



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB1899

Introduced 2/26/2021, by Sen. John F. Curran

SYNOPSIS AS INTRODUCED:

605 ILCS 5/9-113

from Ch. 121, par. 9-113

Amends the Illinois Highway Code. Eliminates the requirement that the State and county highway authorities adopt strategies and practices that include the delivery of 5-year programs, annual programs, and the establishment of coordination councils in the locales. Provides that each utility shall designate in writing to the Secretary of Transportation or his or her designee an agent for notice and the delivery of State or county projects. Provides that the 90-day deadline for removal, relocation, or modification of the ditches, drains, track, rails, poles, wires, pipe line, or other equipment shall be enforceable by the State or county, instead of by a coordination council. Provides that the total cost of modification may include changes made during construction to avoid or minimize impact to known, or unknown utility's facilities. Provides that costs incurred by the State or county due to the untimely relocation of the utility's facilities, and the State's or county's need to meet a project completion date, shall be paid by the utility upon request from the State or county.

LRB102 15176 RAM 20531 b

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

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

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

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

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

1 access to bridge structures, in no such case shall an
2 entity be permitted access from the through-travel lanes,
3 shoulders or ramps of the non-toll federal-aid fully
4 access-controlled State highway to maintain or repair its
5 accommodation; or

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

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

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

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

1 along such highway. Such compensation may include in-kind
2 compensation.

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

24 Where the compensation from any entity is in whole or in
25 part a fee, such fee may be reasonably set, at the election of
26 the State highway authority, in the form of a single lump sum

1 payment or a schedule of payments. All such fees charged as
2 compensation may be reviewed and adjusted upward by the State
3 highway authority once every 5 years provided that any such
4 adjustment shall be based on changes in the fair market value
5 of an easement or leasehold for such use of the non-toll
6 federal-aid fully access-controlled State highway
7 right-of-way. All such fees received as compensation by the
8 State highway authority shall be deposited in the Road Fund.

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

18 (f) Any ditches, drains, track, rails, poles, wires, pipe
19 line, or other equipment located, placed, or constructed upon,
20 under, or along a highway with the consent of the State or
21 county highway authority under this Section shall, upon
22 written notice by the State or county highway authority be
23 removed, relocated, or modified by the owner, the owner's
24 agents, contractors, or employees at no expense to the State
25 or county highway authority when and as deemed necessary by
26 the State or county highway authority for highway or highway

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

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

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

1 circuit in which the subject matter of the complaint is
2 situated or, if the subject matter of the complaint is
3 situated in more than one circuit, in any one of those
4 circuits.

5 (g) It shall be the sole responsibility of the entity,
6 without expense to the State highway authority, to maintain
7 and repair its ditches, drains, track, rails, poles, wires,
8 pipe line or other equipment after it is located, placed or
9 constructed upon, under or along any State highway and in no
10 case shall the State highway authority thereafter be liable or
11 responsible to the entity for any damages or liability of any
12 kind whatsoever incurred by the entity or to the entity's
13 ditches, drains, track, rails, poles, wires, pipe line or
14 other equipment.

15 (h) Except as provided in subsection (h-1), upon receipt
16 of an application therefor, consent to so use a highway may be
17 granted subject to such terms and conditions not inconsistent
18 with this Code as the highway authority deems for the best
19 interest of the public. The terms and conditions required by
20 the appropriate highway authority may include but need not be
21 limited to participation by the party granted consent in the
22 strategies and practices adopted under subsection (b) of this
23 Section. The petitioner shall pay to the owners of property
24 abutting upon the affected highways established as though by
25 common law plat all damages the owners may sustain by reason of
26 such use of the highway, such damages to be ascertained and

1 paid in the manner provided by law for the exercise of the
2 right of eminent domain.

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

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

26 (i) Such consent shall be granted by the Department in the

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

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

23 (k) Paragraphs (c) and (d) of this Section shall not apply
24 to any accommodation located, placed or constructed with the
25 consent of the State highway authority upon, under or along
26 any non-toll federal-aid fully access-controlled State highway

1 prior to July 1, 1984, provided that accommodation was
2 otherwise in compliance with the rules, regulations and
3 specifications of the State highway authority.

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

18 (1-1) With regard to any public utility, as defined in
19 Section 3-105 of the Public Utilities Act, engaged in public
20 water or public sanitary sewer service that comes under the
21 jurisdiction of the Illinois Commerce Commission, the consent
22 to be granted pursuant to this Section by the appropriate
23 highway authority shall be effective only to the extent of the
24 property interest of the State or government unit served by
25 that highway authority. Such consent shall not be binding on
26 any owner of the fee over or under which the highway or road is

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

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

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