



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3343

Introduced 2/10/2010, by Sen. James F. Clayborne, Jr.

SYNOPSIS AS INTRODUCED:

See Index

Amends the Public Utilities Act. Provides that the rules of the Illinois Commerce Commission may include specific options for expediting the issuance of those permits and licenses that are necessary for the construction of energy infrastructure, where such construction is subject to the Commission's jurisdiction. Provides that the rules may provide that in the event that an applicant elects to use an option provided for in the rules that (i) the applicant must request the use of the expedited process at the time of filing its application for a license or permit with the Commission; (ii) the Commission may engage the experts and procure those additional resources that are reasonably necessary for implementing the expedited process; and (iii) the applicant must bear any additional costs incurred by the Commission as a result of the applicant's use of the expedited process. Provides that a common carrier by pipeline that requests and receives a certificate of good standing that is related to the proposed construction of a pipeline or other facility under specified provisions may enter upon, take, or damage private property in the manner provided for by the law of eminent domain. Changes provisions that provide that in its determination of public convenience and necessity for a proposed pipeline or facility designed or intended to transport crude oil, gas, or ethanol and any alternate locations for such proposed pipeline or facility, the Commission shall consider, but not be limited to, specified factors. Amends the Eminent Domain Act to include provisions from the Public Utilities Act in provisions concerning the express grants of the power to acquire property by condemnation or eminent domain. Effective July 1, 2010.

LRB096 19284 MJR 34675 b

1 AN ACT concerning utilities, which may be referred to as
2 the Energy Infrastructure and Jobs Permitting Law.

3 **Be it enacted by the People of the State of Illinois,**
4 **represented in the General Assembly:**

5 Section 5. The Public Utilities Act is amended by changing
6 Sections 8-509 and 15-401 and by adding Section 4-105 as
7 follows:

8 (220 ILCS 5/4-105 new)

9 Sec. 4-105. Options for expedited permitting. The rules of
10 the Commission may include specific options for expediting the
11 issuance of those permits and licenses that are necessary for
12 the construction of energy infrastructure, where such
13 construction is subject to the Commission's jurisdiction. The
14 rules may provide that in the event that an applicant elects to
15 use an option provided for in the rules that (i) the applicant
16 must request the use of the expedited process at the time of
17 filing its application for a license or permit with the
18 Commission; (ii) the Commission may engage the experts and
19 procure those additional resources that are reasonably
20 necessary for implementing the expedited process; and (iii) the
21 applicant must bear any additional costs incurred by the
22 Commission as a result of the applicant's use of the expedited
23 process.

1 (220 ILCS 5/8-509) (from Ch. 111 2/3, par. 8-509)

2 Sec. 8-509. When necessary for the construction of any
3 alterations, additions, extensions or improvements ordered or
4 authorized under Section 8-406, 8-503, ~~or~~ 12-218, or 15-401 of
5 this Act, any public utility may enter upon, take or damage
6 private property in the manner provided for by the law of
7 eminent domain.

8 This Section applies to the exercise of eminent domain
9 powers by telephone companies or telecommunications carriers
10 only when the facilities to be constructed are intended to be
11 used in whole or in part for providing one or more intrastate
12 telecommunications services classified as "noncompetitive"
13 under Section 13-502 in a tariff filed by the condemnor. The
14 exercise of eminent domain powers by telephone companies or
15 telecommunications carriers in all other cases shall be
16 governed solely by "An Act relating to the powers, duties and
17 property of telephone companies", approved May 16, 1903, as now
18 or hereafter amended.

19 (Source: P.A. 86-221.)

20 (220 ILCS 5/15-401)

21 Sec. 15-401. Licensing.

22 (a) No person shall operate as a common carrier by pipeline
23 unless the person possesses a certificate in good standing
24 authorizing it to operate as a common carrier by pipeline. No

1 person shall begin or continue construction of a pipeline or
2 other facility, other than the repair or replacement of an
3 existing pipeline or facility, for use in operations as a
4 common carrier by pipeline unless the person possesses a
5 certificate in good standing. As provided in Section 8-509 of
6 this Act, a common carrier by pipeline that requests and
7 receives a certificate of good standing that is related to the
8 proposed construction of a pipeline or other facility under
9 this Section may enter upon, take, or damage private property
10 in the manner provided for by the law of eminent domain.

11 (b) Requirements for issuance. The Commission, after a
12 hearing, shall grant an application for a certificate
13 authorizing operations as a common carrier by pipeline, in
14 whole or in part, to the extent that it finds that the
15 application was properly filed; a public need for the service
16 exists; the applicant is fit, willing, and able to provide the
17 service in compliance with this Act, Commission regulations,
18 and orders; and the public convenience and necessity requires
19 issuance of the certificate. Evidence encompassing any of the
20 factors set forth in items (1) through (9) of this subsection
21 (b) that is submitted by the applicant, any other party, or the
22 Commission's staff shall also be considered by the Commission
23 in determining whether a public need for the service exists
24 under either current or expected conditions. The changes in
25 this subsection (b) are intended to be confirmatory of existing
26 law.

1 In its determination of public convenience and necessity
2 for a proposed pipeline or facility designed or intended to
3 transport crude oil, gas, or ethanol and any alternate
4 locations for such proposed pipeline or facility, the
5 Commission shall consider, but not be limited to, the
6 following:

7 (1) any evidence presented by the Illinois
8 Environmental Protection Agency regarding the
9 environmental impact of the proposed pipeline or other
10 facility;

11 (2) any evidence presented by the Illinois Department
12 of Transportation regarding the impact of the proposed
13 pipeline or facility on traffic safety, road construction,
14 or other transportation issues;

15 (3) any evidence presented by the Department of Natural
16 Resources regarding the impact of the proposed pipeline or
17 facility on any conservation areas, forest preserves,
18 wildlife preserves, wetlands, or any other natural
19 resource;

20 (4) any evidence of the effect of the pipeline upon the
21 economy, infrastructure, and public safety presented by
22 local governmental units that will be affected by the
23 proposed pipeline or facility;

24 (5) any evidence of the effect of the pipeline upon
25 property values presented by property owners who will be
26 affected by the proposed pipeline or facility, provided,

1 however that the Commission need not hear evidence as to
2 the actual valuation of property such as that as would be
3 presented to and determined by the courts under the Eminent
4 Domain Act;

5 (6) any evidence presented by the Department of
6 Commerce and Economic Opportunity regarding the current
7 and future local, State-wide, or regional economic effect,
8 direct or indirect, of the proposed pipeline or facility
9 including, but not limited to, property values, employment
10 rates, and residential and business development; ~~and~~

11 (7) any evidence addressing the factors in this
12 subsection (b) or other relevant factors that is presented
13 by any other State agency, the applicant, a party, or other
14 entity that participates in the proceeding, including
15 evidence presented by the Commission's staff;

16 (8) any evidence presented by a State agency or unit of
17 State or local government as to the current and future
18 national, State-wide, or regional economic effects of the
19 proposed pipeline, direct or indirect, as they affect
20 residents or businesses in Illinois, including, but not
21 limited to, such impacts as the ability of manufacturers in
22 Illinois to meet public demand for related services and
23 products and to compete in the national and regional
24 economies, improved access of suppliers to regional and
25 national shipping grids, the ability of the State to access
26 funds made available for energy infrastructure by the

1 federal government, mitigation of foreseeable spikes in
2 price affecting Illinois residents or businesses due to
3 sudden changes in supply or transportation capacity, and
4 the likelihood that the proposed construction will
5 substantially encourage related investment in the State's
6 energy infrastructure and the creation of energy related
7 jobs; and

8 (9) any evidence presented by any State or federal
9 governmental entity as to how the proposed pipeline or
10 facility will affect the security, stability, and
11 reliability of energy in the State or in the region.

12 In its written order, the Commission shall address all of
13 the evidence presented, and if the order is contrary to any of
14 the evidence, the Commission shall state the reasons for its
15 determination with regard to that evidence. ~~The provisions of~~
16 ~~this amendatory Act of 1996 apply to any certificate granted or~~
17 ~~denied after the effective date of this amendatory Act of 1996.~~

18 (b-5) An application filed pursuant to this Section may
19 request review of a project route width that identifies the
20 areas in which the pipeline would be located, with the width
21 ranging from the minimum width required for a pipeline
22 right-of-way up to 500 feet in width, thus allowing increased
23 flexibility to accommodate specific landowner requests, avoid
24 environmentally sensitive areas, or address special
25 environmental permitting requirements. The applicant must
26 notify all potentially affected landowners within the defined

1 project route width of the application using the notification
2 procedures set forth in the Commission's rules for applications
3 under this Section. Upon receiving approval of the project
4 route width, the common carrier by pipeline must, as it
5 finalizes the actual pipeline alignment within the route, file
6 its final list of affected landowners with the Commission at
7 least 14 days in advance of beginning construction on any tract
8 within the project route width and also provide the Commission
9 with at least 14 days notice before filing a complaint for
10 eminent domain in the circuit court with regard to any tract
11 within the project route width.

12 (b-10) The Commission shall make its determination on any
13 application filed pursuant to this Section and issue its final
14 order within 11 months after the date that the application is
15 filed unless all parties to the proceeding agree in writing to
16 a period of greater than 11 months, and provided that any
17 agreement to extend the 11-month period must be for a specified
18 period of time, not exceeding 60 days. The parties may enter
19 into more than one agreement to extend time. In the event the
20 Commission fails to enter its order within the applicable
21 11-month period after the filing of the application, or upon
22 the expiration of the last agreement to extend time, any party
23 may file a complaint in the circuit court for an emergency
24 order of mandamus to direct and compel the Commission to enter
25 its order within 60 days after the expiration of the 11-month
26 period or within 60 days after the expiration of the last

1 agreement to extend time, and the court shall set a schedule to
2 enable the Commission to complete the case and enter an order
3 within the 60-day time frame specified in this subsection
4 (b-10). Summons upon the complaint shall be returnable within 5
5 days. The complaint for an order of mandamus shall be brought
6 in the circuit court in which the pipeline is situated or, if
7 the subject matter of the hearing is situated in more than one
8 circuit, then in any one of those circuits. Nothing in this
9 subsection (b-10) shall preclude the Commission from
10 establishing an expedited schedule for making its
11 determination on an application filed pursuant to this Section
12 if it finds that the public interest requires the setting of
13 such an expedited schedule.

14 (b-15) Within 6 months after the Commission's entry of an
15 order approving either a specific route or a project route
16 width under this Section, the common carrier by pipeline that
17 receives such order may file supplemental applications for
18 minor route deviations outside the approved project route
19 width, allowing for additions or changes to the approved route
20 to address environmental concerns encountered during
21 construction or to accommodate landowner requests. Notice of a
22 supplemental application shall be provided to any State agency
23 that appeared in the original proceeding or immediately
24 affected landowner at the time such supplemental application is
25 filed. The route deviations shall be approved by the Commission
26 within 45 days unless a written objection is filed to the

1 supplemental application within 20 days after the date such
2 supplemental application is filed. Hearings on any such
3 supplemental application shall be limited to the
4 reasonableness of the specific variance proposed, and the
5 issues of public need or public convenience or necessity for
6 the project or fitness of the applicant shall not be reopened
7 in the supplemental proceeding.

8 (c) Duties and obligations of common carriers by pipeline.
9 Each common carrier by pipeline shall provide adequate service
10 to the public at reasonable rates and without discrimination.
11 (Source: P.A. 94-793, eff. 5-19-06.)

12 Section 10. The Eminent Domain Act is amended by changing
13 Section 15-5-25 as follows:

14 (735 ILCS 30/15-5-25)

15 Sec. 15-5-25. Eminent domain powers in ILCS Chapters 205
16 through 430. The following provisions of law may include
17 express grants of the power to acquire property by condemnation
18 or eminent domain:

19 (220 ILCS 5/8-509 and 15-401); Public Utilities Act; public
20 utilities; for construction of certain improvements.

21 (220 ILCS 15/1); Gas Storage Act; corporations engaged in the
22 distribution, transportation, or storage of natural gas or
23 manufactured gas; for their operations.

1 (220 ILCS 15/2 and 15/6); Gas Storage Act; corporations engaged
2 in the distribution, transportation, or storage of natural
3 gas or manufactured gas; for use of an underground
4 geological formation for gas storage.

5 (220 ILCS 30/13); Electric Supplier Act; electric
6 cooperatives; for general purposes.

7 (220 ILCS 55/3); Telegraph Act; telegraph companies; for
8 telegraph lines.

9 (220 ILCS 65/4); Telephone Company Act; telecommunications
10 carriers; for telephone company purposes.

11 (225 ILCS 435/23); Ferries Act; ferry operators; for a landing,
12 ferryhouse, or approach.

13 (225 ILCS 440/9); Highway Advertising Control Act of 1971;
14 Department of Transportation; for removal of signs
15 adjacent to highways.

16 (310 ILCS 5/6 and 5/38); State Housing Act; housing
17 corporations; for general purposes.

18 (310 ILCS 10/8.3); Housing Authorities Act; housing
19 authorities; for general purposes.

20 (310 ILCS 10/8.15); Housing Authorities Act; housing
21 authorities; for implementation of conservation plans and
22 demolition.

23 (310 ILCS 10/9); Housing Authorities Act; housing authorities;
24 for general purposes.

25 (310 ILCS 20/5); Housing Development and Construction Act;
26 housing authorities; for development or redevelopment.

1 (310 ILCS 35/2); House Relocation Act; political subdivisions
2 and municipal corporations; for relocation of dwellings
3 for highway construction.

4 (315 ILCS 5/14); Blighted Areas Redevelopment Act of 1947; land
5 clearance commissions; for redevelopment projects.

6 (315 ILCS 10/5); Blighted Vacant Areas Development Act of 1949;
7 State of Illinois; for housing development.

8 (315 ILCS 20/9 and 20/42); Neighborhood Redevelopment
9 Corporation Law; neighborhood redevelopment corporations;
10 for general purposes.

11 (315 ILCS 25/4 and 25/6); Urban Community Conservation Act;
12 municipal conservation boards; for conservation areas.

13 (315 ILCS 30/12); Urban Renewal Consolidation Act of 1961;
14 municipal departments of urban renewal; for blighted area
15 redevelopment projects.

16 (315 ILCS 30/20 and 30/22); Urban Renewal Consolidation Act of
17 1961; municipal departments of urban renewal; for
18 implementing conservation areas.

19 (315 ILCS 30/24); Urban Renewal Consolidation Act of 1961;
20 municipal departments of urban renewal; for general
21 purposes.

22 (415 ILCS 95/6); Junkyard Act; Department of Transportation;
23 for junkyards or scrap processing facilities.

24 (420 ILCS 35/1); Radioactive Waste Storage Act; Illinois
25 Emergency Management Agency; for radioactive by-product
26 and waste storage.

1 (Source: P.A. 94-1055, eff. 1-1-07.)

2 Section 99. Effective date. This Act takes effect July 1,
3 2010.

1 INDEX

2 Statutes amended in order of appearance

3 220 ILCS 5/4-105 new

4 220 ILCS 5/8-509 from Ch. 111 2/3, par. 8-509

5 220 ILCS 5/15-401

6 735 ILCS 30/15-5-25