



Sen. Rachel Ventura

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10400SB0639sam001

LRB104 06917 RTM 25951 a

1 AMENDMENT TO SENATE BILL 639

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 639 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Municipal Code is amended by  
5 changing Section 11-124-5 as follows:

6 (65 ILCS 5/11-124-5)

7 Sec. 11-124-5. Acquisition of water or sewer systems by  
8 eminent domain.

9 (a) In addition to other provisions providing for the  
10 acquisition of water systems or water works, whenever a public  
11 utility subject to the Public Utilities Act utilizes public  
12 property (including, but not limited to, right-of-way) of a  
13 municipality for the installation or maintenance of all or  
14 part of its water distribution system or sewer system, the  
15 municipality has the right to exercise eminent domain to  
16 acquire all or part of the water or sewer system, in accordance

1 with this Section. Unless it complies with the provisions set  
2 forth in this Section, a municipality is not permitted to  
3 acquire by eminent domain that portion of a system located in  
4 another incorporated municipality without agreement of that  
5 municipality, but this provision shall not prevent the  
6 acquisition of that portion of the water system existing  
7 within the acquiring municipality.

8 (b) Where a water or sewer system that is owned by a public  
9 utility (as defined in the Public Utilities Act) provides  
10 water or sewer services to customers located in 2 or more  
11 municipalities, the system may be acquired by a majority of  
12 the municipalities by eminent domain. If the system is to be  
13 acquired by more than one municipality, then there must be an  
14 intergovernmental agreement in existence between the acquiring  
15 municipalities providing for the acquisition.

16 (c) If a water or sewer system that is owned by a public  
17 utility provides water or sewer services to customers located  
18 in one or more municipalities and also to customers in an  
19 unincorporated area and if at least 70% of the customers of the  
20 system or portion thereof are located within the municipality  
21 or municipalities, then the system, or portion thereof as  
22 determined by the corporate authorities, may be acquired,  
23 using eminent domain or otherwise, by either a municipality  
24 under subsection (a) or an entity created by agreement between  
25 municipalities where at least 70% of the customers reside. For  
26 the purposes of determining "customers of the system", only

1 retail customers directly billed by the company shall be  
2 included in the computation. The number of customers of the  
3 system most recently reported to the Illinois Commerce  
4 Commission for any calendar year preceding the year a  
5 resolution is passed by a municipality or municipalities  
6 expressing preliminary intent to purchase the ~~water~~ system or  
7 portion thereof shall be presumed to be the total number of  
8 customers within the system. The public utility shall provide  
9 information relative to the number of customers within each  
10 municipality and within the system within 60 days after any  
11 such request by a municipality.

12 (d) In the case of acquisition by a municipality or  
13 municipalities or a public entity created by law to own or  
14 operate a ~~water~~ system under this Section, service and ~~water~~  
15 supply must be provided to persons who are customers of the  
16 system on the effective date of this amendatory Act of the 94th  
17 General Assembly without discrimination based on whether the  
18 customer is located within or outside of the boundaries of the  
19 acquiring municipality or municipalities or entity, and a  
20 supply contract existing on the effective date of this  
21 amendatory Act of the 94th General Assembly must be honored by  
22 an acquiring municipality, municipalities, or entity according  
23 to the terms so long as the agreement does not conflict with  
24 any other existing agreement.

25 (e) For the purposes of this Section, "system" includes  
26 all assets reasonably necessary to provide water or sewer

1 service to a contiguous or compact geographical service area  
2 or to an area served by a common pipeline and include, but are  
3 not limited to, interests in real estate, all wells, pipes,  
4 treatment plants, pumps and other physical apparatus, data and  
5 records of facilities and customers, fire hydrants, equipment,  
6 or vehicles and also includes service agreements and  
7 obligations derived from use of the assets, whether or not the  
8 assets are contiguous to the municipality, municipalities, or  
9 entity created for the purpose of owning or operating a water  
10 or sewer system.

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

1           The right to review and inspect shall be upon reasonable  
2 notice to the utility, with reasonable inspection and review  
3 time limitations and reasonable response times for production,  
4 copying, and answer. In addition, the utility may utilize a  
5 reasonable security protocol for personnel on the  
6 municipality's physical inspection team.

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

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

20           In addition, the municipality must, upon request,  
21 reimburse the utility for the actual, reasonable costs and  
22 expenses, excluding attorneys' fees, incurred by the utility  
23 as a result of the municipality's inspection and requests for  
24 information. Upon written request, the utility shall issue a  
25 statement itemizing, with reasonable detail, the costs and  
26 expenses for which reimbursement is sought by the utility.

1 Where such written request for a statement has been made, no  
2 payment shall be required until 30 days after receipt of the  
3 statement. Such reimbursement by the municipality shall be  
4 considered income for purposes of any rate proceeding or other  
5 financial request before the Illinois Commerce Commission by  
6 the utility.

7 The municipality and the utility shall cooperate to  
8 resolve any dispute arising under this subsection. In the  
9 event the dispute under this subsection cannot be resolved,  
10 either party may request relief from the circuit court in any  
11 county in which the ~~water~~ system is located, with the  
12 prevailing party to be awarded such relief as the court deems  
13 appropriate under the discovery abuse sanctions currently set  
14 forth in the Illinois Code of Civil Procedure.

15 The municipality's right to inspect physical assets and  
16 records in connection with the purpose of this Section shall  
17 not be exercised with respect to any system more than one time  
18 during a 5-year period, unless a substantial change in the  
19 size of the system or condition of the operating assets of the  
20 system has occurred since the previous inspection. Rights  
21 under franchise agreements and other agreements or statutory  
22 or regulatory provisions are not limited by this Section and  
23 are preserved.

24 The passage of time between an inspection of the utilities  
25 and physical assets and the making of a good faith offer or  
26 initiation of an eminent domain action because of the limit

1 placed on inspections by this subsection shall not be used as a  
2 basis for challenging the good faith of any offer or be used as  
3 the basis for attacking any appraisal, expert, argument, or  
4 position before a court related to an acquisition by purchase  
5 or eminent domain.

6 (g) Notwithstanding any other provision of law, the  
7 Illinois Commerce Commission has no approval authority of any  
8 eminent domain action brought by any governmental entity or  
9 combination of such entities to acquire water or sewer systems  
10 or water works, except as is provided in subsection (h) of  
11 Section 10-5-10 of the Eminent Domain Act.

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

14 (i) This Section does not apply to any public utility  
15 company that, on January 1, 2006, supplied a total of 70,000 or  
16 fewer meter connections in the State unless and until (i) that  
17 public utility company receives approval from the Illinois  
18 Commerce Commission under Section 7-204 of the Public  
19 Utilities Act for the reorganization of the public utility  
20 company or (ii) the majority control of the company changes  
21 through a stock sale, a sale of assets, a merger (other than an  
22 internal reorganization) or otherwise. For the purpose of this  
23 Section, "public utility company" means the public utility  
24 providing water or sewer service and includes any of its  
25 corporate parents, subsidiaries, or affiliates possessing a  
26 franchised water or sewer service in the State.

1 (j) Any contractor or subcontractor that performs work on  
2 a ~~water~~ system acquired by a municipality or municipalities  
3 under this Section shall comply with the requirements of  
4 Section 30-22 of the Illinois Procurement Code. The contractor  
5 or subcontractor shall submit evidence of compliance with  
6 Section 30-22 to the municipality or municipalities.

7 (k) The municipality or municipalities acquiring the ~~water~~  
8 system shall offer available employee positions to the  
9 qualified employees of the acquired ~~water~~ system.

10 (l) The acquisition of systems by eminent domain through  
11 the procedures described in this Section is declared to be a  
12 special use under Section 10-5-60 of the Eminent Domain Act.  
13 Accordingly, the acquisition price shall be the price for  
14 which the system was purchased from the municipality by a  
15 private entity, plus the cost of actual improvement to the  
16 system by the private entity, minus the cost of depreciation  
17 of the assets and any public moneys or assets given to the  
18 public utility for the purpose of improving the water or sewer  
19 service, accounting for the rate of inflation between the time  
20 of purchase by the private entity and the time of acquisition  
21 by the municipality.

22 (Source: P.A. 103-13, eff. 6-9-23.)

23 Section 10. The Eminent Domain Act is amended by changing  
24 Section 10-5-10 as follows:

1 (735 ILCS 30/10-5-10) (was 735 ILCS 5/7-102)

2 Sec. 10-5-10. Parties.

3 (a) When the right (i) to take private property for public  
4 use, without the owner's consent, (ii) to construct or  
5 maintain any public road, railroad, plankroad, turnpike road,  
6 canal, or other public work or improvement, or (iii) to damage  
7 property not actually taken has been or is conferred by  
8 general law or special charter upon any corporate or municipal  
9 authority, public body, officer or agent, person,  
10 commissioner, or corporation and when (i) the compensation to  
11 be paid for or in respect of the property sought to be  
12 appropriated or damaged for the purposes mentioned cannot be  
13 agreed upon by the parties interested, (ii) the owner of the  
14 property is incapable of consenting, (iii) the owner's name or  
15 residence is unknown, or (iv) the owner is a nonresident of the  
16 State, then the party authorized to take or damage the  
17 property so required, or to construct, operate, and maintain  
18 any public road, railroad, plankroad, turnpike road, canal, or  
19 other public work or improvement, may apply to the circuit  
20 court of the county where the property or any part of the  
21 property is situated, by filing with the clerk a complaint.  
22 The complaint shall set forth, by reference, (i) the  
23 complainant's authority in the premises, (ii) the purpose for  
24 which the property is sought to be taken or damaged, (iii) a  
25 description of the property, and (iv) the names of all persons  
26 interested in the property as owners or otherwise, as

1 appearing of record, if known, or if not known stating that  
2 fact; and shall pray the court to cause the compensation to be  
3 paid to the owner to be assessed.

4 (b) If it appears that any person not in being, upon coming  
5 into being, is, or may become or may claim to be, entitled to  
6 any interest in the property sought to be appropriated or  
7 damaged, the court shall appoint some competent and  
8 disinterested person as guardian ad litem to appear for and  
9 represent that interest in the proceeding and to defend the  
10 proceeding on behalf of the person not in being. Any judgment  
11 entered in the proceeding shall be as effectual for all  
12 purposes as though the person was in being and was a party to  
13 the proceeding.

14 (c) If the proceeding seeks to affect the property of  
15 persons under guardianship, the guardians shall be made  
16 parties defendant.

17 (d) Any interested persons whose names are unknown may be  
18 made parties defendant by the same descriptions and in the  
19 same manner as provided in other civil cases.

20 (e) When the property to be taken or damaged is a common  
21 element of property subject to a declaration of condominium  
22 ownership, pursuant to the Condominium Property Act, or of a  
23 common interest community, the complaint shall name the unit  
24 owners' association in lieu of naming the individual unit  
25 owners and lienholders on individual units. Unit owners,  
26 mortgagees, and other lienholders may intervene as parties

1 defendant. For the purposes of this Section, "common interest  
2 community" has the same meaning as set forth in subsection (c)  
3 of Section 9-102 of the Code of Civil Procedure. "Unit owners'  
4 association" or "association" shall refer to both the  
5 definition contained in Section 2 of the Condominium Property  
6 Act and subsection (c) of Section 9-102 of the Code of Civil  
7 Procedure.

8 (f) When the property is sought to be taken or damaged by  
9 the State for the purposes of establishing, operating, or  
10 maintaining any State house or State charitable or other  
11 institutions or improvements, the complaint shall be signed by  
12 the Governor, or the Governor's designee, or as otherwise  
13 provided by law.

14 (g) No property, except property described in Section 3 of  
15 the Sports Stadium Act, property to be acquired in furtherance  
16 of actions under Article 11, Divisions 124, 126, 128, 130,  
17 135, 136, and 139, of the Illinois Municipal Code, property to  
18 be acquired in furtherance of actions under Section 3.1 of the  
19 Intergovernmental Cooperation Act, property to be acquired  
20 that is a water system or waterworks pursuant to the home rule  
21 powers of a unit of local government, property described as  
22 Site B in Section 2 of the Metropolitan Pier and Exposition  
23 Authority Act, and property that may be taken as provided in  
24 the Public-Private Agreements for the South Suburban Airport  
25 Act belonging to a railroad or other public utility subject to  
26 the jurisdiction of the Illinois Commerce Commission, may be

1 taken or damaged, pursuant to the provisions of this Act,  
2 without the prior approval of the Illinois Commerce  
3 Commission.

4 (h) Notwithstanding subsection (g), property belonging to  
5 a public utility that provides water or sewer service and that  
6 is subject to the jurisdiction of the Illinois Commerce  
7 Commission may not be taken or damaged by eminent domain  
8 without prior approval of the Illinois Commerce Commission,  
9 except for: (1) property to be acquired under Section 11-124-5  
10 of the Illinois Municipal Code; and (2) property to be  
11 acquired by a municipality with 140,000 or more inhabitants or  
12 a regional water commission formed under Article 11, Division  
13 135.5 of the Illinois Municipal Code or a municipality that is  
14 a member of such a regional water commission, only in  
15 furtherance of purposes authorized under Article 11, Division  
16 135.5 of the Illinois Municipal Code, and limited solely to  
17 interests in real property and not improvements to or assets  
18 on the real property belonging to a public utility that  
19 provides water or sewer service and that is subject to the  
20 jurisdiction of the Illinois Commerce Commission. This  
21 subsection does not apply to any action commenced prior to the  
22 effective date of this amendatory Act of the 103rd General  
23 Assembly under this Section or Section 11-124-5 or 11-139-12  
24 of the Illinois Municipal Code.

25 (Source: P.A. 103-13, eff. 6-9-23.)".