



Sen. Don Harmon

Filed: 4/4/2016

09900SB2237sam001

LRB099 15719 RJF 44548 a

1 AMENDMENT TO SENATE BILL 2237

2 AMENDMENT NO. _____. Amend Senate Bill 2237 by replacing
3 everything after the enacting clause with the following:

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

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

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

15 (b) The State and county highway authorities are authorized
16 to promulgate reasonable and necessary rules, regulations, and

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

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

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

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

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

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

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

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

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

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

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

1 right-of-way.

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

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

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

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

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

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

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

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

9 (h) Except as provided in subsections ~~subsection~~ (h-1) and
10 (h-2), upon receipt of an application therefor, consent to so
11 use a highway may be granted subject to such terms and
12 conditions not inconsistent with this Code as the highway
13 authority deems for the best interest of the public. The terms
14 and conditions required by the appropriate highway authority
15 may include but need not be limited to participation by the
16 party granted consent in the strategies and practices adopted
17 under subsection (b) of this Section. The petitioner shall pay
18 to the owners of property abutting upon the affected highways
19 established as though by common law plat all damages the owners
20 may sustain by reason of such use of the highway, such damages
21 to be ascertained and paid in the manner provided by law for
22 the exercise of the right of eminent domain.

23 (h-1) With regard to any public utility, as defined in
24 Section 3-105 of the Public Utilities Act, engaged in public
25 water or public sanitary sewer service that comes under the
26 jurisdiction of the Illinois Commerce Commission, upon receipt

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

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

20 (h-2) With regard to any communications provider, consent
21 to use a highway may be granted upon receipt of an application,
22 subject to terms and conditions consistent with this Code as
23 the highway authority deems for the best interest of the
24 public. The terms and conditions required by the appropriate
25 highway authority may include, but need not be limited to,
26 participation by the party granted consent in the strategies

1 and practices adopted under subsection (b) of this Section.

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

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 to the person or persons who have paid
7 real estate taxes for the property as reflected in the county
8 tax records. If no person has paid real estate taxes, then the
9 public interest permits the installation of the facilities
10 without payment of any damages.

11 For purposes of this subsection (h-2), "communications
12 provider" means (1) any telecommunications carrier issued a
13 certificate of public convenience and necessity or a
14 certificate of service authority from the Illinois Commerce
15 Commission; (2) any "interconnected voice over Internet
16 protocol provider" as defined in Section 13-235 of the Public
17 Utilities Act; (3) any company providing "broadband service" as
18 defined in subsection (c) of Section 21-201 of the Public
19 Utilities Act; (4) any "cable operator" as defined in
20 subsection (d) of Section 21-201 of the Public Utilities Act;
21 or (5) any "holder" as defined in subsection (k) of Section
22 21-201 of the Public Utilities Act.

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

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

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

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

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

15 (1-1) With regard to any public utility, as defined in
16 Section 3-105 of the Public Utilities Act, engaged in public
17 water or public sanitary sewer service that comes under the
18 jurisdiction of the Illinois Commerce Commission, the consent
19 to be granted pursuant to this Section by the appropriate
20 highway authority shall be effective only to the extent of the
21 property interest of the State or government unit served by
22 that highway authority. Such consent shall not be binding on
23 any owner of the fee over or under which the highway or road is
24 located but shall be binding on any abutting property owner
25 whose property boundary ends at the right-of-way of the highway
26 or road. For purposes of the preceding sentence, property that

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

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

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