

1                                    AMENDMENT TO HOUSE BILL 2585

2            AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2585 by replacing  
3 everything after the enacting clause with the following:

4            "Section 5. The Illinois Underground Utility Facilities  
5 Damage Prevention Act is amended by changing Sections 2.8, 9,  
6 10, and 11 and adding Section 2.9 as follows:

7            (220 ILCS 50/2.8)

8            Sec. 2.8. Approximate location. "Approximate location"  
9 means the depth of the facility plus 8 inches above and below  
10 the facility in a strip of land at least 3 feet wide, but not  
11 wider than the width of the underground facility or CATS  
12 facility plus 1.5 feet on either side of the facility.

13 (Source: P.A. 92-179, eff. 7-1-02.)

14            (220 ILCS 50/2.9 new)

15            Sec. 2.9. Designer. "Designer" means any person  
16 licensed under the laws of this State to practice  
17 professional engineering, as defined in the Professional and  
18 Engineering Practice Act of 1989 or its successor Act.  
19 "Designer" also means any entity or person licensed under the  
20 laws of this State to practice structural engineering under  
21 the Structural Engineering Practice Act of 1989 or its

1 successor Act.

2 (220 ILCS 50/9) (from Ch. 111 2/3, par. 1609)

3 Sec. 9. Failure to comply with Act.

4 (a) When it is shown by competent evidence in any  
5 arbitration action for damages to underground utility  
6 facilities or CATS facilities that such damages resulted from  
7 excavation or demolition and that the person engaged in such  
8 excavation or demolition willfully failed to comply with the  
9 provisions of this Act, that person shall be deemed prima  
10 facie guilty of negligence. When it is shown by competent  
11 evidence in any arbitration action for recovery of costs  
12 incurred to special districts or units of local government  
13 responding to utility facility damage, lost profit, downtime,  
14 including labor or equipment, or damages to persons, material  
15 or equipment brought by persons undertaking excavation or  
16 demolition acting in compliance with the provisions of this  
17 Act that such damages resulted from the willful failure of  
18 owners and operators of underground facilities or CATS  
19 facilities to comply with the provisions of this Act, those  
20 owners and operators shall be deemed prima facie guilty of  
21 negligence.

22 (b) If a dispute arises out of or relates to the breach  
23 of duties imposed by this Act, the persons engaged in the  
24 excavation or demolition and the owners and operators of  
25 underground utility facilities or CATS facilities shall  
26 submit the dispute to binding arbitration administered by the  
27 American Arbitration Association under its construction  
28 industry rules. The prevailing party in such a dispute shall  
29 be entitled to recover, in addition to costs otherwise  
30 recoverable, its reasonable attorney's fees incurred.

31 (Source: P.A. 86-674.)

32 (220 ILCS 50/10) (from Ch. 111 2/3, par. 1610)

1           Sec. 10. Record of notice; marking of facilities. Upon  
2 notice by the person engaged in excavation or demolition or  
3 by any designer engaged in the planning, design, or  
4 construction of any public infrastructure improvement  
5 project, the person owning or operating underground utility  
6 facilities or CATS facilities in or near the excavation or  
7 demolition area shall cause a written record to be made of  
8 the notice and shall mark, within 48 hours (excluding  
9 Saturdays, Sundays and holidays) of receipt of notice, the  
10 approximate locations of such facilities so as to enable the  
11 person excavating or demolishing to establish the location of  
12 the underground utility facilities or CATS facilities.

13           All persons subject to the requirements of this Act shall  
14 plan and conduct their work consistent with reasonable  
15 business practices. Conditions may exist making it  
16 unreasonable to request that locations be marked within 48  
17 hours. It is unreasonable to request owners and operators of  
18 underground utility facilities and CATS facilities to locate  
19 all of their facilities in an affected area upon short notice  
20 in advance of a large or extensive nonemergency project, or  
21 to request extensive locates in excess of a reasonable  
22 excavation or demolition work schedule, or to request locates  
23 under conditions where a repeat request is likely to be made  
24 because of the passage of time or adverse job conditions.  
25 Owners and operators of underground utility facilities and  
26 CATS facilities must reasonably anticipate seasonal  
27 fluctuations in the number of locate requests and staff  
28 accordingly.

29           If a person owning or operating underground utility  
30 facilities or CATS facilities receives a notice under this  
31 Section but does not own or operate any underground utility  
32 facilities or CATS facilities within the proposed excavation  
33 or demolition area described in the notice, that person,  
34 within 48 hours (excluding Saturdays, Sundays, and holidays)

1 after receipt of the notice, shall so notify the person  
2 engaged in excavation or demolition who initiated the notice,  
3 unless the person who initiated the notice expressly waives  
4 the right to be notified that no facilities are located  
5 within the excavation or demolition area. The notification  
6 by the owner or operator of underground utility facilities or  
7 CATS facilities to the person engaged in excavation or  
8 demolition may be provided in any reasonable manner  
9 including, but not limited to, notification in any one of the  
10 following ways: by face-to-face communication; by phone or  
11 phone message; by facsimile; by posting in the excavation or  
12 demolition area; or by marking the excavation or demolition  
13 area. The owner or operator of those facilities has  
14 discharged the owner's or operator's obligation to provide  
15 notice under this Section if the owner or operator attempts  
16 to provide notice by telephone or by facsimile, if the person  
17 has supplied a facsimile number, but is unable to do so  
18 because the person engaged in the excavation or demolition  
19 does not answer his or her telephone or does not have an  
20 answering machine or answering service to receive the  
21 telephone call or does not have a facsimile machine in  
22 operation to receive the facsimile transmission. If the  
23 owner or operator attempts to provide notice by telephone or  
24 by facsimile but receives a busy signal, that attempt shall  
25 not serve to discharge the owner or operator of the  
26 obligation to provide notice under this Section.

27 A person engaged in excavation or demolition may  
28 expressly waive the right to notification from the owner or  
29 operator of underground utility facilities or CATS facilities  
30 that the owner or operator has no facilities located in the  
31 proposed excavation or demolition area. Waiver of notice is  
32 only permissible in the case of regular or nonemergency  
33 locate requests. The waiver must be made at the time of the  
34 notice to the State-Wide One-Call Notice System. A waiver

1 made under this Section is not admissible as evidence in any  
2 criminal or civil action that may arise out of, or is in any  
3 way related to, the excavation or demolition that is the  
4 subject of the waiver.

5 For the purposes of this Act, underground facility  
6 operators may utilize a combination of flags, stakes, and  
7 paint when possible on non-paved surfaces and when dig site  
8 and seasonal conditions warrant. If the approximate location  
9 of an underground utility facility or CATS facility is marked  
10 with stakes or other physical means, the following color  
11 coding shall be employed:

Utility or Community Antenna Television Systems and Type of Product	Identification Color
Electric Power, Distribution and Transmission.....	Safety Red
Municipal Electric Systems.....	Safety Red
Gas Distribution and Transmission.....	High Visibility Safety Yellow
Oil Distribution and Transmission.....	High Visibility Safety Yellow
Telephone and Telegraph Systems.....	Safety Alert Orange
Community Antenna Television Systems..	Safety Alert Orange
Water Systems.....	Safety Precaution Blue
Sewer Systems.....	Safety Green
Non-potable Water and Slurry Lines....	Safety Purple
Temporary Survey.....	Safety Pink
Proposed Excavation.....	Safety White

30 (Source: P.A. 92-179, eff. 7-1-02.)

31 (220 ILCS 50/11) (from Ch. 111 2/3, par. 1611)

32 Sec. 11. Penalties; liability; fund.

33 (a) Every person who, while engaging in excavation or

1 demolition, wilfully fails to comply with the Act by failing  
2 to provide the notice to the owners or operators of the  
3 underground facilities or CATS facility near the excavation  
4 or demolition area through the State-Wide One-Call Notice  
5 System as required by Section 4 of this Act shall be subject  
6 to a penalty of up to \$5,000 for each separate offense and  
7 shall be liable for the damage caused to the owners or  
8 operators of the facility.

9 (b) Every person who, while engaging in excavation or  
10 demolition, has provided the notice to the owners or  
11 operators of the underground utility facilities or CATS  
12 facilities in and near the excavation or demolition area  
13 through the State-Wide One-Call Notice System as required by  
14 Section 4 of this Act, but otherwise wilfully fails to comply  
15 with this Act, shall be subject to a penalty of up to \$2,500  
16 for each separate offense and shall be liable for the damage  
17 caused to the owners or operators of the facility.

18 (c) Every person who, while engaging in excavation or  
19 demolition, has provided the notice to the owners or  
20 operators of the underground utility facilities or CATS  
21 facilities in and near the excavation or demolition area  
22 through the State-Wide One-Call Notice System as required by  
23 Section 4 of this Act, but otherwise, while acting  
24 reasonably, damages any underground utility facilities or  
25 CATS facilities, shall not be subject to a penalty, but shall  
26 be liable for the damage caused to the owners or operators of  
27 the facility provided the underground utility facility or  
28 CATS facility is properly marked as provided in Section 10  
29 of this Act.

30 (d) Every person who, while engaging in excavation or  
31 demolition, provides notice to the owners or operators of the  
32 underground utility facilities or CATS facilities through the  
33 State-Wide One-Call Notice System as an emergency locate  
34 request and the locate request is not an emergency locate

1 request as defined in Section 2.6 of this Act shall be  
2 subject to a penalty of up to \$2,500 for each separate  
3 offense.

4 (e) Owners and operators of underground utility  
5 facilities or CATS facilities who wilfully fail to comply  
6 with this Act by a failure to mark the location of an  
7 underground utility or CATS facility, after being notified of  
8 planned excavation or demolition through the State-Wide  
9 One-Call Notice System, shall be subject to a penalty of up  
10 to \$5,000 for each separate offense resulting from the  
11 failure to mark an underground utility facility or CATS  
12 facility.

13 (f) As provided in Section 3 of this Act, all owners or  
14 operators of underground utility facilities or CATS  
15 facilities who fail to join the State-Wide One-Call Notice  
16 System by January 1, 2003 shall be subject to a penalty of  
17 \$100 per day for each separate offense. Every day an owner or  
18 operator fails to join the State-Wide One-Call Notice System  
19 is a separate offense. This subsection (f) does not apply to  
20 utilities operating facilities or CATS facilities exclusively  
21 within the boundaries of a municipality with a population of  
22 at least 1,000,000 persons.

23 (g) No owner or operator of underground utility  
24 facilities or CATS facilities shall be subject to a penalty  
25 where a delay in marking or a failure to mark or properly  
26 mark the location of an underground utility or CATS facility  
27 is caused by conditions beyond the reasonable control of such  
28 owner or operator.

29 (h) Any person who is neither an agent, employee, or  
30 authorized locating contractor of the owner or operator of  
31 the underground utility facility or CATS facility nor an  
32 excavator involved in the excavation activity who removes,  
33 alters, or otherwise damages markings, flags, or stakes used  
34 to mark the location of an underground utility or CATS

1 facility other than during the course of the excavation for  
2 which the markings were made or before completion of the  
3 project shall be subject to a penalty up to \$1,000 for each  
4 separate offense.

5 (i) The excavator shall exercise due care at all times  
6 to protect underground utility facilities and CATS  
7 facilities. If, after proper notification through the  
8 State-Wide One-Call Notice System and upon arrival at the  
9 site of a proposed excavation, the excavator observes clear  
10 evidence of the presence of an unmarked utility or CATS  
11 facility in the area of the proposed excavation, the  
12 excavator shall not begin excavating until 2 hours after an  
13 additional call is made to the State-Wide One-Call Notice  
14 System for the area. The operator of the utility or CATS  
15 facility shall respond within 2 hours of the excavator's call  
16 to the State-Wide One-Call Notice System.

17 (j) The Illinois Commerce Commission shall have the  
18 power and jurisdiction to, and shall, enforce the provisions  
19 of this Act. The Illinois Commerce Commission may impose  
20 administrative penalties as provided in this Section. The  
21 Illinois Commerce Commission may promulgate rules and develop  
22 enforcement policies in the manner provided by the Public  
23 Utilities Act in order to implement compliance with this Act.  
24 When a penalty is warranted, the following criteria shall be  
25 used in determining the magnitude of the penalty:

- 26 (1) gravity of noncompliance;
- 27 (2) culpability of offender;
- 28 (3) history of noncompliance;
- 29 (4) ability to pay penalty;
- 30 (5) show of good faith of offender;
- 31 (6) ability to continue business; and
- 32 (7) other special circumstances.

33 The Illinois Commerce Commission shall make public any  
34 formulas developed in applying the above criteria, shall



1 furnish a copy of the formulas upon written request, and  
2 shall post a copy of the formulas on its Website.

3 Failure of the owner or operator of the underground  
4 utility facility to comply with the provisions of Section  
5 9-113 of the Illinois Highway Code shall result in a finding  
6 of no violation of this Act.

7 The violation by owners and operators of underground  
8 utility facilities or CATS facilities of any State or federal  
9 regulation governing the depth of the underground utility  
10 facility or CATS facility shall result in a finding of no  
11 violation of this Act.

12 (k) There is hereby created in the State treasury a  
13 special fund to be known as the Illinois Underground Utility  
14 Facilities Damage Prevention Fund. Eighty percent of the All  
15 penalties recovered in any action under this Section shall be  
16 paid into the Road Fund to be used exclusively for subsurface  
17 utility engineering by the Department of Transportation.  
18 Twenty percent of the penalties recovered under this Section  
19 and shall be distributed annually as a grant to the  
20 State-Wide One-Call Notice System to be used in safety and  
21 informational programs to reduce the number of incidents of  
22 damage to underground utility facilities and CATS facilities  
23 in Illinois. The distribution shall be made during January  
24 of each calendar year based on the balance in the Illinois  
25 Underground Utility Facilities Damage Prevention Fund as of  
26 December 31 of the previous calendar year. In all such  
27 actions under this Section, the procedure and rules of  
28 evidence shall conform with the Code of Civil Procedure, and  
29 with rules of courts governing civil trials.

30 (l) The Illinois Commerce Commission shall establish an  
31 Advisory Committee consisting of a representative from each  
32 of the following: a utility operator, the Department of  
33 Transportation, JUBIE, an excavator, a municipality, and the  
34 general public. The Advisory Committee shall serve as a peer

1 review panel for any contested penalties resulting from the  
2 enforcement of this Act, shall use a de novo standard of  
3 review, and shall render a decision on all contested  
4 penalties within a reasonable time. A written record shall  
5 be kept of all proceedings.

6 The members of the Advisory Committee shall be immune,  
7 individually and jointly, from civil liability for any act or  
8 omission done or made in performance of their duties while  
9 serving as members of such Advisory Committee, unless the act  
10 or omission was the result of willful and wanton misconduct.

11 (m) If, after the Advisory Committee has considered a  
12 particular contested penalty and performed its review  
13 functions under this Act and the Commission's rules, there  
14 remains a dispute as to whether the Commission should impose  
15 a penalty under this Act, the matter shall proceed in the  
16 manner set forth in Article X of the Public Utilities Act,  
17 including the provisions governing judicial review.

18 (Source: P.A. 92-179, eff. 7-1-02.)

19 Section 10. The Code of Civil Procedure is amended by  
20 adding Section 13-214.5 as follows:

21 (735 ILCS 5/13-214.5 new)

22 Sec. 13-214.5. Action for damages involving underground  
23 utility facilities. Actions for damages based upon tort  
24 arising out of a violation or alleged violation of the  
25 Illinois Underground Utility Facilities Damage Prevention Act  
26 shall be commenced no later than 2 years after the cause of  
27 action accrued."