

1 AN ACT concerning local government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

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
25 by an intergovernmental agreement among the various member
26 municipalities, public water districts, townships, State
27 universities, and counties, upon approval by an ordinance
28 adopted by the corporate authorities of each member
29 municipality, public water district, township, State
30 university, or county. This agreement may be amended at any
31 time upon the adoption of concurring ordinances by the
32 corporate authorities of all member municipalities, public

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

28 (b) The governing body of any Municipal Joint Action Water
29 Agency established pursuant to this Section 3.1 shall be a
30 Board of Directors. There shall be one Director from each
31 member municipality, public water district, township, State
32 university, and county of the Municipal Joint Action Water
33 Agency appointed by ordinance of the corporate authorities of
34 the municipality, public water district, township, or county.
35 Each Director shall have one vote. Each Director shall be the
36 Mayor or President of the member municipality, or the chairman

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

18 The Board of Directors shall determine the general policy
19 of the Municipal Joint Action Water Agency, shall approve the
20 annual budget, shall make all appropriations (which may include
21 appropriations made at any time in addition to those made in
22 any annual appropriation document), shall approve all
23 contracts for the purchase or sale of water, shall adopt any
24 resolutions providing for the issuance of bonds or notes by the
25 Agency, shall adopt its by-laws, rules and regulations, and
26 shall have such other powers and duties as may be prescribed in
27 the agreement. Such agreement may further specify those powers
28 and actions of the Municipal Joint Action Water Agency which
29 shall be authorized only upon votes of greater than a majority
30 of all Directors or only upon consents of the corporate
31 authorities of a certain number of member municipalities,
32 public water districts, townships, State universities, or
33 counties.

34 The agreement may provide for the establishment of an
35 Executive Committee to consist of the municipal manager or
36 other elected or appointed official of each member

1 municipality, public water district, township, State
2 university, or county, as designated by ordinance or other
3 official action, from time to time by the corporate authorities
4 of the member municipality, public water district, township,
5 State university, or county, and may prescribe powers and
6 duties of the Executive Committee for the efficient
7 administration of the Agency.

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

23 A Municipal Joint Action Water Agency shall have such
24 powers as shall be provided in the agreement establishing it,
25 which may include, but need not be limited to, the following
26 powers:

27 (i) to sue or be sued;

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

31 (iii) to acquire, hold, sell, lease as lessor or
32 lessee, transfer or dispose of such real or personal
33 property, or interests therein, as it deems appropriate in
34 the exercise of its powers, and to provide for the use
35 thereof by any member municipality, public water district,
36 township, or county;

1 (iv) to make and execute all contracts and other
2 instruments necessary or convenient to the exercise of its
3 powers (including contracts with member municipalities,
4 with public water districts, with townships, and with
5 counties on behalf of county service areas); and

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

9 Member municipalities, public water districts, townships,
10 State universities, or counties may, for the purposes of, and
11 upon request by, the Municipal Joint Action Water Agency,
12 exercise the power of eminent domain available to them, convey
13 property so acquired to the Agency for the cost of acquisition,
14 and be reimbursed for all expenses related to this exercise of
15 eminent domain power on behalf of the Agency.

16 All property, income and receipts of or transactions by a
17 Municipal Joint Action Water Agency shall be exempt from all
18 taxation, the same as if it were the property, income or
19 receipts of or transaction by the member municipalities, public
20 water districts, townships, State universities, or counties.

21 (d) A Municipal Joint Action Water Agency established
22 pursuant to this Section 3.1 shall have the power to buy water
23 and to enter into contracts with any person, corporation or
24 public agency (including any member municipality, public water
25 district, township, or county) for that purpose. Any such
26 contract made by an Agency for a supply of water may contain
27 provisions whereby the Agency is obligated to pay for the
28 supply of water without setoff or counterclaim and irrespective
29 of whether the supply of water is ever furnished, made
30 available or delivered to the Agency or whether any project for
31 the supply of water contemplated by any such contract is
32 completed, operable or operating and notwithstanding any
33 suspension, interruption, interference, reduction or
34 curtailment of the supply of water from such project. Any such
35 contract may provide that if one or more of the other
36 purchasers defaults in the payment of its obligations under

1 such contract or a similar contract made with the supplier of
2 the water one or more of the remaining purchasers party to such
3 contract or such similar contract shall be required to pay for
4 all or a portion of the obligations of the defaulting
5 purchasers. No such contract may have a term in excess of 50
6 years.

7 A Municipal Joint Action Water Agency shall have the power
8 to sell water and to enter into contracts with any person,
9 corporation or public agency (including any member
10 municipality, any public water district, any township, any
11 State university, or any county on behalf of a county service
12 area as set forth in this Section) for that purpose. No such
13 contract may have a term in excess of 50 years. Any such
14 contract entered into to sell water to a public agency may
15 provide that the payments to be made thereunder by such public
16 agency shall be made solely from revenues to be derived by such
17 public agency from the operation of its waterworks system or
18 its combined waterworks and sewerage system. Any public agency
19 so contracting to purchase water shall establish from time to
20 time such fees and charges for its water service or combined
21 water and sewer service as will produce revenues sufficient at
22 all times to pay its obligations to the Agency under the
23 purchase contract. Any such contract so providing shall not
24 constitute indebtedness of such public agency so contracting to
25 buy water within the meaning of any statutory or constitutional
26 limitation. Any such contract of a public agency to buy water
27 shall be a continuing, valid and binding obligation of such
28 public agency payable from such revenues.

29 A Municipal Joint Action Water Agency shall establish fees
30 and charges for the purchase of water from it or for the use of
31 its facilities. No prior appropriation shall be required by
32 either the Municipal Joint Action Water Agency or any public
33 agency before entering into any contract authorized by this
34 paragraph (d).

35 The changes in this Section made by this amendatory Act of
36 1984 are intended to be declarative of existing law.

1 (e) 1. A Municipal Joint Action Water Agency established
2 pursuant to this Section 3.1 may, from time to time, borrow
3 money and, in evidence of its obligation to repay the
4 borrowing, issue its negotiable water revenue bonds or notes
5 pursuant to this paragraph (e) for any of the following
6 purposes: for paying costs of constructing, acquiring,
7 improving or extending a joint waterworks or water supply
8 system; for paying other expenses incident to or incurred in
9 connection with such construction, acquisition, improvement or
10 extension; for repaying advances made to or by the Agency for
11 such purposes; for paying interest on the bonds or notes until
12 the estimated date of completion of any such construction,
13 acquisition, improvement or extension and for such period after
14 the estimated completion date as the Board of Directors of the
15 Agency shall determine; for paying financial, legal,
16 administrative and other expenses of the authorization,
17 issuance, sale or delivery of bonds or notes; for paying costs
18 of insuring payment of the bonds or notes; for providing or
19 increasing a debt service reserve fund with respect to any or
20 all of the Agency's bonds or notes; and for paying, refunding
21 or redeeming any of the Agency's bonds or notes before, after
22 or at their maturity, including paying redemption premiums or
23 interest accruing or to accrue on such bonds or notes being
24 paid or redeemed or for paying any other costs in connection
25 with any such payment or redemption.

26 2. Any bonds or notes issued pursuant to this paragraph (e)
27 by a Municipal Joint Action Water Agency shall be authorized by
28 a resolution of the Board of Directors of the Agency adopted by
29 the affirmative vote of Directors from a majority of the member
30 municipalities, public water districts, townships, State
31 universities, and counties, and any additional requirements as
32 may be set forth in the agreement establishing the Agency. The
33 authorizing resolution may be effective immediately upon its
34 adoption. The authorizing resolution shall describe in a
35 general way any project contemplated to be financed by the
36 bonds or notes, shall set forth the estimated cost of the

1 project and shall determine its period of usefulness. The
2 authorizing resolution shall determine the maturity or
3 maturities of the bonds or notes, the rate or rates at which
4 the bonds or notes are to bear interest and all the other terms
5 and details of the bonds or notes. All such bonds or notes
6 shall mature within the period of estimated usefulness of the
7 project with respect to which such bonds or notes are issued,
8 as determined by the Board of Directors, but in any event not
9 more than 50 years from their date of issue. The bonds and
10 notes may bear interest, payable at such times, at a rate or
11 rates not exceeding the maximum rate established in the Bond
12 Authorization Act, as from time to time in effect. Bonds or
13 notes of a Municipal Joint Action Water Agency shall be sold in
14 such manner as the Board of Directors of the Agency shall
15 determine, either at par or at a premium or discount, but such
16 that the effective interest cost (excluding any redemption
17 premium) to the Agency of the bonds or notes shall not exceed a
18 rate equal to the rate of interest specified in the Act
19 referred to in the preceding sentence.

20 The resolution authorizing the issuance of any bonds or
21 notes pursuant to this paragraph (e) shall constitute a
22 contract with the holders of the bonds and notes. The
23 resolution may contain such covenants and restrictions with
24 respect to the purchase or sale of water by the Agency and the
25 contracts for such purchases or sales, the operation of the
26 joint waterworks system or water supply system, the issuance of
27 additional bonds or notes by the Agency, the security for the
28 bonds and notes, and any other matters, as may be deemed
29 necessary or advisable by the Board of Directors to assure the
30 payment of the bonds or notes of the Agency.

31 3. The resolution authorizing the issuance of bonds or
32 notes by a Municipal Joint Action Water Agency shall pledge and
33 provide for the application of revenues derived from the
34 operation of the Agency's joint waterworks or water supply
35 system (including from contracts for the sale of water by the
36 Agency) and investment earnings thereon to the payment of the

1 cost of operation and maintenance of the system (including
2 costs of purchasing water), to provision of adequate
3 depreciation, reserve or replacement funds with respect to the
4 system or the bonds or notes, and to the payment of principal,
5 premium, if any, and interest on the bonds or notes of the
6 Agency (including amounts for the purchase of such bonds or
7 notes). The resolution shall provide that revenues of the
8 Municipal Joint Action Water Agency so derived from the
9 operation of the system, sufficient (together with other
10 receipts of the Agency which may be applied to such purposes)
11 to provide for such purposes, shall be set aside as collected
12 in a separate fund or funds and used for such purposes. The
13 resolution may provide that revenues not required for such
14 purposes may be used for any proper purpose of the Agency or
15 may be returned to member municipalities.

16 Any notes of a Municipal Joint Action Water Agency issued
17 in anticipation of the issuance of bonds by it may, in
18 addition, be secured by a pledge of proceeds of bonds to be
19 issued by the Agency, as specified in the resolution
20 authorizing the issuance of such notes.

21 4. (i) Except as provided in clauses (ii) and (iii) of this
22 subparagraph 4 of this paragraph (e), all bonds and notes of
23 the Municipal Joint Action Water Agency issued pursuant to this
24 paragraph (e) shall be revenue bonds or notes. Such revenue
25 bonds or notes shall have no claim for payment other than from
26 revenues of the Agency derived from the operation of its joint
27 waterworks or water supply system (including from contracts for
28 the sale of water by the Agency) and investment earnings
29 thereon, from bond or note proceeds and investment earnings
30 thereon, or from such other receipts of the Agency as the
31 agreement establishing the Agency may authorize to be pledged
32 to the payment of revenue bonds or notes, all as and to the
33 extent as provided in the resolution of the Board of Directors
34 authorizing the issuance of the revenue bonds or notes. Revenue
35 bonds or notes issued by a Municipal Joint Action Water Agency
36 pursuant to this paragraph (e) shall not constitute an

1 indebtedness of the Agency or of any member municipality,
2 public water district, township, or county within the meaning
3 of any constitutional or statutory limitation. It shall be
4 plainly stated on each revenue bond and note that it does not
5 constitute an indebtedness of the Municipal Joint Action Water
6 Agency or of any member municipality, public water district,
7 township, or county within the meaning of any constitutional or
8 statutory limitation.

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

1 referendum provided for in clause (iii) and shall be levied
2 upon and collected from all taxable property within the
3 boundaries of any territory subsequently added to the Service
4 Area. Dissolution of the Municipal Joint Action Water Agency
5 for any reason shall not relieve the taxable property within
6 such Service Area from liability for such tax. Liability for
7 such tax for property transferred to or released from such
8 Service Area shall be determined in the same manner as for
9 general obligation bonds of such county, if in an
10 unincorporated area, and of such municipality, if within the
11 boundaries thereof. The clerk or other officer of the Municipal
12 Joint Action Water Agency shall file a certified copy of the
13 resolution or ordinance by which such bonds are authorized to
14 be issued and such tax is levied with the County Clerk or
15 Clerks of the county or counties containing the Service Area,
16 and such filing shall constitute, without the doing of any
17 other act, full and complete authority for such County Clerk or
18 Clerks to extend such tax for collection upon all the taxable
19 property within the Service Area subject to such tax in each
20 and every year, as required, in amounts sufficient to pay the
21 principal of and interest on such bonds, as aforesaid, without
22 limit as to rate or amount. Such tax shall be in addition to
23 and in excess of all other taxes authorized to be levied by the
24 Municipal Joint Action Water Agency or by such county,
25 municipality, township, or public water district. The issuance
26 of such general obligation bonds shall be subject to the other
27 provisions of this paragraph (e), except for the provisions of
28 clause (i) of this subparagraph 4.

29 (iii) No issue of general obligation bonds of the Municipal
30 Joint Action Water Agency (except bonds to refund an existing
31 bonded indebtedness) shall be authorized unless the Municipal
32 Joint Action Water Agency certifies the proposition of issuing
33 such bonds to the proper election authorities, who shall submit
34 the proposition to the voters in the Service Area at an
35 election in accordance with the general election law, and the
36 proposition has been approved by a majority of those voting on

1 the proposition.

2 The proposition shall be substantially in the following
3 form:

4 -----

5 Shall general obligation	
6 bonds for the purpose of (state	
7 purpose), in the sum not to	
8 exceed \$....(insert amount),	Yes
9 be issued by the	-----
10 (insert corporate name of the	No
11 Municipal Joint Action Water	
12 Agency)?	

13 -----

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

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

1 provided in this paragraph (e) and the levying, extension and
2 collection of such taxes.

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

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

1 Joint Action Water Agency under water sales contracts for
2 application by the trustee to the purposes for which such
3 revenues are to be used as provided in this paragraph (e) and
4 as provided in the authorizing resolution. Upon receipt of
5 notice of such assignment, the public agency shall thereafter
6 make the assigned payments directly to such trustee.

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

13 (Source: P.A. 90-210, eff. 7-25-97; 90-595, eff. 1-1-99;
14 91-134, eff. 1-1-00.)

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

17 (65 ILCS 5/11-124-5 new)

18 Sec. 11-124-5. Acquisition of water systems by eminent
19 domain.

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

34 (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
35 supply contract existing on the effective date of this
36 amendatory Act of the 94th General Assembly must be honored by

1 an acquiring municipality, municipalities, or entity according
2 to the terms so long as the agreement does not conflict with
3 any other existing agreement.

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

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

31 The right to review and inspect shall be upon reasonable
32 notice to the utility, with reasonable inspection and review
33 time limitations and reasonable response times for production,
34 copying, and answer. In addition, the utility may utilize a
35 reasonable security protocol for personnel on the
36 municipality's physical inspection team.

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

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

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

27 The municipality and the utility shall cooperate to resolve
28 any dispute arising under this subsection. In the event the
29 dispute under this subsection cannot be resolved, either party
30 may request relief from the circuit court in any county in
31 which the water system is located, with the prevailing party to
32 be awarded such relief as the court deems appropriate under the
33 discovery abuse sanctions currently set forth in the Illinois
34 Code of Civil Procedure.

35 The municipality's right to inspect physical assets and
36 records in connection with the purpose of this Section shall

1 not be exercised with respect to any system more than one time
2 during a 5-year period, unless a substantial change in the size
3 of the system or condition of the operating assets of the
4 system has occurred since the previous inspection. Rights under
5 franchise agreements and other agreements or statutory or
6 regulatory provisions are not limited by this Section and are
7 preserved.

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

16 (g) Notwithstanding any other provision of law, the
17 Illinois Commerce Commission has no approval authority of any
18 eminent domain action brought by any governmental entity or
19 combination of such entities to acquire water systems or water
20 works.

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

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

1 Section 13. The Public Utilities Act is amended by adding
2 Section 7-213 as follows:

3 (220 ILCS 5/7-213 new)

4 Sec. 7-213. Limitations on the transfer of water systems.

5 (a) In the event of a sale, purchase, or any other transfer
6 of ownership, including, without limitation, the acquisition
7 by eminent domain, of a water system, as defined under Section
8 11-124-10 of the Illinois Municipal Code, operated by a
9 privately held public water utility, the water utility's
10 contract or agreements with the acquiring entity (or, in the
11 case of an eminent domain action, the court order) must require
12 that the acquiring entity hire a sufficient number of
13 non-supervisory employees to operate and maintain the water
14 system by initially making offers of employment to the
15 non-supervisory workforce of the water system at no less than
16 the wage rates, and substantially equivalent fringe benefits
17 and terms and conditions of employment that are in effect at
18 the time of transfer of ownership of the water system. The wage
19 rates and substantially equivalent fringe benefits and terms
20 and conditions of employment must continue for at least 30
21 months after the time of the transfer of ownership unless the
22 parties mutually agree to different terms and conditions of
23 employment within that 30-month period.

24 (b) The privately held public water utility shall offer a
25 transition plan to those employees who are not offered jobs by
26 the acquiring entity because that entity has a need for fewer
27 workers. The transition plan shall mitigate employee job losses
28 to the extent practical through such means as offers of
29 voluntary severance, retraining, early retirement, out
30 placement, or related benefits. Before any reduction in the
31 workforce during a water system transaction, the privately held
32 public water utility shall present to the employees, or their
33 representatives, a transition plan outlining the means by which
34 the utility intends to mitigate the impact of the workforce
35 reduction of its employees.

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

3 (735 ILCS 5/7-102) (from Ch. 110, par. 7-102)

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

1 the proceeding and to defend the proceeding on behalf of the
2 person not in being, and any judgment entered in the proceeding
3 shall be as effectual for all purposes as though the person was
4 in being and was a party to the proceeding. If the proceeding
5 seeks to affect the property of persons under guardianship, the
6 guardians shall be made parties defendant. Persons interested,
7 whose names are unknown, may be made parties defendant by the
8 same descriptions and in the same manner as provided in other
9 civil cases. Where the property to be taken or damaged is a
10 common element of property subject to a declaration of
11 condominium ownership pursuant to the Condominium Property Act
12 or of a common interest community, the complaint shall name the
13 unit owners' association in lieu of naming the individual unit
14 owners and lienholders on individual units. Unit owners,
15 mortgagees and other lienholders may intervene as parties
16 defendant. For the purposes of this Section "common interest
17 community" shall have the same meaning as set forth in
18 subsection (c) of Section 9-102 of the Code of Civil Procedure.
19 "Unit owners' association" or "association" shall refer to both
20 the definition contained in Section 2 of the Condominium
21 Property Act and subsection (c) of Section 9-102 of the Code of
22 Civil Procedure. Where the property is sought to be taken or
23 damaged by the state for the purposes of establishing,
24 operating or maintaining any state house or state charitable or
25 other institutions or improvements, the complaint shall be
26 signed by the governor or such other person as he or she shall
27 direct, or as is provided by law. No property, except property
28 described in ~~either~~ Section 3 of the Sports Stadium Act,
29 property to be acquired in furtherance of actions under ~~or~~
30 Article 11, Divisions 124, 126, 128, 130, 135, 136, and
31 Division 139, of the Illinois Municipal Code, property to be
32 acquired in furtherance of actions under Section 3.1 of the
33 Intergovernmental Cooperation Act, property to be acquired
34 that is a water system or waterworks pursuant to the home rule
35 powers of a unit of local government, and property described as
36 Site B in Section 2 of the Metropolitan Pier and Exposition

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

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