



Rep. Jerry Costello, II

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1 AMENDMENT TO SENATE BILL 1576

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1576 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Highway Code is amended by  
5 changing 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

1 specifications for highways for the administration of this  
2 Section. In addition to rules promulgated under this subsection  
3 (b), the State highway authority shall and a county highway  
4 authority may adopt coordination strategies and practices  
5 designed and intended to establish and implement effective  
6 communication respecting planned highway projects that the  
7 State or county highway authority believes may require removal,  
8 relocation, or modification in accordance with subsection (f)  
9 of this Section. The strategies and practices adopted shall  
10 include but need not be limited to the delivery of 5 year  
11 programs, annual programs, and the establishment of  
12 coordination councils in the locales and with the utility  
13 participation that will best facilitate and accomplish the  
14 requirements of the State and county highway authority acting  
15 under subsection (f) of this Section. The utility participation  
16 shall include assisting the appropriate highway authority in  
17 establishing a schedule for the removal, relocation, or  
18 modification of the owner's facilities in accordance with  
19 subsection (f) of this Section. In addition, each utility shall  
20 designate in writing to the Secretary of Transportation or his  
21 or her designee an agent for notice and the delivery of  
22 programs. The coordination councils must be established on or  
23 before January 1, 2002. The 90 day deadline for removal,  
24 relocation, or modification of the ditches, drains, track,  
25 rails, poles, wires, pipe line, or other equipment in  
26 subsection (f) of this Section shall be enforceable upon the

1 establishment of a coordination council in the district or  
2 locale where the property in question is located. The  
3 coordination councils organized by a county highway authority  
4 shall include the county engineer, the County Board Chairman or  
5 his or her designee, and with such utility participation as  
6 will best facilitate and accomplish the requirements of a  
7 highway authority acting under subsection (f) of this Section.  
8 Should a county highway authority decide not to establish  
9 coordination councils, the 90 day deadline for removal,  
10 relocation, or modification of the ditches, drains, track,  
11 rails, poles, wires, pipe line, or other equipment in  
12 subsection (f) of this Section shall be waived for those  
13 highways.

14 (c) In the case of non-toll federal-aid fully  
15 access-controlled State highways, the State highway authority  
16 shall not grant consent to the location, placement or  
17 construction of ditches, drains, track, rails, poles, wires,  
18 pipe line or other equipment upon, under or along any such  
19 non-toll federal-aid fully access-controlled State highway,  
20 which:

21 (1) would require cutting the pavement structure  
22 portion of such highway for installation or, except in the  
23 event of an emergency, would require the use of any part of  
24 such highway right-of-way for purposes of maintenance or  
25 repair. Where, however, the State highway authority  
26 determines prior to installation that there is no other

1 access available for maintenance or repair purposes, use by  
2 the entity of such highway right-of-way shall be permitted  
3 for such purposes in strict accordance with the rules,  
4 regulations and specifications of the State highway  
5 authority, provided however, that except in the case of  
6 access to bridge structures, in no such case shall an  
7 entity be permitted access from the through-travel lanes,  
8 shoulders or ramps of the non-toll federal-aid fully  
9 access-controlled State highway to maintain or repair its  
10 accommodation; or

11 (2) would in the judgment of the State highway  
12 authority, endanger or impair any such ditches, drains,  
13 track, rails, poles, wires, pipe lines or other equipment  
14 already in place; or

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

23 (4) would be inconsistent with Federal law or with  
24 rules, regulations or directives of appropriate Federal  
25 agencies.

26 (d) In the case of accommodations upon, under or along

1 non-toll federal-aid fully access-controlled State highways  
2 the State highway authority may charge an entity reasonable  
3 compensation for the right of that entity to longitudinally  
4 locate, place or construct ditches, drains, track, rails,  
5 poles, wires, pipe line or other equipment upon, under or along  
6 such highway. Such compensation may include in-kind  
7 compensation.

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

1 right-of-way.

2 Where the compensation from any entity is in whole or in  
3 part a fee, such fee may be reasonably set, at the election of  
4 the State highway authority, in the form of a single lump sum  
5 payment or a schedule of payments. All such fees charged as  
6 compensation may be reviewed and adjusted upward by the State  
7 highway authority once every 5 years provided that any such  
8 adjustment shall be based on changes in the fair market value  
9 of an easement or leasehold for such use of the non-toll  
10 federal-aid fully access-controlled State highway  
11 right-of-way. All such fees received as compensation by the  
12 State highway authority shall be deposited in the Road Fund.

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

22 (f) Any ditches, drains, track, rails, poles, wires, pipe  
23 line, or other equipment located, placed, or constructed upon,  
24 under, or along a highway with the consent of the State or  
25 county highway authority under this Section shall, upon written  
26 notice by the State or county highway authority be removed,

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

1 highway authority for such removal, relocation, or  
2 modification, the State or county highway authority may remove,  
3 relocate, or modify such ditches, drains, track, rails, poles,  
4 wires, pipe line, or other equipment and bill the owner thereof  
5 for the total cost of such removal, relocation, or  
6 modification. The scope of the project shall be taken into  
7 consideration by the State or county highway authority in  
8 determining satisfactory arrangements. The State or county  
9 highway authority shall determine the terms of payment of those  
10 costs provided that all costs billed by the State or county  
11 highway authority shall not be made payable over more than a 5  
12 year period from the date of billing. The State and county  
13 highway authority shall have the power to extend the time of  
14 payment in cases of demonstrated financial hardship by a unit  
15 of local government or other public owner of any facilities  
16 removed, relocated, or modified from the highway right-of-way  
17 in accordance with this subsection (f). This paragraph shall  
18 not be construed to prohibit the State or county highway  
19 authority from paying any part of the cost of removal,  
20 relocation, or modification where such payment is otherwise  
21 provided for by State or federal statute or regulation. At any  
22 time within 90 days after written notice was given, the owner  
23 of the drains, track, rails, poles, wires, pipe line, or other  
24 equipment may request the district engineer or, if appropriate,  
25 the county engineer for a waiver of the 90 day deadline. The  
26 appropriate district or county engineer shall make a decision



1 concerning waiver within 10 days of receipt of the request and  
2 may waive the 90 day deadline if he or she makes a written  
3 finding as to the reasons for waiving the deadline. Reasons for  
4 waiving the deadline shall be limited to acts of God, war, the  
5 scope of the project, the State failing to follow the proper  
6 notice procedure, and any other cause beyond reasonable control  
7 of the owner of the facilities. Waiver must not be unreasonably  
8 withheld. If 90 days after written notice was given, the  
9 ditches, drains, track, rails, poles, wires, pipe line, or  
10 other equipment have not been removed, relocated, or modified  
11 to the satisfaction of the State or county highway authority,  
12 no waiver of deadline has been requested or issued by the  
13 appropriate district or county engineer, and no satisfactory  
14 arrangement has been made with the appropriate State or county  
15 highway authority, the State or county highway authority or the  
16 general contractor of the building project may file a complaint  
17 in the circuit court for an emergency order to direct and  
18 compel the owner to remove, relocate, or modify the drains,  
19 track, rails, poles, wires, pipe line, or other equipment to  
20 the satisfaction of the appropriate highway authority. The  
21 complaint for an order shall be brought in the circuit in which  
22 the subject matter of the complaint is situated or, if the  
23 subject matter of the complaint is situated in more than one  
24 circuit, in any one of those circuits.

25 (g) It shall be the sole responsibility of the entity,  
26 without expense to the State highway authority, to maintain and

1 repair its ditches, drains, track, rails, poles, wires, pipe  
2 line or other equipment after it is located, placed or  
3 constructed upon, under or along any State highway and in no  
4 case shall the State highway authority thereafter be liable or  
5 responsible to the entity for any damages or liability of any  
6 kind whatsoever incurred by the entity or to the entity's  
7 ditches, drains, track, rails, poles, wires, pipe line or other  
8 equipment.

9 (h) Except as provided in subsection (h-1), upon receipt of  
10 an application therefor, consent to so use a highway may be  
11 granted subject to such terms and conditions not inconsistent  
12 with this Code as the highway authority deems for the best  
13 interest of the public. The terms and conditions required by  
14 the appropriate highway authority may include but need not be  
15 limited to participation by the party granted consent in the  
16 strategies and practices adopted under subsection (b) of this  
17 Section. If the highway authority does not have fee ownership  
18 of the property over or under the highway or road or the right  
19 to grant use of the property, the petitioner shall pay to the  
20 owners of the property all damages the owners may sustain by  
21 reason of use of the property, which shall be agreed upon by  
22 the petitioner and the owners or ascertained and paid in the  
23 manner provided by law for the exercise of the right of eminent  
24 domain. The petitioner shall pay to the owners of property  
25 abutting upon the affected highways established as though by  
26 common law plat all damages the owners may sustain by reason of

1 such use of the highway, such damages to be ascertained and  
2 paid in the manner provided by law for the exercise of the  
3 right of eminent domain.

4 (h-1) With regard to any public utility, as defined in  
5 Section 3-105 of the Public Utilities Act, engaged in public  
6 water or public sanitary sewer service that comes under the  
7 jurisdiction of the Illinois Commerce Commission, upon receipt  
8 of an application therefor, consent to so use a highway may be  
9 granted subject to such terms and conditions not inconsistent  
10 with this Code as the highway authority deems for the best  
11 interest of the public. The terms and conditions required by  
12 the appropriate highway authority may include but need not be  
13 limited to participation by the party granted consent in the  
14 strategies and practices adopted under subsection (b) of this  
15 Section. If the highway authority does not have fee ownership  
16 of the property, the petitioner shall pay to the owners of  
17 property located in the highway right-of-way all damages the  
18 owners may sustain by reason of such use of the highway, such  
19 damages to be ascertained and paid in the manner provided by  
20 law for the exercise of the right of eminent domain. The  
21 consent shall not otherwise relieve the entity granted that  
22 consent from obtaining by purchase, condemnation, or otherwise  
23 the necessary approval of any owner of the fee over or under  
24 which the highway or road is located, except to the extent that  
25 no such owner has paid real estate taxes on the property for  
26 the 2 years prior to the grant of the consent. Owners of

1 property that abuts the right-of-way but who acquired the  
2 property through a conveyance that either expressly excludes  
3 the property subject to the right-of-way or that describes the  
4 property conveyed as ending at the right-of-way or being  
5 bounded by the right-of-way or road shall not be considered  
6 owners of property located in the right-of-way and shall not be  
7 entitled to damages by reason of the use of the highway or road  
8 for utility purposes, except that this provision shall not  
9 relieve the public utility from the obligation to pay for any  
10 physical damage it causes to improvements lawfully located in  
11 the right-of-way. Owners of abutting property whose  
12 descriptions include the right-of-way but are made subject to  
13 the right-of-way shall be entitled to compensation for use of  
14 the right-of-way. If the property subject to the right-of-way  
15 is not owned by the owners of the abutting property (either  
16 because it is expressly excluded from the property conveyed to  
17 an abutting property owner or the property as conveyed ends at  
18 or is bounded by the right-of-way or road), then the petitioner  
19 shall pay any damages, as so calculated, to the person or  
20 persons who have paid real estate taxes for the property as  
21 reflected in the county tax records. If no person has paid real  
22 estate taxes, then the public interest permits the installation  
23 of the facilities without payment of any damages. This  
24 provision of this amendatory Act of the 93rd General Assembly  
25 is intended to clarify, by codification, existing law and is  
26 not intended to change the law.

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.".