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Nebraska: First to Revise Highway Laws with Own Staff

Henry Grether
University of Nebraska College of Law

Jean Caha
Nebraska Bar Association member

NEBRASKA: FIRST TO REVISE HIGHWAY LAWS WITH OWN STAFF*

Henry Grether†
Jean Caha‡

The passage of Legislative Bills 187,[1] 188,[2] 189,[3] 190,[4] 191,[5] 365,[6] and 413[7] by the Nebraska Legislature in June of 1955 marked the completion of the first phase of the project to rewrite Nebraska's state highway and county road laws. These bills, comprising some seventy-nine sections concerning the state highway system and presenting a complete modernization of the existing laws on that subject, became effective September 18, 1955. These bills were the result of the federal aid project to rewrite Nebraska's highway laws which was initiated in June of 1954 by the Department of Roads and Irrigation in cooperation with the Bureau of Public Roads. It is the purpose of this article to transcribe the system used and problems encountered by the legislative group responsible for this revision in the hope that (1) other states involved in similar projects may benefit from substantive-law changes and the experiences described, and (2) groups interested in similar legislative endeavors may benefit from a description of the legislative tools used in passage of this legislation.

I. PROCEDURE

Initially, the study staff made a preliminary analysis of the existing law to formulate an outline of the problems and to devise a system for classifying the subject matter into logical article headings for the anticipated new statutes. Next, a card catalog and card indexing system for the approximately 600 Nebraska statutes directly legislating on the subject of highway and motor vehicle laws was set up to serve the staff in its preliminary processes of analysis and later to serve as a control check between the existing statutes and the newly proposed statutes. From the card index system, a general outline for the

* A progress report on the revision of the Nebraska highway laws.
† Associate Professor of Law, University of Nebraska.
‡ Member, Nebraska Bar Association.
1 Neb. Laws c. 148 (1955).
2 Id. c. 147.
3 Id. c. 338.
4 Id. c. 339.
5 Id. c. 235.
6 Id. c. 142.
7 Id. c. 329.

highway and motor vehicle laws was tentatively adopted. The purpose of this outline was to furnish a guide for reviewing and classifying the existing statutes into the new framework. The revision of the laws pertaining to the state highway system was given first priority to enable the state to meet the requirements for continued federal aid for the state highway system.

Upon the completion of this initial study, the study staff spent many hours in consultation with the State Engineer, his staff of engineers, the department attorney, members of the Attorney General's office, the Revisor of Statutes, and the Bill Drafter for the Legislature. These consultations, maintained throughout the course of the rewriting, were necessary in order to coordinate the engineering and the legal staffs for a common understanding of highway problems under the existing statutes so that the most feasible legal solutions could be devised by the new legislation. In determining the solutions to these problems, attorney general's opinions and court decisions were reviewed and comparable laws of other states, as well as the results of a similar study of North Dakota's highway laws, were studied for possible adaptation to Nebraska needs.

When the first draft of the proposed bill was completed, a series of conferences with the Legislative Council Committee on Highway Laws commenced. At these conferences, each section of the proposed bill was reviewed and discussed by the legislative committee along with the State Engineer, the department attorney and the study staff.

Review and revision of this first draft continued until the draft was put into bill form for introduction in the Legislature. The resulting bills, Legislative Bills 187, 188, 189, 190, 191 and 365, were introduced in January of 1955, by the five members who comprised the Legislative Council Committee. Even then, however, the revision did not end. Amendments, proposed by the Legislative Committee on Public Works which heard the bills, were studied and revised. Amendments also were prepared to correct errors which still existed in the bills. During the progress of the bills through the Legislature, the study staff was fortunate to have the cooperation of all senators who desired to propose amendments to these bills.

It is in the amending process during the session of the Legislature where mistakes and errors can most easily creep into a complicated legislative act. At this stage of developing new law, instant decisions must often be made because failure to initiate a popular compromise amendment may result in defeat

of the entire act. On the other hand, a simple amendment also may reach the same undesired result by rendering the proposed act unconstitutional or by undermining the purpose of the act so seriously that the act might as well be killed as passed in such "watered down" form. During the various steps in the process of a legislative bill becoming law, unforeseen crises are prone to develop, and when they do, the bill's proponents have to act effectively and swiftly if months of legal research are to be saved from the axe of negative votes. As these crises are reached, it becomes apparent that passage of new law is not just a matter for the legal technician but is the problem child of an efficiently coordinated team. After a crisis develops it is usually too late to form a team. The team must be organized and trained well in advance of the introduction of the bill. Legal technicians must have the law at their fingertips, and engineers and other specialists must be ready to supply factual data at a moment's notice so that the legislators sponsoring the bill are properly equipped to steer the act through committee hearings and floor debate.

For several months prior to the opening of the sixty-seventh session of the unicameral, the legal study staff held numerous conferences with the Legislative Council Committee of five senators. At these meetings each section of the proposed laws was thoroughly explained and discussed so that by the time the bills were formally introduced, the committee members were completely familiar with all of the provisions of the bills and the reasons for these provisions. After introduction, the bills were assigned to the nine member Public Works Committee. This committee held several executive sessions with the five senators on the Legislative Council Committee and with the members of the legal study staff. Through these meetings the legal study staff again had the opportunity to become acquainted with the senators and the senators had the opportunity to study each section of the proposed laws. These numerous meetings resulted in general agreement as to the bills with the exception of a few issues which remained to be concluded after debate before the entire Legislature. By the time the bills reached the floor of the unicameral for general debate, there were at least fourteen senators out of a total of forty-three who were very familiar with the bills. Although all fourteen senators were not friendly to the acts, most of these senators were enthusiastic supporters of the bills; and this group formed the necessary hard core of working senators that are a "must" when the unforeseen crises develop during the passage of new law. Without such represen-

tation, it would be most difficult for a state department to hold its own against the persuasive lobbying of those representing special interest groups who may oppose a bill or parts of a bill purely for selfish reasons. All that goes into the passage of new highway law is not entirely engineering and legal research. Organization of a coordinated team of interested experts is necessary. The minimum formula for success then appears to include efficient technical assistance, proper organization and plenty of human relations.

II. SUBSTANTIVE LAW

An attempt to report all the legal changes in Nebraska highway law would require a number of large volumes. There is great temptation to detail quantities of minutiae that may be of no interest to persons not directly involved in the particular problem of highway law rewriting. Because of the necessity of adopting some scheme of classification and for convenience to the writers of this report, twelve descriptive headings have been chosen as representing the main substantive changes accomplished in Nebraska highway laws. Although the twelve headings are arbitrary, they at least are suggestive of the major functional divisions upon which the legal study was focused. The divisions are:

A. Sections of statutes arranged in functional and more logical sequence.
B. Archaic provisions eliminated.
C. Ambiguities clarified.
D. Powers delegated to the department broadened and specifically enumerated.
E. Proper engineering practices of the department legalized.
F. Legislative intent and definitions.
G. Highway establishment and abandonment.
H. Broad authority delegated for efficient inter-governmental relations of cooperating governmental units.
I. Research and testing essential to modern highway engineering provided for.
J. Broad authority for access control measures delegated to department.
K. Maintenance.
L. Revenue and finance.

A. Sections of Statutes Arranged in Functional and More Logical Sequence

It is important to anyone interested in a particular phase of law to have all the laws which relate to that subject assembled

in one place in the statute books and in a logical order according to subject matter so as to make research on that subject a comparatively easy matter. Because there had never been any attempt to pass one complete law concerning Nebraska highways, but rather the laws had been amended as expediency demanded, the highway laws were neither assembled nor were they in any logical order. This meant that those who were interested in highway legislation were required to search the entire statutes to be assured that all the relevant provisions had been found. This confusion also tended to bring about the passage of inconsistent and conflicting laws. For example, the authority of the department to erect snow fences to protect the highways[8] and to acquire land of other state agencies for highway purposes[9] was included in the laws which concerned county roads rather than under the chapter heading "State Highway System." Sections pertaining to the operation of motor vehicles,[10] the jurisdiction of safety devices[11] and the regulation of advertising signs[12] which more properly belonged with the subject matter concerning rules of the road were included in those laws which dealt with the construction, maintenance and control of the state highway system.

In drafting the recodification, one of the first steps taken was the preparation of an outline comprising, in orderly sequence and arrangement, the component parts that make up any good highway law. The outline contained the following classifications of the subject matter of the new law:

Legislative Intent
Words and Phrases
Highway Administration
Inter-Governmental Relations
Designation of System
Planning and Research
Land Acquisition
Control of Access
Construction and Maintenance
Controls
Equipment and Materials
Finances
Miscellaneous

The existing law was then assembled and that which was retained in L.B. 187 was placed under the logical headings in the outline. As new provisions were drafted, these too were placed in the proper order of the outline and as a net result, L.B. 187 provides a more logical working arrangement and sequence of highway laws.

[8] Neb. Rev. Stat. §§ 39-252, 39-253, 39-254 (1943).
[9] Id. § 39-119.
[10] Id. §§ 39-615, 39-616.
[11] Id. §§ 39-631, 39-632 (Supp. 1953).
[12] Id. §§ 39-617, 39-618 (1943).

B. Archaic Provisions Eliminated

Despite the advent of the atomic age and countless other scientific and engineering wonders, the legal tools available to the highway engineers and administrators in the year 1954 were only those essential in the days when the basic road problem was how to get the horse and buggy out of the mud. By amendment to the basic horse and buggy statutes, some modern legal authorizations had been added in a haphazard way to the powers of the Department of Roads and Irrigation. However, prior to the passage of L.B. 187 many necessary statutory provisions had not been enacted even by the piecemeal amendatory processes, and some of the horse and buggy statutes still remained to clutter up the statute books and to hamper proper highway administration. Even now, because the Nebraska highway law revision is only partially completed, there remains in the law such prize specimens as a fine of twenty dollars for the offense of leaving horses attached to a carriage carrying passengers for hire and for not leaving the reins in the hands of some person to prevent the horses from running away.[13] A fine of five to twenty-five dollars is also provided for continuously camping upon a public highway for more than twenty hours[14] or for camping at two places within a radius of five miles upon any public highway within a period of thirty days.[15]

Even at a time when the Congress of the United States was busy debating means of extending a network of inter-state defense super-highways, the Nebraska law shackled the engineers with a limitation that no public road should have a width exceeding sixty-six feet.[16]

Not only was the width of a public road restricted, but the department had no authority to acquire land for right-of-way except as was needed for the relocation or alteration of existing highways.[17] Under the new legislation, the Department not only has legal authority to acquire land for present and future purposes and for exchange purposes,[18] but also to acquire land for any state highway purposes, which, without being limited to only the specifically named purposes, includes by express reference all of the following:

[13] Id. § 39-702.
[14] Id. § 39-708.
[15] Id. § 39-710.
[16] Id. § 39-104.
[17] Id. § 39-603 (Supp. 1953).
[18] Neb. Laws c. 148, § 20 (1955).

(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, 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; and

(l) The construction and maintenance of sidewalks and highway illumination.[19]

Even though defects may appear in new legislation of such magnitude, the contrast between the scope of the old statutes and the new statutes is apparent. In one jump the difference takes in nearly a century of road building progress.

C. Ambiguities Clarified

The many ambiguities which existed in the prior law were a source of constant headache to the Department of Roads and Irrigation. Because the Department has only that authority which is expressly delegated to it by the Legislature, problems arose in determining the legislative intent with regard to the ambiguous provisions.

The law regarding the responsibility of the Department for maintenance of highways within the corporate limits of cities

[19] Ibid.

having a population of between 2,500 and 25,000 persons is illustrative of such ambiguities. The statute provided that ". . . . portions of such highway . . . shall be maintained by the department to the extent of one half the cost of such maintenance and not to exceed twenty-four feet in width . . . ."[20] With the additional knowledge that there are few, if any, highways in Nebraska which are only forty-eight feet wide, the ambiguity in this provision is apparent. Under the new law, the measure of responsibility of the Department in such cities is one-half the cost of surface maintenance, without any reference to footage.[21]

Ambiguities also existed in the provisions for land acquisition and advertisement for bids on contracts. The statute on land acquisition provided that the Department could acquire land by negotiations or by eminent domain.[22] The meaning of the word "negotiations" in this provision was unclear. The powers of the Department to acquire land could be construed as being very broad or very restrictive, and there was nothing to indicate which construction should be applied. Under the new law, there is little question of the methods by which the Department may acquire land. These methods are spelled out in detail by providing ". . . . the department is hereby authorized to acquire . . . lands by gift, agreement, purchase, exchange, condemnation or otherwise." These lands can be acquired in fee simple or in any lesser estate.[23]

The law regarding the advertisement for bids on contracts requires that the Department advertise for bids ". . . . for not less than twenty days in three consecutive issues of the official county paper. . . ."[24] It is apparent that this wording referred to weekly newspapers. In those instances in which the official paper designated was a daily paper, the Department, in order to comply with this provision, was required to advertise each day for twenty days. The new bill clarifies this law by providing that ". . . . the department shall advertise for sealed bids for not less than twenty days by advertising once a week for three consecutive weeks in the official county newspaper. . . ."[25]

D. Power Delegated to Department Broadened and Specifically Enumerated

A basic proposition of constitutional law in Nebraska is that

[20] Neb. Rev. Stat. § 39-604 (1943).
[21] Neb. Laws c. 148, § 39(2) (1955).
[22] Neb. Rev. Stat. § 39-603 (Supp. 1953).
[23] Neb. Laws c. 148, § 20(1) (1955).
[24] Neb. Rev. Stat. § 39-623 (Supp. 1955).
[25] Neb. Laws c. 148, § 48 (1955).

executive departments have only such powers as are expressly delegated.[26] The most common type of restriction on executive power in the Department of Roads and Irrigation resulted from the failure of the Legislature to delegate broad enough powers to enable the Department to carry out its essential functions. However, there also were express restrictions found in the Nebraska law which obviously were anachronisms and which served to halt the highway engineer. The restriction previously mentioned, which provided that roads should not have a width greater than sixty-six feet,[27] is in marked contrast to the new provision authorizing such width as is deemed necessary by the Department.[28] Even a casual reading of sections 20, 21 and 22 of L.B. 187 will impress the reader who was familiar with the "pre 1955" highway law that instead of virtually having no power to acquire right-of-way and property for other purposes, the Department has been given a full tool chest of legal methods for making property acquisitions.

It is impossible in this article to describe all of the legal obstacles removed through the grant of powers to the Department. Two more examples should be sufficient to indicate the typical kind of omissions and restrictions which the new legislation remedied.

The old law provided that plans and specifications for highway projects could be inspected at the office of the county clerk where the work was to be done.[29] This required the Department to incur substantial expense to place the plans and specifications with the various county clerks. This expense represented waste because no bidders had gone to the county clerks to inspect plans and specifications for years. It was easier to inspect such plans and specifications at the Department offices in Lincoln. In addition, in city or county projects involving federal funds and in which the Department acted as agent for a city or county, the Department, because of an omission in the law, did not have authority to let these contracts at the capitol as they did other contracts. In taking the bids, large teams of highway department employees had to travel to small towns and spend several days to process the letting of bids which everyone concerned would have preferred to handle in a more metropolitan center and nearer the regular offices and facilities of the Department.

[26] Neb. Const. art. IV, § 1.
[27] Neb. Rev. Stat. § 39-104 (1943).
[28] Neb. Laws c. 148, § 20(1) (1955).
[29] Neb. Rev. Stat. § 39-623 (Supp. 1953).

The new law provides that the Department may act as agent for such cities and counties for the purpose of taking bids and letting contracts, and that the bids may be taken and the contracts let at the capitol, with the consent of the city or county.[30] The provision of the new law in regard to plans and specifications is that the advertisement for bids shall state where the plans and specifications for the work may be inspected,[31] and the old requirement of having such plans and specifications at the office of the county clerks was repealed. Also added was the statement of policy that plans and specifications are to conform, as closely as it is practicable, to those adopted by the American Association of State Highway Officials.[32]

The second example relates to detours. The prior law authorized the Department to provide for detours only by using county roads and city and village streets.[33] No authority was granted to construct a necessary detour or to close temporarily a highway. The new act in addition to authorizing use of county roads and city and village streets, also grants authority to acquire land for detours, to create a new temporary road, and to temporarily close a highway and erect suitable barricades.[34]

E. Proper Engineering Practices of the Department Legalized

The responsibility of the Department of Roads and Irrigation to provide a system of highways to meet the demands of the people in the state is a serious one. To develop such a system under laws which are not in step with modern requirements in the engineering field poses problems of both legal and policy nature. Although legally the Department should act only within the authority granted to it, the question becomes more complex in those instances where to do so would deprive the state and the people of any major highway development. Theoretically, the Department should not have been receiving federal aid for the past decade or more because the consent to such aid required by the Federal Aid Act was not provided for in the statutes. Yet without such aid, few highways would have been constructed or improved in Nebraska during this period of time. In 1953 it was discovered that the Department had been maintaining approximately 1,900 miles of federal highways without any authority

30 Neb. Laws c. 148, § 50 (1955).
31 Id. § 48.
32 Id. § 16.
33 Neb. Rev. Stat. § 39-604.01 (Supp. 1953).
34 Neb. Laws c. 148, §§ 30, 45, 46 (1955).

to do so. The fund of money for maintenance of highways provided for in the statutes was earmarked for the maintenance of the state highway system and these federal highways were not a part of that system.[35] Most of these 1,900 miles of roads were important links serving inter-state travel and heavy local traffic, but the Department was legally prevented from maintaining them.

L.B. 187 now provides for the necessary assent to federal aid.[36] Although the law was written in such a manner so as to provide a continuing assent to all of the federal aid acts, it is doubtful whether or not this can be done constitutionally. This section will in all probability have to be amended each session in order to be assured that Nebraska has assented to all of the federal aid acts up to the current time.

L.B. 187 also incorporates by reference a map showing the highways which are to be the state highway system[37] in lieu of listing the highways by number as was done in the old law.[38] There is no designation of highways as federal highways. The maintenance section[39] then refers to the state highway system so that there will be no question of authority to maintain any of the highways on that system.

Basic to the Department's present practice of determining which roads are to be reconstructed or improved is the sufficiency rating. This rating is a modern engineering formula which is used to determine which roads have priority for reconstruction or improvement and precludes the practice of improving roads according to the amount of pressure exerted by special-interest groups or persons. Policy-wise, the use of such a formula is a desirable thing, but it has no legal basis in the existing statutes. The following provision requires the Department to continue this practice where such a practice would be desirable:

> The relative urgency of proposed improvements on the state highway system shall be determined by a sufficiency rating established by the department, insofar as the use of such a rating is deemed practicable. The sufficiency rating shall include, but not be limited to, the following factors: (1) Surface condition, (2) economic factors, (3) safety, and (4) service.[40]

[35] Neb. Rev. Stat. § 39-606 (Supp. 1953); Report of Attorney General 280, 289, 298 (1953-54).
[36] Neb. Laws c. 148, §§ 4-6 (1955).
[37] Id. § 9.
[38] Neb. Rev. Stat. § 39-601 (1943).
[39] Neb. Laws c. 148, § 39 (1955).
[40] Id. § 37.

Because the sufficiency rating and the factors to be considered are still in the experimental and development stage, only four broad classifications of factors were written into the law so that the Department would not be prevented from including other factors if such inclusion was found to be desirable.

F. Legislative Intent and Definitions

Nebraska's old highway laws did not contain a declaration of legislative intent and none of the words used in the laws was defined. Under the new declaration of legislative intent adopted, the Legislature in effect said that the convenience and safety of the traveling public is the most important factor to be considered in the location, relocation and abandonment of highways and that it is expected that in constructing, maintaining and operating roads and highways, an integrated system of highways shall be provided.[41] To this end, the Legislature made the State Engineer and the Department of Roads and Irrigation direct custodians of the state highway system with broad authority, subject to the limits of the constitution and the mandates imposed by the provisions of the act, to plan, develop, construct, operate, maintain and protect the highway facilities of the state within the limits of available funds.

Such a declaration of intent (1) provides a valuable yardstick for those responsible for developing and preserving the highway facilities of the state; (2) serves the public interest when conflicts arise between public and private rights; (3) sets up a standard of performance which must be adhered to by the highway officials in their administration of delegated functions; and (4) serves as a broad framework for the general guidance of future legislatures and as an aid for the courts in litigation on highway matters.

Thirty words and phrases are defined in the new law.[42] So far as possible, the definitions are based on recommendations of the American Association of State Highway Officials. Lack of clarity in meanings and litigation often arise from semantic problems because custom and usage have caused the same word or phrase to convey different meanings to different persons. Therefore, it is important that terms used in statutes may be uniformly construed and interpreted by everyone relying on the statutes. The old Nebraska statutes were deficient in this respect.

[41] Id. § 1.
[42] Id. § 2.

G. Highway Establishment and Abandonment

A major source of controversy in connection with the new act was what highway system should be designated as the official system for the state. The Legislature, after twice reversing itself, finally decided to cut 938 miles from the present system and add 404 miles of new road.[43] Two other alternatives were to authorize the Department to designate the system or to adopt the recommendation of the Legislature's Public Works Committee to designate the highways which were presently maintained as the state highway system. However, an amendment was added to the plan adopted and provided that the Department should maintain the roads being relinquished until July 1, 1956, when the counties will take over the responsibility for these roads. As the legislation was passed, a completely new policy of highway designation was adopted and new methods of relocating, redesignating and abandoning highways were established.[44] Much hope is held for the new procedures which should free the highway engineers from the unworkable legal strait-jacket that even prevented the department from legally maintaining about 1,900 miles of highways in the state—some of which were the most important and most highly traveled in Nebraska.

H. Broad Authority Delegated for Efficient Inter-Governmental Relations of Cooperating Governmental Units

The development of an integrated highway program is not a job solely for the Department of Roads and Irrigation. A close working relationship between the state and local governments is essential. Except for one section, which provided that counties may aid the state with funds for the construction of a state or federal highway in such counties,[45] the existing law was silent insofar as providing legal authorization for such a working relationship. The lack of express authority raised a question as to the legal propriety of assisting local subdivisions with their engineering problems.

L.B. 187 encompasses approximately ten sections which pertain to intergovernmental relations.[46] Very important in the field of intergovernmental relations are those provisions in which the Department is given the responsibility of administering the federal-aid highway laws as they apply to local jurisdictions in ac-

[43] Id. § 9.
[44] Id. §§ 13-15.
[45] Neb. Rev. Stat. § 39-612 (1943).
[46] Neb. Laws c. 148, §§ 5-9, 17, 36, 40-41 (1955).

cordance with the requirements of the federal government.[47] The local jurisdictions are also given the necessary authority to enter into contracts with the Department to enable them to participate in the federal-aid program.

In the highway planning field the Department is organized to conduct state-wide research in highway transportation problems. It has the technical knowledge of highway construction and maintenance and is in a proper position to keep abreast of new highway developments in both the management and technical field. Because most of the counties or cities are not in such a position, the Department is given authority to act in an advisory capacity to, or to enter into agreements with these local subdivisions in the matter of planning, designating, financing, constructing, establishing, improving, maintaining, using, altering, relocating, regulating or vacating of roads, highways, streets, connecting links and controlled-access facilities.[48]

This authority is made broad because of the importance of amiable intergovernmental relations and the impossibility of foreseeing every situation in which such authority would be desirable. In addition, the Department will work cooperatively with certain classes of cities in the development of master street plans,[49] and with all local subdivisions in carrying out research programs.[50] These sections will encourage amiable relations between the state and local governments in accordance with the declared intent of the Legislature[51] and will develop better road programs for the Department and all local governments.

I. Research and Testing Essential to Modern Highway Engineering Provided for

It is vital for today's highway officials, who are interested in modern highway development, to be able to carry on research and testing projects. These projects are necessary in the determination of the need for and the location of a new highway, in the purchase of equipment, to ascertain the best material to be used in highway construction, and in other functions of the Department. The Department of Roads and Irrigation has established a testing laboratory and has followed the practice of carrying on research and testing projects. Yet there was no au-

47 Id. §§ 5-6.

48 Id. §6.

49 Id. § 7 (connecting links), § 8 (advisory capacity concerning roads, highways and streets), § 36 (controlled-access facilities).

50 Id. § 12.

51 Id. § 17.

thorization in the law for such practice by the Department. Here again, the law failed to keep pace with modern practice and the Department legally could have been prevented from carrying out these necessary functions.

L.B. 187 brings the law up to date with the Department practices by authorizing the establishment of a testing laboratory and by authorizing the Department to do research and testing, including the power to enter into agreements to carry on research and test projects pertaining to road purposes with other states.[52] This latter authority will conserve funds by allowing the Department to share expenses and by preventing any duplication of efforts by the Department when a similar project is being carried on by some other state or organization.

J. Broad Authority for Access Control Measures Delegated to Department

The modern demand for more and faster automobiles requires the control of access to highways for maximum safety for travelers. Highway officials in most states have recognized the need for extensive access control and the need for legislation to authorize this control. The Department, under existing law, had the authority to limit access to reasonably convenient egress or ingress on an existing highway or to totally restrict access on such highways by consent or condemnation of such right of reasonable access.[53] The Department also could totally restrict access in those instances where a new highway was constructed and as a result of such construction, property abutted on the highway that did not have direct egress and ingress to it before.[54]

However, there was no specific authority to establish controlled access facilities or to regulate the method of construction or use of access roads.

The access provisions of L.B. 187 retain the existing law on control of ingress and egress,[55] with important additions. The Department is given authority to designate and establish controlled access facilities, with the advice of the State Highway Commission and the consent of the Governor.[56] Upon the establishment of such facilities, the Department has the authority to prohibit, restrict, and regulate access to these facilities. In ad-

[52] Id. §§ 11, 17-19.
[53] Neb. Rev. Stat. § 39-634 (Supp. 1953).
[54] Id. § 39-635.
[55] Neb. Laws c. 148, §§ 29, 30 (1955).
[56] Id. § 27.

dition, the Department has authority to construct the necessary frontage roads to serve such facilities and thereby prohibit any access which might have been allowed before the frontage roads were constructed.[57]

The Department is also given specific authorization to make regulations and issue permits for the construction or use of any private entrance or exit, approach road, facility, thing or appurtenance upon or connected to highway rights-of-way.[58] This regulatory power is essential to insure proper highway construction and use for the safety of users. The provisions are strengthened by providing penalties for violations of the regulations or permit conditions, and by retaining the existing provision for injunction proceedings.[59]

Provision also is made for the construction of road crossings by the Department where the location or relocation of a highway causes the severance of land which is being used for agricultural purposes.[60] This was being done by the Department in order to mitigate severance damages prior to the passage of L.B. 187, although there was no authorization for it to do so.

These access control provisions not only will enable the Department to provide highways which are more safe for travel but also to prevent excessive roadside development. Thus engineers will not be confronted with the necessity of building a bypass to a bypass because of such extensive development. This limitation of roadside development will also lower land acquisition costs whenever it is desired to widen an existing highway to conform to new highway standards.

K. Maintenance

The laws setting forth the duties of the Department of Roads and Irrigation in regard to the maintenance of state highways were a maze of ambiguities and omissions. The Department was required to maintain the state highway system and any other highways if all or part of the construction costs were paid with state or federal funds.[61] However, as was shown earlier, the Department, by a legal quirk, was precluded from maintaining approximately 1,900 miles of some of the most important highways in the state.

[57] Id. § 28.
[58] Id. §§ 32, 33.
[59] Id. §§ 34, 35.
[60] Id. § 31.
[61] Neb. Rev. Stat. § 39-604 (1943).

There were exceptions to this broad statement of the maintenance duties of the Department insofar as highways within the corporate limits of cities and villages were concerned. The responsibility for these highways was divided between the city and state. In cities and villages with a population under 2,500 inhabitants, the Department had sole responsibility for the maintenance of the highways.[62] In cities having a population of more than 2,500 and less than 25,000 inhabitants, the Department was responsible for one-half the cost of maintenance not to exceed 24 feet in width.[63] As was pointed out earlier, the state has few highways which are only 48 feet in width. With the law so written, if the highway did exceed 48 feet in width, it was impossible for the Department to determine which 24 feet it was to maintain or on which 24 feet it was to pay the maintenance costs—24 feet from the middle of the highway—or 24 feet from either side? Was this to include maintenance of the traveled portion only or the entire right-of-way? In addition, the law failed to state what the responsibility of the Department was in those cities with a population greater than 25,000. It was the Department's practice, in spite of this omission, to require these cities to maintain the highways within their corporate limits.

In L.B. 187, the Department is given the duty of maintaining the state highway system, and drainage facilities on this system.[64] The state highway system is that system of highways which is shown on the map adopted by the Legislature, with any subsequent changes in highways being shown on the map on file in the office of the State Engineer.[65] This method of establishing the state highway system should prevent any interpretation of the law so as to preclude the Department from maintaining important highways in the state.

A separate section is written into the law setting forth in clear language the responsibility of the cities and the Department for the maintenance of highways, or connecting links as they are called in the law, within the corporate limits of such cities.[66] The population limitations are changed to coincide with the classes of cities as they are established by statute; namely, metropolitan, primary, first class, and second class cities and villages. The Department is not responsible for any maintenance of the connecting links, including structures within the corporate limits of

[62] Ibid.
[63] Ibid.
[64] Neb. Laws c. 148, §§ 37, 38 (1955).
[65] Id. §§ 9, 11.
[66] Id. § 39.

cities of the metropolitan and primary classes. In cities of the first class, the Department is responsible for one-half the cost of surface maintenance of the connecting links including structures and excluding any parking lanes. The Department will have total responsibility for maintenance of bridges in these cities. In cities of the second class, and villages, the Department has total responsibility for maintenance of the connecting links, including the parking lanes and the structures on these connecting links. The section was written as closely as possible to conform to the actual practices of the Department.

In addition to these maintenance provisions, L.B. 187 provides that special agreements can be entered into with any political or governmental subdivision or any public corporation for the maintenance of roads, streets, highways, connecting links, and controlled access facilities and any additional width which might be added to a highway or structure on the state highway system by any political or governmental subdivision or public corporation.[67]

L.B. 187 also provides that the Department may let contracts for maintenance of highways and requires that anyone desiring to submit a bid for a maintenance contract which exceeds $2,500 shall apply to the Department for prequalification.[68] The Department previously did not have authority to let contracts for maintenance work.

L. Revenue and Finance

The subject of fiscal policies and financing was considered to be outside the scope of the rewriting of Nebraska highway laws. Nevertheless, some important provisions relating to these matters were included in the legislative program for the 1955 session. Lopping 938 miles off the present state highway system, while not strictly a revenue measure, will have a direct effect upon the Department's financial ability to provide an integrated network of highways designed for modern motor transportation. The various counties will assume responsibility for maintenance of these 938 miles of roads on July 1, 1956.[69]

The policy of improving present highways in priority, established by a sufficiency rating system designed by highway engineers, is established by the new law and while not a revenue measure, is very important to Nebraska highway economics.

[67] Id. §§ 7, 36, 41.
[68] Id. § 51.
[69] Id. § 9.

Administrative procedures and excessive bookkeeping procedures necessitated by legal requirements of keeping various nonfunctional classifications of department funds were improved upon in several ways by new legal provisions included in the recodification bill. For example, most of the former classes of funds were abolished and the category of "highway cash fund" was preserved into which the old funds were consolidated.[70]

Earmarked in the state budget for the Department of Roads and Irrigation is $81,511,500—more than one-third of the state budget total.[71] Despite provision for this large percentage of the state budget to go to this Department, sufficient funds were not provided for building a system of interstate highways proposed by the federal government unless substantial economies can be accomplished in providing for the present system. To leave flexibility in its highway building program, however, the new law does refer to the federally proposed highway system and exempts from the total mileage limitation placed on the state highway system, any highways which are a part of the proposed interstate highway system for which the federal government provides more than half of the money.[72] Behind this is the possibility that the interstate highway system may require long stretches of new right-of-way, particularly between Grand Island and North Platte, Nebraska.

Since an organization can function no better than the people forming such organization, a very important measure is one providing for a substantial pay raise for the position of State Engineer.[73]

CONCLUSION

The hodgepodge of state highway laws on the statute books prior to the adoption of the new highway laws, represented only a small percentage of the total road statutes in Nebraska. An important step has been taken in Nebraska to equip highway engineers and administrators with a proper legal instrument which should enhance the Nebraska highway program for many years. Nevertheless, revision of Nebraska statutes relating to highways, streets and roads is presently incomplete. Curative amendments and technical changes to the new laws will certainly be necessary at the next session of the Legislature. Furthermore, a volumin-

[70] Id. §§ 26, 40, 41, 56.
[71] Neb. Laws c. 222, § 23 (1955).
[72] Neb. Laws c. 148, § 10 (1955).
[73] Neb. Laws c. 329, § 3 (1955).

ous portion of the statutes has not yet been revised. Probably the largest single defect in the old law, which was just revised, was the absence of provisions delegating necessary authority and power to the engineers and administrators charged with the responsibility of the state highway program. For example, there were only thirty-two sections of statutes relating to state highways in the old law, while L.B. 187, which was only one of numerous bills passed by the Legislature, contained sixty-three sections, or twice as many sections as previously related to this subject matter. On the other hand, the road statutes, which were not within the scope of the state highway laws revision, contain more than 525 sections of statutes. It is not unlikely that a revision of these laws will result in a reduction in the number of sections rather than an increase. Naturally the revision of the laws pertaining to the ninety-three counties of Nebraska is a much larger undertaking than the revision of laws for the highway department. This is so not only because there are so many counties, but also because of the different kinds of legal organization of counties; the variance of interest between the counties; the greater volume of statutes to study; and because these statutes generally are older and more outdated than were the state highway statutes.

Despite modernization of the state highway statutes, the area of cooperation between the levels of state, county and city governments is seriously jeopardized due to the omission, in the county and city statutes, of provisions supplementing the powers delegated to the Department of Roads and Irrigation in the new revision. This lack of correlation between statutes pertaining to state, county, and city roads will continue to impede progress in any modern road program unless it is corrected. As a declaration of its intention to solve this continuing problem, the Nebraska Legislature adopted a resolution January 19, 1955 as follows:

> Legislative Resolution 5. Re: Study of Existing Laws Relative to County Roads and Recommendations for Necessary Changes.
>
> WHEREAS, the laws pertaining to county roads were adopted before the need for a more modern and adequate system of county roads became apparent, and
>
> WHEREAS, the need for adequate laws to govern the construction. maintenance and improvement of county roads exists at this time.
>
> NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NEBRASKA LEGISLATURE IN SIXTY-SEVENTH SESSION ASSEMBLED:

> 1. That the Legislative Council make a study of existing laws and recommend to the next regular session of the Nebraska State Legislature the necessary changes which will provide for the efficient and economical operation of the counties of Nebraska with respect to county roads.[74]

In addition to the gigantic problem of modernizing county road laws, the statutes relating to bridges and the motor vehicle laws are a collection of anachronistic provisions. These must be revised before Nebraska will have a completely modern and functionally adequate code of laws. Such a basic legal document is essential in order that engineers and highway administrators may provide motor transportation facilities for safe and efficient use in our times and the foreseeable atomic age which is promised.

[74] Legis. Res. 5, Neb. Legis. J. 171 (1951).

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CONTRIBUTORS TO THE NOVEMBER ISSUE

HENRY M. GRETHER, JR., B.A. 1943, LL.B. 1947, University of Utah; LL.M. 1948, University of Minnesota; author of Cases on Water Rights; Special Attorney for Department of Roads and Irrigation, State of Nebraska; Associate Professor of Law, University of Nebraska.

MILTON D. GREEN, A.B. 1926, J.D. 1928, University of Michigan; LL.M. 1938, Jur.Sc.D. 1944, Columbia University; Dean and Professor of Law, Washington University School of Law.

HERBERT BROWNELL, JR., A.B. 1924, University of Nebraska; LL.B. 1927, Yale University; Attorney General of the United States.

WILLIAM F. SWINDLER, A.B., B. Sc. in Journalism 1935, Washington University; M.A. 1936, Ph.D. 1942, University of Missouri; Director of the School of Journalism, University of Nebraska.

LESTER A. DANIELSON, LL.B. 1935, University of Nebraska; member of the firm of Neighbors & Danielson, Scottsbluff, Nebraska.

ERNEST FEDER, *License en Droit* 1935, *Doctorate en Droit* 1938, University of Geneva; M.S. 1948, University of California; Associate Professor of Agricultural Economics, University of Nebraska.