

House Study Bill 153

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
TRANSPORTATION BILL BY
CHAIRPERSON ARNOLD)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to obstructions in highways and providing
2 penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1940HC 81
5 eg/pj/5

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1 1 Section 1. NEW SECTION. 318.1 DEFINITIONS.
1 2 As used in this chapter, unless the context otherwise
1 3 requires:
1 4 1. "Breakaway mailbox" means a mailbox, approved by the
1 5 United States postal service under its "standard for
1 6 mailboxes, city and rural curbside", and used for the curbside
1 7 delivery of mail, which is supported by a wood post no greater
1 8 in cross section than four inches square or by a post with a
1 9 strength no greater than a two-inch-diameter standard steel
1 10 pipe. Two such posts may be used to support a cluster of four
1 11 or more mailboxes.
1 12 2. "Department" means the state department of
1 13 transportation.
1 14 3. "Highway authority" means the county board of
1 15 supervisors, in the case of secondary roads, city council, in
1 16 the case of city streets, and the department, in the case of
1 17 primary roads.
1 18 4. "Highway right-of-way" means the total area of land,
1 19 whether reserved by public ownership or easement, that is
1 20 reserved for the operation and maintenance of a legally
1 21 established public roadway. This area shall be deemed to
1 22 consist of two portions, a central traveled way including the
1 23 shoulders and that remainder on both sides of the road,
1 24 between the outside shoulder edges and the outer boundaries of
1 25 the right-of-way.
1 26 5. "Obstruction" means an obstacle in the way, or an
1 27 impediment or hindrance which impedes, opposes, or interferes
1 28 with free passage along the highway right-of-way.
1 29 6. "Traveled portion of the right-of-way" means that area
1 30 of the highway right-of-way, not including the shoulders, on
1 31 which vehicles normally travel.
1 32 7. "Utility structures" means the aboveground devices,
1 33 required by utility companies, including poles, lines, and
1 34 wires, used for telephone and other transmission purposes, and
1 35 gas and electrical substations.
2 1 Sec. 2. NEW SECTION. 318.2 PURPOSE.
2 2 The purpose of this chapter is to enhance public safety for
2 3 those traveling the public roads and allow economical
2 4 maintenance of highway rights-of-way.
2 5 Sec. 3. NEW SECTION. 318.3 OBSTRUCTIONS IN HIGHWAY
2 6 RIGHT-OF-WAY.
2 7 1. A person shall not place, or cause to be placed, an
2 8 obstruction within any highway right-of-way. This prohibition
2 9 includes, but is not limited to, the following actions:
2 10 a. The excavation, filling, or making of any physical
2 11 changes to any part of the highway right-of-way, except as
2 12 provided under section 318.8.
2 13 b. The cultivation or growing of crops within the highway
2 14 right-of-way.
2 15 c. The destruction of plants placed within the highway
2 16 right-of-way.
2 17 d. The placing of fences or ditches within the highway
2 18 right-of-way.

2 19 e. The alteration of ditches, water breaks, or drainage
2 20 tiles within the highway right-of-way.
2 21 f. The placement of trash, litter, debris, waste material,
2 22 manure, rocks, crops or crop residue, brush, vehicles,
2 23 machinery, or other items within the highway right-of-way.
2 24 g. The placement of billboards, signs, advertising
2 25 devices, or mailboxes or mailbox supports, except for
2 26 breakaway mailboxes, within the highway right-of-way.
2 27 h. The placement of any red reflector, or any object or
2 28 other device which shall cause the effect of a red reflector
2 29 on the highway right-of-way which is visible to passing
2 30 motorists.

2 31 2. The following actions shall not constitute an
2 32 obstruction within a highway right-of-way:

2 33 a. Mowing or harvesting grass within the highway right-
2 34 of-way so long as the mowing or harvesting does not destroy
2 35 the grass or other plants in the highway right-of-way and is
3 1 not in violation of an integrated roadside vegetation
3 2 management plan adopted pursuant to section 314.22.

3 3 b. Placement of a breakaway mailbox.

3 4 c. Any action by, or authorized by, the highway authority
3 5 or the state of Iowa.

3 6 Sec. 4. NEW SECTION. 318.4 DUTY OF HIGHWAY AUTHORITIES.

3 7 The highway authority shall remove all obstructions in a
3 8 highway right-of-way under its jurisdiction. The highway
3 9 authority and its officers and employees shall be immune from
3 10 liability regarding any claim based upon or arising out of an
3 11 act or omission in connection with the removal of an
3 12 obstruction.

3 13 Sec. 5. NEW SECTION. 318.5 REMOVAL AND COST.

3 14 1. An obstruction in a highway right-of-way which
3 15 constitutes an immediate and dangerous hazard shall, without
3 16 notice or liability in damages, be removed by the highway
3 17 authority.

3 18 2. An obstruction not constituting an immediate and
3 19 dangerous hazard shall be removed by the highway authority
3 20 without liability after forty-eight-hour notice served in the
3 21 same manner in which an original notice is served, or in
3 22 writing by certified mail, or in any other manner reasonably
3 23 calculated to apprise the person responsible for the
3 24 obstruction that the obstruction will be removed at the
3 25 person's expense. The highway authority shall assess the
3 26 removal cost.

3 27 3. Upon removal of the obstruction, the highway authority
3 28 may immediately send a statement of the cost to the person
3 29 responsible for the obstruction. If within ten days after
3 30 sending the statement the cost is not paid, the highway
3 31 authority may institute legal proceedings to collect the cost
3 32 of removal. The removal costs shall be assessed against the
3 33 following persons, as applicable:

3 34 a. The vehicle owner in the case of an abandoned vehicle.

3 35 b. The abutting property owner in the case of a fence,
4 1 other than a right-of-way line fence, or other temporary
4 2 obstruction placed within the highway right-of-way by the
4 3 owner or tenant of the abutting property.

4 4 c. The owner or person responsible for placement of any
4 5 other obstruction.

4 6 Sec. 6. NEW SECTION. 318.6 PUBLIC NUISANCE.

4 7 1. Any person who places, or causes to be placed, any
4 8 obstruction in a highway right-of-way as prohibited under
4 9 section 318.3 is deemed to have created a public nuisance
4 10 punishable as provided in chapter 657.

4 11 2. If a person is found guilty of placing an obstruction
4 12 within a highway right-of-way, the court may, in addition to
4 13 any fine imposed, or judgment for damages or costs for which a
4 14 separate execution may issue, order that the obstruction be
4 15 abated or removed at the expense of the defendant. The costs
4 16 for abatement or removal of the obstruction may be entered as
4 17 a personal judgment against the defendant or assessed against
4 18 the property where the obstruction occurred, or both.

4 19 Sec. 7. NEW SECTION. 318.7 INJUNCTION TO RESTRAIN
4 20 OBSTRUCTIONS.

4 21 A highway authority may maintain a suit in equity aided by
4 22 injunction to restrain an obstruction in a highway right-of-
4 23 way. In such actions, the highway authority may cause the
4 24 legal boundary lines of the highway to be adjudicated provided
4 25 all interested parties are impleaded.

4 26 Sec. 8. NEW SECTION. 318.8 PERMIT REQUIRED.

4 27 A person shall not excavate, fill, or make a physical
4 28 change within a highway right-of-way without obtaining a
4 29 permit from the applicable highway authority. At the request

4 30 of a permittee, a modification may be granted in the
4 31 discretion of the highway authority. Work performed under the
4 32 permit shall be performed in conformity with the
4 33 specifications prescribed by the highway authority. If the
4 34 work does not conform to permit specifications, the person
4 35 shall be notified to make the conforming changes. If after
5 1 twenty days the changes have not been made, the highway
5 2 authority may make the necessary changes and immediately send
5 3 a statement of the cost to the responsible person. If within
5 4 thirty days after sending the statement the cost is not paid,
5 5 the highway authority may institute legal proceedings to
5 6 collect the cost of correction. A violation of the permit
5 7 specifications shall be considered a violation of section
5 8 318.3.

5 9 Sec. 9. NEW SECTION. 318.9 UTILITY STRUCTURES.

5 10 1. A pole in a highway right-of-way used for telephone or
5 11 other transmission purposes shall be removed by the owner or
5 12 person operating the transmission lines upon written notice of
5 13 not less than thirty days, to the owner or other person. In
5 14 the event the owner or other person is unable to remove the
5 15 pole within the thirty-day period due to a storm or other act
5 16 of God, the pole shall be removed by the owner or other person
5 17 within a reasonable time.

5 18 2. Upon written application, the highway authority shall
5 19 locate the construction of new telephone or transmission lines
5 20 or parts of lines for the roads within the highway authority's
5 21 jurisdiction, as follows:

5 22 a. The county engineer, or the board of supervisors if a
5 23 county engineer is not available, shall locate the lines for
5 24 secondary roads.

5 25 b. The city engineer or the city street department shall
5 26 locate the lines for city streets.

5 27 c. The state highway engineer shall locate the lines for
5 28 primary roads.

5 29 3. The state highway engineer and the county engineer, or
5 30 the board of supervisors if a county engineer is not
5 31 available, may designate the location of a utility structure
5 32 within a highway right-of-way. A utility structure that is
5 33 not properly located within the highway right-of-way shall be
5 34 removed within a time prescribed to a designated location. If
5 35 not so removed, the highway authority may remove the utility
6 1 structure and recover costs as provided in section 318.5.

6 2 Sec. 10. NEW SECTION. 318.10 FENCES.

6 3 1. A fence which constitutes an immediate and dangerous
6 4 hazard shall, without notice or liability in damages, be
6 5 removed by the highway authority. In all other cases where a
6 6 fence is an obstruction in a highway right-of-way, notice in
6 7 writing of not less than thirty days shall be given to the
6 8 owner, occupant, or agent of the land enclosed by the fence.

6 9 2. The notice shall, with reasonable certainty, specify
6 10 the line to which the fences shall be removed, and shall be
6 11 served in the same manner that original notices are required
6 12 to be served, or in writing by certified mail, or in any other
6 13 manner reasonably calculated to apprise the person responsible
6 14 for the fence.

6 15 3. The state highway engineer and the county engineer, or
6 16 the board of supervisors if a county engineer is not
6 17 available, may designate the location of a fence within a
6 18 highway right-of-way. A fence that is not properly located
6 19 within the highway right-of-way shall be removed within a time
6 20 prescribed to a designated location. If not so removed, the
6 21 highway authority may remove the fences and recover costs as
6 22 provided in section 318.5.

6 23 Sec. 11. NEW SECTION. 318.11 BILLBOARDS AND SIGNS.

6 24 1. No billboard or advertising sign or device, except a
6 25 sign or device authorized by law or approved by the highway
6 26 authority, shall be placed or erected upon a highway right-
6 27 of-way.

6 28 2. A billboard or advertising sign, whether on public or
6 29 private property, that obstructs the view of any portion of a
6 30 public highway or of a railway track making the use of the
6 31 traveled portion of the right-of-way dangerous is a public
6 32 nuisance and shall be abated. The person responsible for the
6 33 erection and maintenance of the billboard or sign may be
6 34 punished as provided in chapter 657.

6 35 Sec. 12. NEW SECTION. 318.12 ENFORCEMENT.

7 1 A highway authority shall enforce the provisions of this
7 2 chapter by appropriate civil or criminal proceeding or by both
7 3 such proceedings.

7 4 Sec. 13. Section 68A.406, subsection 2, paragraph a, Code
7 5 2005, is amended to read as follows:

7 6 a. Any property owned by the state or the governing body
7 7 of a county, city, or other political subdivision of the
7 8 state, including all property considered the public right-of=
7 9 way. Upon a determination by the board that a sign has been
7 10 improperly placed, the sign shall be removed by highway
7 11 authorities as provided in section ~~319.13~~ 318.5, or by county
7 12 or city law enforcement authorities in a manner consistent
7 13 with section ~~319.13~~ 318.5.

7 14 Sec. 14. Section 306.46, subsection 1, Code 2005, is
7 15 amended to read as follows:

7 16 1. A public utility may construct, operate, repair, or
7 17 maintain its utility facilities within a public road right=
7 18 of-way. The location of new utility facilities shall comply
7 19 with section ~~319.5~~ 318.9. A utility facility shall not be
7 20 constructed or installed in a manner that causes interference
7 21 with public use of the road.

7 22 Sec. 15. Section 306C.13, subsection 8, paragraph f, Code
7 23 2005, is amended to read as follows:

7 24 f. Which do not comply with all applicable state or local
7 25 laws, regulations and ordinances, including but not limited to
7 26 zoning, building, and sign codes as locally interpreted and
7 27 applied and enforced, or which violate chapter ~~319~~ 318;
7 28 however, nothing in this division shall prevent or restrict
7 29 county or local zoning authorities from making a determination
7 30 of customary use concerning size, lighting, and spacing of
7 31 advertising devices in zoned commercial or industrial adjacent
7 32 areas, and such determinations will be accepted in lieu of the
7 33 standards of this division. The provisions of this division
7 34 shall not prevent or restrict county or local zoning
7 35 authorities within their respective jurisdictions from
8 1 establishing standards imposing controls stricter than those
8 2 required by this division.

8 3 Sec. 16. Section 311.32, Code 2005, is amended to read as
8 4 follows:

8 5 311.32 ADMINISTRATION AND MAINTENANCE OF ROADS.

8 6 Any road established by petition and any road improved by
8 7 petition under this chapter shall be administered and
8 8 maintained by the county under chapters 306, 309, 314, 317,
8 9 and ~~319~~ 318. However, the fact that right-of-way is donated
8 10 by property owners for the establishment of a road or a
8 11 portion of the cost of a road improvement is paid by property
8 12 owners under this chapter, does not preclude the board of
8 13 supervisors from exercising its responsibility over these
8 14 roads as secondary roads.

8 15 Sec. 17. Section 331.362, subsection 7, Code 2005, is
8 16 amended to read as follows:

8 17 7. The board shall cause the removal of obstructions on
8 18 the secondary roads, in accordance with chapter ~~319~~ 318.

8 19 Sec. 18. Section 331.756, subsection 57, Code 2005, is
8 20 amended to read as follows:

8 21 57. Commence legal proceedings to remove billboards and
8 22 signs which constitute a public nuisance as provided in
8 23 section ~~319.11~~ 318.11.

8 24 Sec. 19. Chapter 319, Code 2005, is repealed.

8 25 EXPLANATION

8 26 This bill reorganizes much of the existing Code chapter
8 27 pertaining to obstructions in highways into new Code chapter
8 28 318, while adding some new provisions. The bill provides a
8 29 purpose section and definitions for the new Code chapter. The
8 30 bill lists actions that are and are not prohibited
8 31 obstructions. The bill provides that an obstruction creates a
8 32 public nuisance punishable under Code chapter 657 pertaining
8 33 to nuisances.

8 34 The bill also provides amendments to other Code sections to
8 35 conform to the new Code chapter.

9 1 LSB 1940HC 81

9 2 eg:nh/pj/5