

1 AMENDMENT TO HOUSE BILL 5592

2 AMENDMENT NO. _____. Amend House Bill 5592 by replacing
3 the title with the following:

4 "AN ACT concerning highways"; and

5 by replacing everything after the enacting clause with the
6 following:

7 "Section 5. The Illinois Highway Code is amended by
8 changing Section 9-113 as follows:

9 (605 ILCS 5/9-113) (from Ch. 121, par. 9-113)

10 Sec. 9-113. (a) No ditches, drains, track, rails, poles,
11 wires, pipe line or other equipment of any public utility
12 company, municipal corporation or other public or private
13 corporation, association or person shall be located, placed
14 or constructed upon, under or along any highway, or upon any
15 township or district road, without first obtaining the
16 written consent of the appropriate highway authority as
17 hereinafter provided for in this Section.

18 (b) The State and county highway authorities are
19 authorized to promulgate reasonable and necessary rules,
20 regulations, and specifications for highways for the
21 administration of this Section. In addition to rules

1 promulgated under this subsection (b), the State highway
2 authority shall and a county highway authority may adopt
3 coordination strategies and practices designed and intended
4 to establish and implement effective communication respecting
5 planned highway projects that the State or county highway
6 authority believes may require removal, relocation, or
7 modification in accordance with subsection (f) of this
8 Section. The strategies and practices adopted shall include
9 but need not be limited to the delivery of 5 year programs,
10 annual programs, and the establishment of coordination
11 councils in the locales and with the utility participation
12 that will best facilitate and accomplish the requirements of
13 the State and county highway authority acting under
14 subsection (f) of this Section. The utility participation
15 shall include assisting the appropriate highway authority in
16 establishing a schedule for the removal, relocation, or
17 modification of the owner's facilities in accordance with
18 subsection (f) of this Section. In addition, each utility
19 shall designate in writing to the Secretary of Transportation
20 or his or her designee an agent for notice and the delivery
21 of programs. The coordination councils must be established on
22 or before January 1, 2002. The 90 day deadline for removal,
23 relocation, or modification of the ditches, drains, track,
24 rails, poles, wires, pipe line, or other equipment in
25 subsection (f) of this Section shall be enforceable upon the
26 establishment of a coordination council in the district or
27 locale where the property in question is located. The
28 coordination councils organized by a county highway authority
29 shall include the county engineer, the County Board Chairman
30 or his or her designee, and with such utility participation
31 as will best facilitate and accomplish the requirements of a
32 highway authority acting under subsection (f) of this
33 Section. Should a county highway authority decide not to
34 establish coordination councils, the 90 day deadline for

1 removal, relocation, or modification of the ditches, drains,
2 track, rails, poles, wires, pipe line, or other equipment in
3 subsection (f) of this Section shall be waived for those
4 highways.

5 (c) In the case of non-toll federal-aid fully
6 access-controlled State highways, the State highway authority
7 shall not grant consent to the location, placement or
8 construction of ditches, drains, track, rails, poles, wires,
9 pipe line or other equipment upon, under or along any such
10 non-toll federal-aid fully access-controlled State highway,
11 which:

12 (1) would require cutting the pavement structure
13 portion of such highway for installation or, except in
14 the event of an emergency, would require the use of any
15 part of such highway right-of-way for purposes of
16 maintenance or repair. Where, however, the State highway
17 authority determines prior to installation that there is
18 no other access available for maintenance or repair
19 purposes, use by the entity of such highway right-of-way
20 shall be permitted for such purposes in strict accordance
21 with the rules, regulations and specifications of the
22 State highway authority, provided however, that except in
23 the case of access to bridge structures, in no such case
24 shall an entity be permitted access from the
25 through-travel lanes, shoulders or ramps of the non-toll
26 federal-aid fully access-controlled State highway to
27 maintain or repair its accommodation; or

28 (2) would in the judgment of the State highway
29 authority, endanger or impair any such ditches, drains,
30 track, rails, poles, wires, pipe lines or other equipment
31 already in place; or

32 (3) would, if installed longitudinally within the
33 access control lines of such highway, be above ground
34 after installation except that the State highway

1 authority may consent to any above ground installation
2 upon, under or along any bridge, interchange or grade
3 separation within the right-of-way which installation is
4 otherwise in compliance with this Section and any rules,
5 regulations or specifications issued hereunder; or

6 (4) would be inconsistent with Federal law or with
7 rules, regulations or directives of appropriate Federal
8 agencies.

9 (d) In the case of accommodations upon, under or along
10 non-toll federal-aid fully access-controlled State highways
11 the State highway authority may charge an entity reasonable
12 compensation for the right of that entity to longitudinally
13 locate, place or construct ditches, drains, track, rails,
14 poles, wires, pipe line or other equipment upon, under or
15 along such highway. Such compensation may include in-kind
16 compensation.

17 Where the entity applying for use of a non-toll
18 federal-aid fully access-controlled State highway
19 right-of-way is a public utility company, municipal
20 corporation or other public or private corporation,
21 association or person, such compensation shall be based upon
22 but shall not exceed a reasonable estimate by the State
23 highway authority of the fair market value of an easement or
24 leasehold for such use of the highway right-of-way. Where the
25 State highway authority determines that the applied-for use
26 of such highway right-of-way is for private land uses by an
27 individual and not for commercial purposes, the State highway
28 authority may charge a lesser fee than would be charged a
29 public utility company, municipal corporation or other public
30 or private corporation or association as compensation for the
31 use of the non-toll federal-aid fully access-controlled State
32 highway right-of-way. In no case shall the written consent
33 of the State highway authority give or be construed to give
34 any entity any easement, leasehold or other property interest

1 of any kind in, upon, under, above or along the non-toll
2 federal-aid fully access-controlled State highway
3 right-of-way.

4 Where the compensation from any entity is in whole or in
5 part a fee, such fee may be reasonably set, at the election
6 of the State highway authority, in the form of a single lump
7 sum payment or a schedule of payments. All such fees charged
8 as compensation may be reviewed and adjusted upward by the
9 State highway authority once every 5 years provided that any
10 such adjustment shall be based on changes in the fair market
11 value of an easement or leasehold for such use of the
12 non-toll federal-aid fully access-controlled State highway
13 right-of-way. All such fees received as compensation by the
14 State highway authority shall be deposited in the Road Fund.

15 (e) Any entity applying for consent shall submit such
16 information in such form and detail to the appropriate
17 highway authority as to allow the authority to evaluate the
18 entity's application. In the case of accommodations upon,
19 under or along non-toll federal-aid fully access-controlled
20 State highways the entity applying for such consent shall
21 reimburse the State highway authority for all of the
22 authority's reasonable expenses in evaluating that entity's
23 application, including but not limited to engineering and
24 legal fees.

25 (f) Any ditches, drains, track, rails, poles, wires,
26 pipe line, or other equipment located, placed, or constructed
27 upon, under, or along a highway with the consent of the State
28 or county highway authority under this Section shall, upon
29 written notice by the State or county highway authority be
30 removed, relocated, or modified by the owner, the owner's
31 agents, contractors, or employees at no expense to the State
32 or county highway authority when and as deemed necessary by
33 the State or county highway authority for highway or highway
34 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
6 right-of-way such that the unit of local government or other
7 owner of any facilities receiving notice in accordance with
8 this subsection (f) can proceed with relocating, replacing,
9 or reconstructing the ditches, drains, track, rails, poles,
10 wires, pipe line, or other equipment. If a permit
11 application to relocate on a public right-of-way is not filed
12 within 15 days of the receipt of final engineering plans, the
13 notice precondition of a permit to begin work is waived.
14 However, under no circumstances shall this notice provision
15 be construed to require the State or any government
16 department or agency to purchase additional rights-of-way to
17 accommodate utilities. If, within 90 days after receipt of
18 such written notice, the ditches, drains, track, rails,
19 poles, wires, pipe line, or other equipment have not been
20 removed, relocated, or modified to the reasonable
21 satisfaction of the State or county highway authority, or if
22 arrangements are not made satisfactory to the State or county
23 highway authority for such removal, relocation, or
24 modification, the State or county highway authority may
25 remove, relocate, or modify such ditches, drains, track,
26 rails, poles, wires, pipe line, or other equipment and bill
27 the owner thereof for the total cost of such removal,
28 relocation, or modification. The scope of the project shall
29 be taken into consideration by the State or county highway
30 authority in determining satisfactory arrangements. The State
31 or county highway authority shall determine the terms of
32 payment of those costs provided that all costs billed by the
33 State or county highway authority shall not be made payable
34 over more than a 5 year period from the date of billing. The

1 State and county highway authority shall have the power to
2 extend the time of payment in cases of demonstrated financial
3 hardship by a unit of local government or other public owner
4 of any facilities removed, relocated, or modified from the
5 highway right-of-way in accordance with this subsection (f).
6 This paragraph shall not be construed to prohibit the State
7 or county highway authority from paying any part of the cost
8 of removal, relocation, or modification where such payment is
9 otherwise provided for by State or federal statute or
10 regulation. At any time within 90 days after written notice
11 was given, the owner of the drains, track, rails, poles,
12 wires, pipe line, or other equipment may request the district
13 engineer or, if appropriate, the county engineer for a waiver
14 of the 90 day deadline. The appropriate district or county
15 engineer shall make a decision concerning waiver within 10
16 days of receipt of the request and may waive the 90 day
17 deadline if he or she makes a written finding as to the
18 reasons for waiving the deadline. Reasons for waiving the
19 deadline shall be limited to acts of God, war, the scope of
20 the project, the State failing to follow the proper notice
21 procedure, and any other cause beyond reasonable control of
22 the owner of the facilities. Waiver must not be unreasonably
23 withheld. If 90 days after written notice was given, the
24 ditches, drains, track, rails, poles, wires, pipe line, or
25 other equipment have not been removed, relocated, or modified
26 to the satisfaction of the State or county highway authority,
27 no waiver of deadline has been requested or issued by the
28 appropriate district or county engineer, and no satisfactory
29 arrangement has been made with the appropriate State or
30 county highway authority, the State or county highway
31 authority or the general contractor of the building project
32 may file a complaint in the circuit court for an emergency
33 order to direct and compel the owner to remove, relocate, or
34 modify the drains, track, rails, poles, wires, pipe line, or

1 other equipment to the satisfaction of the appropriate
 2 highway authority. The complaint for an order shall be
 3 brought in the circuit in which the subject matter of the
 4 complaint is situated or, if the subject matter of the
 5 complaint is situated in more than one circuit, in any one of
 6 those circuits.

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

17 (h) Upon receipt of an application therefor, consent to
 18 so use a highway may be granted subject to such terms and
 19 conditions not inconsistent with this Code as the highway
 20 authority deems for the best interest of the public. The
 21 terms and conditions required by the appropriate highway
 22 authority may include but need not be limited to
 23 participation by the party granted consent in the strategies
 24 and practices adopted under subsection (b) of this Section.
 25 If the highway authority does not have fee ownership of the
 26 property, the petitioner shall pay to the owners of property
 27 located in the highway right-of-way abutting--upon---the
 28 affected--highways--established--as--though--by--common--law--plat
 29 all damages the owners may sustain by reason of such use of
 30 the highway, such damages to be ascertained and paid in the
 31 manner provided by law for the exercise of the right of
 32 eminent domain. Owners of property that abuts the
 33 right-of-way but who acquired the property through a
 34 conveyance that either expressly excludes the property

1 subject to the right-of-way or that describes the property
2 conveyed as ending at the right-of-way or being bounded by
3 the right-of-way or road shall not be considered owners of
4 property located in the right-of-way and shall not be
5 entitled to damages by reason of the use of the highway or
6 road for utility purposes. If the property subject to the
7 right-of-way is not owned by the owners of the abutting
8 property (either because it is expressly excluded from the
9 property conveyed to an abutting property owner or the
10 property as conveyed ends at or is bounded by the
11 right-of-way or road), then the petitioner shall pay any
12 damages, as so calculated, to the person or persons who have
13 paid real estate taxes for the property as reflected in the
14 county tax records. If no person has paid real estate taxes,
15 then the public interest permits the installation of the
16 facilities without payment of any damages. This provision of
17 this amendatory Act of the 92nd General Assembly is intended
18 to clarify, by codification, existing law and is not intended
19 to change the law.

20 (i) Such consent shall be granted by the Department in
21 the case of a State highway; by the county board or its
22 designated county superintendent of highways in the case of a
23 county highway; by either the highway commissioner or the
24 county superintendent of highways in the case of a township
25 or district road, provided that if consent is granted by the
26 highway commissioner, the petition shall be filed with the
27 commissioner at least 30 days prior to the proposed date of
28 the beginning of construction, and that if written consent is
29 not given by the commissioner within 30 days after receipt
30 of the petition, the applicant may make written application
31 to the county superintendent of highways for consent to the
32 construction. This Section does not vitiate, extend or
33 otherwise affect any consent granted in accordance with law
34 prior to the effective date of this Code to so use any

1 highway.

2 (j) Nothing in this Section shall limit the right of a
3 highway authority to permit the location, placement or
4 construction or any ditches, drains, track, rails, poles,
5 wires, pipe line or other equipment upon, under or along any
6 highway or road as a part of its highway or road facilities
7 or which the highway authority determines is necessary to
8 service facilities required for operating the highway or
9 road, including rest areas and weigh stations.

10 (k) Paragraphs (c) and (d) of this Section shall not
11 apply to any accommodation located, placed or constructed
12 with the consent of the State highway authority upon, under
13 or along any non-toll federal-aid fully access-controlled
14 State highway prior to July 1, 1984, provided that
15 accommodation was otherwise in compliance with the rules,
16 regulations and specifications of the State highway
17 authority.

18 (l) The consent to be granted pursuant to this Section
19 by the appropriate highway authority shall be effective only
20 to the extent of the property interest of the State or
21 government unit served by that highway authority. Such
22 consent shall not be binding on any owner of the fee over or
23 under which the highway or road is located but shall be
24 binding on any abutting property owner whose property
25 boundary ends at the right-of-way of the highway or road.
26 The consent and shall not otherwise relieve the entity
27 granted that consent from obtaining by purchase, condemnation
28 or otherwise the necessary approval of any owner of the fee
29 over or under which the highway or road is located, except to
30 the extent that no such owner has paid real estate taxes on
31 the property for the 2 years prior to the grant of the
32 consent. This paragraph shall not be construed as a
33 limitation on the use for highway or road purposes of the
34 land or other property interests acquired by the public for

1 highway or road purposes, including the space under or above
2 such right-of-way.

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

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

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

9 (765 ILCS 5/7a) (from Ch. 30, par. 6a)

10 Sec. 7a. Any instrument, including a will, which
11 conveys, transfers, encumbers, leases or releases, or by
12 which an agreement is made to convey, transfer, encumber,
13 lease or release, or by virtue of which there is conveyed,
14 transferred, encumbered, leased or released, any real
15 property, whether described by a metes and bounds description
16 or otherwise, which abuts upon any road, street, highway or
17 alley, or upon any abandoned or vacated road, street, highway
18 or alley shall be deemed and construed to include any right,
19 title or interest in that part of such road, street, highway
20 or alley which the abutting owner who makes any such
21 instrument shall presently have or, which such owner, his
22 heirs, successors and assigns subsequently acquires in such
23 road, street, highway or alley unless such instrument by its
24 terms expressly excludes, in the description of the property,
25 such road, street, highway or alley. The right, title or
26 interest acquired under such instrument in such road, street,
27 highway or alley, by virtue of the provisions of this Act,
28 shall be deemed and construed to be for the same uses and
29 purposes set forth in such instrument with respect to the
30 real property specifically described in the instrument.
31 However, no covenants or agreements made by the maker of any
32 such instrument with respect to any real property

1 specifically described shall apply to or be enforceable with
2 respect to any right, title or interest which is acquired
3 solely by virtue of the provisions of this Act. "Conveyance"
4 expressly excludes a road, street, highway, or alley if the
5 legal description of the property uses the boundary of the
6 road, street, highway, or alley closest to the property being
7 conveyed as a boundary of the property being conveyed. This
8 provision of this amendatory Act of the 92nd General Assembly
9 is intended to clarify, by codification, existing law and is
10 not intended to change the law.
11 (Source: P.A. 76-1660.)".