

# EVERYDAY DEMOCRACY

*Seasonal Newsletter from the Citizen Advocacy Center and Citizens in the Western Suburbs.  
Spring 2002*

## **An Agency Ripe For Reform: The Illinois State Toll Highway Authority**

April 10, 2002, CAC's executive director, Terry Pastika, testified before the General Assembly's Senate Transportation Committee Hearing on behalf of the Tollway Accountability Campaign (TAC). TAC is a coalition of twenty-five regional and statewide civic, community and environmental groups that have joined together to seek increased fiscal accountability and legislative oversight of the Illinois State Toll Highway Authority (ISTHA).

The Center has extensively documented the history of fiscal mismanagement and lack of accountability of the ISTHA through the end of 1998 in Tollgate I and Tollgate II: A Motorists Guide to Understanding Why the Tollways are Not Freeways and a Manifesto for Reform. Time and again, the ISTHA has demonstrated that this is an agency ripe for reform, proven this time by a proposal in late March to pass a quickie toll hike under a lame duck governor with five of the nine director's terms ending within the next year, coupled with a vague reconstruction plan and what amounted to sham public hearings. The combination of public outcry and disapproval from legislators and the governor have put the brakes on the toll hike – for now.

After years of questionable financial practices and disregard for long term planning of the inevitable task of rebuilding the original tollroads, the ISTHA is in a self-proclaimed financial crisis. The proposed solution is an 87% toll increase to fund a \$5.5 billion system-wide reconstruction and widening project that is part of a 15- year Capital Plan.

The Capital Plan would be one of the largest public works projects in the history of Illinois but very few details were put forth stating studies, reports, options, or alternatives to the reconstruction and widening projects. Unanswered questions are rampant. For example:

- A significant portion of the \$5.5 billion is allocated to road widening to relieve congestion, but no information was offered detailing the consideration of less-costly alternatives, such as congestive pricing;

- The 87% toll hike would only fund the next eight years and another unknown toll hike would be necessary in 2010. Both completion of the plan and the amount of the second toll hike would be left to another Toll Authority Board, leaving the public in the dark as to exact cost of the reconstruction plan and the overall toll increase;
- Under the plan, the ISTHA expects a revenue surplus in 2017 but no details have been put forth stating how the surplus will be spent or managed. The current Toll Authority Board again says this is up to a future board.

Considering the history of mismanagement, motorists deserve a detailed account of schedules and budgetary expenditures. Moreover, Toll Authority representatives have implied that the proposed toll increase would only be used to fund the reconstruction and widening of the existing system and not to expand the system. With the current toll roads on the brink of crumbling, any thought of expanding the system is outrageous. One way the Toll Authority Board could begin to restore credibility is by signing a resolution stating no new tollway construction will occur until all reconstruction and repairs have been completed on the original toll roads.

The manner in which the ISTHA proposed the toll increase is a harsh reminder of the unaccountability of the ISTHA. By statute, the Toll Authority is required to hold public hearings in all 12 counties that the toll roads serve. The public hearing is supposed to be an opportunity for decision makers to hear input from the public, and for the public to hear proposed actions, considered alternatives and policy justifications for the actions under consideration.

The ISTHA conducted all twelve public hearings simultaneously on April 17, 2002 between 7-9 PM to inform the public about one of the largest public works projects in the history of Illinois. Furthermore, with only 9 directors and

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# Strategic Lawsuits Against Public Participation: SLAPP SUITS

In the struggle to achieve real debate on issues of public concern, community organizations face a demoralizing threat: the SLAPP suit. A SLAPP suit, or strategic lawsuit against public participation, presents an attractive tool for parties seeking to stifle public dialogue. For example, a real estate developer eager to quash public debate on a new housing project might bring a SLAPP suit against a community group opposed to the project. The developer may allege that the community group's public comments in opposition to the project amount to defamation, or tortiously interfere with the developer's economic interests.

The Center had first hand experience with SLAPP suits when defending a local community association from a \$110 million SLAPP suit brought by a developer, alleging "a civil conspiracy" because the community association successfully petitioned the forest preserve to preserve open space. The Center won a dismissal on First Amendment grounds.

The SLAPP suit represents a pernicious abuse of the legal system. In addition to squandering judicial resources, the SLAPP suit allows better organized, better funded business interests to exploit their financial advantage over community organizations. While a SLAPP suit ultimately rests upon the viability of its underlying claim, even meritless claims can achieve their primary objective: silencing public debate. The cost of defending a SLAPP suit can

## Agency Ripe For Reform continued

the executive director, the public had no guarantee that they would have the opportunity to talk to the directors. Fortunately, public outcry and criticism by legislators led to the ISTHA agreeing to hold more public hearings about the Capital Plan.

Despite verbal assurances that indiscretions of the past have been addressed, no guarantees exist to bind the Toll Authority from unaccountable practices. A credibility issue hangs heavy over the integrity of the Toll Authority. Protection from unaccountable practices need to be built into the system rather than depend on directors who come and go.

Keep informed! Attend the future public hearings regarding toll increases and the proposed plan and attend the ISTHA budget and operation meetings.

To read the Center's statement at the Transportation Committee Hearing, visit the Center's website at

severely constrain a community organization's ability to advance community interests, and may even force the organization into bankruptcy. The mere threat of a SLAPP suit deters political participation, and by chilling the exercise of First Amendment rights SLAPP suits threaten to erode the foundation of a healthy democracy.

Several states have passed anti-SLAPP legislation. As of May 2002 Delaware, Florida, Georgia, Indiana, Louisiana, Maine, Massachusetts, Minnesota, Nebraska, Nevada, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, and Washington have enacted anti-SLAPP statutes. State legislators in Colorado and Michigan and Illinois have proposed anti-SLAPP statutes in 2002.

In Illinois, Senators Cullerton and Barack, and State Representative Feigenholtz have proposed SB1633 and HB4315. These identical bills seek to amend the Illinois Code of Civil Procedure to allow a court to grant a special motion to dismiss in favor of a defendant who is the subject of a SLAPP suit provided that: a) the suit is based on an act taken by the defendant in furtherance of her right of petition or free speech; b) the defendant has exercised her right of petition or free speech in connection with a public issue; and c) the court determines the party bringing the SLAPP does not have a reasonable probability of prevailing on the claim.

Should a defendant prevail on the special motion to dismiss, the bills would require the plaintiff to compensate the defendant for attorney's fees and costs incurred in defending the suit. In addition, the bills require discovery to be stayed until the court has ruled on the defendant's special motion to dismiss. However, courts retain the discretion to order discovery to proceed before the defendant's motion has been decided. The bills do not apply to an action brought by the Attorney General, a State's Attorney, or an attorney for a unit of local government acting in her official capacity.

The bills also create a mechanism for tracking the use of the special motion it seeks to provide defendants. The Bill requires the Administrative Office of Illinois Courts to inform the General Assembly on the frequency of use and outcome of the special motion to dismiss.

Both bills died in House and Senate rules committees and will be reintroduced next spring.

Joe Marzo, Summer Intern

## **The Open Meetings Act, an Agenda "New Items" Rule**

On January 24th, the Illinois Appellate Court ruled that the Open Meetings Act requires local governing bodies to give citizens fair warning before taking action upon issues. Before the ruling, local governing bodies could introduce and act upon issues in the same session without providing advance notice that decisions were about to be made. While Illinois law requires that an agenda be posted 48 hours in advance of each regularly scheduled meeting of a governing body, the Act specifically states that "consideration" of items at public meetings is not limited to items listed on the agenda.

Because this "consideration" of unlisted items is permissible, it became possible for local governing bodies to be obscure when important decision-making would take place, and as a result, minimizing community input. Public attendance at governmental meetings is often contingent on specific issues noted on the agenda. Citizens concerned about maintaining a forest preserve, for example, are unlikely to attend a meeting which posts an agenda that specifically mentions only fire protection and garbage collection. The Illinois Appellate Court addressed these abuses in January when it declared that the "consideration" of items not specifically listed on the posted agenda could not

include voting on these items. Voting or other decision-making may only occur following the requisite 48 hour notice. In the case decided, the Adams County Board of Trustees was held to violate the Open Meetings Act by voting to implement an alternative benefit program for elected county officers without specifically listing that item on its agenda. The court stated that the Board's use of the general term "new business" on its agenda did not suffice to notify the community that a vote on a county officer benefit program was imminent. Requiring a posted agenda serves to give a community timely notice of impending governmental actions.

Allowing local governing bodies to take action on items not specifically mentioned on the agenda would defeat the purpose of requiring the agenda. The court stated that allowing this would defeat the stated purpose of the Open Meetings Act, designed to protect the Illinois citizen's right to know about the actions of its local governing bodies.

Local governing bodies are concerned about the ruling, because it will prevent them from acting on an item which demands prompt action, but which could not be included on the posted agenda. Groups which meet infrequently might face a delay of several months in getting issues resolved. Because items often do spontaneously arise during meetings, fulfilling the 48-hour notice requirement might mean putting off action until the next monthly or semi-annual meeting. However, even in genuine emergency situations the Open Meetings Act does not permit local governing bodies to make decisions without giving prior notice to the community. In emergencies, advance notice of issues to be resolved must be given to the community as soon as practicable. Moreover, the court's ruling may well encourage rather than hinder effective local government. A detailed agenda posted in advance serves other purposes beyond informing the local community. It promotes the efficient use of meeting time by the local governing body, and it provides the opportunity for members of that body to become educated on issues which are to be decided.

Rebecca Parkhurst, Summer Intern

### **CAC Summer Events**

**Friday, June 14, 12:30 PM, Brown Bag Lunch at CAC**  
Affirmative Action and School Admissions.

**Saturday, June 15, 10 AM—9 PM,**  
**Union Park, Chicago-** Down-home Democracy Tour  
Visit CAC's booth.

**Wednesday, June 19, 7:30 PM, Evening Program at CAC**—Operation Safe Roads—How Far Will The Indictments Go?

**Friday, July 12, 12:30 PM, Brown Bag Lunch at CAC**

**Tuesday, July 23, 7:00 PM, Democracy Day at CAC!**  
Summer Intern Presentations, All Welcome!

**July 24th—July 28th, DuPage County Fair Grounds**  
DuPage County Fair, Visit CAC's booth.

For more information on all events, visit our website at [www.citizenadvocacycenter.org](http://www.citizenadvocacycenter.org)

*Everyday Democracy* is a publication of the *Citizen Advocacy Center*, a non-profit, nonpartisan, 501(c)(3) corporation. Submissions from citizen advocates in the western suburbs of Chicago are encouraged.

The *Center* is an educational and charitable organization dedicated to building democracy for the 21st century by strengthening the public's capacities, resources, and institutions for self-governance.

If you are interested in receiving more information, becoming a volunteer, or making a tax-deductible contribution to the *Center*, please feel free to contact or visit us.

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*Return Service Requested*

<b>Citizen Advocacy Center Receives Two Matching Grants</b>	<b>Citizen Advocacy Center's 8th Anniversary Celebration</b>
<p>The Center has received two matching challenge grants—donations from individuals who will match dollar for dollar any donation to the Center! These generous individuals have collectively pledged \$5,000.</p> <p>Do your part to help the Center continue to build democracy! Making a donation today will count for twice as much.</p> <p><b>Make Your Donation of \$50 Worth \$100!</b></p> <p><b>Make Your Donation of \$100 Worth \$200!</b></p>	<p>Saturday, April 13th, marked the 8th anniversary of the day the Center opened its doors to help citizens build democracy. Thank you to everyone who contributed to make the day a success.</p> <p>Many thanks to our musical guests acoustic guitar players, Mighty Joe and Arthur Lee, and former intern and violinist, Naveret Kaur Heneghan.</p> <p>Thank you to Social Poet, James McGrew for his inspirational poems, Ed Yohnka from the ACLU and Harald Taggart from the Democratic Socialists for their presentations.</p>