



Sen. William E. Brady

Filed: 4/21/2016

09900SB2237sam002

LRB099 15719 AXK 47949 a

1 AMENDMENT TO SENATE BILL 2237

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

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

7 (605 ILCS 5/9-113) (from Ch. 121, par. 9-113)

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

16 (b) The State and county highway authorities are authorized

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

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

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

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

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

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

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

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

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

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

1 the non-toll federal-aid fully access-controlled State highway
2 right-of-way.

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

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

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

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

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

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

26 (g) It shall be the sole responsibility of the entity,

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

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

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

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

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

21 (h-2) For purposes of this subsection (h-2),
22 "communications provider" means (1) any telecommunications
23 carrier issued a certificate of public convenience and
24 necessity or a certificate of service authority from the
25 Illinois Commerce Commission; (2) any "interconnected voice
26 over Internet protocol provider" as defined in Section 13-235

1 of the Public Utilities Act; (3) any company providing
2 "broadband service" as defined in subsection (c) of Section
3 21-201 of the Public Utilities Act; (4) any "cable operator" as
4 defined in subsection (d) of Section 21-201 of the Public
5 Utilities Act; or (5) any "holder" as defined in subsection (k)
6 of Section 21-201 of the Public Utilities Act.

7 With regard to any communications provider, consent to use
8 a highway may be granted upon receipt of an application,
9 subject to terms and conditions consistent with this Code as
10 the highway authority deems for the best interest of the
11 public. If the highway authority does not have fee ownership of
12 the property, the petitioner shall pay to the owners of
13 property located in the highway right-of-way all damages the
14 owners may sustain by reason of use of the highway, with
15 damages to be ascertained and paid in the manner provided by
16 law for the exercise of the right of eminent domain. The
17 consent shall not relieve the entity granted that consent from
18 obtaining by purchase, condemnation, or otherwise the
19 necessary approval of any owner of the fee over or under which
20 the highway or road is located, except to the extent that no
21 owner has paid real estate taxes on the property for the 2
22 years prior to the grant of the consent. Owners of abutting
23 property whose descriptions include the right-of-way, but are
24 made subject to the right-of-way, shall be entitled to
25 compensation for use of the right-of-way. Owners of property
26 that abuts the right-of-way, but who acquired the property

1 through a conveyance that either expressly excludes the
2 property subject to the right-of-way or that describes the
3 property conveyed as ending at the right-of-way or being
4 bounded by the right-of-way or road shall not be considered
5 owners of property located in the right-of-way, and shall not
6 be entitled to damages by reason of the use of the highway or
7 road for services provided by a communications provider. This
8 provision shall not relieve the communications provider from
9 the obligation to pay for any physical damage it causes to
10 improvements lawfully located in the right-of-way. If the
11 property subject to the right-of-way is not owned by the owners
12 of the abutting property, either because it is expressly
13 excluded from the property conveyed to an abutting property
14 owner or the property as conveyed ends at or is bounded by the
15 right-of-way or road, then the petitioner shall pay any damages
16 to the person or persons who have paid real estate taxes for
17 the property as reflected in the county tax records. If no
18 person has paid real estate taxes, then the public interest
19 permits the installation of the facilities without payment of
20 any damages.

21 A communications provider shall provide an initial notice
22 to all owners of the property, in writing and by registered
23 mail, 30 days prior to the start of any installation or removal
24 work. A second notice shall be provided by phone, electronic
25 mail, or in writing at least 3, but no more than 15 days,
26 before the start of the installation or removal work and shall

1 inform the owners that they, or their agents, may be present
2 when the work occurs.

3 Drainage tile that is damaged by installation or removal
4 work shall be repaired by the communications provider or the
5 owners of property if the owners agree to perform the repair.
6 The owners shall be reimbursed by the communications provider
7 for any costs resulting from the agreed repair within 60 days
8 following the completion of the repair. During the construction
9 stage, all permanent tile line repairs shall be made within 14
10 days of identification or notification of the damage, weather
11 and soil conditions permitting. At all other times, repairs
12 shall be made within a commercially reasonable time or as
13 mutually agreed upon by the communications provider and the
14 owners of the property. Drainage tile repairs shall include,
15 but are not limited to:

16 (1) repair to tile lines that are known to be damaged,
17 cut, or removed. The tile lines shall be staked or flagged
18 in a manner that will remain visible until permanent
19 repairs are completed. If water is flowing through a tile
20 line, the communications provider shall use commercially
21 reasonable efforts to immediately repair the tile line
22 until permanent repairs can be completed. If the tile lines
23 are dry with no flowing water, temporary repairs are not
24 required if permanent repairs can be completed by the
25 communications provider or the owner within 14 days of the
26 damage if exposed tiles are screened or otherwise protected

1 to prevent entry of foreign materials into the tile lines;

2 (2) repair to tile lines that are severed by an
3 excavation trench. The repairs shall be made using the
4 Illinois Department of Agriculture Tile Line Repair
5 Drawings, Temporary and Permanent, 2012;

6 (3) repair to tile lines damaged as part of the
7 excavation for installation of an underground cable. If the
8 tile line is damaged as part of the excavation, the
9 underground cable shall be installed with a minimum of one
10 foot clearance below or one foot clearance over the tile
11 line to be repaired; and

12 (4) maintenance to the tile line alignment and
13 gradient. A laser transit shall be used to ensure the
14 proper gradient is maintained. A laser operated tiling
15 machine shall be used to install or replace tiling segments
16 of 100 linear feet or more. Following any installation or
17 removal activities, the communications provider shall use
18 commercially reasonable practices to restore the drainage
19 in the area to the condition it was before the commencement
20 of the installation or removal activities. If the owners of
21 the property and the communications provider cannot agree
22 upon a reasonable method to complete the restoration, the
23 communications provider and the landowner shall follow the
24 recommendations of the appropriate county Soil and Water
25 Conservation District.

26 The owners of the property shall be compensated for any

1 damage or loss of crops due to the impact of damaged tile or
2 any other damage caused by installation or removal work. If
3 trenching operations are required through rocky terrain,
4 commercially reasonable precautions shall be taken to minimize
5 the potential of oversized rocks becoming interspersed with
6 adjacent soil material. Rocks removed from subsoil areas,
7 topsoil, or from any excavations shall be removed from the
8 owner's premises or disposed of on the owner's premises at a
9 location that is mutually acceptable to the owners and the
10 communications provider. All rutted land shall be restored to a
11 condition as close as reasonably practicable to its original
12 condition. Soil conservation practices, including, but not
13 limited to, terraces and grassed waterways, that are damaged by
14 installation or removal work shall be restored as close as
15 reasonably practicable to their preconstruction condition.

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

1 county superintendent of highways for consent to the
2 construction. This Section does not vitiate, extend or
3 otherwise affect any consent granted in accordance with law
4 prior to the effective date of this Code to so use any highway.

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

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

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

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

8 (1-1) With regard to any public utility, as defined in
9 Section 3-105 of the Public Utilities Act, engaged in public
10 water or public sanitary sewer service that comes under the
11 jurisdiction of the Illinois Commerce Commission, the consent
12 to be granted pursuant to this Section by the appropriate
13 highway authority shall be effective only to the extent of the
14 property interest of the State or government unit served by
15 that highway authority. Such consent shall not be binding on
16 any owner of the fee over or under which the highway or road is
17 located but shall be binding on any abutting property owner
18 whose property boundary ends at the right-of-way of the highway
19 or road. For purposes of the preceding sentence, property that
20 includes a portion of a highway or road but is subject to the
21 highway or road shall not be considered to end at the highway
22 or road. The consent shall not otherwise relieve the entity
23 granted that consent from obtaining by purchase, condemnation
24 or otherwise the necessary approval of any owner of the fee
25 over or under which the highway or road is located, except to
26 the extent that no such owner has paid real estate taxes on the

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

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

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