



Filed: 3/23/2006

09400SB3046ham001

LRB094 19197 BDD 57431 a

1 AMENDMENT TO SENATE BILL 3046

2 AMENDMENT NO. _____. Amend Senate Bill 3046 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Intergovernmental Cooperation Act is
5 amended by changing Section 3.1 as follows:

6 (5 ILCS 220/3.1) (from Ch. 127, par. 743.1)

7 Sec. 3.1. Municipal Joint Action Water Agency.

8 (a) Any municipality or municipalities of this State, any
9 county or counties of this State, any township in a county with
10 a population under 700,000 of this State, any public water
11 district or districts of this State, State university, or any
12 combination thereof may, by intergovernmental agreement,
13 establish a Municipal Joint Action Water Agency to provide
14 adequate supplies of water on an economical and efficient basis
15 for member municipalities, public water districts and other
16 incorporated and unincorporated areas within such counties.
17 ~~For purposes of this Act, the water supply may only be derived~~
18 ~~from Lake Michigan, the Mississippi River, the Missouri River,~~
19 ~~or the Sangamon River Valley Alluvium.~~ Any such Agency shall
20 itself be a municipal corporation, public body politic and
21 corporate. A Municipal Joint Action Water Agency so created
22 shall not itself have taxing power except as hereinafter
23 provided.

24 A Municipal Joint Action Water Agency shall be established

1 by an intergovernmental agreement among the various member
2 municipalities, public water districts, townships, State
3 universities, and counties, upon approval by an ordinance
4 adopted by the corporate authorities of each member
5 municipality, public water district, township, State
6 university, or county. This agreement may be amended at any
7 time upon the adoption of concurring ordinances by the
8 corporate authorities of all member municipalities, public
9 water districts, townships, State universities, and counties.
10 The agreement may provide for additional municipalities,
11 public water districts, any State universities, townships in
12 counties with a population under 700,000, or counties to join
13 the Agency upon adoption of an ordinance by the corporate
14 authorities of the joining municipality, public water
15 district, township, or county, and upon such consents,
16 conditions and approvals of the governing body of the Municipal
17 Joint Action Water Agency and of existing member
18 municipalities, public water districts, townships, State
19 universities, and counties as shall be provided in the
20 agreement. The agreement shall provide the manner and terms on
21 which any municipality, public water district, township, or
22 county may withdraw from membership in the Municipal Joint
23 Action Water Agency and on which the Agency may terminate and
24 dissolve in whole or in part. The agreement shall set forth the
25 corporate name of the Municipal Joint Action Water Agency and
26 its duration. Promptly upon any agreement establishing a
27 Municipal Joint Action Water Agency being entered into, or upon
28 the amending of any such agreement, a copy of such agreement or
29 amendment shall be filed in the office of the Secretary of
30 State of Illinois. Promptly upon the addition or withdrawal of
31 any municipality, public water district, township in a county
32 with a population under 700,000, or county, or upon the
33 dissolution of a Municipal Joint Action Water Agency, that fact
34 shall be certified by an officer of the Agency to the Secretary

1 of State of Illinois.

2 (b) The governing body of any Municipal Joint Action Water
3 Agency established pursuant to this Section 3.1 shall be a
4 Board of Directors. There shall be one Director from each
5 member municipality, public water district, township, State
6 university, and county of the Municipal Joint Action Water
7 Agency appointed by ordinance of the corporate authorities of
8 the municipality, public water district, township, or county.
9 Each Director shall have one vote. Each Director shall be the
10 Mayor or President of the member municipality, or the chairman
11 of the board of trustees of the member public water district,
12 the supervisor of the member township, the appointee of the
13 State university, or the chairman of the county board or chief
14 executive officer of the member county or a county board member
15 appointed by the chairman of the county board of the member
16 county, appointing the Director; an elected member of the
17 corporate authorities of that municipality, public water
18 district, township, or county; or other elected official of the
19 appointing municipality, public water district, township, or
20 county. Any agreement establishing a Municipal Joint Action
21 Water Agency shall specify the period during which a Director
22 shall hold office and may provide for the appointment of
23 Alternate Directors from member municipalities, public water
24 districts, townships, or counties. The Board of Directors shall
25 elect one Director to serve as Chairman, and shall elect
26 persons, who need not be Directors, to such other offices as
27 shall be designated in the agreement.

28 The Board of Directors shall determine the general policy
29 of the Municipal Joint Action Water Agency, shall approve the
30 annual budget, shall make all appropriations (which may include
31 appropriations made at any time in addition to those made in
32 any annual appropriation document), shall approve all
33 contracts for the purchase or sale of water, shall adopt any
34 resolutions providing for the issuance of bonds or notes by the

1 Agency, shall adopt its by-laws, rules and regulations, and
2 shall have such other powers and duties as may be prescribed in
3 the agreement. Such agreement may further specify those powers
4 and actions of the Municipal Joint Action Water Agency which
5 shall be authorized only upon votes of greater than a majority
6 of all Directors or only upon consents of the corporate
7 authorities of a certain number of member municipalities,
8 public water districts, townships, State universities, or
9 counties.

10 The agreement may provide for the establishment of an
11 Executive Committee to consist of the municipal manager or
12 other elected or appointed official of each member
13 municipality, public water district, township, State
14 university, or county, as designated by ordinance or other
15 official action, from time to time by the corporate authorities
16 of the member municipality, public water district, township,
17 State university, or county, and may prescribe powers and
18 duties of the Executive Committee for the efficient
19 administration of the Agency.

20 (c) A Municipal Joint Action Water Agency established
21 pursuant to this Section 3.1 may plan, construct, improve,
22 extend, acquire, finance (including the issuance of revenue
23 bonds or notes as provided in this Section 3.1), operate,
24 maintain, and contract for a joint waterworks or water supply
25 system which may include, or may consist of, without
26 limitation, facilities for receiving, storing, and
27 transmitting water from any source for supplying water to
28 member municipalities, public water districts, townships, or
29 counties (including county special service areas created under
30 the Special Service Area Tax Act and county service areas
31 authorized under the Counties Code), or other public agencies,
32 persons, or corporations. Facilities of the Municipal Joint
33 Action Water Agency may be located within or without the
34 corporate limits of any member municipality.

1 A Municipal Joint Action Water Agency shall have such
2 powers as shall be provided in the agreement establishing it,
3 which may include, but need not be limited to, the following
4 powers:

5 (i) to sue or be sued;

6 (ii) to apply for and accept gifts or grants or loans
7 of funds or property or financial or other aid from any
8 public agency or private entity;

9 (iii) to acquire, hold, sell, lease as lessor or
10 lessee, transfer or dispose of such real or personal
11 property, or interests therein, as it deems appropriate in
12 the exercise of its powers, and to provide for the use
13 thereof by any member municipality, public water district,
14 township, or county;

15 (iv) to make and execute all contracts and other
16 instruments necessary or convenient to the exercise of its
17 powers (including contracts with member municipalities,
18 with public water districts, with townships, and with
19 counties on behalf of county service areas); and

20 (v) to employ agents and employees and to delegate by
21 resolution to one or more of its Directors or officers such
22 powers as it may deem proper.

23 Member municipalities, public water districts, townships,
24 State universities, or counties may, for the purposes of, and
25 upon request by, the Municipal Joint Action Water Agency,
26 exercise the power of eminent domain available to them, convey
27 property so acquired to the Agency for the cost of acquisition,
28 and be reimbursed for all expenses related to this exercise of
29 eminent domain power on behalf of the Agency.

30 All property, income and receipts of or transactions by a
31 Municipal Joint Action Water Agency shall be exempt from all
32 taxation, the same as if it were the property, income or
33 receipts of or transaction by the member municipalities, public
34 water districts, townships, State universities, or counties.

1 (d) A Municipal Joint Action Water Agency established
2 pursuant to this Section 3.1 shall have the power to buy water
3 and to enter into contracts with any person, corporation or
4 public agency (including any member municipality, public water
5 district, township, or county) for that purpose. Any such
6 contract made by an Agency for a supply of water may contain
7 provisions whereby the Agency is obligated to pay for the
8 supply of water without setoff or counterclaim and irrespective
9 of whether the supply of water is ever furnished, made
10 available or delivered to the Agency or whether any project for
11 the supply of water contemplated by any such contract is
12 completed, operable or operating and notwithstanding any
13 suspension, interruption, interference, reduction or
14 curtailment of the supply of water from such project. Any such
15 contract may provide that if one or more of the other
16 purchasers defaults in the payment of its obligations under
17 such contract or a similar contract made with the supplier of
18 the water one or more of the remaining purchasers party to such
19 contract or such similar contract shall be required to pay for
20 all or a portion of the obligations of the defaulting
21 purchasers. No such contract may have a term in excess of 50
22 years.

23 A Municipal Joint Action Water Agency shall have the power
24 to sell water and to enter into contracts with any person,
25 corporation or public agency (including any member
26 municipality, any public water district, any township, any
27 State university, or any county on behalf of a county service
28 area as set forth in this Section) for that purpose. No such
29 contract may have a term in excess of 50 years. Any such
30 contract entered into to sell water to a public agency may
31 provide that the payments to be made thereunder by such public
32 agency shall be made solely from revenues to be derived by such
33 public agency from the operation of its waterworks system or
34 its combined waterworks and sewerage system. Any public agency

1 so contracting to purchase water shall establish from time to
2 time such fees and charges for its water service or combined
3 water and sewer service as will produce revenues sufficient at
4 all times to pay its obligations to the Agency under the
5 purchase contract. Any such contract so providing shall not
6 constitute indebtedness of such public agency so contracting to
7 buy water within the meaning of any statutory or constitutional
8 limitation. Any such contract of a public agency to buy water
9 shall be a continuing, valid and binding obligation of such
10 public agency payable from such revenues.

11 A Municipal Joint Action Water Agency shall establish fees
12 and charges for the purchase of water from it or for the use of
13 its facilities. No prior appropriation shall be required by
14 either the Municipal Joint Action Water Agency or any public
15 agency before entering into any contract authorized by this
16 paragraph (d).

17 The changes in this Section made by this amendatory Act of
18 1984 are intended to be declarative of existing law.

19 (e) 1. A Municipal Joint Action Water Agency established
20 pursuant to this Section 3.1 may, from time to time, borrow
21 money and, in evidence of its obligation to repay the
22 borrowing, issue its negotiable water revenue bonds or notes
23 pursuant to this paragraph (e) for any of the following
24 purposes: for paying costs of constructing, acquiring,
25 improving or extending a joint waterworks or water supply
26 system; for paying other expenses incident to or incurred in
27 connection with such construction, acquisition, improvement or
28 extension; for repaying advances made to or by the Agency for
29 such purposes; for paying interest on the bonds or notes until
30 the estimated date of completion of any such construction,
31 acquisition, improvement or extension and for such period after
32 the estimated completion date as the Board of Directors of the
33 Agency shall determine; for paying financial, legal,
34 administrative and other expenses of the authorization,

1 issuance, sale or delivery of bonds or notes; for paying costs
2 of insuring payment of the bonds or notes; for providing or
3 increasing a debt service reserve fund with respect to any or
4 all of the Agency's bonds or notes; and for paying, refunding
5 or redeeming any of the Agency's bonds or notes before, after
6 or at their maturity, including paying redemption premiums or
7 interest accruing or to accrue on such bonds or notes being
8 paid or redeemed or for paying any other costs in connection
9 with any such payment or redemption.

10 2. Any bonds or notes issued pursuant to this paragraph (e)
11 by a Municipal Joint Action Water Agency shall be authorized by
12 a resolution of the Board of Directors of the Agency adopted by
13 the affirmative vote of Directors from a majority of the member
14 municipalities, public water districts, townships, State
15 universities, and counties, and any additional requirements as
16 may be set forth in the agreement establishing the Agency. The
17 authorizing resolution may be effective immediately upon its
18 adoption. The authorizing resolution shall describe in a
19 general way any project contemplated to be financed by the
20 bonds or notes, shall set forth the estimated cost of the
21 project and shall determine its period of usefulness. The
22 authorizing resolution shall determine the maturity or
23 maturities of the bonds or notes, the rate or rates at which
24 the bonds or notes are to bear interest and all the other terms
25 and details of the bonds or notes. All such bonds or notes
26 shall mature within the period of estimated usefulness of the
27 project with respect to which such bonds or notes are issued,
28 as determined by the Board of Directors, but in any event not
29 more than 50 years from their date of issue. The bonds and
30 notes may bear interest, payable at such times, at a rate or
31 rates not exceeding the maximum rate established in the Bond
32 Authorization Act, as from time to time in effect. Bonds or
33 notes of a Municipal Joint Action Water Agency shall be sold in
34 such manner as the Board of Directors of the Agency shall

1 determine, either at par or at a premium or discount, but such
2 that the effective interest cost (excluding any redemption
3 premium) to the Agency of the bonds or notes shall not exceed a
4 rate equal to the rate of interest specified in the Act
5 referred to in the preceding sentence.

6 The resolution authorizing the issuance of any bonds or
7 notes pursuant to this paragraph (e) shall constitute a
8 contract with the holders of the bonds and notes. The
9 resolution may contain such covenants and restrictions with
10 respect to the purchase or sale of water by the Agency and the
11 contracts for such purchases or sales, the operation of the
12 joint waterworks system or water supply system, the issuance of
13 additional bonds or notes by the Agency, the security for the
14 bonds and notes, and any other matters, as may be deemed
15 necessary or advisable by the Board of Directors to assure the
16 payment of the bonds or notes of the Agency.

17 3. The resolution authorizing the issuance of bonds or
18 notes by a Municipal Joint Action Water Agency shall pledge and
19 provide for the application of revenues derived from the
20 operation of the Agency's joint waterworks or water supply
21 system (including from contracts for the sale of water by the
22 Agency) and investment earnings thereon to the payment of the
23 cost of operation and maintenance of the system (including
24 costs of purchasing water), to provision of adequate
25 depreciation, reserve or replacement funds with respect to the
26 system or the bonds or notes, and to the payment of principal,
27 premium, if any, and interest on the bonds or notes of the
28 Agency (including amounts for the purchase of such bonds or
29 notes). The resolution shall provide that revenues of the
30 Municipal Joint Action Water Agency so derived from the
31 operation of the system, sufficient (together with other
32 receipts of the Agency which may be applied to such purposes)
33 to provide for such purposes, shall be set aside as collected
34 in a separate fund or funds and used for such purposes. The

1 resolution may provide that revenues not required for such
2 purposes may be used for any proper purpose of the Agency or
3 may be returned to member municipalities.

4 Any notes of a Municipal Joint Action Water Agency issued
5 in anticipation of the issuance of bonds by it may, in
6 addition, be secured by a pledge of proceeds of bonds to be
7 issued by the Agency, as specified in the resolution
8 authorizing the issuance of such notes.

9 4. (i) Except as provided in clauses (ii) and (iii) of this
10 subparagraph 4 of this paragraph (e), all bonds and notes of
11 the Municipal Joint Action Water Agency issued pursuant to this
12 paragraph (e) shall be revenue bonds or notes. Such revenue
13 bonds or notes shall have no claim for payment other than from
14 revenues of the Agency derived from the operation of its joint
15 waterworks or water supply system (including from contracts for
16 the sale of water by the Agency) and investment earnings
17 thereon, from bond or note proceeds and investment earnings
18 thereon, or from such other receipts of the Agency as the
19 agreement establishing the Agency may authorize to be pledged
20 to the payment of revenue bonds or notes, all as and to the
21 extent as provided in the resolution of the Board of Directors
22 authorizing the issuance of the revenue bonds or notes. Revenue
23 bonds or notes issued by a Municipal Joint Action Water Agency
24 pursuant to this paragraph (e) shall not constitute an
25 indebtedness of the Agency or of any member municipality,
26 public water district, township, or county within the meaning
27 of any constitutional or statutory limitation. It shall be
28 plainly stated on each revenue bond and note that it does not
29 constitute an indebtedness of the Municipal Joint Action Water
30 Agency or of any member municipality, public water district,
31 township, or county within the meaning of any constitutional or
32 statutory limitation.

33 (ii) If the Agreement so provides and subject to the
34 referendum provided for in clause (iii) of this subparagraph 4

1 of this paragraph (e), the Municipal Joint Action Water Agency
2 may borrow money for corporate purposes on the credit of the
3 Municipal Joint Action Water Agency, and issue general
4 obligation bonds therefor, in such amounts and form and on such
5 conditions as it shall prescribe, but shall not become indebted
6 in any manner or for any purpose in an amount including
7 existing indebtedness in the aggregate which exceeds 5.75% of
8 the aggregate value of the taxable property within the
9 boundaries of the participating municipalities, public water
10 districts, townships, and county service areas within a member
11 county determined by the governing body of the county by
12 resolution to be served by the Municipal Joint Action Water
13 Agency (including any territory added to the Agency after the
14 issuance of such general obligation bonds), collectively
15 defined as the "Service Area", as equalized and assessed by the
16 Department of Revenue and as most recently available at the
17 time of the issue of said bonds. Before or at the time of
18 incurring any such general obligation indebtedness, the
19 Municipal Joint Action Water Agency shall provide for the
20 collection of a direct annual tax, which shall be unlimited as
21 to rate or amount, sufficient to pay the interest on such debt
22 as it falls due and also to pay and discharge the principal
23 thereof at maturity, which shall be within 40 years after the
24 date of issue thereof. Such tax shall be levied upon and
25 collected from all of the taxable property within the
26 territorial boundaries of such Service Area at the time of the
27 referendum provided for in clause (iii) and shall be levied
28 upon and collected from all taxable property within the
29 boundaries of any territory subsequently added to the Service
30 Area. Dissolution of the Municipal Joint Action Water Agency
31 for any reason shall not relieve the taxable property within
32 such Service Area from liability for such tax. Liability for
33 such tax for property transferred to or released from such
34 Service Area shall be determined in the same manner as for

1 general obligation bonds of such county, if in an
 2 unincorporated area, and of such municipality, if within the
 3 boundaries thereof. The clerk or other officer of the Municipal
 4 Joint Action Water Agency shall file a certified copy of the
 5 resolution or ordinance by which such bonds are authorized to
 6 be issued and such tax is levied with the County Clerk or
 7 Clerks of the county or counties containing the Service Area,
 8 and such filing shall constitute, without the doing of any
 9 other act, full and complete authority for such County Clerk or
 10 Clerks to extend such tax for collection upon all the taxable
 11 property within the Service Area subject to such tax in each
 12 and every year, as required, in amounts sufficient to pay the
 13 principal of and interest on such bonds, as aforesaid, without
 14 limit as to rate or amount. Such tax shall be in addition to
 15 and in excess of all other taxes authorized to be levied by the
 16 Municipal Joint Action Water Agency or by such county,
 17 municipality, township, or public water district. The issuance
 18 of such general obligation bonds shall be subject to the other
 19 provisions of this paragraph (e), except for the provisions of
 20 clause (i) of this subparagraph 4.

21 (iii) No issue of general obligation bonds of the Municipal
 22 Joint Action Water Agency (except bonds to refund an existing
 23 bonded indebtedness) shall be authorized unless the Municipal
 24 Joint Action Water Agency certifies the proposition of issuing
 25 such bonds to the proper election authorities, who shall submit
 26 the proposition to the voters in the Service Area at an
 27 election in accordance with the general election law, and the
 28 proposition has been approved by a majority of those voting on
 29 the proposition.

30 The proposition shall be substantially in the following
 31 form:

32 -----

33 Shall general obligation
 34 bonds for the purpose of (state

1 purpose), in the sum not to
 2 exceed \$....(insert amount), Yes
 3 be issued by the -----
 4 (insert corporate name of the No
 5 Municipal Joint Action Water
 6 Agency)?

7 -----

8 5. As long as any bonds or notes of a Municipal Joint
 9 Action Water Agency created pursuant to this Section 3.1 are
 10 outstanding and unpaid, the Agency shall not terminate or
 11 dissolve and, except as permitted by the resolution or
 12 resolutions authorizing outstanding bonds or notes, no member
 13 municipality, public water district, township, or county may
 14 withdraw from the Agency. While any such bonds or notes are
 15 outstanding, all contracts for the sale of water by the Agency
 16 to member municipalities, public water districts, townships,
 17 or counties shall be irrevocable except as permitted by the
 18 resolution or resolutions authorizing such bonds or notes. The
 19 Agency shall establish fees and charges for its operations
 20 sufficient to provide adequate revenues to meet all of the
 21 requirements under its various resolutions authorizing bonds
 22 or notes.

23 6. A holder of any bond or note issued pursuant to this
 24 paragraph (e) may, in any civil action, mandamus or other
 25 proceeding, enforce and compel performance of all duties
 26 required to be performed by the Agency or such counties, as
 27 provided in the authorizing resolution, or by any of the public
 28 agencies contracting with the Agency to purchase water,
 29 including the imposition of fees and charges, the collection of
 30 sufficient revenues and the proper application of revenues as
 31 provided in this paragraph (e) and the levying, extension and
 32 collection of such taxes.

33 7. In addition, the resolution authorizing any bonds or
 34 notes issued pursuant to this paragraph (e) may provide for a

1 pledge, assignment, lien or security interest, for the benefit
2 of the holders of any or all bonds or notes of the Agency, (i)
3 on any or all revenues derived from the operation of the joint
4 waterworks or water supply system (including from contracts for
5 the sale of water) and investment earnings thereon or (ii) on
6 funds or accounts securing the payment of the bonds or notes as
7 provided in the authorizing resolution. In addition, such a
8 pledge, assignment, lien or security interest may be made with
9 respect to any receipts of the Agency which the agreement
10 establishing the Agency authorizes it to apply to payment of
11 bonds or notes. Any such pledge, assignment, lien or security
12 interest for the benefit of holders of bonds or notes shall be
13 valid and binding from the time the bonds or notes are issued,
14 without any physical delivery or further act, and shall be
15 valid and binding as against or prior to any claims of any
16 other party having any claims of any kind against the Agency
17 irrespective of whether such other parties have notice of such
18 pledge, assignment, lien or security interest.

19 A resolution of a Municipal Joint Water Agency authorizing
20 the issuance of bonds or notes pursuant to this paragraph (e)
21 may provide for the appointment of a corporate trustee with
22 respect to any or all of such bonds or notes (which trustee may
23 be any trust company or state or national bank having the power
24 of a trust company within Illinois). In that event, the
25 resolution shall prescribe the rights, duties and powers of the
26 trustee to be exercised for the benefit of the Agency and the
27 protection of the holders of such bonds or notes. The
28 resolution may provide for the trustee to hold in trust, invest
29 and use amounts in funds and accounts created as provided in
30 the resolution. The resolution authorizing the bonds or notes
31 may provide for the assignment and direct payment to the
32 trustee of amounts owed by public agencies to the Municipal
33 Joint Action Water Agency under water sales contracts for
34 application by the trustee to the purposes for which such

1 revenues are to be used as provided in this paragraph (e) and
2 as provided in the authorizing resolution. Upon receipt of
3 notice of such assignment, the public agency shall thereafter
4 make the assigned payments directly to such trustee.

5 Nothing in this Section authorizes a Joint Action Water
6 Agency to provide water service directly to residents within a
7 municipality or in territory within one mile or less of the
8 corporate limits of a municipality that operates a public water
9 supply unless the municipality has consented in writing to such
10 service being provided.

11 (Source: P.A. 90-210, eff. 7-25-97; 90-595, eff. 1-1-99;
12 91-134, eff. 1-1-00.)

13 Section 10. The Illinois Municipal Code is amended by
14 adding Section 11-124-5 as follows:

15 (65 ILCS 5/11-124-5 new)

16 Sec. 11-124-5. Acquisition of water systems by eminent
17 domain.

18 (a) In addition to other provisions providing for the
19 acquisition of water systems or water works, whenever a public
20 utility subject to the Public Utilities Act utilizes public
21 property (including, but not limited to, right-of-way) of a
22 municipality for the installation or maintenance of all or part
23 of its water distribution system, the municipality has the
24 right to exercise eminent domain to acquire all or part of the
25 water system, in accordance with this Section. Unless it
26 complies with the provisions set forth in this Section, a
27 municipality is not permitted to acquire by eminent domain that
28 portion of a system located in another incorporated
29 municipality without agreement of that municipality, but this
30 provision shall not prevent the acquisition of that portion of
31 the water system existing within the acquiring municipality.

32 (b) Where a water system that is owned by a public utility

1 (as defined in the Public 16 Utilities Act) provides water to
2 customers located in 2 or more municipalities, the system may
3 be acquired by either or all of the municipalities by eminent
4 domain if there is in existence an intergovernmental agreement
5 between the municipalities served providing for acquisition.

6 (c) If a water system that is owned by a public utility
7 provides water to customers located in one or more
8 municipalities and also to customers in an unincorporated area
9 and if at least 70% of the customers of the system or portion
10 thereof are located within the municipality or municipalities,
11 then the system, or portion thereof as determined by the
12 corporate authorities, may be acquired, using eminent domain or
13 otherwise, by either a municipality under subsection (a) or an
14 entity created by agreement between municipalities where at
15 least 70% of the customers reside. For the purposes of
16 determining "customers of the system", only retail customers
17 directly billed by the company shall be included in the
18 computation. The number of customers of the system most
19 recently reported to the Illinois Commerce Commission for any
20 calendar year preceding the year a resolution is passed by a
21 municipality or municipalities expressing preliminary intent
22 to purchase the water system or portion thereof shall be
23 presumed to be the total number of customers within the system.
24 The public utility shall provide information relative to the
25 number of customers within each municipality and within the
26 system within 60 days after any such request by a municipality.

27 (d) In the case of acquisition by a municipality or
28 municipalities or a public entity created by law to own or
29 operate a water system under this Section, service and water
30 supply must be provided to persons who are customers of the
31 system on the effective date of this amendatory Act of the 94th
32 General Assembly without discrimination based on whether the
33 customer is located within or outside of the boundaries of the
34 acquiring municipality or municipalities or entity, and a

1 supply contract existing on the effective date of this
2 amendatory Act of the 94th General Assembly must be honored by
3 an acquiring municipality, municipalities, or entity according
4 to the terms so long as the agreement does not conflict with
5 any other existing agreement.

6 (e) For the purposes of this Section, "system" includes all
7 assets reasonably necessary to provide water service to a
8 contiguous or compact geographical service area or to an area
9 served by a common pipeline and include, but are not limited
10 to, interests in real estate, all wells, pipes, treatment
11 plants, pumps and other physical apparatus, data and records of
12 facilities and customers, fire hydrants, equipment, or
13 vehicles and also includes service agreements and obligations
14 derived from use of the assets, whether or not the assets are
15 contiguous to the municipality, municipalities, or entity
16 created for the purpose of owning or operating a water system.

17 (f) Before making a good faith offer, a municipality may
18 pass a resolution of intent to study the feasibility of
19 purchasing or exercising its power of eminent domain to acquire
20 any water system or water works, sewer system or sewer works,
21 or combined water and sewer system or works, or part thereof.
22 Upon the passage of such a resolution, the municipality shall
23 have the right to review and inspect all financial and other
24 records, and both corporeal and incorporeal assets of such
25 utility related to the condition and the operation of the
26 system or works, or part thereof, as part of the study and
27 determination of feasibility of the proposed acquisition by
28 purchase or exercise of the power of eminent domain, and the
29 utility shall make knowledgeable persons who have access to all
30 relevant facts and information regarding the subject system or
31 works available to answer inquiries related to the study and
32 determination.

33 The right to review and inspect shall be upon reasonable
34 notice to the utility, with reasonable inspection and review

1 time limitations and reasonable response times for production,
2 copying, and answer. In addition, the utility may utilize a
3 reasonable security protocol for personnel on the
4 municipality's physical inspection team.

5 In the absence of other agreement, the utility must respond
6 to any notice by the municipality concerning its review and
7 inspection within 21 days after receiving the notice. The
8 review and inspection of the assets of the company shall be
9 over such period of time and carried out in such manner as is
10 reasonable under the circumstances.

11 Information requested that is not privileged or protected
12 from discovery under the Illinois Code of Civil Procedure but
13 is reasonably claimed to be proprietary, including, without
14 limitation, information that constitutes trade secrets or
15 information that involves system security concerns, shall be
16 provided, but shall not be considered a public record and shall
17 be kept confidential by the municipality.

18 In addition, the municipality must, upon request,
19 reimburse the utility for the actual, reasonable costs and
20 expenses, excluding attorneys' fees, incurred by the utility as
21 a result of the municipality's inspection and requests for
22 information. Upon written request, the utility shall issue a
23 statement itemizing, with reasonable detail, the costs and
24 expenses for which reimbursement is sought by the utility.
25 Where such written request for a statement has been made, no
26 payment shall be required until 30 days after receipt of the
27 statement. Such reimbursement by the municipality shall be
28 considered income for purposes of any rate proceeding or other
29 financial request before the Illinois Commerce Commission by
30 the utility.

31 The municipality and the utility shall cooperate to resolve
32 any dispute arising under this subsection. In the event the
33 dispute under this subsection cannot be resolved, either party
34 may request relief from the circuit court in any county in

1 which the water system is located, with the prevailing party to
2 be awarded such relief as the court deems appropriate under the
3 discovery abuse sanctions currently set forth in the Illinois
4 Code of Civil Procedure.

5 The municipality's right to inspect physical assets and
6 records in connection with the purpose of this Section shall
7 not be exercised with respect to any system more than one time
8 during a 5-year period, unless a substantial change in the size
9 of the system or condition of the operating assets of the
10 system has occurred since the previous inspection. Rights under
11 franchise agreements and other agreements or statutory or
12 regulatory provisions are not limited by this Section and are
13 preserved.

14 The passage of time between an inspection of the utilities
15 and physical assets and the making of a good faith offer or
16 initiation of an eminent domain action because of the limit
17 placed on inspections by this subsection shall not be used as a
18 basis for challenging the good faith of any offer or be used as
19 the basis for attacking any appraisal, expert, argument, or
20 position before a court related to an acquisition by purchase
21 or eminent domain.

22 (g) Notwithstanding any other provision of law, the
23 Illinois Commerce Commission has no approval authority of any
24 eminent domain action brought by any governmental entity or
25 combination of such entities to acquire water systems or water
26 works.

27 (h) The provisions of this Section are severable under
28 Section 1.31 of the Statute on Statutes.

29 Section 15. The Code of Civil Procedure is amended by
30 changing Section 7-102 as follows:

31 (735 ILCS 5/7-102) (from Ch. 110, par. 7-102)

32 Sec. 7-102. Parties. Where the right to take private

1 property for public use, without the owner's consent or the
2 right to construct or maintain any public road, railroad,
3 plankroad, turnpike road, canal or other public work or
4 improvement, or which may damage property not actually taken
5 has been heretofore or shall hereafter be conferred by general
6 law or special charter upon any corporate or municipal
7 authority, public body, officer or agent, person, commissioner
8 or corporation and the compensation to be paid for or in
9 respect of the property sought to be appropriated or damaged
10 for the purposes mentioned cannot be agreed upon by the parties
11 interested, or in case the owner of the property is incapable
12 of consenting, or the owner's name or residence is unknown, or
13 the owner is a nonresident of the state, the party authorized
14 to take or damage the property so required, or to construct,
15 operate and maintain any public road, railroad, plankroad,
16 turnpike road, canal or other public work or improvement, may
17 apply to the circuit court of the county where the property or
18 any part thereof is situated, by filing with the clerk a
19 complaint, setting forth, by reference, his, her or their
20 authority in the premises, the purpose for which the property
21 is sought to be taken or damaged, a description of the
22 property, the names of all persons interested therein as owners
23 or otherwise as appearing of record, if known, or if not known
24 stating that fact and praying such court to cause the
25 compensation to be paid to the owner to be assessed. If it
26 appears that any person not in being, upon coming into being,
27 is, or may become or may claim to be, entitled to any interest
28 in the property sought to be appropriated or damaged the court
29 shall appoint some competent and disinterested person as
30 guardian ad litem, to appear for and represent such interest in
31 the proceeding and to defend the proceeding on behalf of the
32 person not in being, and any judgment entered in the proceeding
33 shall be as effectual for all purposes as though the person was
34 in being and was a party to the proceeding. If the proceeding

1 seeks to affect the property of persons under guardianship, the
2 guardians shall be made parties defendant. Persons interested,
3 whose names are unknown, may be made parties defendant by the
4 same descriptions and in the same manner as provided in other
5 civil cases. Where the property to be taken or damaged is a
6 common element of property subject to a declaration of
7 condominium ownership pursuant to the Condominium Property Act
8 or of a common interest community, the complaint shall name the
9 unit owners' association in lieu of naming the individual unit
10 owners and lienholders on individual units. Unit owners,
11 mortgagees and other lienholders may intervene as parties
12 defendant. For the purposes of this Section "common interest
13 community" shall have the same meaning as set forth in
14 subsection (c) of Section 9-102 of the Code of Civil Procedure.
15 "Unit owners' association" or "association" shall refer to both
16 the definition contained in Section 2 of the Condominium
17 Property Act and subsection (c) of Section 9-102 of the Code of
18 Civil Procedure. Where the property is sought to be taken or
19 damaged by the state for the purposes of establishing,
20 operating or maintaining any state house or state charitable or
21 other institutions or improvements, the complaint shall be
22 signed by the governor or such other person as he or she shall
23 direct, or as is provided by law. No property, except property
24 described in ~~either~~ Section 3 of the Sports Stadium Act, property to be acquired in furtherance of actions under or
25 Article 11, Divisions 124, 126, 128, 130, 135, 136, and
26 Division 139, of the Illinois Municipal Code, property to be
27 acquired in furtherance of actions under Section 3.1 of the
28 Intergovernmental Cooperation Act, property to be acquired
29 that is a water system or waterworks pursuant to the home rule
30 powers of a unit of local government, and property described as
31 Site B in Section 2 of the Metropolitan Pier and Exposition
32 Authority Act, belonging to a railroad or other public utility
33 subject to the jurisdiction of the Illinois Commerce Commission
34

1 may be taken or damaged, pursuant to the provisions of Article
2 VII of this Act, without the prior approval of the Illinois
3 Commerce Commission. This amendatory Act of 1991 (Public Act
4 87-760) is declaratory of existing law and is intended to
5 remove possible ambiguities, thereby confirming the existing
6 meaning of the Code of Civil Procedure and of the Illinois
7 Municipal Code in effect before January 1, 1992 (the effective
8 date of Public Act 87-760).
9 (Source: P.A. 89-683, eff. 6-1-97; 90-6, eff. 6-3-97.)".