

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 highway authority is authorized to  
16 promulgate reasonable and necessary rules, regulations and  
17 specifications for State highways for the administration of  
18 this Section.

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

26 (1) would require cutting the pavement structure  
27 portion of such highway for installation or, except in  
28 the event of an emergency, would require the use of any  
29 part of such highway right-of-way for purposes of  
30 maintenance or repair. Where, however, the State highway  
31 authority determines prior to installation that there is

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

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

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

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

26 (d) In the case of accommodations upon, under or along  
27 non-toll federal-aid fully access-controlled State highways  
28 the State highway authority may charge an entity reasonable  
29 compensation for the right of that entity to longitudinally  
30 locate, place or construct ditches, drains, track, rails,  
31 poles, wires, pipe line or other equipment upon, under or  
32 along such highway. Such compensation may include in-kind  
33 compensation.

34 Where the entity applying for use of a non-toll

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

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

32 (e) Any entity applying for consent shall submit such  
33 information in such form and detail to the appropriate  
34 highway authority as to allow the authority to evaluate the

1 entity's application. In the case of accommodations upon,  
2 under or along non-toll federal-aid fully access-controlled  
3 State highways the entity applying for such consent shall  
4 reimburse the State highway authority for all of the  
5 authority's reasonable expenses in evaluating that entity's  
6 application, including but not limited to engineering and  
7 legal fees.

8 (f) Any ditches, drains, track, rails, poles, wires,  
9 pipe line or other equipment located, placed or constructed  
10 upon, under or along a State highway with the consent of the  
11 State highway authority under this Section shall, upon  
12 written notice by the State, highway authority be subject to  
13 removal, relocation or modification at no expense to the  
14 State highway authority when and as deemed necessary by the  
15 State highway authority for highway or highway safety  
16 purposes. If, within 60 days after receipt of such written  
17 notice, arrangements are not made satisfactory to the State  
18 highway authority for such removal, relocation or  
19 modification, the State highway authority may remove,  
20 relocate or modify such ditches, drains, track, rails, poles,  
21 wires, pipe line or other equipment and bill the owner  
22 thereof for the total cost of such removal, relocation or  
23 modification. The State highway authority shall determine  
24 the terms of payment of those costs provided that all costs  
25 billed by the State highway authority shall not be made  
26 payable over more than a 5 year period from the date of  
27 billing. This paragraph shall not be construed to prohibit  
28 the State 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. If 90 days after written notice was given, the  
32 ditches, drains, track, rails, poles, pipes, lines, or other  
33 equipment have not been removed, relocated, or modified to  
34 the satisfaction of the State highway authority, the owner of

1 the drains, track, rails, poles, pipes, lines, or other  
2 equipment located along the State highway is in breach of the  
3 written consent and is subject to liquidated damages of not  
4 more than \$500 per day. Neither the State nor any contractor  
5 hired by the State under this subsection (f) to remove,  
6 relocate, or modify the drains, track, rails, poles, pipes,  
7 lines, or other equipment located along the State highway is  
8 liable or responsible for any resulting injury to persons or  
9 damage to property.

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

20 (h) Upon receipt of an application therefor, consent to  
21 so use a highway may be granted subject to such terms and  
22 conditions not inconsistent with this Code as the highway  
23 authority deems for the best interest of the public. The  
24 petitioner shall pay to the owners of property abutting upon  
25 the affected highways established as though by common law  
26 plat all damages the owners may sustain by reason of such use  
27 of the highway, such damages to be ascertained and paid in  
28 the manner provided by law for the exercise of the right of  
29 eminent domain.

30 (i) Such consent shall be granted by the Department in  
31 the case of a State highway; by the county board or its  
32 designated county superintendent of highways in the case of a  
33 county highway; by either the highway commissioner or the  
34 county superintendent of highways in the case of a township

1 or district road, provided that if consent is granted by the  
2 highway commissioner, the petition shall be filed with the  
3 commissioner at least 30 days prior to the proposed date of  
4 the beginning of construction, and that if written consent is  
5 not given by the commissioner within 30 days after receipt  
6 of the petition, the applicant may make written application  
7 to the county superintendent of highways for consent to the  
8 construction. This Section does not vitiate, extend or  
9 otherwise affect any consent granted in accordance with law  
10 prior to the effective date of this Code to so use any  
11 highway.

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

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

28 (l) The consent to be granted pursuant to this Section  
29 by the appropriate highway authority shall be effective only  
30 to the extent of the property interest of the State or  
31 government unit served by that highway authority. Such  
32 consent shall not be binding on any owner of the fee over or  
33 under which the highway or road is located and shall not  
34 otherwise relieve the entity granted that consent from

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

8 (Source: P.A. 85-540.)