that the effectiveness of the public street or road signs or traffic signals are not impaired.
6. In all cases of permits above, the owner by signing the application form gives the LPA a right-of-entry to the property permitting the LPA access, at any time to remove the encroachment, where the owner has been notified in writing to remove the encroachment and such encroachment hasn't been corrected or removed within 30 days after the notification date.
7. That all permits shall have upon their face that the right to encroach shall be automatically revoked where the use of the property changes, alterations as to size occur to the encroachment, the encroachment is moved or changed from the original plans, sketches, drawings or narrative submitted with the application and further where the property is needed for the LPA public street or road purposes the permit is revoked upon 30 days written notice.
8. An inventory of existing encroachments shall be made in all cases where Public ROW is needed for the LPA public street or road construction. Notices shall be sent to the owners of encroachments where the permits are to be revoked because the encroachment no longer conforms to this policy. Notices shall also be sent to the owners of those encroachments that need to be altered or removed as part of the project because the encroachment no longer conforms to this policy.

## **LANDSCAPING**

The LPA may permit the beautification of the right-of-way by the adjacent landowner, local municipality or other interested party when it does not compromise the integrity and the safety of the LPA public ROW. Landscaping, as used in this policy, means to alter the appearance of a piece of land by planting trees, shrubs, flowers, grasses, and the like. It does not mean changing the contour of the land. Any grading work would need to follow the policy criteria for grading. It also does not mean placing any other items in the right-of-way other than those noted.

1. Landscaping permits shall not be allowed when the LPA determines the primary purpose of the landscaping is to enhance or benefit private property.
2. The surfacing of any portion of the right-of-way for use by a business for parking or display of merchandise is strictly prohibited.
3. Drainage shall not be altered through a landscaped area.
4. The variety and location of shrubbery or trees planted within the right-of-way must be approved for design acceptability by the appropriate LPA Official and must meet the minimum set back codes of the local jurisdictional government, if any.
5. Any party allowed to landscape as provided in this section shall indemnify and hold harmless the LPA for all injury sustained and property damage caused by the landscaping or the landscaping installation operations.
6. Landscaping permits shall not be granted for tree trimming or tree removal, except for exceptional circumstances when approved for design acceptability by the appropriate LPA Official. LPA policy for Tree Trimming and Tree Removal by Utility Districts should be followed for these types of requests from utility companies.
7. Landscaping permits shall not be granted for plantings that will have the appearance of recognizable business logos or any other nationally or regionally known shapes or symbols.

## **TEMPORARY IRRIGATION PIPE CROSSINGS**

The LPA has the authority and responsibility to regulate temporary irrigation pipe crossings on all Public ROW. The temporary irrigation pipe may be allowed to occupy LPA public street or road drainage structures by permit provided the LPA has determined the placement of a temporary irrigation pipe will not negatively impact the drainage structure.

## **GRADING AND DIRT REMOVAL**

The LPA may allow and regulate grading and dirt removal from all Public ROW. Grading and dirt removal to enhance the view of billboards will be strictly prohibited. For other grading and dirt removal work, the LPA's application and permit process shall be followed. Consideration should be given to the following non-inclusive list of factors in deciding whether or not to issue a permit:

1. Does the grading and/or removal of dirt benefit the LPA?
2. Does the grading and/or removal of dirt primarily benefit only the applicant? If this is the case, consideration should be given to charging the applicant for the dirt.
3. What is the LPA's future right-of-way needs?
4. Is there any noise impacts as a result of removing an existing berm?
5. Are there any negative drainage and water quality impacts?
6. Will there be a negative visual impact from the LPA's public street or road?
7. Will there be any wetland impacts or effects on established wetlands?

<b>MONITORING WELLS</b>
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The request for a permit to drill and install monitoring wells in the right-of-way is generally the result of contamination of underground water. The wells allow the applicant to monitor the amount of contamination, direction of flow, etc. The applicant shall provide documents, from the governmental agency responsible for determining the extent of the contamination, which support the necessity of using the Public ROW. The use of the Public ROW may be considered only as a "last resort" when no other feasible monitoring well locations are available for use by the applicant. The LPA should determine that the requested use of the right-of-way will not interfere with transportation safety and the LPA's maintenance uses. Generally two specific instructions are needed:

1. The cover plate for the monitoring well shall be flush with the surrounding ground.
2. Upon completion of the testing, the holes shall be refilled by applicant per specifications set forth in Nebraska Revised Statutes, 1943, Chapters 46-1201 to 46-1241 and Rules and Regulations, Title 178, Chapter 12.

It is important to determine the proper name to be used for the permit holder. This should be the person(s) who is legally responsible for the well.

## WATER REMEDIATION or WATER DISCHARGE

These types of projects usually involve the applicant wishing to discharge water into the Public ROW or storm sewers for extended periods of time. Generally underground water has been contaminated and the remediation efforts require the water to be pumped from the ground, airified, and discharged to drainage systems. The use of the Public ROW may be considered only as a “last resort” when no other feasible route can be followed by the applicant. The application should address the following:

1. Provide documentation to identify what other alternative routes were considered and why those routes were not feasible.
2. All documentation showing the reason for the discharge plans for the discharge, contamination reports and copies of all federal, state and local jurisdictional permits.
3. The applicant should provide information that describes how the right-of-way will be used. The following as a minimum, should be included:
  - How long the system will operate.
  - The volume of discharge.
  - Assurances and explanation of proper operation, inspection and maintenance of the system.
  - Method of preserving the capacity of the ditch, culverts, or sewer systems that the applicant wishes to occupy. Examples would be to install a sensor or float system in the storm sewer to automatically shut off the system in the event of a storm. Consideration could also be given to giving a key to the appropriate city official.
  - Inspection of wintertime operations in regards to ice build-up blocking outlets or causing other problems.
  - What method will be used to shut off the system in case of downstream maintenance or construction.
4. The applicant shall provide to the LPA all reasonable assurances that the water discharged on LPA’s Public ROW is free of contamination.
5. The applicant shall agree to hold harmless and defend the LPA against any and all claims arising out of the discharge of water on LPA property.

The LPA should make the final determination to approve or reject the request for a permit. The LPA must concur that no feasible alternate location is available before allowing this type of use or occupancy. In addition, the LPA needs to determine that the

requested use of the right-of-way will not interfere with, or cause unreasonable hazards to, the use of the right-of-way for LPA public street, road, or other transportation purposes. In addition, the LPA should consider the possibility of creation of wetlands and maintenance problems associated with the use of LPA's right-of-way.

The LPA reserves the right to reject any water remediation permit applications where the LPA determines it to be in the LPA's best interest to do so.

## APPENDIX

The following is a non-exclusive list of statutes concerning the use of Public ROW.

The LPA is given statutory authority, in several instances, for the control of the use of ROW on federal-aid public streets or roads of the LPA.

### **18-413. Waterworks; right-of-way outside corporate limits; purposes; conditions.**

Any city or village in this state erecting, constructing or maintaining a system of waterworks, or part of a system of waterworks, without its corporate limits, is hereby granted the right-of-way along any of the public roads of the state, the streets and alleys of any village or city within the state, and over and through any of the lands which are the property of the state, for the laying, constructing, and maintaining of water mains, conduits, and aqueducts for the purpose of transporting or conveying water from such system of waterworks, or part of such system of waterworks, to such city or village erecting the same. Such city or village is hereby granted such right-of-way for the further purpose of erecting and maintaining all necessary poles and wires, or conduits, for the purpose of transporting, transmitting or conveying electric current from such city or village to such system of waterworks, or part of such system of waterworks, for power and light purposes; *Provided, however*, that such city in constructing such water mains, conduits, and aqueducts for transporting water, and such poles, wires, and conduits for transmitting electric current along the streets or alleys of any other village, as aforesaid, shall construct and locate the same in accordance with existing ordinances of such other village or city pertaining thereto, and shall be liable for any damage caused thereby; *provided further*, that poles and wires shall be constructed so as not to interfere with the use of the public roadway, and said wires shall be placed at a height not less than twenty feet above all road crossings.

### **31-353. Crossing of highways or railroads; mutual agreement; condemnation.**

The board shall have the power to construct the works across any street, avenue, highway, railway, canal, ditch or flume which the route of the ditches may intersect or cross, in such manner as to afford security for life and property, but the board shall restore the same, when so crossed or intersected, to its former state as nearly as may be, or in a manner not to impair its usefulness unnecessarily. Every company whose railroad shall be intersected or crossed by the works shall unite with the board in forming such intersections and crossings, and shall grant the privilege aforesaid. If such railroad company and the board, or the owners and controllers of such property, thing or franchise so to be crossed, cannot agree upon the amount to be paid therefor, or the points or the manner of such crossings, the same shall be ascertained and determined in all respects as is provided in respect to the taking of land.

### **31-354. Public lands; grant of right-of-way.**

The right-of-way is hereby given, dedicated and set apart, to locate, construct and maintain such works over and through any of the lands which are now or may be the property of the state.

### **31-430. Power to cross highways and railroads.**

The district may dig ditches and drains under and across railroads and public highways.

### **31-528. Enlarged district; power to maintain adequate sewerage facilities; damages; payment to municipalities.**

In addition to the powers of said district and of the trustees thereof as originally vested, such enlarged district and the trustees thereof shall have power and jurisdiction to provide and maintain adequate and suitable sewerage systems for the entire district; to provide and maintain sewage disposal or reduction plants; to enter upon any street, alley or public place in any municipality, city or village, within the limits of such enlarged district for the laying of sewers and the construction of sewerage systems. The district shall pay to such municipality, city or village, upon claim being filed therefor, the amount of any damage to any pavement or any public improvement. Such municipality, city or village shall not be entitled to any compensation for the use of its streets, alleys or public places except for damage to such public improvements.

**39-301. Roads; injuring or obstructing; penalties; exceptions.**

Any person who injures or obstructs a public road by felling a tree or trees in, upon, or across the same, by placing or leaving any other obstruction thereon, by encroaching upon the same with any fence, by plowing or digging any ditch or other opening thereon, by diverting water onto or across such road so as to saturate, wash, or impair the maintenance, construction, or passability of such public road, or by allowing water to accumulate on the roadway or traveled surface of the road or who leaves the cutting of any hedge thereupon for more than five days shall, upon conviction thereof, be guilty of a Class V misdemeanor and, in case of placing any obstruction on the road, be charged an additional sum of not exceeding three dollars per day for every day he or she allows such obstruction to remain after being ordered to remove the same by the road overseer or other officer in charge of road work in the area where such obstruction is located, complaint to be made by any person feeling aggrieved.

This section shall not apply to any person who lawfully fells any tree for use and will immediately remove the same out of the road nor to any person through whose land a public road may pass who desires to drain such land and gives due notice of such intention to the road overseer or other officer in charge of road work nor when damage has been caused by a mechanical malfunction of any irrigation equipment, when a sprinkler irrigation system had been set so that under normal weather conditions no water would have been placed upon the right-of-way of any road, when the county board grants permission for the landowner to divert water from one area to another along a county highway right-of-way, or when a municipality has granted permission along or across the right-of-way under its jurisdiction, except that if damage has been caused by a mechanical malfunction of irrigation equipment more than two times in one calendar year, the penalty provided in this section shall apply.

Any officer in charge of road work, after having given reasonable notice to the owners of the obstruction or person so obstructing or plowing or digging ditches upon such road, may remove any such fence or other obstruction, fill up any such ditch or excavation, and recover the necessary cost of such removal from such owner or other person obstructing such road, to be collected by such officer in an action in county court.

Any public roads which have not been worked and which have not been used or traveled by the public for the last fifteen years may be fenced by the owners of adjoining lands if written permission is first obtained from the county board of commissioners or supervisors and if adequate means of ingress and egress are provided by suitable gates.

**39-302. Roads; sprinkler irrigation system; restrictions; violations; penalty.**

A sprinkler irrigation system which due to location or design diverts, or is capable of diverting, water onto or across a public road so as to saturate, wash, or impair the maintenance, construction, or passability of such public road or allows water to accumulate on the roadway or traveled surface of the public road shall be equipped with a device which will automatically shut off the endgun of the irrigation system causing such diversion or accumulation of water. Any person who fails to comply with this section shall, upon conviction thereof, be guilty of a Class IV misdemeanor, except that section 39-301 shall be controlling with respect to mechanical malfunctions and normal weather conditions.

**39-307. Barbed wire fence along highway without guards; penalty.**

Any person who builds a barbed wire fence across or in any plain traveled road or track in common use, either public or private, without first putting up sufficient guards to prevent either human or beast from running into the fence shall be guilty of a Class V misdemeanor and shall be liable for all damages that may accrue to the party damaged by reason of such barbed wire fence.

**39-308. Removal of traffic hazards; determined by Department of Roads and local authority; violation; penalty.**

It shall be the duty of the owner of real property to remove from such property any tree, plant, shrub, or other obstruction, or part thereof, which, by obstructing the view of any driver, constitutes a traffic hazard. When the Department of Roads or any local authority determines upon the basis of engineering and traffic investigation that such a traffic hazard exists, it shall notify the owner and order that the hazard be removed within ten days. Failure of the owner to remove such traffic hazard within ten days shall constitute a Class V misdemeanor, and every day such owner fails to remove it shall be a separate offense.

**39-309. Sidewalks, trees, hedge fence bordering public roads; when lawful; removal by county board.**

It shall be lawful for the owner or occupants of land bordering upon any public road to build sidewalks not to exceed six feet in width, to plant shade and ornamental trees along and in such road at a distance not exceeding one-tenth of the legal width of a road from its margin, and to erect and maintain a fence as long as it is actually necessary for the purpose of raising a hedge on the margin a distance of six feet from and within such marginal lines, except that when, in the opinion of the county board, the hedge fence, trees, or undergrowth on any county road interferes with the use of the right-of-way for road purposes or presents a hazard to the traveling public, the county board may, in its discretion, remove, or cause to be removed, at county expense, the hedge fence, trees, or undergrowth from the road right-of-way.

**39-311. Rubbish on highways; prohibited; signs; enforcement; violation; penalties.**

(1) No person shall throw or deposit upon any highway:

(a) Any glass bottle, glass, nails, tacks, wire, cans, or other substance likely to injure any person or animal or damage any vehicle upon such highway; or

(b) Any burning material.

(2) Any person who deposits or permits to be deposited upon any highway any destructive or injurious material shall immediately remove such or cause it to be removed.

(3) Any person who removes a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance deposited on the highway from such vehicle.

(4) The Department of Roads or a local authority as defined in section 60-628 may procure and place at reasonable intervals on the side of highways under its respective jurisdiction appropriate signs showing the penalty for violating this section. Such signs shall be of such size and design as to be easily read by persons on such highways, but the absence of such a sign shall not excuse a violation of this section.

(5) It shall be the duty of all Nebraska State Patrol officers, conservation officers, sheriffs, deputy sheriffs, and other law enforcement officers to enforce this section and to make prompt investigation of any violations of this section reported by any person.

(6) Any person who violates any provision of this section shall be guilty of (a) a Class III misdemeanor for the first offense, (b) a Class II misdemeanor for the second offense, and (c) a Class I misdemeanor for the third or subsequent offense.

**39-312. Camping; permitted; where; violation; penalty.**

It shall be unlawful to camp on any state or county public highway, roadside area, park, or other property acquired for highway or roadside park purposes except at such places as are designated campsites by the Department of Roads or the county or other legal entity of government owning or controlling such places. This provision shall not apply to lands originally acquired for highway purposes which have been transferred or leased to the Game and Parks Commission or a natural resources district or to other lands owned or controlled by the Game and Parks Commission where camping shall be controlled by the provisions of section 37-305 or by a natural resources district where camping shall be controlled by the provisions of section 2-3292.

For purposes of this section, camping means temporary lodging out of doors and presupposes the occupancy of a shelter designed or used for such purposes, such as a sleeping bag, tent, trailer, station wagon, pickup camper, camper-bus, or other vehicle, and the use of camping equipment and camper means an occupant of any such shelter.

Any person who camps on any state or county public highway, roadside area, park, or other property acquired for highway or roadside park purposes, which has not been properly designated as a campsite, or any person who violates any lawfully promulgated rules or regulations properly posted to regulate camping at designated campsites shall be guilty of a Class V misdemeanor and shall be ordered to pay any amount as determined by the court which may be necessary to reimburse the department or the county for the expense of repairing any damage to such campsite resulting from such violation.

**39-313. Hunting, trapping, or molesting predatory animal on or from freeway; prohibited, exception; violation; penalty.**

No person shall hunt, trap, or molest any predatory animal on or upon any portion of a freeway or approach or exit thereto except at locations designated for such purpose. No person shall shoot from the roadway onto or across the land of any farmer or landowner or kill, attempt to kill, or retrieve any wildlife or game on such land prior to receiving permission from such farmer or landowner. Any person who violates this section shall be guilty of a Class V misdemeanor.

**39-805. Bridge over irrigation or drainage ditch; construction and maintenance; cost; how paid.**

Whenever any public highway within this state shall cross or be crossed by any ditch or channel of any public drainage or irrigation district it shall be the duty of the governing board of the drainage or irrigation district and the governing board of the county or municipal corporation involved to negotiate and agree for the building and maintenance of bridges and approaches thereto on such terms as shall be equitable, all things considered, between such drainage or irrigation district and such county or municipality. If such boards for any reason shall fail to agree with reference to said matter, it shall be the duty of the drainage or irrigation district to build the necessary bridges and approaches, and restore the highway in question to its former state as nearly as may be as it was laid out prior to the construction of the ditch or channel in question, and it shall be the duty of the county or municipal corporation involved to maintain said bridges and approaches; *Provided*, where more than seventy-five percent of the water passing through any such ditch or channel is used by any person, firm or corporation for purposes other than irrigation or drainage, it shall be the duty of such person, firm or corporation, so using such seventy-five percent or more of such water, to build and maintain solely at his, their or its expense, all such bridges and approaches thereto. Any bridge that may be built by any drainage or irrigation district or by any person, firm or corporation under the provisions of this section shall be constructed under the supervision of the Department of Roads, if on a state highway, and under the supervision of the county board or governing body of a municipality, if under the jurisdiction of such board or governing body of such municipality.

**39-1401. Terms, defined.**

As used in Chapter 39, articles 14 to 20, except sections 39-1520.01 and 39-1908, unless the context otherwise requires:

- (1) County board shall mean the board of county commissioners in commissioner-type counties and the board of county supervisors in township counties;
- (2) Public roads shall mean all roads within this state which have been laid out in pursuance of any law of this state, and which have not been vacated in pursuance of law, and all roads located and opened by the county board of any county and traveled for more than ten years; and
- (3) County road unit system shall mean the administration of county and township roads as provided in sections 39-1513 to 39-1518.

**39-1402. Public roads; supervision by county board.**

General supervision and control of the public roads of each county is vested in the county board. The board shall have the power and authority of establishment, improvement, maintenance and abandonment of public roads of the county and of enforcement of the laws in relation thereto as provided by the provisions of Chapter 39, articles 14 to 20, except sections 39-1520.01 and 39-1908.

**39-1403. Roads on county or township line; deviation from line.**

Any public road that is or shall hereafter be laid out on a county or township line shall be held to be a road on a county or township line, although, owing to the topography of the ground along the county or township line, or at the crossing of any stream of water, the proper authorities, in establishing or locating such road, may have located a portion of the same to one side of such county or township line.

**39-1404. Public grounds, interests in; cannot arise by operation of law.**

No privilege, franchise, right, title, right of user, or other interest in or to any street, avenue, road, thoroughfare, alley or public grounds in any county, city, municipality, town, or village of this state, or in the space or region under, through or above any such street, avenue, road, thoroughfare, alley, or public

grounds, shall ever arise or be created, secured, acquired, extended, enlarged or amplified by user, occupation, acquiescence, implication, or estoppel.

**39-1729. Access to public roads; right assured; landowners may waive; condemnation.**

The right of reasonable convenient egress and ingress from lands or lots, abutting on an existing street or road, may not be denied except with the consent of the owners of such lands or lots, or with the condemnation of such right of access to and from such abutting lands or lots.

**39-1808. Livestock lanes; when provided by county board.**

Whenever the condition of any sand roadbed shall be such that the driving of cattle or other livestock thereon will destroy or impair said sand roadbed, the county board may at its discretion, locate, build, and maintain lanes or other driveways adjacent to said road through which such cattle or other livestock shall be driven.

**39-1809. Livestock lanes; establishment; maintenance; powers of county board.**

In the establishment and maintenance of such lanes and driveways the county board shall have the same powers and follow the same procedure as is provided by law for the establishment and maintenance of public roads and highways, except as to bridges, culverts and the grading of such lanes and driveways.

**39-1811. Weeds; mowing; duty of landowner; neglect of duty; obligation of county board; cost; assessment and collection.**

(1) It shall be the duty of the landowners in this state to mow all weeds that can be mowed with the ordinary farm mower to the middle of all public roads and drainage ditches running along their lands at least twice each year, namely, before July 15, for the first time and sometime in August for the second time.

(2) Whenever a landowner, referred to in subsections (1) and (3) of this section, neglects to mow the weeds as provided in this section, it shall be the duty of the county board on complaint of any resident of the county to cause the weeds to be mowed or otherwise destroyed on neglected portions of roads or ditches complained of.

(3) The county board shall cause to be ascertained and recorded an accurate account of the cost of mowing or destroying such weeds, as referred to in subsections (1) and (2) of this section, in such places, specifying, in such statement or account of costs, the description of the land abutting upon each side of the highway where such weeds were mowed or destroyed, and, if known, the name of the owner of such abutting land. The board shall file such statement with the county clerk, together with a description of the lands abutting on each side of the road where such expenses were incurred, and the county board, at the time of the annual tax levy made upon lands and property of the county, may, if it desires, assess such cost upon such abutting land, giving such landowner due notice of such proposed assessment and reasonable opportunity to be heard concerning the proposed assessment before the same is finally made.

**39-1812. Hedges and trees; trimming; duties of landowners.**

Each landowner in this state upon whose land there is standing or growing any osage orange, willow or locust hedge fence, trees, or undergrowth, bordering the public roads, when such fence, trees, or undergrowth become a public nuisance to travel on the roads, or obstruct the view at or near railroad crossings, crossroads or abrupt turns in the road, shall keep the same trimmed not less than once a year by cutting back to within four feet of the ground, excepting trees, which shall be trimmed from the ground up eight feet, and the trimmings so cut shall be burned or removed from the road right-of-way within ten days after each cutting.

**39-1813. Hedges and trees; failure of landowner to trim; procedure; notice; hearing; order.**

Whenever any landowner or his agent shall neglect to trim such hedge fence, trees, or undergrowth as provided in section 39-1812, it shall be the duty of the person in charge of county road maintenance in the area in which such hedge fence, trees, or undergrowth is located, to report the same in writing simultaneously to the county attorney and to the county board, giving the location of the hedge fence, trees, or undergrowth and declaring the same to be a public nuisance. The county attorney shall, upon receipt of such written notice, immediately serve written notice upon the owner of the hedge fence, trees, or undergrowth, or upon his agent, to have such hedge fence, trees, or undergrowth, trimmed and the trimmings burned or removed within ten days. Upon failure of the landowner or his agent to comply with the notice of the county attorney within ten days, the county attorney shall give notice in writing to the landowner or his agent, fixing a date for a hearing before the county board on the complaint previously entered, that the landowner or his agent is maintaining a public nuisance by failing to trim said hedge fence, trees, or undergrowth in accordance with the provisions of section 39-1812. The notice shall fix a time not earlier than the next regular meeting of the county board, and in any event not less than five days after the date of the notice, when the owner or agent may appear before the county board and a hearing shall be had upon the matter. The county attorney shall appear at the hearing on behalf of the county for the abatement of the alleged public nuisance maintained by the owner or agent of the land upon which the hedge fence, trees, or undergrowth may be found. If at the hearing it shall appear that the hedge fence, trees, or undergrowth named in the notice are in a condition contrary to the provisions of section 39-1812, the county board shall forthwith and at once declare such hedge fence, trees, or undergrowth a public nuisance, and make an immediate order for the trimming of the same in accordance with the provisions of section 39-1812. If the owner or agent shall neglect or fail to comply with the order within thirty days after receipt of such written notice, the county board shall cause the same to be done. The cost shall be paid from the general fund and a statement of such cost shall be recorded by the county board with the county clerk, giving a proper description of the lands whereon such hedge fence, trees, or undergrowth was trimmed, and the county clerk shall include such costs in making the county tax lists as an assessment and charge against such lands, which charge shall be a lien upon said lands and be collected the same as all other taxes regularly levied. Nothing in sections 39-1812 and 39-1813 shall be deemed to abridge the right of appeal from the finding of the county board to the district court.

**39-1814. Road over private property; when authorized; fences; auto gates.**

Where it is apparent to the county board that a county or township road causes or would cause unnecessary burdens upon the county or township or upon the landowners adjoining such road, the county board may provide that such road may be fenced by such landowners; Provided, the safety and welfare of the traveling public are not substantially affected thereby; provided further, that the county board may install and maintain auto gates through such fences where the road crosses the fences; and provided further, that auto gates shall be not less than eighteen feet in length when located upon an established graded road.

**39-1816. Parking motor vehicles on right-of-way; county board; power to prohibit or restrict; violation; penalty.**

In order to promote safety, power is conferred upon the county board of any county to prohibit or restrict the parking of motor vehicles on the right-of-way of county highways outside the corporate limits of any city or village and to erect and maintain appropriate signs thereon giving notice of no parking or restricted parking.

Any person, firm, association, partnership, limited liability company, or corporation which parks a motor vehicle in the right-of-way of a county highway where no parking or restricted parking signs have been erected or maintained, in violation of such signs, shall be guilty of a Class V misdemeanor. Whenever any peace officer finds a vehicle parked in violation of this section, he or she may move such vehicle at the expense of the registered owner or request the driver or person in charge of such vehicle to move such vehicle.

If any motor vehicle is found upon the right-of-way of any county highway in violation of this section and the identity of the driver cannot be determined, the owner or person in whose name such vehicle is registered shall be prima facie responsible for such violation.

**46-153. Construction across streams, highways, railroads, and ditches; right-of-way over state lands; state water and water rights.**

The board of directors shall have the power to construct such works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch or flume which the route of such canal or canals may intersect or cross, in such manner as to afford security for life and property; but the board shall restore the same, when so crossed or intersected, to its former state as nearly as may be, or in a sufficient manner not to have impaired unnecessarily its usefulness. Every company whose railroad shall be intersected or crossed by such works shall unite with the board in forming such intersections and crossings, and grant the privilege aforesaid; and if such railroad company and such board, or the owners and controllers of the property, thing or franchise so to be crossed, cannot agree upon the amount to be paid therefor, or the points or the manner of the crossings, the same shall be ascertained and determined in all respects as is provided in respect to the taking of land. The right-of-way is hereby given, dedicated, and set apart, to locate, construct and maintain such works over and through any of the lands which are or may be the property of the state; and also there is given, dedicated, and set apart for the use and purposes aforesaid, all water and water rights belonging to this state within the district.

**46-266. Irrigation water; overflow on roads; duty of owner to prevent; violation; penalty.**

No owner of any water power or irrigation ditch, canal or lateral shall so construct, maintain or operate the same as to permit any water to escape therefrom upon any public road or highway. No person in the application of water in the irrigation of lands shall permit the same to escape from such lands and to flow upon any public road or highway. Any person violating any of the provisions of this section shall be guilty of a Class V misdemeanor. Each day water is permitted to flow or escape upon any public road or highway in violation of the foregoing prohibitions shall be deemed a separate and distinct offense. The overseer of highways or other officer in charge of road work in the area in which a violation occurs shall make complaint therefor, but no other person shall be precluded from making complaint.

**46-313. Eminent domain; use of highways; construction and operation; general law applicable.**

All general provisions of law applicable to electric light and power corporations and irrigation districts which pertain to the exercise of the power of eminent domain, the use and occupation of public highways, and the manner or method of construction and physical operation of plants, systems, and transmission lines shall be applicable, as nearly as may be, to irrigation districts in their exercise of the powers and functions, and in their performance of the duties conferred or imposed upon them under the provisions of sections 46-301 to 46-315.

**57-1102. Crossing public roads or highways; rights acquired; restrictions.**

Any such person, company, corporation or association, in the laying, relaying, operation and maintenance of any such pipeline within the State of Nebraska, shall have the right to enter upon and cross, with such pipeline, any public road or highway, under such reasonable regulations and restrictions as may be prescribed by the Department of Roads, if it is a state or federal highway, or by the county board of each county, as to all other public roads and highways within such county, and shall also have the right to lay, relay, operate and maintain such pipeline in and along any public road or highway.

**70-515. Applicability of laws.**

All provisions of law, now applicable to electric light and power corporations as regards the use and occupation of the public highways, and the manner or method of construction and physical operation of plants, systems, and transmission lines, shall be applicable, as nearly as may be, to municipalities and public electric light and power districts in their exercise of the powers and functions, and in their performance of the duties, conferred or imposed upon them under the provisions of sections [70-501](#) to [70-515](#).

**70-667. Plants, systems, and works; construction or operation; works of internal improvement; laws applicable; eminent domain; procedure; when available.**

All power plants and systems, all hydrogen production, storage, or distribution systems, all ethanol production or distribution systems, and all irrigation works constructed, acquired, used, or operated by any district organized under or subject to Chapter 70, article 6, or proposed by such district to be so constructed, acquired, owned, used, or operated are hereby declared to be works of internal

improvement. All laws applicable to works of internal improvement and all provisions of law applicable to electric light and power corporations, irrigation districts, or privately owned irrigation corporations, the use and occupation of state and other public lands and highways, the appropriation, acquisition, or use of water, water power, water rights, or water diversion or storage rights, for any of the purposes contemplated in such statutory provisions, the manner or method of construction and physical operation of power plants, systems, transmission lines, and irrigation works, as herein contemplated, shall be applicable, as nearly as may be, to all districts organized under or subject to Chapter 70, article 6, and in the performance of the duties conferred or imposed upon them under such statutory provisions. Such laws, provisions of law, or statutory provisions are hereby made applicable to all irrigation works and facilities operated by irrigation divisions of public power and irrigation districts organized under Chapter 70, article 6, and shall include, but not be limited to, the right of such district to exercise the powers conferred upon districts by Chapters 31 and 46, relating to operation, maintenance, rehabilitation, construction, reconstruction, repairs, extension, recharge for ground water, and surface and subsurface drainage projects and the assessment of the cost thereof to the lands benefited thereby. The right to exercise the power of eminent domain is conferred, except that this power may not be exercised for the purpose of condemning property for use by a privately operated ethanol production or distribution facility or a privately operated hydrogen production, storage, or distribution facility. The procedure to condemn property shall be exercised in the manner set forth in Chapter 76, article 7.

**74-307. Roads, streams, or canals; crossings; conditions.**

Any railroad may construct and carry its tracks across, over, or under any road, railroad, canal, stream, or watercourse when it may be necessary in the construction thereof. In such cases, the railroad shall construct its railroad crossings so as to not unnecessarily impede the travel, transportation, or navigation upon the road, railroad, canal, stream, or watercourse so crossed. The railroad may change the channel of any stream or watercourse whenever it may be necessary in the location, construction, or use of its road if it does not change the general course of the stream or watercourse or materially impair its usefulness.

**86-704. Telecommunications companies; right-of-way; wires; municipalities; powers and duties; increase in occupation tax; procedure; election.**

(1) Any telecommunications company, incorporated or qualified to do business in this state, is granted the right to construct, operate, and maintain telecommunications lines and related facilities along, upon, across, and under the public highways of this state, and upon and under lands in this state, whether state or privately owned, except that (a) such lines and related facilities shall be so constructed and maintained as not to interfere with the ordinary use of such lands or of such highways by the public and (b) all aerial wires and cables shall be placed at a height of not less than eighteen feet above all highway crossings.

(2) Sections 86-701 to 86-707 shall not transfer the rights now vested in municipalities in relation to the regulation of the poles, wires, cables, and other appliances or authorize a telecommunications company to erect any poles or construct any conduit, cable, or other facilities along, upon, across, or under a public highway within a municipality without first obtaining the consent of the governing body of the municipality. The municipality shall not exercise any authority over any rights the telecommunications company may have to deliver telecommunications services as authorized by the Public Service Commission or the Federal Communications Commission.

(3) Consent from a governing body for the use of a public highway within a municipality shall be based upon a lawful exercise of its statutory and constitutional authority. Such consent shall not be unreasonably withheld, and a preference or disadvantage shall not be created through the granting or withholding of such consent. A municipality shall not adopt an ordinance that prohibits or has the effect of prohibiting the ability of a telecommunications company to provide telecommunications service.

(4)(a) A municipality shall not levy a tax, fee, or charge for any right or privilege of engaging in a telecommunications business or for the use by a telecommunications company of a public highway other than:

(i)(A) Until January 1, 2013, an occupation tax authorized under section 14-109, 15-202, 15-203, 16-205, or 17-525; and

(B) Beginning January 1, 2013, an occupation tax authorized under section 14-109, 15-202, 15-203, 16-205, or 17-525 that meets the following requirements:

(I) The occupation tax shall be imposed only on the receipts from the sale of telecommunications service as defined in subdivision (7)(aa) of section 77-2703.04; and

(II) The occupation tax shall not exceed six and twenty-five hundredths percent except as provided in subsection (5) of this section; and

(ii) A public highway construction permit fee or charge to the extent that the fee or charge applies to all persons seeking use of the public highway in a substantially similar manner. All public highway construction permit fees or charges shall be directly related to the costs incurred by the municipality in providing services relating to the granting or administration of permits. Any highway construction permit fee or charge shall also be reasonably related in time to the occurrence of such costs.

(b) Any tax, fee, or charge imposed by a municipality shall be competitively neutral.

(5) Beginning January 1, 2013, a municipality may increase an occupation tax described in subdivision (4)(a)(i)(B) of this section to a rate that exceeds the limit contained in subdivision (4)(a)(i)(B)(II) of this section if the question of whether to increase such rate has been submitted at a primary or general election at which members of the governing body of the municipality are nominated or elected or at a special election held within the municipality and in which all registered voters shall be entitled to vote on such question. A municipality may not increase its existing rate pursuant to this subsection by more than twenty-five hundredths percent at any one election. The officials of the municipality shall order the submission of the question by submitting a certified copy of the resolution proposing the rate increase to the election commissioner or county clerk at least fifty days before the election. The election shall be conducted in accordance with the Election Act. If a majority of the votes cast upon such question are in favor of such rate increase, then the governing body of such municipality shall be empowered to impose the rate increase. If a majority of those voting on the question are opposed to such rate increase, then the governing body of the municipality shall not impose such rate increase.

(6) The changes made by Laws 1999, LB 496, shall not be construed to affect the terms or conditions of any franchise, license, or permit issued by a municipality prior to August 28, 1999, or to release any party from any obligations thereunder. Such franchises, licenses, or permits shall remain fully enforceable in accordance with their terms. A municipality may lawfully enter into agreements with franchise holders, licensees, or permittees to modify or terminate an existing franchise, license, or agreement.

(7) Taxes or fees shall not be collected by a municipality through the provision of in-kind services by a telecommunications company, and a municipality shall not require the provision of in-kind services as a condition of consent to the use of a public highway.

(8) The terms of any agreement between a municipality and a telecommunications company regarding use of public highways shall be matters of public record and shall be made available to any member of the public upon request, except that information submitted to a municipality by a telecommunications company which such telecommunications company determines to be proprietary shall be deemed to be a trade secret pursuant to subdivision (3) of section 84-712.05 and shall be accorded full protection from disclosure to third parties in a manner consistent with state law.

### **86-305. Electric service companies; highways; right-of-way; damage to private property; procedure.**

All persons, associations, and corporations engaged in the generating or transmitting of electric current for sale, use, or purchase in the state for power or other purposes, are hereby granted the right-of-way for all necessary poles and wires along, within, and across any of the public highways of this state. Such persons, associations, or corporations shall be liable for all damages to private property by reason of the use of the public highways for such purpose. Such damages shall be ascertained and determined in the manner set forth in sections 76-704 to 76-724.

### **39-301**