

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, may 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.)".