

IC 8-23-5

Chapter 5. State Highways

IC 8-23-5-1

Encroachment on state highways; removal, prevention, and termination; notice; entry; costs; exceptions

Sec. 1. (a) The department may remove, prevent, or terminate an encroachment onto a state highway, right-of-way, or other department property, including drainage onto the highway, right-of-way, or other property.

(b) If the department determines that an encroachment exists, the department shall give notice by certified mail to the owner and the occupant of the property from which the encroachment has occurred and by posting a copy of the notice in a conspicuous place on the property. The notice must specify the encroachment and the period of time within which the encroachment must be removed, terminated, or prevented. The period of time specified in the notice may not be less than thirty (30) days.

(c) If the encroachment has not been removed, terminated, or prevented within the period of time specified in the notice under subsection (b), the department may enter the property from which the encroachment has occurred and take whatever action the department considers necessary to remove, terminate, or prevent the encroachment.

(d) The cost of the department's removal, termination, or prevention of an encroachment under subsection (c) shall be paid by the owner of the property from which the encroachment has occurred. The department shall bill the owner for the cost. If the bill remains unpaid for a period of thirty (30) days, the department shall file the bill with the clerk of the circuit court of the county in which the property is located. The clerk shall immediately enter the bill on the judgment docket against the owner of the property, and the bill is a lien against the property. The lien may be foreclosed in the same manner as other judgment liens, without relief from valuation or appraisal laws or right of redemption.

(e) Where an awning, canopy, marquee, advertising sign, or similar encroachment extending over a highway right-of-way was in place on August 12, 1963, and is supported entirely from outside the highway right-of-way, the encroachment may remain if the department determines that the encroachment will not impair the highway or interfere with the free and safe flow of traffic on the highway.

As added by P.L.18-1990, SEC.214.

IC 8-23-5-2

Construction and reconstruction at railroad crossings; costs

Sec. 2. (a) If a highway or road is being constructed or reconstructed so that it crosses or intersects the existing tracks of a railroad at grade level at a point where no crossing previously existed, the department, county, city, or town under whose

jurisdiction the crossing lies shall pay the cost of the construction of the new crossing, the approaches to the crossing, and the cost of the necessary protective or crossing warning signals. After construction, the owner or lessee of the railroad shall maintain the crossing and protective or crossing warning signals and keep them in repair at the owner's or lessee's cost.

(b) If the owner or lessee of a railroad is constructing or reconstructing railroad tracks so that the tracks cross or intersect a highway or road at grade level at a point where no railroad crossing previously existed, the owner or lessee of the railroad shall pay the cost of the construction of the new crossing, the approaches to the crossing, and the cost of the necessary protective or crossing warning signals. After construction, the owner or lessee of the railroad shall maintain the crossing and protective or crossing warning signals and keep them in repair at the owner's or lessee's cost.

(c) If a highway or road crosses or intersects the tracks of a railroad at grade level and the highway or road is reconstructed to alter the existing crossing or intersection by a change of grade, widening or changing the type of pavement, or by changing the angle of the intersection, the department, county, city, or town under whose jurisdiction the crossing lies shall pay the cost of the reconstruction of the crossing, the approaches to the crossing, and the cost of the necessary protective or crossing warning signals. After reconstruction, the owner or lessee of the railroad shall maintain the crossing and protective or crossing warning signals and keep them in repair at the owner's or lessee's cost.

(d) If the owner or lessee of a railroad reconstructs or alters the tracks of a railroad that crosses or intersects a highway or road at grade level so that it is necessary to reconstruct or alter the crossing or intersection, the owner or lessee of the railroad shall pay the cost of the reconstruction or altering of the crossing, the approaches to the crossing, and the cost of the necessary protective or crossing warning signals. After construction, the owner or lessee of the railroad shall maintain the crossing and protective or crossing warning signals and keep them in repair at the owner's or lessee's cost.

(e) Notwithstanding subsections (a) through (d), the department, a county, a city, or a town under whose jurisdiction a railroad crossing lies may provide highway or road surface maintenance at a railroad crossing if the department, county, city, or town requests and receives written approval from the railroad owner or lessee before commencing the highway or road surface maintenance. The cost of the maintenance may be wholly or partially borne by the department, county, city, or town upon agreement with the railroad.

(f) Any construction, reconstruction, or maintenance of highway or road surfaces provided for in this section may be paid for from funds obtained under 23 U.S.C. 130.

(g) A railroad whose tracks lie in any public highway or road shall properly grade, surface, and maintain the highway, road, and railroad tracks within the boundaries described in subsection (h):

(1) in accordance with the grade and surfacing material of the

highway or road; and

(2) in a manner as to afford security for life and property of persons and vehicles using the highway or road.

(h) The railroad is responsible for the repair and maintenance of the grade and surface occupied by the railroad tracks, including the space:

(1) between the rails of a railroad track;

(2) between the railroad tracks if there are at least two (2) railroad tracks; and

(3) that extends eighteen (18) inches in width on the outside of each rail of a railroad track.

As added by P.L.18-1990, SEC.214. Amended by P.L.183-2005, SEC.1.

IC 8-23-5-3

Construction of railroad viaducts

Sec. 3. (a) The department may construct a viaduct where a railroad yard and tracks adjacent to a railroad yard intersect the direct route of a through street in a city or town that directly connects with a state highway designated as a principal arterial highway if the owner of the railroad yard or tracks agrees to grant an easement to build a viaduct. The easement shall be granted without compensation or damages allowed to the owner of the railroad yard or tracks.

(b) A viaduct authorized under subsection (a) shall be constructed according to plans and specifications adopted by the department in the same manner as state highways are constructed. The department may contract with the owner of the railroad yard or tracks to have the viaduct built by the owner of the railroad yard or tracks.

As added by P.L.18-1990, SEC.214.

IC 8-23-5-4

Improvement of certain connecting streets and roads

Sec. 4. Whenever:

(1) the department improves a state highway that is connected with a city street or road; and

(2) the state owns property in the city;

the department shall improve the part of the connecting street or road that runs through or abuts the state owned property to conform with the standards adopted for the construction and improvement of state highways.

As added by P.L.18-1990, SEC.214.

IC 8-23-5-5

Construction of sidewalks

Sec. 5. The department may construct sidewalks on and along a highway in the state highway system outside the corporate limits of a city whenever the department considers that sidewalks are necessary for the protection and safety of pedestrians.

As added by P.L.18-1990, SEC.214.

IC 8-23-5-6

Maintenance of state institution roadways

Sec. 6. (a) The department shall maintain all highways and driveways located on the premises of institutions operated by the state, including the state fairgrounds upon a request for maintenance by the institution. The expense of maintaining a highway or driveway under this subsection shall be paid by the department, subject to the approval of the governor.

(b) The department shall:

(1) maintain public roads and parking areas constructed on properties of the department of natural resources; and

(2) construct new roads on properties owned by the department of natural resources:

(A) upon the request of the department of natural resources;

(B) subject to the approval of the engineers of the department of natural resources as to the design and location of the new roads to preserve scenic values; and

(C) subject to the approval of the governor.

As added by P.L.18-1990, SEC.214. Amended by P.L.110-1993, SEC.1.

IC 8-23-5-7

Construction and maintenance of roadside parks and connecting highways

Sec. 7. (a) As part of the state highway system, the department may lay out, construct, and maintain roadside parks and highways that connect a state highway with a state park, state forest reserve, state game preserve, or a state institution. A connecting highway constructed under this subsection shall be constructed in the same manner as a state highway.

(b) Before a roadside park or connecting highway described in subsection (a) may be constructed within the boundaries of a state institution, park, reserve or preserve, the board of trustees of the state institution, park, reserve, or preserve must adopt a resolution approving the construction.

(c) The department may cooperate with a county highway authority having jurisdiction over a county highway that connects a state park, state forest reserve, state game preserve, or state recreation area with a state highway. The department shall undertake construction and maintenance responsibilities under this subsection upon the request of the department of natural resources if the request is approved by the governor.

(d) Expenditures incurred by the department in carrying out this section shall be made from the motor vehicle highway account before distribution to local units of government. Before an expenditure may be made under this subsection, an appropriation authorizing the expenditure must be made.

As added by P.L.18-1990, SEC.214.

IC 8-23-5-8

Installation of vending machines in interstate highway rest areas

Sec. 8. (a) The department may install vending machines for items including food, drink, candy, and first aid kits in rest areas on the interstate highway system.

(b) The department shall report in an electronic format under IC 5-14-6 to the general assembly through the legislative council the results of the installation.

(c) Installation of the vending machines must conform with federal and Indiana law.

As added by P.L.18-1990, SEC.214. Amended by P.L.28-2004, SEC.75.

IC 8-23-5-9

Additions to state highway system; procedures

Sec. 9. (a) The department may establish the approximate locations, using the recommended widths established by the department in the department's approved design manual for equivalent classification of roads, of rights-of-way for additions to the state highway system.

(b) If the department establishes the approximate locations and widths of rights-of-way for an addition to the state highway system under subsection (a), the department shall conduct a public hearing in at least one (1) county in which a right-of-way for the addition is located. The department shall publish notice of a hearing conducted under this subsection in two (2) newspapers of general circulation in the county in which the hearing will be conducted at least ten (10) days before the hearing. If only one (1) newspaper is published in the county, publication in that newspaper is sufficient. Notice of the hearing shall be given by mail to all owners of real property identified within the rights-of-way shown on the map prepared under subsection (c).

(c) If the department establishes the approximate locations and widths of rights-of-way for an addition to the state highway system under subsection (a), the department shall prepare a map showing the approximate location and width of each right-of-way for the proposed addition. The map must display the following:

- (1) Existing highways in the area of the addition.
- (2) Property lines and owners of record of property to be acquired for the rights-of-way.
- (3) Other information determined necessary by the department.

The department shall approve the map, with changes (if applicable), at the public hearing conducted under subsection (b). The department shall record the approval and a copy of the approved map in the office of the recorder of each county in which land to be acquired for the addition is located.

(d) The department shall:

- (1) publish notice of a recording under subsection (c) in two (2) newspapers of general circulation in each county in which an approval is recorded; however, if only one (1) newspaper is published in the county, publication in that newspaper is

sufficient; and

(2) not more than sixty (60) days after an approval is recorded, send notice of the recording by certified mail to all owners of record of real property to be acquired for rights-of-way for the addition.

(e) The owner of property to be acquired for a right-of-way must give at least sixty (60) days notice by registered mail to the department before developing or otherwise improving the property. However, the owner may perform normal or emergency repairs to existing structures on the property without giving notice to the department.

(f) Not more than forty-five (45) days after receiving a notice under subsection (e), the department shall respond by providing notice to the property owner of the department's intent to acquire the property. The department shall:

(1) purchase; or

(2) exercise the right of eminent domain to acquire;

the property not more than one hundred eighty (180) days after responding under this subsection. If the department does not purchase the property or acquire the property by eminent domain within one hundred eighty (180) days after responding under this subsection, the department may subsequently acquire the property through the exercise of the right of eminent domain under IC 32-24.

(g) An owner of property to be acquired for a right-of-way may not receive damages for any development or improvement for which the owner is required to give notice to the department under subsection (e) unless the department fails to purchase or exercise the right of eminent domain to acquire the property under subsection (f).

(h) The state or a county or municipality in which an addition to the state highway system is located may acquire a right-of-way needed for the addition at any time. For purposes of this subsection, the fair market value of the property shall be determined as follows:

(1) If the property is purchased, the fair market value on the date of purchase.

(2) If the property is acquired by eminent domain, the fair market value on the date on which the complaint in condemnation was filed.

However, if the property is agricultural land, the fair market value shall be determined under IC 32-24-1.

(i) The department shall adopt guidelines to determine whether a project constitutes an addition to the state highway system for purposes of this section. In adopting guidelines under this subsection, the department shall consider the following:

(1) The need for additional capacity.

(2) The estimated cost of the project.

(3) Whether the project is new construction or maintenance.

(j) As used in this section, "owner" does not include a utility.

(k) At the same time and in the same manner as the notice is sent under subsection (d)(2), the department shall notify the owner of property to be acquired for a right-of-way of the following:

(1) With respect to damage that occurs to the property as a result of entry onto the land for a purpose set forth in IC 8-23-7-26:

(A) a description of the owner's right to compensation for the damage from the department; and

(B) the procedure that the owner must follow to obtain the compensation.

(2) The name, mailing address, and telephone number of an individual or office within the department to which the owner may direct questions concerning the rights and procedures described in subdivision (1).

As added by P.L.99-2008, SEC.1.