



Rep. Daniel Swanson

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LRB102 14207 RAM 24619 a

1 AMENDMENT TO HOUSE BILL 2863

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2863 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  
16 authorized to promulgate reasonable and necessary rules,

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

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

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

22 (1) would require cutting the pavement structure  
23 portion of such highway for installation or, except in the  
24 event of an emergency, would require the use of any part of  
25 such highway right-of-way for purposes of maintenance or  
26 repair. Where, however, the State highway authority

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

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

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

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

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

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

1 any kind in, upon, under, above or along the non-toll  
2 federal-aid fully access-controlled State highway  
3 right-of-way.

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

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

24 (f) Any ditches, drains, track, rails, poles, wires, pipe  
25 line, or other equipment located, placed, or constructed upon,  
26 under, or along a highway with the consent of the State or

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

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



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

1 situated in more than one circuit, in any one of those  
2 circuits.

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

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

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

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

24 (i) Such consent shall be granted by the Department in the  
25 case of a State highway; by the county board or its designated  
26 county superintendent of highways in the case of a county

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

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

1           (k) Paragraphs (c) and (d) of this Section shall not apply  
2 to any accommodation located, placed or constructed with the  
3 consent of the State highway authority upon, under or along  
4 any non-toll federal-aid fully access-controlled State highway  
5 prior to July 1, 1984, provided that accommodation was  
6 otherwise in compliance with the rules, regulations and  
7 specifications of the State highway authority.

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

22           (l-1) With regard to any public utility, as defined in  
23 Section 3-105 of the Public Utilities Act, engaged in public  
24 water or public sanitary sewer service that comes under the  
25 jurisdiction of the Illinois Commerce Commission, the consent  
26 to be granted pursuant to this Section by the appropriate

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

26 (m) The provisions of this Section apply to all permits

1 issued by the Department of Transportation and the appropriate  
2 State or county highway authority.  
3 (Source: P.A. 92-470, eff. 1-1-02; 93-357, eff. 1-1-04.)".