

SB1222



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1222

Introduced 2/8/2011, by Sen. John M. Sullivan

SYNOPSIS AS INTRODUCED:

605 ILCS 5/9-113

from Ch. 121, par. 9-113

Amends the Illinois Highway Code. Provides that any public water district organized under the Public Water District Act is authorized to construct, maintain, alter, and extend its water main along, upon, under, and across any highway, street, alley, or public ground in the State. Effective immediately.

LRB097 06787 HEP 46878 b

A BILL FOR

1 AN ACT concerning transportation.

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

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

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

7 Sec. 9-113. (a) Except as provided in subsection (1-2), no
8 ~~no~~ ditches, drains, track, rails, poles, wires, pipe line or
9 other equipment of any public utility company, municipal
10 corporation or other public or private corporation,
11 association or person shall be located, placed or constructed
12 upon, under or along any highway, or upon any township or
13 district road, without first obtaining the written consent of
14 the appropriate highway authority as hereinafter provided for
15 in this Section.

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

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

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

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

1 entity be permitted access from the through-travel lanes,
2 shoulders or ramps of the non-toll federal-aid fully
3 access-controlled State highway to maintain or repair its
4 accommodation; or

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

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

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

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

1 compensation.

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

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

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

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

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

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

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

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

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

1 ditches, drains, track, rails, poles, wires, pipe line or other
2 equipment.

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

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

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

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

14 (i) Such consent shall be granted by the Department in the
15 case of a State highway; by the county board or its designated
16 county superintendent of highways in the case of a county
17 highway; by either the highway commissioner or the county
18 superintendent of highways in the case of a township or
19 district road, provided that if consent is granted by the
20 highway commissioner, the petition shall be filed with the
21 commissioner at least 30 days prior to the proposed date of the
22 beginning of construction, and that if written consent is not
23 given by the commissioner within 30 days after receipt of the
24 petition, the applicant may make written application to the
25 county superintendent of highways for consent to the
26 construction. This Section does not vitiate, extend or

1 otherwise affect any consent granted in accordance with law
2 prior to the effective date of this Code to so use any highway.

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

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

18 (l) Except as provided in subsections ~~subsection~~ (l-1) and
19 (l-2), the consent to be granted pursuant to this Section by
20 the appropriate highway authority shall be effective only to
21 the extent of the property interest of the State or government
22 unit served by that highway authority. Such consent shall not
23 be binding on any owner of the fee over or under which the
24 highway or road is located and shall not otherwise relieve the
25 entity granted that consent from obtaining by purchase,
26 condemnation or otherwise the necessary approval of any owner

1 of the fee over or under which the highway or road is located.
2 This paragraph shall not be construed as a limitation on the
3 use for highway or road purposes of the land or other property
4 interests acquired by the public for highway or road purposes,
5 including the space under or above such right-of-way.

6 (1-1) Except as provided in subsection (1-2), with ~~With~~
7 regard to any public utility, as defined in Section 3-105 of
8 the Public Utilities Act, engaged in public water or public
9 sanitary sewer service that comes under the jurisdiction of the
10 Illinois Commerce Commission, the consent to be granted
11 pursuant to this Section by the appropriate highway authority
12 shall be effective only to the extent of the property interest
13 of the State or government unit served by that highway
14 authority. Such consent shall not be binding on any owner of
15 the fee over or under which the highway or road is located but
16 shall be binding on any abutting property owner whose property
17 boundary ends at the right-of-way of the highway or road. For
18 purposes of the preceding sentence, property that includes a
19 portion of a highway or road but is subject to the highway or
20 road shall not be considered to end at the highway or road. 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. This provision

1 is not intended to absolve a utility from obtaining consent
2 from a lawful owner of the roadway or highway property (i.e. a
3 person whose deed of conveyance lawfully includes the property,
4 whether or not made subject to the highway or road) but who
5 does not pay taxes by reason of Division 6 of Article 10 of the
6 Property Tax Code. This paragraph shall not be construed as a
7 limitation on the use for highway or road purposes of the land
8 or other property interests acquired by the public for highway
9 or road purposes, including the space under or above such
10 right-of-way.

11 (1-2) Any public water district organized under the Public
12 Water District Act is authorized to construct, maintain, alter,
13 and extend its water main along, upon, under, and across any
14 highway, street, alley, or public ground in the State, as
15 provided in Section 9 of the Public Water District Act.

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

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

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.