

AN ACT concerning transportation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

compensation.

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

Where the compensation from any entity is in whole or in part a fee, such fee may be reasonably set, at the election of the State highway authority, in the form of a single lump sum payment or a schedule of payments. All such fees charged as

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

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

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

completion of engineering plans, the receipt of the necessary permits issued by the appropriate State and county highway authority to begin work, and the establishment of sufficient rights-of-way for a given utility authorized by the State or county highway authority to remain on the highway right-of-way such that the unit of local government or other owner of any facilities receiving notice in accordance with this subsection (f) can proceed with relocating, replacing, or reconstructing the ditches, drains, track, rails, poles, wires, pipe line, or other equipment. If a permit application to relocate on a public right-of-way is not filed within 15 days of the receipt of final engineering plans, the notice precondition of a permit to begin work is waived. However, under no circumstances shall this notice provision be construed to require the State or any government department or agency to purchase additional rights-of-way to accommodate utilities. If, within 90 days after receipt of such written notice, the ditches, drains, track, rails, poles, wires, pipe line, or other equipment have not been removed, relocated, or modified to the reasonable satisfaction of the State or county highway authority, or if arrangements are not made satisfactory to the State or county highway authority for such removal, relocation, or modification, the State or county highway authority may remove, relocate, or modify such ditches, drains, track, rails, poles, wires, pipe line, or other equipment and bill the owner thereof for the total cost of such

removal, relocation, or modification. The scope of the project shall be taken into consideration by the State or county highway authority in determining satisfactory arrangements. The State or county highway authority shall determine the terms of payment of those costs provided that all costs billed by the State or county highway authority shall not be made payable over more than a 5 year period from the date of billing. The State and county highway authority shall have the power to extend the time of payment in cases of demonstrated financial hardship by a unit of local government or other public owner of any facilities removed, relocated, or modified from the highway right-of-way in accordance with this subsection (f). This paragraph shall not be construed to prohibit the State or county highway authority from paying any part of the cost of removal, relocation, or modification where such payment is otherwise provided for by State or federal statute or regulation. At any time within 90 days after written notice was given, the owner of the drains, track, rails, poles, wires, pipe line, or other equipment may request the district engineer or, if appropriate, the county engineer for a waiver of the 90 day deadline. The appropriate district or county engineer shall make a decision concerning waiver within 10 days of receipt of the request and may waive the 90 day deadline if he or she makes a written finding as to the reasons for waiving the deadline. Reasons for waiving the deadline shall be limited to acts of God, war, the scope of the



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

(g) It shall be the sole responsibility of the entity, without expense to the State highway authority, to maintain and repair its ditches, drains, track, rails, poles, wires, pipe line or other equipment after it is located, placed or constructed upon, under or along any State highway and in no

case shall the State highway authority thereafter be liable or responsible to the entity for any damages or liability of any kind whatsoever incurred by the entity or to the entity's ditches, drains, track, rails, poles, wires, pipe line or other equipment.

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

(h-1) With regard to any public utility, as defined in Section 3-105 of the Public Utilities Act, engaged in public water or public sanitary sewer service that comes under the jurisdiction of the Illinois Commerce Commission, upon receipt of an application therefor, consent to so use a highway may be granted subject to such terms and conditions not inconsistent with this Code as the highway authority deems for the best

interest of the public. The terms and conditions required by the appropriate highway authority may include but need not be limited to participation by the party granted consent in the strategies and practices adopted under subsection (b) of this Section. If the highway authority does not have fee ownership of the property, the petitioner shall pay to the owners of property located in the highway right-of-way all damages the owners may sustain by reason of such use of the highway, such damages to be ascertained and paid in the manner provided by law for the exercise of the right of eminent domain. The consent shall not otherwise relieve the entity granted that consent from obtaining by purchase, condemnation, or otherwise the necessary approval of any owner of the fee over or under which the highway or road is located, except to the extent that no such owner has paid real estate taxes on the property for the 2 years prior to the grant of the consent. Owners of property that abuts the right-of-way but who acquired the property through a conveyance that either expressly excludes the property subject to the right-of-way or that describes the property conveyed as ending at the right-of-way or being bounded by the right-of-way or road shall not be considered owners of property located in the right-of-way and shall not be entitled to damages by reason of the use of the highway or road for utility purposes, except that this provision shall not relieve the public utility from the obligation to pay for any physical damage it causes to improvements lawfully located

in the right-of-way. Owners of abutting property whose descriptions include the right-of-way but are made subject to the right-of-way shall be entitled to compensation for use of the right-of-way. If the property subject to the right-of-way is not owned by the owners of the abutting property (either because it is expressly excluded from the property conveyed to an abutting property owner or the property as conveyed ends at or is bounded by the right-of-way or road), then the petitioner shall pay any damages, as so calculated, to the person or persons who have paid real estate taxes for the property as reflected in the county tax records. If no person has paid real estate taxes, then the public interest permits the installation of the facilities without payment of any damages. This provision of this amendatory Act of the 93rd General Assembly is intended to clarify, by codification, existing law and is not intended to change the law.

(i) Such consent shall be granted by the Department in the case of a State highway; by the county board or its designated county superintendent of highways in the case of a county highway; by either the highway commissioner or the county superintendent of highways in the case of a township or district road, provided that if consent is granted by the highway commissioner, the petition shall be filed with the commissioner at least 30 days prior to the proposed date of the beginning of construction, and that if written consent is not given by the commissioner within 30 days after receipt of the

petition, the applicant may make written application to the county superintendent of highways for consent to the construction. In the case of township roads, the county superintendent of highways may either grant consent for the construction or deny the application. The county superintendent of highways shall provide written confirmation, citing the basis of the decision, to both the highway commissioner and the applicant. This Section does not vitiate, extend or otherwise affect any consent granted in accordance with law prior to the effective date of this Code to so use any highway.

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

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

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

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

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

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

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