



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB2863

Introduced 2/19/2021, by Rep. Daniel Swanson

SYNOPSIS AS INTRODUCED:

605 ILCS 5/9-113

from Ch. 121, par. 9-113

Amends the Illinois Highway Code. Provides that an owner or occupant seeking consent from a highway authority to construct ditches, drains, track, rails, poles, wires, pipe line or other equipment along any highway or road may appeal the authority's decision to deny consent to the county superintendent of highways by filing an appeal in the office of the district clerk within 10 days after receiving the written explanation of the decision. Provides that the county superintendent shall set a date for hearing a complaint and provide notice of the hearing to all persons interested. Provides that if the county superintendent of highways finds that a petition for ingress or egress is not inconsistent with public safety, the commissioner shall approve the petition.

LRB102 14207 RAM 19559 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 Illinois Highway Code is amended by
5 changing Section 9-113 as follows:

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

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

15 (b) The State and county highway authorities are
16 authorized to promulgate reasonable and necessary rules,
17 regulations, and specifications for highways for the
18 administration of this Section. In addition to rules
19 promulgated under this subsection (b), the State highway
20 authority shall and a county highway authority may adopt
21 coordination strategies and practices designed and intended to
22 establish and implement effective communication respecting
23 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 (d) In the case of accommodations upon, under or along
21 non-toll federal-aid fully access-controlled State highways
22 the State highway authority may charge an entity reasonable
23 compensation for the right of that entity to longitudinally
24 locate, place or construct ditches, drains, track, rails,
25 poles, wires, pipe line or other equipment upon, under or
26 along such highway. Such compensation may include in-kind

1 compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 petition, the applicant may make written application to the
2 county superintendent of highways for consent to the
3 construction. This Section does not vitiate, extend or
4 otherwise affect any consent granted in accordance with law
5 prior to the effective date of this Code to so use any highway.
6 The owner or occupant may appeal such a decision to the county
7 superintendent of highways by filing an appeal in the office
8 of the district clerk within 10 days after receiving the
9 written explanation of the decision of the highway
10 commissioner to deny ingress or egress. The clerk shall
11 thereupon transmit the original petition for ingress or egress
12 of the township or district road, together with the notice of
13 appeal to the county superintendent of highways. Upon receipt
14 thereof, the county superintendent of highways shall set a
15 day, not less than 10 nor more than 20 days after the petition
16 is filed, for hearing the complaint alleged in the petition,
17 and shall cause 10 days' notice of such a hearing to be given,
18 addressed "to all persons interested" by posting notices of
19 such a hearing in 5 of the most public places in the district
20 in the vicinity of the road or section of road described in the
21 petition; by delivering a copy of the notice to the owner or
22 occupant appealing the decision of the highway commissioner or
23 mailing a copy thereof to the owner or occupant at the post
24 office address of the owner or occupant, postage prepaid; and
25 also by delivering a copy of the notice to the commissioner or
26 mailing a copy thereof to the commissioner at the post office

1 address of the commissioner, postage prepaid. If the county
2 superintendent of highways determines as a result of such a
3 hearing that the petition for ingress or egress to the
4 district or township road is not inconsistent with public
5 safety, the commissioner shall approve the petition for
6 ingress or egress and file the same in the office of the
7 district clerk.

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

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

23 (l) Except as provided in subsection (l-1), the consent to
24 be granted pursuant to this Section by the appropriate highway
25 authority shall be effective only to the extent of the
26 property interest of the State or government unit served by

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

11 (1-1) With regard to any public utility, as defined in
12 Section 3-105 of the Public Utilities Act, engaged in public
13 water or public sanitary sewer service that comes under the
14 jurisdiction of the Illinois Commerce Commission, the consent
15 to be granted pursuant to this Section by the appropriate
16 highway authority shall be effective only to the extent of the
17 property interest of the State or government unit served by
18 that highway authority. Such consent shall not be binding on
19 any owner of the fee over or under which the highway or road is
20 located but shall be binding on any abutting property owner
21 whose property boundary ends at the right-of-way of the
22 highway or road. For purposes of the preceding sentence,
23 property that includes a portion of a highway or road but is
24 subject to the highway or road shall not be considered to end
25 at the highway or road. The consent shall not otherwise
26 relieve the entity granted that consent from obtaining by

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

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

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