



104TH GENERAL ASSEMBLY

State of Illinois

2025 and 2026

SB2789

Introduced 1/13/2026, by Sen. Patrick J. Joyce

SYNOPSIS AS INTRODUCED:

220 ILCS 5/8-406
605 ILCS 5/9-113

from Ch. 111 2/3, par. 8-406
from Ch. 121, par. 9-113

Amends the Illinois Highway Code. Provides that a high voltage transmission line may be constructed, placed, or maintained across any public right-of-way or along any highway, federally aided State highway, controlled access highway, interstate highway, or roadway, except as deemed necessary by the Secretary of Transportation to protect public safety or ensure the proper function of the highway. Provides that in the case of the co-location of a high voltage transmission line with Department of Transportation highway right-of-way, the Secretary of Transportation shall engage in coordination activities with a utility or developer to review requested highway corridors for a possible permitted location of a high voltage transmission line. Provides that when a permissible route along a highway corridor has been identified by the Department and the utility or developer, the Department must engage in consultation with the utility or developer to develop a constructability report to be used by both parties when co-location projects are being planned and approved. Amends the Public Utilities Act. Establishes an order of priority when siting a location for a new electric transmission facility.

LRB104 17515 LNS 30942 b

1 AN ACT concerning transportation.

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

4 Section 5. The Public Utilities Act is amended by changing
5 Section 8-406 as follows:

6 (220 ILCS 5/8-406) (from Ch. 111 2/3, par. 8-406)

7 Sec. 8-406. Certificate of public convenience and
8 necessity.

9 (a) No public utility not owning any city or village
10 franchise nor engaged in performing any public service or in
11 furnishing any product or commodity within this State as of
12 July 1, 1921 and not possessing a certificate of public
13 convenience and necessity from the Illinois Commerce
14 Commission, the State Public Utilities Commission, or the
15 Public Utilities Commission, at the time Public Act 84-617
16 goes into effect (January 1, 1986), shall transact any
17 business in this State until it shall have obtained a
18 certificate from the Commission that public convenience and
19 necessity require the transaction of such business. A
20 certificate of public convenience and necessity requiring the
21 transaction of public utility business in any area of this
22 State shall include authorization to the public utility
23 receiving the certificate of public convenience and necessity

1 to construct such plant, equipment, property, or facility as
2 is provided for under the terms and conditions of its tariff
3 and as is necessary to provide utility service and carry out
4 the transaction of public utility business by the public
5 utility in the designated area.

6 (b) No public utility shall begin the construction of any
7 new plant, equipment, property, or facility which is not in
8 substitution of any existing plant, equipment, property, or
9 facility, or any extension or alteration thereof or in
10 addition thereto, unless and until it shall have obtained from
11 the Commission a certificate that public convenience and
12 necessity require such construction. Whenever after a hearing
13 the Commission determines that any new construction or the
14 transaction of any business by a public utility will promote
15 the public convenience and is necessary thereto, it shall have
16 the power to issue certificates of public convenience and
17 necessity. The Commission shall determine that proposed
18 construction will promote the public convenience and necessity
19 only if the utility demonstrates: (1) that the proposed
20 construction is necessary to provide adequate, reliable, and
21 efficient service to its customers and is the least-cost means
22 of satisfying the service needs of its customers or that the
23 proposed construction will promote the development of an
24 effectively competitive electricity market that operates
25 efficiently, is equitable to all customers, and is the least
26 cost means of satisfying those objectives; (2) that the

1 utility is capable of efficiently managing and supervising the
2 construction process and has taken sufficient action to ensure
3 adequate and efficient construction and supervision thereof;
4 and (3) that the utility is capable of financing the proposed
5 construction without significant adverse financial
6 consequences for the utility or its customers. In the siting
7 of a new electric transmission facility, including a high
8 voltage transmission line, it is the policy of this State that
9 the following corridors must be used in the following order of
10 priority: (i) existing utility corridors; (ii) highway
11 (interstate, freeway, and State trunk) and railroad corridors;
12 (iii) recreational trails, to the extent that the facilities
13 may be constructed below ground and that the facilities do not
14 significantly impact environmentally sensitive areas; (iv) new
15 utility corridors. Permitting on a priority corridor shall be
16 done to the greatest extent feasible that is consistent with
17 economic and engineering considerations, reliability of the
18 electric system, and protection of the environment.

19 (b-5) As used in this subsection (b-5):

20 "Qualifying direct current applicant" means an entity that
21 seeks to provide direct current bulk transmission service for
22 the purpose of transporting electric energy in interstate
23 commerce.

24 "Qualifying direct current project" means a high voltage
25 direct current electric service line that crosses at least one
26 Illinois border, the Illinois portion of which is physically

1 located within the region of the Midcontinent Independent
2 System Operator, Inc., or its successor organization, and runs
3 through the counties of Pike, Scott, Greene, Macoupin,
4 Montgomery, Christian, Shelby, Cumberland, and Clark, is
5 capable of transmitting electricity at voltages of 345
6 kilovolts or above, and may also include associated
7 interconnected alternating current interconnection facilities
8 in this State that are part of the proposed project and
9 reasonably necessary to connect the project with other
10 portions of the grid.

11 Notwithstanding any other provision of this Act, a
12 qualifying direct current applicant that does not own,
13 control, operate, or manage, within this State, any plant,
14 equipment, or property used or to be used for the transmission
15 of electricity at the time of its application or of the
16 Commission's order may file an application on or before
17 December 31, 2023 with the Commission pursuant to this Section
18 or Section 8-406.1 for, and the Commission may grant, a
19 certificate of public convenience and necessity to construct,
20 operate, and maintain a qualifying direct current project. The
21 qualifying direct current applicant may also include in the
22 application requests for authority under Section 8-503. The
23 Commission shall grant the application for a certificate of
24 public convenience and necessity and requests for authority
25 under Section 8-503 if it finds that the qualifying direct
26 current applicant and the proposed qualifying direct current

1 project satisfy the requirements of this subsection and
2 otherwise satisfy the criteria of this Section or Section
3 8-406.1 and the criteria of Section 8-503, as applicable to
4 the application and to the extent such criteria are not
5 superseded by the provisions of this subsection. The
6 Commission's order on the application for the certificate of
7 public convenience and necessity shall also include the
8 Commission's findings and determinations on the request or
9 requests for authority pursuant to Section 8-503. Prior to
10 filing its application under either this Section or Section
11 8-406.1, the qualifying direct current applicant shall conduct
12 3 public meetings in accordance with subsection (h) of this
13 Section. If the qualifying direct current applicant
14 demonstrates in its application that the proposed qualifying
15 direct current project is designed to deliver electricity to a
16 point or points on the electric transmission grid in either or
17 both the PJM Interconnection, LLC or the Midcontinent
18 Independent System Operator, Inc., or their respective
19 successor organizations, the proposed qualifying direct
20 current project shall be deemed to be, and the Commission
21 shall find it to be, for public use. If the qualifying direct
22 current applicant further demonstrates in its application that
23 the proposed transmission project has a capacity of 1,000
24 megawatts or larger and a voltage level of 345 kilovolts or
25 greater, the proposed transmission project shall be deemed to
26 satisfy, and the Commission shall find that it satisfies, the

1 criteria stated in item (1) of subsection (b) of this Section
2 or in paragraph (1) of subsection (f) of Section 8-406.1, as
3 applicable to the application, without the taking of
4 additional evidence on these criteria. Prior to the transfer
5 of functional control of any transmission assets to a regional
6 transmission organization, a qualifying direct current
7 applicant shall request Commission approval to join a regional
8 transmission organization in an application filed pursuant to
9 this subsection (b-5) or separately pursuant to Section 7-102
10 of this Act. The Commission may grant permission to a
11 qualifying direct current applicant to join a regional
12 transmission organization if it finds that the membership, and
13 associated transfer of functional control of transmission
14 assets, benefits Illinois customers in light of the attendant
15 costs and is otherwise in the public interest. Nothing in this
16 subsection (b-5) requires a qualifying direct current
17 applicant to join a regional transmission organization.
18 Nothing in this subsection (b-5) requires the owner or
19 operator of a high voltage direct current transmission line
20 that is not a qualifying direct current project to obtain a
21 certificate of public convenience and necessity to the extent
22 it is not otherwise required by this Section 8-406 or any other
23 provision of this Act.

24 (c) As used in this subsection (c):

25 "Decommissioning" has the meaning given to that term in
26 subsection (a) of Section 8-508.1.

1 "Nuclear power reactor" has the meaning given to that term
2 in Section 8 of the Nuclear Safety Law of 2004.

3 After the effective date of this amendatory Act of the
4 103rd General Assembly, no construction shall commence on any
5 new nuclear power reactor with a nameplate capacity of more
6 than 300 megawatts of electricity to be located within this
7 State, and no certificate of public convenience and necessity
8 or other authorization shall be issued therefor by the
9 Commission, until the Illinois Emergency Management Agency and
10 Office of Homeland Security, in consultation with the Illinois
11 Environmental Protection Agency and the Illinois Department of
12 Natural Resources, finds that the United States Government,
13 through its authorized agency, has identified and approved a
14 demonstrable technology or means for the disposal of high
15 level nuclear waste, or until such construction has been
16 specifically approved by a statute enacted by the General
17 Assembly. Beginning January 1, 2026, construction may commence
18 on a new nuclear power reactor with a nameplate capacity of 300
19 megawatts of electricity or less within this State if the
20 entity constructing the new nuclear power reactor has obtained
21 all permits, licenses, permissions, or approvals governing the
22 construction, operation, and funding of decommissioning of
23 such nuclear power reactors required by: (1) this Act; (2) any
24 rules adopted by the Illinois Emergency Management Agency and
25 Office of Homeland Security under the authority of this Act;
26 (3) any applicable federal statutes, including, but not

1 limited to, the Atomic Energy Act of 1954, the Energy
2 Reorganization Act of 1974, the Low-Level Radioactive Waste
3 Policy Amendments Act of 1985, and the Energy Policy Act of
4 1992; (4) any regulations promulgated or enforced by the U.S.
5 Nuclear Regulatory Commission, including, but not limited to,
6 those codified at Title X, Parts 20, 30, 40, 50, 70, and 72 of
7 the Code of Federal Regulations, as from time to time amended;
8 and (5) any other federal or State statute, rule, or
9 regulation governing the permitting, licensing, operation, or
10 decommissioning of such nuclear power reactors. None of the
11 rules developed by the Illinois Emergency Management Agency
12 and Office of Homeland Security or any other State agency,
13 board, or commission pursuant to this Act shall be construed
14 to supersede the authority of the U.S. Nuclear Regulatory
15 Commission. The changes made by this amendatory Act of the
16 103rd General Assembly shall not apply to the uprate, renewal,
17 or subsequent renewal of any license for an existing nuclear
18 power reactor that began operation prior to the effective date
19 of this amendatory Act of the 103rd General Assembly.

20 None of the changes made in this amendatory Act of the
21 103rd General Assembly are intended to authorize the
22 construction of nuclear power plants powered by nuclear power
23 reactors that are not either: (1) small modular nuclear
24 reactors; or (2) nuclear power reactors licensed by the U.S.
25 Nuclear Regulatory Commission to operate in this State prior
26 to the effective date of this amendatory Act of the 103rd

1 General Assembly.

2 (d) In making its determination under subsection (b) of
3 this Section, the Commission shall attach primary weight to
4 the cost or cost savings to the customers of the utility. The
5 Commission may consider any or all factors which will or may
6 affect such cost or cost savings, including the public
7 utility's engineering judgment regarding the materials used
8 for construction.

9 (e) The Commission may issue a temporary certificate which
10 shall remain in force not to exceed one year in cases of
11 emergency, to assure maintenance of adequate service or to
12 serve particular customers, without notice or hearing, pending
13 the determination of an application for a certificate, and may
14 by regulation exempt from the requirements of this Section
15 temporary acts or operations for which the issuance of a
16 certificate will not be required in the public interest.

17 A public utility shall not be required to obtain but may
18 apply for and obtain a certificate of public convenience and
19 necessity pursuant to this Section with respect to any matter
20 as to which it has received the authorization or order of the
21 Commission under the Electric Supplier Act, and any such
22 authorization or order granted a public utility by the
23 Commission under that Act shall as between public utilities be
24 deemed to be, and shall have except as provided in that Act the
25 same force and effect as, a certificate of public convenience
26 and necessity issued pursuant to this Section.

1 No electric cooperative shall be made or shall become a
2 party to or shall be entitled to be heard or to otherwise
3 appear or participate in any proceeding initiated under this
4 Section for authorization of power plant construction and as
5 to matters as to which a remedy is available under the Electric
6 Supplier Act.

7 (f) Such certificates may be altered or modified by the
8 Commission, upon its own motion or upon application by the
9 person or corporation affected. Unless exercised within a
10 period of 2 years from the grant thereof, authority conferred
11 by a certificate of convenience and necessity issued by the
12 Commission shall be null and void.

13 No certificate of public convenience and necessity shall
14 be construed as granting a monopoly or an exclusive privilege,
15 immunity or franchise.

16 (g) A public utility that undertakes any of the actions
17 described in items (1) through (3) of this subsection (g) or
18 that has obtained approval pursuant to Section 8-406.1 of this
19 Act shall not be required to comply with the requirements of
20 this Section to the extent such requirements otherwise would
21 apply. For purposes of this Section and Section 8-406.1 of
22 this Act, "high voltage electric service line" means an
23 electric line having a design voltage of 100,000 or more. For
24 purposes of this subsection (g), a public utility may do any of
25 the following:

26 (1) replace or upgrade any existing high voltage

1 electric service line and related facilities,
2 notwithstanding its length;

3 (2) relocate any existing high voltage electric
4 service line and related facilities, notwithstanding its
5 length, to accommodate construction or expansion of a
6 roadway or other transportation infrastructure; or

7 (3) construct a high voltage electric service line and
8 related facilities that is constructed solely to serve a
9 single customer's premises or to provide a generator
10 interconnection to the public utility's transmission
11 system and that will pass under or over the premises owned
12 by the customer or generator to be served or under or over
13 premises for which the customer or generator has secured
14 the necessary right of way.

15 (h) A public utility seeking to construct a high-voltage
16 electric service line and related facilities (Project) must
17 show that the utility has held a minimum of 2 pre-filing public
18 meetings to receive public comment concerning the Project in
19 each county where the Project is to be located, no earlier than
20 6 months prior to filing an application for a certificate of
21 public convenience and necessity from the Commission. Notice
22 of the public meeting shall be published in a newspaper of
23 general circulation within the affected county once a week for
24 3 consecutive weeks, beginning no earlier than one month prior
25 to the first public meeting. If the Project traverses 2
26 contiguous counties and where in one county the transmission

1 line mileage and number of landowners over whose property the
2 proposed route traverses is one-fifth or less of the
3 transmission line mileage and number of such landowners of the
4 other county, then the utility may combine the 2 pre-filing
5 meetings in the county with the greater transmission line
6 mileage and affected landowners. All other requirements
7 regarding pre-filing meetings shall apply in both counties.
8 Notice of the public meeting, including a description of the
9 Project, must be provided in writing to the clerk of each
10 county where the Project is to be located. A representative of
11 the Commission shall be invited to each pre-filing public
12 meeting.

13 (h-5) A public utility seeking to construct a high-voltage
14 electric service line and related facilities must also show
15 that the Project has complied with training and competence
16 requirements under subsection (b) of Section 15 of the
17 Electric Transmission Systems Construction Standards Act.

18 (i) For applications filed after August 18, 2015 (the
19 effective date of Public Act 99-399), the Commission shall, by
20 certified mail, notify each owner of record of land, as
21 identified in the records of the relevant county tax assessor,
22 included in the right-of-way over which the utility seeks in
23 its application to construct a high-voltage electric line of
24 the time and place scheduled for the initial hearing on the
25 public utility's application. The utility shall reimburse the
26 Commission for the cost of the postage and supplies incurred

1 for mailing the notice.

2 (Source: P.A. 102-609, eff. 8-27-21; 102-662, eff. 9-15-21;
3 102-813, eff. 5-13-22; 102-931, eff. 5-27-22; 103-569, eff.
4 6-1-24; 103-1066, eff. 2-20-25.)

5 Section 10. 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
17 authorized to promulgate reasonable and necessary rules,
18 regulations, and specifications for highways for the
19 administration of this Section. In addition to rules
20 promulgated under this subsection (b), the State highway
21 authority shall and a county highway authority may adopt
22 coordination strategies and practices designed and intended to
23 establish and implement effective communication respecting
24 planned highway projects that the State or county highway

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

1 authority acting under subsection (f) of this Section. Should
2 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
22 by the entity of such highway right-of-way shall be
23 permitted for such purposes in strict accordance with the
24 rules, 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
11 after installation except that the State highway authority
12 may consent to any above ground installation upon, under
13 or along any bridge, interchange or grade separation
14 within 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 (c-1) As used in this subsection, "high voltage
21 transmission line" means an electric line and associated
22 facilities having a design voltage of 100,000 or more.

23 A high voltage transmission line, under the laws of this
24 State or the ordinance of any city or county, may be
25 constructed, placed, or maintained across any public
26 right-of-way or along any highway, federally aided State

1 highway, controlled access highway, interstate highway, or
2 roadway, except as deemed necessary by the Secretary of
3 Transportation to protect public safety or ensure the proper
4 function of the highway. If the Secretary of Transportation
5 denies a high voltage transmission line co-location request,
6 the reasons for the denial must be submitted for review to the
7 chairs and ranking minority members of the committees with
8 jurisdiction over energy and transportation and the Chair of
9 the Illinois Commerce Commission within 90 days of the denial.

10 In the case of the co-location of a high voltage
11 transmission line with Department of Transportation highway
12 right-of-way, the Secretary of Transportation, or the
13 Secretary's designee, shall, upon written request, engage in
14 coordination activities with a utility or developer to review
15 requested highway corridors for possible permitted locations
16 of a high voltage transmission line. A project coordinator
17 shall be assigned within 30 days of the written request. As
18 part of this consultation, the Department must share all known
19 plans with a utility or developer on potential future projects
20 that could impact the placement of a high voltage transmission
21 line.

22 When a permissible route along a highway corridor has been
23 identified by the Department and the utility or developer, the
24 Department must engage in consultation with the utility or
25 developer to develop a constructability report to be used by
26 both parties when co-location projects are being planned and

1 approved. The report must be approved by both parties prior to
2 the Department issuing a permit for use of the highway
3 right-of-way. The constructability report shall be prepared by
4 the utility or developer in consultation with the Department
5 and shall include the terms and conditions for building the
6 co-located project. Included within the report shall be an
7 agreed upon timeframe for which there will not be any request
8 by the Department for relocation of the high voltage
9 transmission line. If the Department needs a high voltage
10 transmission line in its right-of-way relocated, it shall give
11 the high voltage transmission line owner a 10-year advance
12 notice.

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

21 Where the entity applying for use of a non-toll
22 federal-aid fully access-controlled State highway right-of-way
23 is a public utility company, municipal corporation or other
24 public or private corporation, association or person, such
25 compensation shall be based upon but shall not exceed a
26 reasonable estimate by the State highway authority of the fair

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

16 Where the compensation from any entity is in whole or in
17 part a fee, such fee may be reasonably set, at the election of
18 the State highway authority, in the form of a single lump sum
19 payment or a schedule of payments. All such fees charged as
20 compensation may be reviewed and adjusted upward by the State
21 highway authority once every 5 years provided that any such
22 adjustment shall be based on changes in the fair market value
23 of an easement or leasehold for such use of the non-toll
24 federal-aid fully access-controlled State highway
25 right-of-way. All such fees received as compensation by the
26 State highway authority shall be deposited in the Road Fund.

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

10 (f) Any ditches, drains, track, rails, poles, wires, pipe
11 line, or other equipment located, placed, or constructed upon,
12 under, or along a highway with the consent of the State or
13 county highway authority under this Section shall, upon
14 written notice by the State or county highway authority be
15 removed, relocated, or modified by the owner, the owner's
16 agents, contractors, or employees at no expense to the State
17 or county highway authority when and as deemed necessary by
18 the State or county highway authority for highway or highway
19 safety purposes. The notice shall be properly given after the
20 completion of engineering plans, the receipt of the necessary
21 permits issued by the appropriate State and county highway
22 authority to begin work, and the establishment of sufficient
23 rights-of-way for a given utility authorized by the State or
24 county highway authority to remain on the highway right-of-way
25 such that the unit of local government or other owner of any
26 facilities receiving notice in accordance with this subsection

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

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

1 no waiver of deadline has been requested or issued by the
2 appropriate district or county engineer, and no satisfactory
3 arrangement has been made with the appropriate State or county
4 highway authority, the State or county highway authority or
5 the general contractor of the building project may file a
6 complaint in the circuit court for an emergency order to
7 direct and compel the owner to remove, relocate, or modify the
8 drains, track, rails, poles, wires, pipe line, or other
9 equipment to the satisfaction of the appropriate highway
10 authority. The complaint for an order shall be brought in the
11 circuit in which the subject matter of the complaint is
12 situated or, if the subject matter of the complaint is
13 situated in more than one circuit, in any one of those
14 circuits.

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

25 (h) Except as provided in subsection (h-1), upon receipt
26 of an application therefor, consent to so use a highway may be

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

13 (h-1) With regard to any public utility, as defined in
14 Section 3-105 of the Public Utilities Act, engaged in public
15 water or public sanitary sewer service that comes under the
16 jurisdiction of the Illinois Commerce Commission, upon receipt
17 of an application therefor, consent to so use a highway may be
18 granted subject to such terms and conditions not inconsistent
19 with this Code as the highway authority deems for the best
20 interest of the public. The terms and conditions required by
21 the appropriate highway authority may include but need not be
22 limited to participation by the party granted consent in the
23 strategies and practices adopted under subsection (b) of this
24 Section. If the highway authority does not have fee ownership
25 of the property, the petitioner shall pay to the owners of
26 property located in the highway right-of-way all damages the

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

1 or is bounded by the right-of-way or road), then the
2 petitioner shall pay any damages, as so calculated, to the
3 person or persons who have paid real estate taxes for the
4 property as reflected in the county tax records. If no person
5 has paid real estate taxes, then the public interest permits
6 the installation of the facilities without payment of any
7 damages. This provision of this amendatory Act of the 93rd
8 General Assembly is intended to clarify, by codification,
9 existing law and is not intended to change the law.

10 (i) Such consent shall be granted by the Department in the
11 case of a State highway; by the county board or its designated
12 county superintendent of highways in the case of a county
13 highway; by either the highway commissioner or the county
14 superintendent of highways in the case of a township or
15 district road, provided that if consent is granted by the
16 highway commissioner, the petition shall be filed with the
17 commissioner at least 30 days prior to the proposed date of the
18 beginning of construction, and that if written consent is not
19 given by the commissioner within 30 days after receipt of the
20 petition, the applicant may make written application to the
21 county superintendent of highways for consent to the
22 construction. In the case of township roads, the county
23 superintendent of highways may either grant consent for the
24 construction or deny the application. The county
25 superintendent of highways shall provide written confirmation,
26 citing the basis of the decision, to both the highway

1 commissioner and the applicant. This Section does not vitiate,
2 extend or otherwise affect any consent granted in accordance
3 with law prior to the effective date of this Code to so use any
4 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
16 any 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
23 property interest of the State or government unit served by
24 that highway authority. Such consent shall not be binding on
25 any owner of the fee over or under which the highway or road is
26 located and shall not otherwise relieve the entity granted

1 that consent from obtaining by purchase, condemnation or
2 otherwise the necessary approval of any owner of the fee over
3 or under which the highway or road is located. This paragraph
4 shall not be construed as a limitation on the use for highway
5 or road purposes of the land or other property interests
6 acquired by the public for highway or road purposes, including
7 the space 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
19 highway or road. For purposes of the preceding sentence,
20 property that includes a portion of a highway or road but is
21 subject to the highway or road shall not be considered to end
22 at the highway or road. The consent shall not otherwise
23 relieve the entity granted that consent from obtaining by
24 purchase, condemnation or otherwise the necessary approval of
25 any owner of the fee over or under which the highway or road is
26 located, except to the extent that no such owner has paid real

1 estate taxes on the property for the 2 years prior to the grant
2 of the consent. This provision is not intended to absolve a
3 utility from obtaining consent from a lawful owner of the
4 roadway or highway property (i.e. a person whose deed of
5 conveyance lawfully includes the property, whether or not made
6 subject to the highway or road) but who does not pay taxes by
7 reason of Division 6 of Article 10 of the Property Tax Code.
8 This paragraph shall not be construed as a limitation on the
9 use for 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. 102-449, eff. 1-1-22.)