

1 AN ACT concerning highways.

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
11 or constructed upon, under or along any highway, or upon any
12 township or district road, without first obtaining the
13 written consent of the appropriate highway authority as
14 hereinafter 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
22 to establish and implement effective communication respecting
23 planned highway projects that the State or county highway
24 authority believes may require removal, relocation, or
25 modification in accordance with subsection (f) of this
26 Section. The strategies and practices adopted shall include
27 but need not be limited to the delivery of 5 year programs,
28 annual programs, and the establishment of coordination
29 councils in the locales and with the utility participation
30 that will best facilitate and accomplish the requirements of
31 the State and county highway authority acting under

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

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

33 (1) would require cutting the pavement structure
34 portion of such highway for installation or, except in

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

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

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

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

30 (d) In the case of accommodations upon, under or along
31 non-toll federal-aid fully access-controlled State highways
32 the State highway authority may charge an entity reasonable
33 compensation for the right of that entity to longitudinally
34 locate, place or construct ditches, drains, track, rails,

1 poles, wires, pipe line or other equipment upon, under or
2 along such highway. Such compensation may include in-kind
3 compensation.

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

25 Where the compensation from any entity is in whole or in
26 part a fee, such fee may be reasonably set, at the election
27 of the State highway authority, in the form of a single lump
28 sum payment or a schedule of payments. All such fees charged
29 as compensation may be reviewed and adjusted upward by the
30 State highway authority once every 5 years provided that any
31 such adjustment shall be based on changes in the fair market
32 value of an easement or leasehold for such use of the
33 non-toll federal-aid fully access-controlled State highway
34 right-of-way. All such fees received as compensation by the

1 State highway authority shall be deposited in the Road Fund.

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

12 (f) Any ditches, drains, track, rails, poles, wires,
13 pipe line, or other equipment located, placed, or constructed
14 upon, under, or along a highway with the consent of the State
15 or county highway authority under this Section shall, upon
16 written notice by the State or county highway authority be
17 removed, relocated, or modified by the owner, the owner's
18 agents, contractors, or employees at no expense to the State
19 or county highway authority when and as deemed necessary by
20 the State or county highway authority for highway or highway
21 safety purposes. The notice shall be properly given after the
22 completion of engineering plans, the receipt of the necessary
23 permits issued by the appropriate State and county highway
24 authority to begin work, and the establishment of sufficient
25 rights-of-way for a given utility authorized by the State or
26 county highway authority to remain on the highway
27 right-of-way such that the unit of local government or other
28 owner of any facilities receiving notice in accordance with
29 this subsection (f) can proceed with relocating, replacing,
30 or reconstructing the ditches, drains, track, rails, poles,
31 wires, pipe line, or other equipment. If a permit
32 application to relocate on a public right-of-way is not filed
33 within 15 days of the receipt of final engineering plans, the
34 notice precondition of a permit to begin work is waived.

1 However, under no circumstances shall this notice provision
2 be construed to require the State or any government
3 department or agency to purchase additional rights-of-way to
4 accommodate utilities. If, within 90 days after receipt of
5 such written notice, the ditches, drains, track, rails,
6 poles, wires, pipe line, or other equipment have not been
7 removed, relocated, or modified to the reasonable
8 satisfaction of the State or county highway authority, or if
9 arrangements are not made satisfactory to the State or county
10 highway authority for such removal, relocation, or
11 modification, the State or county highway authority may
12 remove, relocate, or modify such ditches, drains, track,
13 rails, poles, wires, pipe line, or other equipment and bill
14 the owner thereof for the total cost of such removal,
15 relocation, or modification. The scope of the project shall
16 be taken into consideration by the State or county highway
17 authority in determining satisfactory arrangements. The State
18 or county highway authority shall determine the terms of
19 payment of those costs provided that all costs billed by the
20 State or county highway authority shall not be made payable
21 over more than a 5 year period from the date of billing. The
22 State and county highway authority shall have the power to
23 extend the time of payment in cases of demonstrated financial
24 hardship by a unit of local government or other public owner
25 of any facilities removed, relocated, or modified from the
26 highway right-of-way in accordance with this subsection (f).
27 This paragraph shall not be construed to prohibit the State
28 or county highway authority from paying any part of the cost
29 of removal, relocation, or modification where such payment is
30 otherwise provided for by State or federal statute or
31 regulation. At any time within 90 days after written notice
32 was given, the owner of the drains, track, rails, poles,
33 wires, pipe line, or other equipment may request the district
34 engineer or, if appropriate, the county engineer for a waiver

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

28 (g) It shall be the sole responsibility of the entity,
29 without expense to the State highway authority, to maintain
30 and repair its ditches, drains, track, rails, poles, wires,
31 pipe line or other equipment after it is located, placed or
32 constructed upon, under or along any State highway and in no
33 case shall the State highway authority thereafter be liable
34 or responsible to the entity for any damages or liability of

1 any kind whatsoever incurred by the entity or to the entity's
2 ditches, drains, track, rails, poles, wires, pipe line or
3 other equipment.

4 (h) Upon receipt of an application therefor, consent to
5 so use a highway may be granted subject to such terms and
6 conditions not inconsistent with this Code as the highway
7 authority deems for the best interest of the public. The
8 terms and conditions required by the appropriate highway
9 authority may include but need not be limited to
10 participation by the party granted consent in the strategies
11 and practices adopted under subsection (b) of this Section.
12 If the highway authority does not have fee ownership of the
13 property, the petitioner shall pay to the owners of property
14 located in the highway right-of-way abutting--upon---the
15 affected--highways--established--as--though--by--common--law--plat
16 all damages the owners may sustain by reason of such use of
17 the highway, such damages to be ascertained and paid in the
18 manner provided by law for the exercise of the right of
19 eminent domain. Owners of property that abuts the
20 right-of-way but who acquired the property through a
21 conveyance that either expressly excludes the property
22 subject to the right-of-way or that describes the property
23 conveyed as ending at the right-of-way or being bounded by
24 the right-of-way or road shall not be considered owners of
25 property located in the right-of-way and shall not be
26 entitled to damages by reason of the use of the highway or
27 road for utility purposes. If the property subject to the
28 right-of-way is not owned by the owners of the abutting
29 property (either because it is expressly excluded from the
30 property conveyed to an abutting property owner or the
31 property as conveyed ends at or is bounded by the
32 right-of-way or road), then the petitioner shall pay any
33 damages, as so calculated, to the person or persons who have
34 paid real estate taxes for the property as reflected in the

1 county tax records. If no person has paid real estate taxes,
 2 then the public interest permits the installation of the
 3 facilities without payment of any damages. This provision of
 4 this amendatory Act of the 92nd General Assembly is intended
 5 to clarify, by codification, existing law and is not intended
 6 to change the law.

7 (i) Such consent shall be granted by the Department in
 8 the case of a State highway; by the county board or its
 9 designated county superintendent of highways in the case of a
 10 county highway; by either the highway commissioner or the
 11 county superintendent of highways in the case of a township
 12 or district road, provided that if consent is granted by the
 13 highway commissioner, the petition shall be filed with the
 14 commissioner at least 30 days prior to the proposed date of
 15 the beginning of construction, and that if written consent is
 16 not given by the commissioner within 30 days after receipt
 17 of the petition, the applicant may make written application
 18 to the county superintendent of highways for consent to the
 19 construction. This Section does not vitiate, extend or
 20 otherwise affect any consent granted in accordance with law
 21 prior to the effective date of this Code to so use any
 22 highway.

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

31 (k) Paragraphs (c) and (d) of this Section shall not
 32 apply to any accommodation located, placed or constructed
 33 with the consent of the State highway authority upon, under
 34 or along any non-toll federal-aid fully access-controlled

1 State highway prior to July 1, 1984, provided that
2 accommodation was otherwise in compliance with the rules,
3 regulations and specifications of the State highway
4 authority.

5 (l) The consent to be granted pursuant to this Section
6 by the appropriate highway authority shall be effective only
7 to the extent of the property interest of the State or
8 government unit served by that highway authority. Such
9 consent shall not be binding on any owner of the fee over or
10 under which the highway or road is located but shall be
11 binding on any abutting property owner whose property
12 boundary ends at the right-of-way of the highway or road.
13 The consent and shall not otherwise relieve the entity
14 granted that consent from obtaining by purchase, condemnation
15 or otherwise the necessary approval of any owner of the fee
16 over or under which the highway or road is located, except to
17 the extent that no such owner has paid real estate taxes on
18 the property for the 2 years prior to the grant of the
19 consent. This paragraph shall not be construed as a
20 limitation on the use for highway or road purposes of the
21 land or other property interests acquired by the public for
22 highway or road purposes, including the space under or above
23 such right-of-way.

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

27 (Source: P.A. 92-470, eff. 1-1-02.)

28 Section 10. The Conveyances Act is amended by changing
29 Section 7a as follows:

30 (765 ILCS 5/7a) (from Ch. 30, par. 6a)

31 Sec. 7a. Any instrument, including a will, which
32 conveys, transfers, encumbers, leases or releases, or by

1 which an agreement is made to convey, transfer, encumber,
2 lease or release, or by virtue of which there is conveyed,
3 transferred, encumbered, leased or released, any real
4 property, whether described by a metes and bounds description
5 or otherwise, which abuts upon any road, street, highway or
6 alley, or upon any abandoned or vacated road, street, highway
7 or alley shall be deemed and construed to include any right,
8 title or interest in that part of such road, street, highway
9 or alley which the abutting owner who makes any such
10 instrument shall presently have or, which such owner, his
11 heirs, successors and assigns subsequently acquires in such
12 road, street, highway or alley unless such instrument by its
13 terms expressly excludes, in the description of the property,
14 such road, street, highway or alley. The right, title or
15 interest acquired under such instrument in such road, street,
16 highway or alley, by virtue of the provisions of this Act,
17 shall be deemed and construed to be for the same uses and
18 purposes set forth in such instrument with respect to the
19 real property specifically described in the instrument.
20 However, no covenants or agreements made by the maker of any
21 such instrument with respect to any real property
22 specifically described shall apply to or be enforceable with
23 respect to any right, title or interest which is acquired
24 solely by virtue of the provisions of this Act. "Conveyance"
25 expressly excludes a road, street, highway, or alley if the
26 legal description of the property uses the boundary of the
27 road, street, highway, or alley closest to the property being
28 conveyed as a boundary of the property being conveyed. This
29 provision of this amendatory Act of the 92nd General Assembly
30 is intended to clarify, by codification, existing law and is
31 not intended to change the law.
32 (Source: P.A. 76-1660.)