

SB1388



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB1388

Introduced 2/9/2017, by Sen. Don Harmon

SYNOPSIS AS INTRODUCED:

605 ILCS 5/9-113

from Ch. 121, par. 9-113

Amends the Illinois Highway Code. Provides that upon receipt of an application, consent to use a highway may be granted to any communications provider issued a certificate of public convenience and necessity from the Illinois Commerce Commission. Provides requirements (same as those under current law for a public utility) for communications provider use of a highway right-of-way if the highway authority does not have fee ownership of the property to be used. Defines "communications provider". Effective immediately.

LRB100 09036 AXK 19184 b

A BILL FOR

1 AN ACT concerning transportation.

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

4 Section 5. The Illinois Highway Code is amended by changing
5 Section 9-113 as follows:

6 (605 ILCS 5/9-113) (from Ch. 121, par. 9-113)

7 Sec. 9-113. (a) No ditches, drains, track, rails, poles,
8 wires, pipe line or other equipment of any public utility
9 company, municipal corporation or other public or private
10 corporation, association or person shall be located, placed or
11 constructed upon, under or along any highway, or upon any
12 township or district road, without first obtaining the written
13 consent of the appropriate highway authority as hereinafter
14 provided for in this Section.

15 (b) The State and county highway authorities are authorized
16 to promulgate reasonable and necessary rules, regulations, and
17 specifications for highways for the administration of this
18 Section. In addition to rules promulgated under this subsection
19 (b), the State highway authority shall and a county highway
20 authority may adopt coordination strategies and practices
21 designed and intended to establish and implement effective
22 communication respecting planned highway projects that the
23 State or county highway authority believes may require removal,

1 relocation, or modification in accordance with subsection (f)
2 of this Section. The strategies and practices adopted shall
3 include but need not be limited to the delivery of 5 year
4 programs, annual programs, and the establishment of
5 coordination councils in the locales and with the utility
6 participation that will best facilitate and accomplish the
7 requirements of the State and county highway authority acting
8 under subsection (f) of this Section. The utility participation
9 shall include assisting the appropriate highway authority in
10 establishing a schedule for the removal, relocation, or
11 modification of the owner's facilities in accordance with
12 subsection (f) of this Section. In addition, each utility shall
13 designate in writing to the Secretary of Transportation or his
14 or her designee an agent for notice and the delivery of
15 programs. The coordination councils must be established on or
16 before January 1, 2002. The 90 day deadline for removal,
17 relocation, or modification of the ditches, drains, track,
18 rails, poles, wires, pipe line, or other equipment in
19 subsection (f) of this Section shall be enforceable upon the
20 establishment of a coordination council in the district or
21 locale where the property in question is located. The
22 coordination councils organized by a county highway authority
23 shall include the county engineer, the County Board Chairman or
24 his or her designee, and with such utility participation as
25 will best facilitate and accomplish the requirements of a
26 highway authority acting under subsection (f) of this Section.

1 Should a county highway authority decide not to establish
2 coordination councils, the 90 day deadline for removal,
3 relocation, or modification of the ditches, drains, track,
4 rails, poles, wires, pipe line, or other equipment in
5 subsection (f) of this Section shall be waived for those
6 highways.

7 (c) In the case of non-toll federal-aid fully
8 access-controlled State highways, the State highway authority
9 shall not grant consent to the location, placement or
10 construction of ditches, drains, track, rails, poles, wires,
11 pipe line or other equipment upon, under or along any such
12 non-toll federal-aid fully access-controlled State highway,
13 which:

14 (1) would require cutting the pavement structure
15 portion of such highway for installation or, except in the
16 event of an emergency, would require the use of any part of
17 such highway right-of-way for purposes of maintenance or
18 repair. Where, however, the State highway authority
19 determines prior to installation that there is no other
20 access available for maintenance or repair purposes, use by
21 the entity of such highway right-of-way shall be permitted
22 for such purposes in strict accordance with the rules,
23 regulations and specifications of the State highway
24 authority, provided however, that except in the case of
25 access to bridge structures, in no such case shall an
26 entity be permitted access from the through-travel lanes,

1 shoulders or ramps of the non-toll federal-aid fully
2 access-controlled State highway to maintain or repair its
3 accommodation; or

4 (2) would in the judgment of the State highway
5 authority, endanger or impair any such ditches, drains,
6 track, rails, poles, wires, pipe lines or other equipment
7 already in place; or

8 (3) would, if installed longitudinally within the
9 access control lines of such highway, be above ground after
10 installation except that the State highway authority may
11 consent to any above ground installation upon, under or
12 along any bridge, interchange or grade separation within
13 the right-of-way which installation is otherwise in
14 compliance with this Section and any rules, regulations or
15 specifications issued hereunder; or

16 (4) would be inconsistent with Federal law or with
17 rules, regulations or directives of appropriate Federal
18 agencies.

19 (d) In the case of accommodations upon, under or along
20 non-toll federal-aid fully access-controlled State highways
21 the State highway authority may charge an entity reasonable
22 compensation for the right of that entity to longitudinally
23 locate, place or construct ditches, drains, track, rails,
24 poles, wires, pipe line or other equipment upon, under or along
25 such highway. Such compensation may include in-kind
26 compensation.

1 Where the entity applying for use of a non-toll federal-aid
2 fully access-controlled State highway right-of-way is a public
3 utility company, municipal corporation or other public or
4 private corporation, association or person, such compensation
5 shall be based upon but shall not exceed a reasonable estimate
6 by the State highway authority of the fair market value of an
7 easement or leasehold for such use of the highway right-of-way.
8 Where the State highway authority determines that the
9 applied-for use of such highway right-of-way is for private
10 land uses by an individual and not for commercial purposes, the
11 State highway authority may charge a lesser fee than would be
12 charged a public utility company, municipal corporation or
13 other public or private corporation or association as
14 compensation for the use of the non-toll federal-aid fully
15 access-controlled State highway right-of-way. In no case shall
16 the written consent of the State highway authority give or be
17 construed to give any entity any easement, leasehold or other
18 property interest of any kind in, upon, under, above or along
19 the non-toll federal-aid fully access-controlled State highway
20 right-of-way.

21 Where the compensation from any entity is in whole or in
22 part a fee, such fee may be reasonably set, at the election of
23 the State highway authority, in the form of a single lump sum
24 payment or a schedule of payments. All such fees charged as
25 compensation may be reviewed and adjusted upward by the State
26 highway authority once every 5 years provided that any such

1 adjustment shall be based on changes in the fair market value
2 of an easement or leasehold for such use of the non-toll
3 federal-aid fully access-controlled State highway
4 right-of-way. All such fees received as compensation by the
5 State highway authority shall be deposited in the Road Fund.

6 (e) Any entity applying for consent shall submit such
7 information in such form and detail to the appropriate highway
8 authority as to allow the authority to evaluate the entity's
9 application. In the case of accommodations upon, under or along
10 non-toll federal-aid fully access-controlled State highways
11 the entity applying for such consent shall reimburse the State
12 highway authority for all of the authority's reasonable
13 expenses in evaluating that entity's application, including
14 but not limited to engineering and legal fees.

15 (f) Any ditches, drains, track, rails, poles, wires, pipe
16 line, or other equipment located, placed, or constructed upon,
17 under, or along a highway with the consent of the State or
18 county highway authority under this Section shall, upon written
19 notice by the State or county highway authority be removed,
20 relocated, or modified by the owner, the owner's agents,
21 contractors, or employees at no expense to the State or county
22 highway authority when and as deemed necessary by the State or
23 county highway authority for highway or highway safety
24 purposes. The notice shall be properly given after the
25 completion of engineering plans, the receipt of the necessary
26 permits issued by the appropriate State and county highway

1 authority to begin work, and the establishment of sufficient
2 rights-of-way for a given utility authorized by the State or
3 county highway authority to remain on the highway right-of-way
4 such that the unit of local government or other owner of any
5 facilities receiving notice in accordance with this subsection
6 (f) can proceed with relocating, replacing, or reconstructing
7 the ditches, drains, track, rails, poles, wires, pipe line, or
8 other equipment. If a permit application to relocate on a
9 public right-of-way is not filed within 15 days of the receipt
10 of final engineering plans, the notice precondition of a permit
11 to begin work is waived. However, under no circumstances shall
12 this notice provision be construed to require the State or any
13 government department or agency to purchase additional
14 rights-of-way to accommodate utilities. If, within 90 days
15 after receipt of such written notice, the ditches, drains,
16 track, rails, poles, wires, pipe line, or other equipment have
17 not been removed, relocated, or modified to the reasonable
18 satisfaction of the State or county highway authority, or if
19 arrangements are not made satisfactory to the State or county
20 highway authority for such removal, relocation, or
21 modification, the State or county highway authority may remove,
22 relocate, or modify such ditches, drains, track, rails, poles,
23 wires, pipe line, or other equipment and bill the owner thereof
24 for the total cost of such removal, relocation, or
25 modification. The scope of the project shall be taken into
26 consideration by the State or county highway authority in

1 determining satisfactory arrangements. The State or county
2 highway authority shall determine the terms of payment of those
3 costs provided that all costs billed by the State or county
4 highway authority shall not be made payable over more than a 5
5 year period from the date of billing. The State and county
6 highway authority shall have the power to extend the time of
7 payment in cases of demonstrated financial hardship by a unit
8 of local government or other public owner of any facilities
9 removed, relocated, or modified from the highway right-of-way
10 in accordance with this subsection (f). This paragraph shall
11 not be construed to prohibit the State or county highway
12 authority from paying any part of the cost of removal,
13 relocation, or modification where such payment is otherwise
14 provided for by State or federal statute or regulation. At any
15 time within 90 days after written notice was given, the owner
16 of the drains, track, rails, poles, wires, pipe line, or other
17 equipment may request the district engineer or, if appropriate,
18 the county engineer for a waiver of the 90 day deadline. The
19 appropriate district or county engineer shall make a decision
20 concerning waiver within 10 days of receipt of the request and
21 may waive the 90 day deadline if he or she makes a written
22 finding as to the reasons for waiving the deadline. Reasons for
23 waiving the deadline shall be limited to acts of God, war, the
24 scope of the project, the State failing to follow the proper
25 notice procedure, and any other cause beyond reasonable control
26 of the owner of the facilities. Waiver must not be unreasonably

1 withheld. If 90 days after written notice was given, the
2 ditches, drains, track, rails, poles, wires, pipe line, or
3 other equipment have not been removed, relocated, or modified
4 to the satisfaction of the State or county highway authority,
5 no waiver of deadline has been requested or issued by the
6 appropriate district or county engineer, and no satisfactory
7 arrangement has been made with the appropriate State or county
8 highway authority, the State or county highway authority or the
9 general contractor of the building project may file a complaint
10 in the circuit court for an emergency order to direct and
11 compel the owner to remove, relocate, or modify the drains,
12 track, rails, poles, wires, pipe line, or other equipment to
13 the satisfaction of the appropriate highway authority. The
14 complaint for an order shall be brought in the circuit in which
15 the subject matter of the complaint is situated or, if the
16 subject matter of the complaint is situated in more than one
17 circuit, in any one of those circuits.

18 (g) It shall be the sole responsibility of the entity,
19 without expense to the State highway authority, to maintain and
20 repair its ditches, drains, track, rails, poles, wires, pipe
21 line or other equipment after it is located, placed or
22 constructed upon, under or along any State highway and in no
23 case shall the State highway authority thereafter be liable or
24 responsible to the entity for any damages or liability of any
25 kind whatsoever incurred by the entity or to the entity's
26 ditches, drains, track, rails, poles, wires, pipe line or other

1 equipment.

2 (h) Except as provided in subsection (h-1), upon receipt of
3 an application therefor, consent to so use a highway may be
4 granted subject to such terms and conditions not inconsistent
5 with this Code as the highway authority deems for the best
6 interest of the public. The terms and conditions required by
7 the appropriate highway authority may include but need not be
8 limited to participation by the party granted consent in the
9 strategies and practices adopted under subsection (b) of this
10 Section. The petitioner shall pay to the owners of property
11 abutting upon the affected highways established as though by
12 common law plat all damages the owners may sustain by reason of
13 such use of the highway, such damages to be ascertained and
14 paid in the manner provided by law for the exercise of the
15 right of eminent domain.

16 (h-1) With regard to any public utility, as defined in
17 Section 3-105 of the Public Utilities Act, engaged in public
18 water or public sanitary sewer service that comes under the
19 jurisdiction of the Illinois Commerce Commission, or any
20 communications provider as defined in this subsection (h-1),
21 upon receipt of an application therefor, consent to so use a
22 highway may be granted subject to such terms and conditions not
23 inconsistent with this Code as the highway authority deems for
24 the best interest of the public. The terms and conditions
25 required by the appropriate highway authority may include but
26 need not be limited to participation by the party granted

1 consent in the strategies and practices adopted under
2 subsection (b) of this Section. If the highway authority does
3 not have fee ownership of the property, the petitioner shall
4 pay to the owners of property located in the highway
5 right-of-way all damages the owners may sustain by reason of
6 such use of the highway, such damages to be ascertained and
7 paid in the manner provided by law for the exercise of the
8 right of eminent domain. The consent shall not otherwise
9 relieve the entity granted that consent from obtaining by
10 purchase, condemnation, or otherwise the necessary approval of
11 any owner of the fee over or under which the highway or road is
12 located, except to the extent that no such owner has paid real
13 estate taxes on the property for the 2 years prior to the grant
14 of the consent. Owners of property that abuts the right-of-way
15 but who acquired the property through a conveyance that either
16 expressly excludes the property subject to the right-of-way or
17 that describes the property conveyed as ending at the
18 right-of-way or being bounded by the right-of-way or road shall
19 not be considered owners of property located in the
20 right-of-way and shall not be entitled to damages by reason of
21 the use of the highway or road for utility purposes, except
22 that this provision shall not relieve the public utility from
23 the obligation to pay for any physical damage it causes to
24 improvements lawfully located in the right-of-way. Owners of
25 abutting property whose descriptions include the right-of-way
26 but are made subject to the right-of-way shall be entitled to

1 compensation for use of the right-of-way. If the property
2 subject to the right-of-way is not owned by the owners of the
3 abutting property (either because it is expressly excluded from
4 the property conveyed to an abutting property owner or the
5 property as conveyed ends at or is bounded by the right-of-way
6 or road), then the petitioner shall pay any damages, as so
7 calculated, to the person or persons who have paid real estate
8 taxes for the property as reflected in the county tax records.
9 If no person has paid real estate taxes, then the public
10 interest permits the installation of the facilities without
11 payment of any damages. This provision of this amendatory Act
12 of the 93rd General Assembly is intended to clarify, by
13 codification, existing law and is not intended to change the
14 law.

15 For purposes of this subsection (h-1), "communications
16 provider" means (1) any telecommunications carrier issued a
17 certificate of public convenience and necessity or a
18 certificate of service authority from the Illinois Commerce
19 Commission; (2) any "interconnected voice over Internet
20 protocol provider" as defined in Section 13-235 of the Public
21 Utilities Act; (3) any company providing "broadband service" as
22 defined in subsection (c) of Section 21-201 of the Public
23 Utilities Act; (4) any "cable operator" as defined in
24 subsection (d) of Section 21-201 of the Public Utilities Act;
25 or (5) any "holder" as defined in subsection (k) of Section
26 21-201 of the Public Utilities Act.

1 (i) Such consent shall be granted by the Department in the
2 case of a State highway; by the county board or its designated
3 county superintendent of highways in the case of a county
4 highway; by either the highway commissioner or the county
5 superintendent of highways in the case of a township or
6 district road, provided that if consent is granted by the
7 highway commissioner, the petition shall be filed with the
8 commissioner at least 30 days prior to the proposed date of the
9 beginning of construction, and that if written consent is not
10 given by the commissioner within 30 days after receipt of the
11 petition, the applicant may make written application to the
12 county superintendent of highways for consent to the
13 construction. This Section does not vitiate, extend or
14 otherwise affect any consent granted in accordance with law
15 prior to the effective date of this Code to so use any highway.

16 (j) Nothing in this Section shall limit the right of a
17 highway authority to permit the location, placement or
18 construction or any ditches, drains, track, rails, poles,
19 wires, pipe line or other equipment upon, under or along any
20 highway or road as a part of its highway or road facilities or
21 which the highway authority determines is necessary to service
22 facilities required for operating the highway or road,
23 including rest areas and weigh stations.

24 (k) Paragraphs (c) and (d) of this Section shall not apply
25 to any accommodation located, placed or constructed with the
26 consent of the State highway authority upon, under or along any

1 non-toll federal-aid fully access-controlled State highway
2 prior to July 1, 1984, provided that accommodation was
3 otherwise in compliance with the rules, regulations and
4 specifications of the State highway authority.

5 (1) Except as provided in subsection (1-1), the consent to
6 be granted pursuant to this Section by the appropriate highway
7 authority shall be effective only to the extent of the property
8 interest of the State or government unit served by that highway
9 authority. Such consent shall not be binding on any owner of
10 the fee over or under which the highway or road is located and
11 shall not otherwise relieve the entity granted that consent
12 from obtaining by purchase, condemnation or otherwise the
13 necessary approval of any owner of the fee over or under which
14 the highway or road is located. This paragraph shall not be
15 construed as a limitation on the use for highway or road
16 purposes of the land or other property interests acquired by
17 the public for highway or road purposes, including the space
18 under or above such right-of-way.

19 (1-1) With regard to any public utility, as defined in
20 Section 3-105 of the Public Utilities Act, engaged in public
21 water or public sanitary sewer service that comes under the
22 jurisdiction of the Illinois Commerce Commission, the consent
23 to be granted pursuant to this Section by the appropriate
24 highway authority shall be effective only to the extent of the
25 property interest of the State or government unit served by
26 that highway authority. Such consent shall not be binding on

1 any owner of the fee over or under which the highway or road is
2 located but shall be binding on any abutting property owner
3 whose property boundary ends at the right-of-way of the highway
4 or road. For purposes of the preceding sentence, property that
5 includes a portion of a highway or road but is subject to the
6 highway or road shall not be considered to end at the highway
7 or road. The consent shall not otherwise relieve the entity
8 granted that consent from obtaining by purchase, condemnation
9 or otherwise the necessary approval of any owner of the fee
10 over or under which the highway or road is located, except to
11 the extent that no such owner has paid real estate taxes on the
12 property for the 2 years prior to the grant of the consent.
13 This provision is not intended to absolve a utility from
14 obtaining consent from a lawful owner of the roadway or highway
15 property (i.e. a person whose deed of conveyance lawfully
16 includes the property, whether or not made subject to the
17 highway or road) but who does not pay taxes by reason of
18 Division 6 of Article 10 of the Property Tax Code. This
19 paragraph shall not be construed as a limitation on the use for
20 highway or road purposes of the land or other property
21 interests acquired by the public for highway or road purposes,
22 including the space under or above such right-of-way.

23 (m) The provisions of this Section apply to all permits
24 issued by the Department of Transportation and the appropriate
25 State or county highway authority.

26 (Source: P.A. 92-470, eff. 1-1-02; 93-357, eff. 1-1-04.)

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.