

FILED FEB 28 2006

SENATE FILE 2297
BY COMMITTEE ON TRANSPORTATION

(SUCCESSOR TO SSB 1100)

Passed Senate, Date _____ Passed House, 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:

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SF 2297

1 Section 1. NEW SECTION. 318.1 DEFINITIONS.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "Breakaway mailbox" means a mailbox, approved by the
5 United States postal service under its "standard for
6 mailboxes, city and rural curbside", and used for the curbside
7 delivery of mail, which is supported by a wood post no greater
8 in cross section than four inches square or by a post with a
9 strength no greater than a two-inch-diameter standard steel
10 pipe. Two such posts may be used to support a cluster of four
11 or more mailboxes.

12 2. "Department" means the state department of
13 transportation.

14 3. "Highway authority" means the county board of
15 supervisors, in the case of secondary roads, and the
16 department, in the case of primary roads.

17 4. "Highway right-of-way" means the total area of land,
18 whether reserved by public ownership or easement, that is
19 reserved for the operation and maintenance of a legally
20 established public roadway. This area shall be deemed to
21 consist of two portions, a central traveled way including the
22 shoulders and that remainder on both sides of the road,
23 between the outside shoulder edges and the outer boundaries of
24 the right-of-way.

25 5. "Obstruction" means an obstacle in the highway right-
26 of-way, or an impediment or hindrance which impedes, opposes,
27 or interferes with free passage along the highway right-of-way
28 not including utility structures installed in accordance with
29 an approved permit.

30 6. "Traveled portion of the right-of-way" means that area
31 of the highway right-of-way, not including the shoulders, on
32 which vehicles normally travel.

33 7. "Utility" means all private, public, municipal, or
34 cooperative owned systems for water, sewer, natural gas,
35 electric, telegraph, telephone, transit, pipeline, heating

1 plants, railroads, bridges, street lights, or traffic control
2 signals.

3 8. "Utility structures" means the aboveground devices,
4 required by a utility, including poles, lines, and wires, used
5 for telephone, electric, natural gas, and other distribution
6 or transmission purposes, and natural gas and electrical
7 substations.

8 Sec. 2. NEW SECTION. 318.2 PURPOSE.

9 The purpose of this chapter is to enhance public safety for
10 those traveling the public roads and allow economical
11 maintenance of highway rights-of-way.

12 Sec. 3. NEW SECTION. 318.3 OBSTRUCTIONS IN HIGHWAY
13 RIGHT-OF-WAY.

14 1. A person shall not place, or cause to be placed, an
15 obstruction within any highway right-of-way. This prohibition
16 includes, but is not limited to, the following actions:

17 a. The excavation, filling, or making of any physical
18 changes to any part of the highway right-of-way, except as
19 provided under section 318.8.

20 b. The cultivation or growing of crops within the highway
21 right-of-way.

22 c. The destruction of plants placed within the highway
23 right-of-way.

24 d. The placing of fences or ditches within the highway
25 right-of-way.

26 e. The alteration of ditches, water breaks, or drainage
27 tiles within the highway right-of-way.

28 f. The placement of trash, litter, debris, waste material,
29 manure, rocks, crops or crop residue, brush, vehicles,
30 machinery, or other items within the highway right-of-way.

31 g. The placement of billboards, signs, advertising
32 devices, or mailboxes or mailbox supports, except for
33 breakaway mailboxes, within the highway right-of-way.

34 h. The placement of any red reflector, or any object or
35 other device which shall cause the effect of a red reflector

1 on the highway right-of-way which is visible to passing
2 motorists.

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

5 a. Mowing or harvesting grass within the highway right-
6 of-way so long as the mowing or harvesting does not destroy
7 the grass or other plants in the highway right-of-way and is
8 not in violation of an integrated roadside vegetation
9 management plan adopted pursuant to section 314.22.

10 b. Any action by, or authorized by, the highway authority
11 or the state of Iowa.

12 Sec. 4. NEW SECTION. 318.4 DUTY OF HIGHWAY AUTHORITIES.

13 The highway authority shall cause all obstructions in a
14 highway right-of-way under its jurisdiction to be removed.
15 The highway authority and its officers and employees shall be
16 immune from liability regarding any claim based upon or
17 arising out of an act or omission in connection with the
18 removal of an obstruction.

19 Sec. 5. NEW SECTION. 318.5 REMOVAL AND COST.

20 1. An obstruction in a highway right-of-way which
21 constitutes an immediate and dangerous hazard shall, without
22 notice or liability in damages, be removed by the highway
23 authority.

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

33 3. Upon removal of the obstruction, the highway authority
34 may immediately send a statement of the cost to the person
35 responsible for the obstruction. If within ten days after

1 sending the statement the cost is not paid, the highway
2 authority may institute legal proceedings to collect the cost
3 of removal. The removal costs shall be assessed against the
4 following persons, as applicable:

5 a. The vehicle owner in the case of an abandoned vehicle.

6 b. The abutting property owner in the case of a fence,
7 other than a right-of-way line fence, or other temporary
8 obstruction placed within the highway right-of-way by the
9 owner or tenant of the abutting property.

10 c. The owner or person responsible for placement of any
11 other obstruction.

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

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

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

25 Sec. 7. NEW SECTION. 318.7 INJUNCTION TO RESTRAIN
26 OBSTRUCTIONS.

27 A highway authority may maintain a suit in equity aided by
28 injunction to restrain an obstruction in a highway right-of-
29 way. In such actions, the highway authority may cause the
30 legal boundary lines of the highway to be adjudicated provided
31 all interested parties are impleaded.

32 Sec. 8. NEW SECTION. 318.8 PERMIT REQUIRED.

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

1 of a permittee, a modification may be granted in the
2 discretion of the highway authority. Work performed under the
3 permit shall be performed in conformity with the
4 specifications prescribed by the highway authority. If the
5 work does not conform to permit specifications, the person
6 shall be notified to make the conforming changes. If after
7 twenty days the changes have not been made, the highway
8 authority may make the necessary changes and immediately send
9 a statement of the cost to the responsible person. If within
10 thirty days after sending the statement the cost is not paid,
11 the highway authority may institute legal proceedings to
12 collect the cost of correction. A violation of the permit
13 specifications shall be considered a violation of section
14 318.3. A public utility subject to section 306A.3 is exempt
15 from this section.

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

17 1. a. A utility structure in a highway right-of-way used
18 for telephone, electric, natural gas, or other distribution or
19 transmission purposes shall be removed by the owner or
20 operator of the transmission lines upon written notice from
21 the highway authority of not less than ninety days, to the
22 owner and operator. The notice shall, with reasonable
23 certainty, specify the utility structure to be removed, and
24 shall be served in the same manner that original notices are
25 required to be served. If the owner or operator of the
26 transmission line is unable to remove the utility structure
27 within the required time due to circumstances beyond the
28 control of the owner or operator, the owner or operator shall
29 file a request with the highway authority for an extension of
30 time to complete the work.

31 b. If the owner or operator of a transmission line needs
32 authorization from the utilities board or other governmental
33 authority to relocate a utility structure or to obtain a new
34 private easement right for relocation of the utility
35 structure, the owner or operator shall request an extension of

1 time within which to remove the utility structure. The
2 highway authority shall grant an extension of time for at
3 least ninety days following the date authorization is granted
4 or the easement right is obtained.

5 2. Upon written application, the highway authority shall
6 locate the construction of new telephone, electric, or
7 transmission lines or parts of lines, including natural gas
8 pipeline, for the roads within the highway authority's
9 jurisdiction, subject to the jurisdiction of the utilities
10 board under chapters 476, 478, and 479, as follows:

11 a. The county engineer, or the board of supervisors if a
12 county engineer is not available, shall locate the lines for
13 secondary roads.

14 b. The department shall locate the lines for primary
15 roads.

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

24 Sec. 10. NEW SECTION. 318.10 FENCES.

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

31 2. The notice shall, with reasonable certainty, specify
32 the line to which the fences shall be removed, and shall be
33 served in the same manner that original notices are required
34 to be served, or in writing by certified mail, or in any other
35 manner reasonably calculated to apprise the person responsible

1 for the fence.

2 3. The department and the county engineer, or the board of
3 supervisors if a county engineer is not available, may
4 designate the location of a fence within a highway right-of-
5 way. A fence that is not properly located within the highway
6 right-of-way shall be removed within a time prescribed to a
7 designated location. If not so removed, the highway authority
8 may remove the fences and recover costs as provided in section
9 318.5.

10 Sec. 11. NEW SECTION. 318.11 BILLBOARDS AND SIGNS.

11 1. No billboard or advertising sign or device, except a
12 sign or device authorized by law or approved by the highway
13 authority, shall be placed or erected upon a highway right-
14 of-way.

15 2. A billboard or advertising sign, whether on public or
16 private property, that obstructs the view of any portion of a
17 public highway or of a railway track making the use of the
18 traveled portion of the right-of-way dangerous is a public
19 nuisance and shall be abated. The person responsible for the
20 erection and maintenance of the billboard or sign may be
21 punished as provided in chapter 657.

22 Sec. 12. NEW SECTION. 318.12 ENFORCEMENT.

23 A highway authority shall enforce the provisions of this
24 chapter by appropriate civil or criminal proceeding or by both
25 such proceedings.

26 Sec. 13. Section 68A.406, subsection 2, paragraph a, Code
27 Supplement 2005, is amended to read as follows:

28 a. Any property owned by the state or the governing body
29 of a county, city, or other political subdivision of the
30 state, including all property considered the public right-of-
31 way. Upon a determination by the board that a sign has been
32 improperly placed, the sign shall be removed by highway
33 authorities as provided in section ~~319.13~~ 318.5, or by county
34 or city law enforcement authorities in a manner consistent
35 with section ~~319.13~~ 318.5.

1 Sec. 14. Section 306.46, subsection 1, Code Supplement
2 2005, is amended to read as follows:

3 1. A public utility may construct, operate, repair, or
4 maintain its utility facilities within a public road right-
5 of-way. The location of new utility facilities shall comply
6 with section ~~319-5~~ 318.9. A utility facility shall not be
7 constructed or installed in a manner that causes interference
8 with public use of the road.

9 Sec. 15. Section 306C.13, subsection 8, paragraph f, Code
10 2005, is amended to read as follows:

11 f. Which do not comply with all applicable state or local
12 laws, regulations and ordinances, including but not limited to
13 zoning, building, and sign codes as locally interpreted and
14 applied and enforced, or which violate chapter ~~319~~ 318;
15 however, nothing in this division shall prevent or restrict
16 county or local zoning authorities from making a determination
17 of customary use concerning size, lighting, and spacing of
18 advertising devices in zoned commercial or industrial adjacent
19 areas, and such determinations will be accepted in lieu of the
20 standards of this division. The provisions of this division
21 shall not prevent or restrict county or local zoning
22 authorities within their respective jurisdictions from
23 establishing standards imposing controls stricter than those
24 required by this division.

25 Sec. 16. Section 311.32, Code 2005, is amended to read as
26 follows:

27 311.32 ADMINISTRATION AND MAINTENANCE OF ROADS.

28 Any road established by petition and any road improved by
29 petition under this chapter shall be administered and
30 maintained by the county under chapters 306, 309, 314, 317,
31 and ~~319~~ 318. However, the fact that right-of-way is donated
32 by property owners for the establishment of a road or a
33 portion of the cost of a road improvement is paid by property
34 owners under this chapter, does not preclude the board of
35 supervisors from exercising its responsibility over these

1 roads as secondary roads.

2 Sec. 17. Section 331.362, subsection 7, Code 2005, is
3 amended to read as follows:

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

6 Sec. 18. Section 331.756, subsection 57, Code Supplement
7 2005, is amended to read as follows:

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

11 Sec. 19. Chapter 319, Code 2005, is repealed.

12 EXPLANATION

13 This bill reorganizes much of the existing Code chapter
14 pertaining to obstructions in highways into new Code chapter
15 318, while adding some new provisions. The bill provides a
16 purpose section and definitions for the new Code chapter. The
17 bill lists actions that are and are not prohibited
18 obstructions. The bill provides that an obstruction creates a
19 public nuisance punishable under Code chapter 657 pertaining
20 to nuisances. The bill also addresses utility structures
21 located in a highway right-of-way.

22 The bill also provides amendments to other Code sections to
23 conform to the new Code chapter.

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SENATE FILE 2297

S-5022

- 1 Amend Senate File 2297 as follows:
2 1. Page 3, by striking lines 15 through 18.
By DICK L. DEARDEN

S-5022 FILED MARCH 6, 2006

SENATE FILE 2297

S-5085

- 1 Amend Senate File 2297 as follows:
2 1. Page 1, by striking lines 4 through 11.
3 2. Page 2, line 31, by inserting before the word
4 "advertising" the following: "or".
5 3. Page 2, by striking lines 32 and 33 and
6 inserting the following: "devices within the highway
7 right-of-way."
8 4. Page 3, by striking lines 15 through 18 and
9 inserting the following: "All removals shall be
10 without liability on the part of any officer ordering
11 or effecting such removal."
12 5. By renumbering as necessary.

By JOHN PUTNEY

S-5085 FILED MARCH 16, 2006

SENATE FILE 2297

S-5192

1 Amend Senate File 2297 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "Section 1. NEW SECTION. 318.1 DEFINITIONS.

5 As used in this chapter, unless the context
6 otherwise requires:

7 1. "Department" means the state department of
8 transportation.

9 2. "Highway authority" means the county board of
10 supervisors, in the case of secondary roads, and the
11 department, in the case of primary roads.

12 3. "Highway right-of-way" means the total area of
13 land, whether reserved by public ownership or
14 easement, that is reserved for the operation and
15 maintenance of a legally established public roadway.
16 This area shall be deemed to consist of two portions,
17 a central traveled way including the shoulders and
18 that remainder on both sides of the road, between the
19 outside shoulder edges and the outer boundaries of the
20 right-of-way.

21 4. "Obstruction" means an obstacle in the highway
22 right-of-way, or an impediment or hindrance which
23 impedes, opposes, or interferes with free passage
24 along the highway right-of-way not including utility
25 structures installed in accordance with an approved
26 permit.

27 5. "Traveled portion of the right-of-way" means
28 that area of the highway right-of-way, not including
29 the shoulders, on which vehicles normally travel.

30 6. "Utility" means all private, public, municipal,
31 or cooperative owned systems for water, sewer, natural
32 gas, electric, telegraph, telephone, transit,
33 pipeline, heating plants, railroads, bridges, street
34 lights, or traffic control signals.

35 7. "Utility structures" means the aboveground
36 devices, required by a utility, including poles,
37 lines, and wires, used for telephone, electric,
38 natural gas, and other distribution or transmission
39 purposes, and natural gas and electrical substations.

40 Sec. 2. NEW SECTION. 318.2 PURPOSE.

41 The purpose of this chapter is to enhance public
42 safety for those traveling the public roads and allow
43 economical maintenance of highway rights-of-way.

44 Sec. 3. NEW SECTION. 318.3 OBSTRUCTIONS IN
45 HIGHWAY RIGHT-OF-WAY.

46 1. A person shall not place, or cause to be
47 placed, an obstruction within any highway right-of-
48 way. This prohibition includes, but is not limited
49 to, the following actions:

50 a. The excavation, filling, or making of any

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1 physical changes to any part of the highway right-of-
2 way, except as provided under section 318.8.

3 b. The cultivation or growing of crops within the
4 highway right-of-way.

5 c. The destruction of plants placed within the
6 highway right-of-way.

7 d. The placing of fences or ditches within the
8 highway right-of-way.

9 e. The alteration of ditches, water breaks, or
10 drainage tiles within the highway right-of-way.

11 f. The placement of trash, litter, debris, waste
12 material, manure, rocks, crops or crop residue, brush,
13 vehicles, machinery, or other items within the highway
14 right-of-way.

15 g. The placement of billboards, signs, or
16 advertising devices within the highway right-of-way.

17 h. The placement of any red reflector, or any
18 object or other device which shall cause the effect of
19 a red reflector on the highway right-of-way which is
20 visible to passing motorists.

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

23 a. Mowing or harvesting grass within the highway
24 right-of-way so long as the mowing or harvesting does
25 not destroy the grass or other plants in the highway
26 right-of-way and is not in violation of an integrated
27 roadside vegetation management plan adopted pursuant
28 to section 314.22.

29 b. Any action by, or authorized by, the highway
30 authority or the state of Iowa.

31 Sec. 4. NEW SECTION. 318.4 DUTY OF HIGHWAY
32 AUTHORITIES.

33 The highway authority shall cause all obstructions
34 in a highway right-of-way under its jurisdiction to be
35 removed. All removals shall be without liability on
36 the part of any officer ordering or effecting such
37 removal.

38 Sec. 5. NEW SECTION. 318.5 REMOVAL AND COST.

39 1. An obstruction in a highway right-of-way which
40 constitutes an immediate and dangerous hazard shall,
41 without notice or liability in damages, be removed by
42 the highway authority.

43 2. An obstruction not constituting an immediate
44 and dangerous hazard shall be removed by the highway
45 authority without liability after forty-eight-hour
46 notice served in the same manner in which an original
47 notice is served, or in writing by certified mail, or
48 in any other manner reasonably calculated to apprise
49 the person responsible for the obstruction that the
50 obstruction will be removed at the person's expense.

1 The highway authority shall assess the removal cost.
 2 3. Upon removal of the obstruction, the highway
 3 authority may immediately send a statement of the cost
 4 to the person responsible for the obstruction. If
 5 within ten days after sending the statement the cost
 6 is not paid, the highway authority may institute legal
 7 proceedings to collect the cost of removal. The
 8 removal costs shall be assessed against the following
 9 persons, as applicable:

- 10 a. The vehicle owner in the case of an abandoned
 11 vehicle.
- 12 b. The abutting property owner in the case of a
 13 fence, other than a right-of-way line fence, or other
 14 temporary obstruction placed within the highway right-
 15 of-way by the owner or tenant of the abutting
 16 property.
- 17 c. The owner or person responsible for placement
 18 of any other obstruction.

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

20 1. Any person who places, or causes to be placed,
 21 any obstruction in a highway right-of-way as
 22 prohibited under section 318.3 is deemed to have
 23 created a public nuisance punishable as provided in
 24 chapter 657.

25 2. If a person is found guilty of placing an
 26 obstruction within a highway right-of-way, the court
 27 may, in addition to any fine imposed, or judgment for
 28 damages or costs for which a separate execution may
 29 issue, order that the obstruction be abated or removed
 30 at the expense of the defendant. The costs for
 31 abatement or removal of the obstruction may be entered
 32 as a personal judgment against the defendant or
 33 assessed against the property where the obstruction
 34 occurred, or both.

35 Sec. 7. NEW SECTION. 318.7 INJUNCTION TO
 36 RESTRAIN OBSTRUCTIONS.

37 A highway authority may maintain a suit in equity
 38 aided by injunction to restrain an obstruction in a
 39 highway right-of-way. In such actions, the highway
 40 authority may cause the legal boundary lines of the
 41 highway to be adjudicated provided all interested
 42 parties are impleaded.

43 Sec. 8. NEW SECTION. 318.8 PERMIT REQUIRED.

44 A person shall not excavate, fill, or make a
 45 physical change within a highway right-of-way without
 46 obtaining a permit from the applicable highway
 47 authority. At the request of a permittee, a
 48 modification may be granted in the discretion of the
 49 highway authority. Work performed under the permit
 50 shall be performed in conformity with the

1 specifications prescribed by the highway authority.
2 If the work does not conform to permit specifications,
3 the person shall be notified to make the conforming
4 changes. If after twenty days the changes have not
5 been made, the highway authority may make the
6 necessary changes and immediately send a statement of
7 the cost to the responsible person. If within thirty
8 days after sending the statement the cost is not paid,
9 the highway authority may institute legal proceedings
10 to collect the cost of correction. A violation of the
11 permit specifications shall be considered a violation
12 of section 318.3. A public utility subject to section
13 306A.3 is exempt from this section.

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

15 1. a. A utility structure in a highway right-of-
16 way used for telephone, electric, natural gas, or
17 other distribution or transmission purposes shall be
18 removed by the owner or operator of the transmission
19 lines upon written notice from the highway authority
20 of not less than ninety days, to the owner and
21 operator. The notice shall, with reasonable
22 certainty, specify the utility structure to be
23 removed, and shall be served in the same manner that
24 original notices are required to be served. If the
25 owner or operator of the transmission line is unable
26 to remove the utility structure within the required
27 time due to circumstances beyond the control of the
28 owner or operator, the owner or operator shall file a
29 request with the highway authority for an extension of
30 time to complete the work. /

31 b. If the owner or operator of a transmission line
32 needs authorization from the utilities board or other
33 governmental authority to relocate a utility structure
34 or to obtain a new private easement right for
35 relocation of the utility structure, the owner or
36 operator shall request an extension of time within
37 which to remove the utility structure. The highway
38 authority shall grant an extension of time for at
39 least ninety days following the date authorization is
40 granted or the easement right is obtained.

41 2. Upon written application, the highway authority
42 shall locate the construction of new telephone,
43 electric, or transmission lines or parts of lines,
44 including natural gas pipeline, for the roads within
45 the highway authority's jurisdiction, subject to the
46 jurisdiction of the utilities board under chapters
47 476, 478, and 479, as follows:

48 a. The county engineer, or the board of
49 supervisors if a county engineer is not available,
50 shall locate the lines for secondary roads.

1 b. The department shall locate the lines for
 2 primary roads.
 3 3. The department and the county engineer, or the
 4 board of supervisors if a county engineer is not
 5 available, may designate the location of a utility
 6 structure within a highway right-of-way. A utility
 7 structure that is not properly located within the
 8 highway right-of-way shall be removed within a time
 9 prescribed to a designated location. If not so
 10 removed, the highway authority may remove the utility
 11 structure and recover costs as provided in section
 12 318.5.

13 Sec. 10. NEW SECTION. 318.10 FENCES.

14 1. A fence which constitutes an immediate and
 15 dangerous hazard shall, without notice or liability in
 16 damages, be removed by the highway authority. In all
 17 other cases where a fence is an obstruction in a
 18 highway right-of-way, notice in writing of not less
 19 than thirty days shall be given to the owner,
 20 occupant, or agent of the land enclosed by the fence.

21 2. The notice shall, with reasonable certainty,
 22 specify the line to which the fences shall be removed,
 23 and shall be served in the same manner that original
 24 notices are required to be served, or in writing by
 25 certified mail, or in any other manner reasonably
 26 calculated to apprise the person responsible for the
 27 fence.

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

37 Sec. 11. NEW SECTION. 318.11 BILLBOARDS AND
38 SIGNS.

39 1. No billboard or advertising sign or device,
 40 except a sign or device authorized by law or approved
 41 by the highway authority, shall be placed or erected
 42 upon a highway right-of-way.

43 2. A billboard or advertising sign, whether on
 44 public or private property, that obstructs the view of
 45 any portion of a public highway or of a railway track
 46 making the use of the traveled portion of the right-
 47 of-way dangerous is a public nuisance and shall be
 48 abated. The person responsible for the erection and
 49 maintenance of the billboard or sign may be punished
 50 as provided in chapter 657.

1 Sec. 12. NEW SECTION. 318.12 ENFORCEMENT.

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

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

8 a. Any property owned by the state or the
9 governing body of a county, city, or other political
10 subdivision of the state, including all property
11 considered the public right-of-way. Upon a
12 determination by the board that a sign has been
13 improperly placed, the sign shall be removed by
14 highway authorities as provided in section ~~319.13~~
15 318.5, or by county or city law enforcement
16 authorities in a manner consistent with section ~~319.13~~
17 318.5.

18 Sec. 14. Section 306.46, subsection 1, Code
19 Supplement 2005, is amended to read as follows:

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

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

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

45 Sec. 16. Section 311.32, Code 2005, is amended to
46 read as follows:

47 311.32 ADMINISTRATION AND MAINTENANCE OF ROADS.

48 Any road established by petition and any road
49 improved by petition under this chapter shall be
50 administered and maintained by the county under

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Page 7

1 chapters 306, 309, 314, 317, and ~~319~~ 318. However,
2 the fact that right-of-way is donated by property
3 owners for the establishment of a road or a portion of
4 the cost of a road improvement is paid by property
5 owners under this chapter, does not preclude the board
6 of supervisors from exercising its responsibility over
7 these roads as secondary roads.

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

10 7. The board shall cause the removal of
11 obstructions on the secondary roads, in accordance
12 with chapter ~~319~~ 318.

13 Sec. 18. Section 331.756, subsection 57, Code
14 Supplement 2005, is amended to read as follows:

15 57. Commence legal proceedings to remove
16 billboards and signs which constitute a public
17 nuisance as provided in section ~~319.11~~ 318.11.

18 Sec. 19. Chapter 319, Code 2005, is repealed."

19 2. By renumbering as necessary.

By DICK L. DEARDEN

S-5192 FILED APRIL 12, 2006

Hahn Co-chair
Dearden Co-chair
Kettering
Beall

SSB# 1100
Transportation

Succeeded By
SF/HF 2297

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
TRANSPORTATION BILL BY
CO-CHAIRPERSON PUTNEY)

Passed Senate, Date _____ Passed House, 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:

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1 Section 1. NEW SECTION. 318.1 DEFINITIONS.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "Breakaway mailbox" means a mailbox, approved by the
5 United States postal service under its "standard for
6 mailboxes, city and rural curbside", and used for the curbside
7 delivery of mail, which is supported by a wood post no greater
8 in cross section than four inches square or by a post with a
9 strength no greater than a two-inch-diameter standard steel
10 pipe. Two such posts may be used to support a cluster of four
11 or more mailboxes.

12 2. "Department" means the state department of
13 transportation.

14 3. "Highway authority" means the county board of
15 supervisors, in the case of secondary roads, city council, in
16 the case of city streets, and the department, in the case of
17 primary roads.

18 4. "Highway right-of-way" means the total area of land,
19 whether reserved by public ownership or easement, that is
20 reserved for the operation and maintenance of a legally
21 established public roadway. This area shall be deemed to
22 consist of two portions, a central traveled way including the
23 shoulders and that remainder on both sides of the road,
24 between the outside shoulder edges and the outer boundaries of
25 the right-of-way.

26 5. "Obstruction" means an obstacle in the way, or an
27 impediment or hindrance which impedes, opposes, or interferes
28 with free passage along the highway right-of-way.

29 6. "Traveled portion of the right-of-way" means that area
30 of the highway right-of-way, not including the shoulders, on
31 which vehicles normally travel.

32 7. "Utility structures" means the aboveground devices,
33 required by utility companies, including poles, lines, and
34 wires, used for telephone and other transmission purposes, and
35 gas and electrical substations.

1 Sec. 2. NEW SECTION. 318.2 PURPOSE.

2 The purpose of this chapter is to enhance public safety for
3 those traveling the public roads and allow economical
4 maintenance of highway rights-of-way.

5 Sec. 3. NEW SECTION. 318.3 OBSTRUCTIONS IN HIGHWAY
6 RIGHT-OF-WAY.

7 1. A person shall not place, or cause to be placed, an
8 obstruction within any highway right-of-way. This prohibition
9 includes, but is not limited to, the following actions:

10 a. The excavation, filling, or making of any physical
11 changes to any part of the highway right-of-way, except as
12 provided under section 318.8.

13 b. The cultivation or growing of crops within the highway
14 right-of-way.

15 c. The destruction of plants placed within the highway
16 right-of-way.

17 d. The placing of fences or ditches within the highway
18 right-of-way.

19 e. The alteration of ditches, water breaks, or drainage
20 tiles within the highway right-of-way.

21 f. The placement of trash, litter, debris, waste material,
22 manure, rocks, crops or crop residue, brush, vehicles,
23 machinery, or other items within the highway right-of-way.

24 g. The placement of billboards, signs, advertising
25 devices, or mailboxes or mailbox supports, except for
26 breakaway mailboxes, within the highway right-of-way.

27 h. The placement of any red reflector, or any object or
28 other device which shall cause the effect of a red reflector
29 on the highway right-of-way which is visible to passing
30 motorists.

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

33 a. Mowing or harvesting grass within the highway right-
34 of-way so long as the mowing or harvesting does not destroy
35 the grass or other plants in the highway right-of-way and is

1 not in violation of an integrated roadside vegetation
2 management plan adopted pursuant to section 314.22.

3 b. Placement of a breakaway mailbox.

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

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

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

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

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

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

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

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

35 b. The abutting property owner in the case of a fence,

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

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

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

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

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

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

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

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

27 A person shall not excavate, fill, or make a physical
28 change within a highway right-of-way without obtaining a
29 permit from the applicable highway authority. At the request
30 of a permittee, a modification may be granted in the
31 discretion of the highway authority. Work performed under the
32 permit shall be performed in conformity with the
33 specifications prescribed by the highway authority. If the
34 work does not conform to permit specifications, the person
35 shall be notified to make the conforming changes. If after

1 twenty days the changes have not been made, the highway
2 authority may make the necessary changes and immediately send
3 a statement of the cost to the responsible person. If within
4 thirty days after sending the statement the cost is not paid,
5 the highway authority may institute legal proceedings to
6 collect the cost of correction. A violation of the permit
7 specifications shall be considered a violation of section
8 318.3.

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

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

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

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

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

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

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

1 structure and recover costs as provided in section 318.5.

2 Sec. 10. NEW SECTION. 318.10 FENCES.

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

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

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

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

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

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

35 Sec. 12. NEW SECTION. 318.12 ENFORCEMENT.

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

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

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

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

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

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

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

1 establishing standards imposing controls stricter than those
2 required by this division.

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

5 311.32 ADMINISTRATION AND MAINTENANCE OF ROADS.

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

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

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

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

21 57. Commence legal proceedings to remove billboards and
22 signs which constitute a public nuisance as provided in
23 section ~~319-11~~ 318.11.

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

25 EXPLANATION

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

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