



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
HB5314

Introduced 01/25/06, by Rep. Robert S. Molaro

SYNOPSIS AS INTRODUCED:

605 ILCS 5/9-113

from Ch. 121, par. 9-113

Amends the Illinois Highway Code. Provides that, if relocation of the equipment of any public utility company is necessary for highway construction and the public utility company has not responded to requests for that relocation, the Department of Transportation or the local highway authority may hire a subcontractor to relocate the equipment and may charge the public utility for the relocation. Provides that the Department or local highway authority shall not be liable for any resulting damages.

LRB094 17443 DRH 52738 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 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 (a-5) The Department or the local highway authority, if
16 relocation of ditches, drains tracks, rails, poles, wires, pipe
17 line, or other equipment of any public utility company is
18 necessary for highway construction and the public utility
19 company has not responded to requests for that relocation, may
20 hire a subcontractor to relocate the equipment and may charge
21 the public utility for the relocation. The Department or local
22 highway authority shall not be liable for any damages resulting
23 from any relocation of the equipment of public utility company
24 under this subsection (a-5).

25 (b) The State and county highway authorities are authorized
26 to promulgate reasonable and necessary rules, regulations, and
27 specifications for highways for the administration of this
28 Section. In addition to rules promulgated under this subsection
29 (b), the State highway authority shall and a county highway
30 authority may adopt coordination strategies and practices
31 designed and intended to establish and implement effective
32 communication respecting planned highway projects that the

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

34 (c) In the case of non-toll federal-aid fully
35 access-controlled State highways, the State highway authority
36 shall not grant consent to the location, placement or

1 construction of ditches, drains, track, rails, poles, wires,
2 pipe line or other equipment upon, under or along any such
3 non-toll federal-aid fully access-controlled State highway,
4 which:

5 (1) would require cutting the pavement structure
6 portion of such highway for installation or, except in the
7 event of an emergency, would require the use of any part of
8 such highway right-of-way for purposes of maintenance or
9 repair. Where, however, the State highway authority
10 determines prior to installation that there is no other
11 access available for maintenance or repair purposes, use by
12 the entity of such highway right-of-way shall be permitted
13 for such purposes in strict accordance with the rules,
14 regulations and specifications of the State highway
15 authority, provided however, that except in the case of
16 access to bridge structures, in no such case shall an
17 entity be permitted access from the through-travel lanes,
18 shoulders or ramps of the non-toll federal-aid fully
19 access-controlled State highway to maintain or repair its
20 accommodation; or

21 (2) would in the judgment of the State highway
22 authority, endanger or impair any such ditches, drains,
23 track, rails, poles, wires, pipe lines or other equipment
24 already in place; or

25 (3) would, if installed longitudinally within the
26 access control lines of such highway, be above ground after
27 installation except that the State highway authority may
28 consent to any above ground installation upon, under or
29 along any bridge, interchange or grade separation within
30 the right-of-way which installation is otherwise in
31 compliance with this Section and any rules, regulations or
32 specifications issued hereunder; or

33 (4) would be inconsistent with Federal law or with
34 rules, regulations or directives of appropriate Federal
35 agencies.

36 (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
27 right-of-way.

28 Where the compensation from any entity is in whole or in
29 part a fee, such fee may be reasonably set, at the election of
30 the State highway authority, in the form of a single lump sum
31 payment or a schedule of payments. All such fees charged as
32 compensation may be reviewed and adjusted upward by the State
33 highway authority once every 5 years provided that any such
34 adjustment shall be based on changes in the fair market value
35 of an easement or leasehold for such use of the non-toll
36 federal-aid fully access-controlled State highway

1 right-of-way. All such fees received as compensation by the
2 State highway authority shall be deposited in the Road Fund.

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

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

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

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

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

31 (h) Except as provided in subsection (h-1), upon receipt of
32 an application therefor, consent to so use a highway may be
33 granted subject to such terms and conditions not inconsistent
34 with this Code as the highway authority deems for the best
35 interest of the public. The terms and conditions required by
36 the appropriate highway authority may include but need not be

1 limited to participation by the party granted consent in the
2 strategies and practices adopted under subsection (b) of this
3 Section. The petitioner shall pay to the owners of property
4 abutting upon the affected highways established as though by
5 common law plat 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.

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

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

22 (i) Such consent shall be granted by the Department in the
23 case of a State highway; by the county board or its designated
24 county superintendent of highways in the case of a county
25 highway; by either the highway commissioner or the county
26 superintendent of highways in the case of a township or
27 district road, provided that if consent is granted by the
28 highway commissioner, the petition shall be filed with the
29 commissioner at least 30 days prior to the proposed date of the
30 beginning of construction, and that if written consent is not
31 given by the commissioner within 30 days after receipt of the
32 petition, the applicant may make written application to the
33 county superintendent of highways for consent to the
34 construction. This Section does not vitiate, extend or
35 otherwise affect any consent granted in accordance with law
36 prior to the effective date of this Code to so use any highway.

1 (j) Nothing in this Section shall limit the right of a
2 highway authority to permit the location, placement or
3 construction or any ditches, drains, track, rails, poles,
4 wires, pipe line or other equipment upon, under or along any
5 highway or road as a part of its highway or road facilities or
6 which the highway authority determines is necessary to service
7 facilities required for operating the highway or road,
8 including rest areas and weigh stations.

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

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

30 (l-1) With regard to any public utility, as defined in
31 Section 3-105 of the Public Utilities Act, engaged in public
32 water or public sanitary sewer service that comes under the
33 jurisdiction of the Illinois Commerce Commission, the consent
34 to be granted pursuant to this Section by the appropriate
35 highway authority shall be effective only to the extent of the
36 property interest of the State or government unit served by

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

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

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

28 Section 99. Effective date. This Act takes effect upon
29 becoming law.