

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

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

1 right of eminent domain. The consent shall not otherwise
2 relieve the entity granted that consent from obtaining by
3 purchase, condemnation, or otherwise the necessary approval
4 of any owner of the fee over or under which the highway or
5 road is located, except to the extent that no such owner has
6 paid real estate taxes on the property for the 2 years prior
7 to the grant of the consent. Owners of property that abuts
8 the right-of-way but who acquired the property through a
9 conveyance that either expressly excludes the property
10 subject to the right-of-way or that describes the property
11 conveyed as ending at the right-of-way or being bounded by
12 the right-of-way or road shall not be considered owners of
13 property located in the right-of-way and shall not be
14 entitled to damages by reason of the use of the highway or
15 road for utility purposes, except that this provision shall
16 not relieve the public utility from the obligation to pay for
17 any physical damage it causes to improvements lawfully
18 located in the right-of-way. Owners of abutting property
19 whose descriptions include the right-of-way but are made
20 subject to the right-of-way shall be entitled to compensation
21 for use of the right-of-way. If the property subject to the
22 right-of-way is not owned by the owners of the abutting
23 property (either because it is expressly excluded from the
24 property conveyed to an abutting property owner or the
25 property as conveyed ends at or is bounded by the
26 right-of-way or road), then the petitioner shall pay any
27 damages, as so calculated, to the person or persons who have
28 paid real estate taxes for the property as reflected in the
29 county tax records. If no person has paid real estate taxes,
30 then the public interest permits the installation of the
31 facilities without payment of any damages. This provision of
32 this amendatory Act of the 93rd General Assembly is intended
33 to clarify, by codification, existing law and is not intended
34 to change the law.

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

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

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

33 (l) Except as provided in subsection (l-1), the consent
34 to be granted pursuant to this Section by the appropriate

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

14 (1-1) With regard to any public utility, as defined in
15 Section 3-105 of the Public Utilities Act, engaged in public
16 water or public sanitary sewer service that comes under the
17 jurisdiction of the Illinois Commerce Commission, the consent
18 to be granted pursuant to this Section by the appropriate
19 highway authority shall be effective only to the extent of
20 the property interest of the State or government unit served
21 by that highway authority. Such consent shall not be binding
22 on any owner of the fee over or under which the highway or
23 road is located but shall be binding on any abutting property
24 owner whose property boundary ends at the right-of-way of the
25 highway or road. For purposes of the preceding sentence,
26 property that includes a portion of a highway or road but is
27 subject to the highway or road shall not be considered to end
28 at the highway or road. The consent shall not otherwise
29 relieve the entity granted that consent from obtaining by
30 purchase, condemnation or otherwise the necessary approval of
31 any owner of the fee over or under which the highway or road
32 is located, except to the extent that no such owner has paid
33 real estate taxes on the property for the 2 years prior to
34 the grant of the consent. This provision is not intended to

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

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

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

15 Section 10. The Conveyances Act is amended by changing
16 Section 7a as follows:

17 (765 ILCS 5/7a) (from Ch. 30, par. 6a)

18 Sec. 7a. (a) Except as provided in subsection (b), any
19 instrument, including a will, which conveys, transfers,
20 encumbers, leases or releases, or by which an agreement is
21 made to convey, transfer, encumber, lease or release, or by
22 virtue of which there is conveyed, transferred, encumbered,
23 leased or released, any real property, whether described by a
24 metes and bounds description or otherwise, which abuts upon
25 any road, street, highway or alley, or upon any abandoned or
26 vacated road, street, highway or alley shall be deemed and
27 construed to include any right, title or interest in that
28 part of such road, street, highway or alley which the
29 abutting owner who makes any such instrument shall presently
30 have or, which such owner, his heirs, successors and assigns
31 subsequently acquires in such road, street, highway or alley
32 unless such instrument by its terms expressly excludes, in

1 the description of the property, such road, street, highway
2 or alley. The right, title or interest acquired under such
3 instrument in such road, street, highway or alley, by virtue
4 of the provisions of this Act, shall be deemed and construed
5 to be for the same uses and purposes set forth in such
6 instrument with respect to the real property specifically
7 described in the instrument. However, no covenants or
8 agreements made by the maker of any such instrument with
9 respect to any real property specifically described shall
10 apply to or be enforceable with respect to any right, title
11 or interest which is acquired solely by virtue of the
12 provisions of this Act.

13 (b) 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, any
17 instrument, including a will, which conveys, transfers,
18 encumbers, leases or releases, or by which an agreement is
19 made to convey, transfer, encumber, lease or release, or by
20 virtue of which there is conveyed, transferred, encumbered,
21 leased or released, any real property, whether described by a
22 metes and bounds description or otherwise, which abuts upon
23 any road, street, highway or alley, or upon any abandoned or
24 vacated road, street, highway or alley shall be deemed and
25 construed to include any right, title or interest in that
26 part of such road, street, highway or alley which the
27 abutting owner who makes any such instrument shall presently
28 have or, which such owner, his heirs, successors and assigns
29 subsequently acquires in such road, street, highway or alley
30 unless such instrument by its terms expressly excludes, in
31 the description of the property, such road, street, highway
32 or alley. The right, title or interest acquired under such
33 instrument in such road, street, highway or alley, by virtue
34 of the provisions of this Act, shall be deemed and construed

1 to be for the same uses and purposes set forth in such
2 instrument with respect to the real property specifically
3 described in the instrument. However, no covenants or
4 agreements made by the maker of any such instrument with
5 respect to any real property specifically described shall
6 apply to or be enforceable with respect to any right, title,
7 or interest which is acquired solely by virtue to the
8 provisions of this Act. "Conveyance" expressly excludes a
9 road, street, highway, or alley if the legal description of
10 the property uses the boundary of the road, street, highway,
11 or alley closest to the property being conveyed as a boundary
12 of the property being conveyed or expressly states that the
13 road, street, highway, or alley is excepted from the property
14 being conveyed. A conveyance does not expressly exclude a
15 road, street, highway, or alley if the conveyance is
16 described as being "subject to" the road, street, highway, or
17 alley. The rights accruing in the abutting property owner
18 under this Act shall be subject to all existing uses and
19 easements located within the right-of-way; the rights shall
20 also be subject to such future uses and easements as may be
21 permitted to be located within the right-of-way under the
22 provisions of the Illinois Highway Code or any successor
23 statute thereto. This provision of this amendatory Act of
24 the 93rd General Assembly is intended to clarify, by
25 codification, existing law and is not intended to change the
26 law.

27 (Source: P.A. 76-1660.)