

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. In the case of township roads, the county  
4 superintendent of highways may either grant consent for the  
5 construction or deny the application. The county  
6 superintendent of highways shall provide written confirmation,  
7 citing the basis of the decision, to both the highway  
8 commissioner and the applicant. This Section does not vitiate,  
9 extend or otherwise affect any consent granted in accordance  
10 with law 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 or  
17 which the highway authority determines is necessary to service  
18 facilities required for operating the highway or road,  
19 including rest areas and weigh stations.

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

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

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

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

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

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