



Rep. Renee Kosel

Filed: 3/1/2006

09400HB4333ham003

LRB094 16381 BDD 56831 a

1 AMENDMENT TO HOUSE BILL 4333

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 4333, AS AMENDED, by  
3 replacing everything after the enacting clause with the  
4 following:

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

7 (5 ILCS 220/3.1) (from Ch. 127, par. 743.1)

8 Sec. 3.1. Municipal Joint Action Water Agency.

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

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

34           (b) The governing body of any Municipal Joint Action Water

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

25 The Board of Directors shall determine the general policy  
26 of the Municipal Joint Action Water Agency, shall approve the  
27 annual budget, shall make all appropriations (which may include  
28 appropriations made at any time in addition to those made in  
29 any annual appropriation document), shall approve all  
30 contracts for the purchase or sale of water, shall adopt any  
31 resolutions providing for the issuance of bonds or notes by the  
32 Agency, shall adopt its by-laws, rules and regulations, and  
33 shall have such other powers and duties as may be prescribed in  
34 the agreement. Such agreement may further specify those powers

1 and actions of the Municipal Joint Action Water Agency which  
2 shall be authorized only upon votes of greater than a majority  
3 of all Directors or only upon consents of the corporate  
4 authorities of a certain number of member municipalities,  
5 public water districts, townships, or counties.

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

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

30 A Municipal Joint Action Water Agency shall have such  
31 powers as shall be provided in the agreement establishing it,  
32 which may include, but need not be limited to, the following  
33 powers:

34 (i) to sue or be sued;

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

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

10           (iv) to make and execute all contracts and other  
11 instruments necessary or convenient to the exercise of its  
12 powers (including contracts with member municipalities,  
13 with public water districts, with townships, and with  
14 counties on behalf of county service areas); and

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

18           Member municipalities, public water districts, townships,  
19 or counties may, for the purposes of, and upon request by, the  
20 Municipal Joint Action Water Agency, exercise the power of  
21 eminent domain available to them, convey property so acquired  
22 to the Agency for the cost of acquisition, and be reimbursed  
23 for all expenses related to this exercise of eminent domain  
24 power on behalf of the Agency.

25           All property, income and receipts of or transactions by a  
26 Municipal Joint Action Water Agency shall be exempt from all  
27 taxation, the same as if it were the property, income or  
28 receipts of or transaction by the member municipalities, public  
29 water districts, townships, or counties.

30           (d) A Municipal Joint Action Water Agency established  
31 pursuant to this Section 3.1 shall have the power to buy water  
32 and to enter into contracts with any person, corporation or  
33 public agency (including any member municipality, public water  
34 district, township, or county) for that purpose. Any such

1 contract made by an Agency for a supply of water may contain  
2 provisions whereby the Agency is obligated to pay for the  
3 supply of water without setoff or counterclaim and irrespective  
4 of whether the supply of water is ever furnished, made  
5 available or delivered to the Agency or whether any project for  
6 the supply of water contemplated by any such contract is  
7 completed, operable or operating and notwithstanding any  
8 suspension, interruption, interference, reduction or  
9 curtailment of the supply of water from such project. Any such  
10 contract may provide that if one or more of the other  
11 purchasers defaults in the payment of its obligations under  
12 such contract or a similar contract made with the supplier of  
13 the water one or more of the remaining purchasers party to such  
14 contract or such similar contract shall be required to pay for  
15 all or a portion of the obligations of the defaulting  
16 purchasers. No such contract may have a term in excess of 50  
17 years.

18 A Municipal Joint Action Water Agency shall have the power  
19 to sell water and to enter into contracts with any person,  
20 corporation or public agency (including any member  
21 municipality, any public water district, any township, or any  
22 county on behalf of a county service area as set forth in this  
23 Section) for that purpose. No such contract may have a term in  
24 excess of 50 years. Any such contract entered into to sell  
25 water to a public agency may provide that the payments to be  
26 made thereunder by such public agency shall be made solely from  
27 revenues to be derived by such public agency from the operation  
28 of its waterworks system or its combined waterworks and  
29 sewerage system. Any public agency so contracting to purchase  
30 water shall establish from time to time such fees and charges  
31 for its water service or combined water and sewer service as  
32 will produce revenues sufficient at all times to pay its  
33 obligations to the Agency under the purchase contract. Any such  
34 contract so providing shall not constitute indebtedness of such

1 public agency so contracting to buy water within the meaning of  
2 any statutory or constitutional limitation. Any such contract  
3 of a public agency to buy water shall be a continuing, valid  
4 and binding obligation of such public agency payable from such  
5 revenues.

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

12 The changes in this Section made by this amendatory Act of  
13 1984 are intended to be declarative of existing law.

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

1 or at their maturity, including paying redemption premiums or  
2 interest accruing or to accrue on such bonds or notes being  
3 paid or redeemed or for paying any other costs in connection  
4 with any such payment or redemption.

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



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

12           3. The resolution authorizing the issuance of bonds or  
13 notes by a Municipal Joint Action Water Agency shall pledge and  
14 provide for the application of revenues derived from the  
15 operation of the Agency's joint waterworks or water supply  
16 system (including from contracts for the sale of water by the  
17 Agency) and investment earnings thereon to the payment of the  
18 cost of operation and maintenance of the system (including  
19 costs of purchasing water), to provision of adequate  
20 depreciation, reserve or replacement funds with respect to the  
21 system or the bonds or notes, and to the payment of principal,  
22 premium, if any, and interest on the bonds or notes of the  
23 Agency (including amounts for the purchase of such bonds or  
24 notes). The resolution shall provide that revenues of the  
25 Municipal Joint Action Water Agency so derived from the  
26 operation of the system, sufficient (together with other  
27 receipts of the Agency which may be applied to such purposes)  
28 to provide for such purposes, shall be set aside as collected  
29 in a separate fund or funds and used for such purposes. The  
30 resolution may provide that revenues not required for such  
31 purposes may be used for any proper purpose of the Agency or  
32 may be returned to member municipalities.

33           Any notes of a Municipal Joint Action Water Agency issued  
34 in anticipation of the issuance of bonds by it may, in

1 addition, be secured by a pledge of proceeds of bonds to be  
2 issued by the Agency, as specified in the resolution  
3 authorizing the issuance of such notes.

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

28 (ii) If the Agreement so provides and subject to the  
29 referendum provided for in clause (iii) of this subparagraph 4  
30 of this paragraph (e), the Municipal Joint Action Water Agency  
31 may borrow money for corporate purposes on the credit of the  
32 Municipal Joint Action Water Agency, and issue general  
33 obligation bonds therefor, in such amounts and form and on such  
34 conditions as it shall prescribe, but shall not become indebted

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

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

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

25 The proposition shall be substantially in the following  
 26 form:

27 -----

<p>28 Shall general obligation          29 bonds for the purpose of (state          30 purpose), in the sum not to          31 exceed \$....(insert amount),          32 be issued by the .....          33 (insert corporate name of the          34 Municipal Joint Action Water</p>	<p>Yes          -----          No</p>
--	---

1 Agency)?

2 -----

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

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

28 7. In addition, the resolution authorizing any bonds or  
 29 notes issued pursuant to this paragraph (e) may provide for a  
 30 pledge, assignment, lien or security interest, for the benefit  
 31 of the holders of any or all bonds or notes of the Agency, (i)  
 32 on any or all revenues derived from the operation of the joint  
 33 waterworks or water supply system (including from contracts for  
 34 the sale of water) and investment earnings thereon or (ii) on

1 funds or accounts securing the payment of the bonds or notes as  
2 provided in the authorizing resolution. In addition, such a  
3 pledge, assignment, lien or security interest may be made with  
4 respect to any receipts of the Agency which the agreement  
5 establishing the Agency authorizes it to apply to payment of  
6 bonds or notes. Any such pledge, assignment, lien or security  
7 interest for the benefit of holders of bonds or notes shall be  
8 valid and binding from the time the bonds or notes are issued,  
9 without any physical delivery or further act, and shall be  
10 valid and binding as against or prior to any claims of any  
11 other party having any claims of any kind against the Agency  
12 irrespective of whether such other parties have notice of such  
13 pledge, assignment, lien or security interest.

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

34 Nothing in this Section authorizes a Joint Action Water

1 Agency to provide water service directly to residents within a  
2 municipality or in territory within one mile or less of the  
3 corporate limits of a municipality that operates a public water  
4 supply unless the municipality has consented in writing to such  
5 service being provided.

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

8 Section 10. The Illinois Municipal Code is amended by  
9 adding Section 11-124-5.1 as follows:

10 (65 ILCS 5/11-124-5.1 new)

11 Sec. 11-124-5.1. Acquisition of water systems by eminent  
12 domain.

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

27 (b) Where a water system that is owned by a public utility  
28 (as defined in the Public Utilities Act) provides water to  
29 customers located entirely in 2 or more municipalities, the  
30 system may be acquired by either or both of the municipalities  
31 by eminent domain if there is in existence an intergovernmental  
32 agreement between the municipalities served providing for

1 acquisition.

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

23 (d) In the case of acquisition by a municipality or  
24 municipalities or entity created by law to own or operate a  
25 water system under this Section, service must be provided to  
26 all retail customers of the system at the time of acquisition  
27 without discrimination in rates based on whether the customer  
28 is located within or outside the boundaries of the acquiring  
29 municipality or municipalities or entity.

30 (e) For the purposes of this Section, "system" includes all  
31 assets reasonably necessary to provide water service to a  
32 contiguous or compact geographical service area and include,  
33 but are not limited to, interests in real estate, all wells,  
34 pipes, treatment plants, pumps and other physical apparatus,



1 data and records of facilities and customers, fire hydrants,  
2 equipment, or vehicles and also includes service agreements and  
3 obligations derived from use of the assets, whether or not the  
4 assets are contiguous to the municipality, municipalities, or  
5 entity created for the purpose of owning or operating a water  
6 system.

7 (f) The valuation of all systems or waterworks acquired  
8 under this Section and any other Division of this Article 11  
9 may be pursuant to the formulas set forth in Section 11-139-12.

10 (g) Notwithstanding any other provision of law, the  
11 Illinois Commerce Commission has no approval authority of any  
12 eminent domain action brought by any governmental entity or  
13 combination of such entities to acquire water systems or water  
14 works.

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

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

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

32 (735 ILCS 5/7-102) (from Ch. 110, par. 7-102)

1           Sec. 7-102. Parties. Where the right to take private  
2 property for public use, without the owner's consent or the  
3 right to construct or maintain any public road, railroad,  
4 plankroad, turnpike road, canal or other public work or  
5 improvement, or which may damage property not actually taken  
6 has been heretofore or shall hereafter be conferred by general  
7 law or special charter upon any corporate or municipal  
8 authority, public body, officer or agent, person, commissioner  
9 or corporation and the compensation to be paid for or in  
10 respect of the property sought to be appropriated or damaged  
11 for the purposes mentioned cannot be agreed upon by the parties  
12 interested, or in case the owner of the property is incapable  
13 of consenting, or the owner's name or residence is unknown, or  
14 the owner is a nonresident of the state, the party authorized  
15 to take or damage the property so required, or to construct,  
16 operate and maintain any public road, railroad, plankroad,  
17 turnpike road, canal or other public work or improvement, may  
18 apply to the circuit court of the county where the property or  
19 any part thereof is situated, by filing with the clerk a  
20 complaint, setting forth, by reference, his, her or their  
21 authority in the premises, the purpose for which the property  
22 is sought to be taken or damaged, a description of the  
23 property, the names of all persons interested therein as owners  
24 or otherwise as appearing of record, if known, or if not known  
25 stating that fact and praying such court to cause the  
26 compensation to be paid to the owner to be assessed. If it  
27 appears that any person not in being, upon coming into being,  
28 is, or may become or may claim to be, entitled to any interest  
29 in the property sought to be appropriated or damaged the court  
30 shall appoint some competent and disinterested person as  
31 guardian ad litem, to appear for and represent such interest in  
32 the proceeding and to defend the proceeding on behalf of the  
33 person not in being, and any judgment entered in the proceeding  
34 shall be as effectual for all purposes as though the person was

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

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

10 (Source: P.A. 89-683, eff. 6-1-97; 90-6, eff. 6-3-97.)".