

**SB0249**



**95TH GENERAL ASSEMBLY**

**State of Illinois**

**2007 and 2008**

**SB0249**

Introduced 2/7/2007, by Sen. John J. Millner

**SYNOPSIS AS INTRODUCED:**

70 ILCS 3720/2

from Ch. 111 2/3, par. 252

Amends the Water Commission Act of 1985. Provides that the territory of a water commission shall not include territory within a municipality that constructs and operates its own water system.

LRB095 10656 HLH 30886 b

FISCAL NOTE ACT  
MAY APPLY

**A BILL FOR**

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 Water Commission Act of 1985 is amended by  
5 changing Section 2 as follows:

6 (70 ILCS 3720/2) (from Ch. 111 2/3, par. 252)

7 Sec. 2. County water commissions. The General Assembly  
8 hereby finds and declares that it is necessary and in the  
9 public interest to help assure a sufficient and economic supply  
10 of a source of water within those county wide areas of this  
11 State where, because of a growth in population and proximity to  
12 large urban centers, the health, safety and welfare of the  
13 residents is threatened by an ever increasing shortage of a  
14 continuing, available and adequate source and supply of water  
15 on an economically reasonable basis; however, it is not the  
16 intent of the General Assembly to interfere with the power of  
17 municipalities to provide for the retail distribution of water  
18 to their residents or the customers of their water systems.  
19 Therefore, in order to provide for a sufficient and economic  
20 supply of water to such areas, it is hereby declared to be the  
21 law of this State that:

22 (a) With respect to any water commission constituted  
23 pursuant to Division 135 of the Illinois Municipal Code or

1 established by operation of law under Public Act 83-1123, as  
2 amended, which water commission includes municipalities which  
3 in the aggregate have within their corporate limits more than  
4 50% of the population of a county (hereinafter referred to as a  
5 "home county"), and such county is contiguous to a county which  
6 has a population in excess of 1,000,000 inhabitants, the  
7 provisions of this Act shall apply. With respect to any such  
8 water commission (hereinafter referred to as a "county water  
9 commission"):

10 (i) the terms of all commissioners of such commission  
11 holding office at the time a water commission becomes a  
12 county water commission shall terminate 30 days after such  
13 time and new commissioners shall be appointed as the  
14 governing board of the county water commission as  
15 hereinafter provided in subsection (c); and

16 (ii) the county water commission shall continue to be a  
17 body corporate and politic, and shall bear the name of the  
18 home county but shall be independent from and not a part of  
19 the county government and shall itself be a political  
20 subdivision and a unit of local government, and upon  
21 appointment of the new commissioners as the governing board  
22 of such water commission as provided in subsection (c),  
23 such water commission shall remain responsible for the full  
24 payment of, and shall by operation of law be deemed to have  
25 assumed and shall pay when due all debts and obligations of  
26 the commission as the same is constituted and as such debts

1 and obligations existed on the date such water commission  
2 becomes a county water commission and such additional debts  
3 and obligations as are incurred by such commission after  
4 such date and prior to the appointment of the new  
5 commissioners as the governing board of such commission,  
6 and further shall continue to have and exercise all powers  
7 and functions and duties of a water commission created  
8 pursuant to Division 135 of the Illinois Municipal Code, as  
9 now or hereafter amended, and the county water commission  
10 may rely on that Division, as modified and supplemented by  
11 the provisions of this Act, as lawful authority under which  
12 it may act.

13 (b) Any county water commission shall have as its territory  
14 within its corporate limits, subject to taxation for its  
15 purposes, and subject to the powers and limitations as  
16 conferred by this Act, (i) all of the territory of the home  
17 county except that territory located within the corporate  
18 limits of excluded units as hereinafter defined and (ii) also  
19 all of the territory located outside the home county and  
20 included within the corporate limits of an included unit as  
21 hereinafter defined. As used in this Act, "excluded unit" means  
22 a unit of local government having a waterworks system and  
23 having within its corporate limits territory within the home  
24 county and which, at the time any commission becomes a county  
25 water commission, receives, or has contracted at such time for  
26 the receipt of, more than 25% of the water distributed by such

1 unit's water system from a source outside of the home county  
2 or, on or after the effective date of this amendatory Act of  
3 the 95th General Assembly, any municipality that constructs and  
4 operates its own water system which provides a sufficient and  
5 economic supply of a source of water to its residents or the  
6 customers of its water system. As used in this Section,  
7 "included unit" means any unit of local government having a  
8 waterworks system and having within its corporate limits  
9 territory within the home county, which unit of local  
10 government is not an excluded unit. No other water commission  
11 shall be constituted under Division 135 of the Illinois  
12 Municipal Code in any home county after the effective date of  
13 this Act to provide water from any source located outside the  
14 home county. Except as authorized by a county water commission,  
15 no home county or included unit shall enter into any new or  
16 renew or extend any existing contract, agreement or other  
17 arrangement for the acquisition or sale of water from any  
18 source located outside a home county; provided, however, that  
19 any included unit may contract for a supply of water in case of  
20 a temporary emergency from any other unit of local government  
21 or any entity. In the event that any included unit elects to  
22 serve retail customers outside its corporate boundaries and to  
23 establish rates and charges for such water in excess of those  
24 charged within its corporate boundaries, such rates and charges  
25 shall have a reasonable relationship to the actual cost of  
26 providing and delivering the water; this provision is

1 declarative of existing law. It is declared to be the law of  
2 this State pursuant to paragraphs (g) and (h) of Section 6 of  
3 Article VII of the Illinois Constitution that in any home  
4 county, the provisions of this Act and Division 135 of the  
5 Illinois Municipal Code, as modified and supplemented by this  
6 Act and this amendatory Act of the 93rd General Assembly,  
7 constitute a limitation upon the power of any such county and  
8 upon all units of local government (except excluded units)  
9 within such county, including home rule units, limiting to such  
10 county, units of local government and home rule units the power  
11 to acquire, supply or distribute water or to establish any  
12 water commission for such purposes involving water from any  
13 source located outside the home county in a manner other than  
14 as provided or permitted by this Act and Division 135, as  
15 modified and supplemented by this Act, and further constitute  
16 an exercise of exclusive State power with respect to the  
17 acquisition, supply and distribution of water from any source  
18 located outside the home county by any such county and by units  
19 of local government (except excluded units), including home  
20 rule units, within such county and with respect to the  
21 establishment for such purposes of any water commission  
22 therein, which power may not be exercised concurrently by any  
23 unit of local government or home rule unit. Upon the request of  
24 any included unit, a county water commission shall provide such  
25 included unit Lake Michigan water in an amount up to the then  
26 current Department of Transportation allocation of Lake

1 Michigan water for such included unit.

2 With respect to a water commission to which the provisions  
3 of subsection (a) apply, all uninhabited territory that is  
4 owned and solely occupied by such a commission and is located  
5 not within its home county but within a non-home rule  
6 municipality adjacent to its home county shall,  
7 notwithstanding any other provision of law, be disconnected  
8 from that municipality by operation of this Act on the  
9 effective date of this amendatory Act of 1991, and shall  
10 thereafter no longer be within the territory of the  
11 municipality for any purpose; except that for the purposes of  
12 any statute that requires contiguity of territory, the  
13 territory of the water commission shall be disregarded and the  
14 municipality shall not be deemed to be noncontiguous by virtue  
15 of the disconnection of the water commission territory.

16 (c) The governing body of any water commission to which the  
17 provisions of subsection (a) apply shall be a board of  
18 commissioners, each to be appointed within 30 days after the  
19 water commission becomes a county water commission to a term  
20 commencing on such date, as follows:

21 (i) one commissioner, who shall serve as chairman, who  
22 shall be a resident of the home county, to be appointed by  
23 the chairman of the county board of such county with the  
24 advice and consent of the county board, provided that  
25 following the expiration of the term or vacancy of the  
26 current chairman serving on the effective date of this

1           amendatory Act of the 93rd General Assembly, any subsequent  
2           appointment as chairman shall also be subject to the advice  
3           and consent of the county water commission;

4           (ii) one commissioner from each county board district  
5           within the home county, to be appointed by the chairman of  
6           the county board of the home county with the advice and  
7           consent of the county board; and

8           (iii) one commissioner from each county board district  
9           within the home county, to be appointed by the majority  
10          vote of the mayors of those included units which are  
11          municipalities and which have the greatest percentage of  
12          their respective populations residing within such county  
13          board district of the home county.

14          The mayors of the respective county board districts shall  
15          meet for the purpose of making said respective appointments at  
16          a time and place designated by that mayor in each county board  
17          district of the included unit with the largest population  
18          voting for a commissioner upon not less than 10 days' written  
19          notice to each other mayor entitled to vote.

20          The commissioners so appointed shall serve for a term of 6  
21          years, or until their successors have been appointed and have  
22          qualified in the same manner as the original appointments,  
23          except that at the first meeting of such commissioners, (A) the  
24          commissioners first appointed pursuant to paragraph (ii) of  
25          this subsection shall determine publicly by lot 1/3 of their  
26          number to serve for terms of 2 years, 1/3 of their number to



1 serve for terms of 4 years and 1/3 of their number to serve for  
2 terms of 6 years, any odd number of commissioners so determined  
3 by dividing into thirds to serve 6 year terms, and (B) the  
4 commissioners first appointed pursuant to paragraph (iii) of  
5 this subsection shall determine publicly by lot 1/3 of their  
6 number to serve for terms of 2 years, 1/3 of their number to  
7 serve for terms of 4 years and 1/3 of their number to serve for  
8 terms of 6 years, any odd number of commissioners so determined  
9 by dividing into thirds to serve 6 year terms. The commissioner  
10 first appointed pursuant to paragraph (i) of this subsection,  
11 who shall serve as chairman, shall serve for a term of 6 years.  
12 Any commissioner may be a member of the governing board or an  
13 officer or employee of such county or any unit of local  
14 government within such county. A commissioner is eligible for  
15 reappointment upon the expiration of his term. A vacancy in the  
16 office of a commissioner shall be filled for the balance of the  
17 unexpired term by appointment and qualification as to residency  
18 in the same manner as the original appointment was made. Each  
19 commissioner shall receive the same compensation which shall  
20 not be more than \$600 per year, except that no such  
21 commissioner who is a member of the governing board or an  
22 officer or employee of such county or any unit of local  
23 government within such county may receive any compensation for  
24 serving as a commissioner. Each commissioner may be removed by  
25 the appointing authority for any cause for which any other  
26 county or municipal officer may be removed. The county water

1 commission shall determine its own rules of proceeding. A  
2 quorum shall be a majority of the commissioners then in office.  
3 All ordinances or resolutions shall be passed by not less than  
4 a majority of a quorum. No commissioner or employee of the  
5 commission, no member of the county board or other official  
6 elected within such county, no mayor or president or other  
7 member of the corporate authorities of any unit of local  
8 government within such county, and no employee of such county  
9 or any such unit of local government, shall be interested  
10 directly or indirectly in any contract or job of work or  
11 materials, or the profits thereof, or services to be performed  
12 for or by the commission. A violation of any of the foregoing  
13 provisions of this subsection is a Class C misdemeanor. A  
14 conviction is cause for the removal of a person from his office  
15 or employment.

16 (d) Except as provided in subsection (g), subject to the  
17 referendum provided for in subsection (e), a county water  
18 commission may borrow money for corporate purposes on the  
19 credit of the commission, and issue general obligation bonds  
20 therefor, in such amounts and form and on such conditions as it  
21 shall prescribe, but shall not become indebted in any manner or  
22 for any purpose in an amount including existing indebtedness in  
23 the aggregate to exceed 5.75% of the aggregate value of the  
24 taxable property within the territorial boundaries of the  
25 county water commission, as equalized and assessed by the  
26 Department of Revenue and as most recently available at the

1 time of the issue of said bonds. Before or at the time of  
2 incurring any indebtedness, except as provided in subsection  
3 (g), the commission shall provide for the collection of a  
4 direct annual tax, which shall be unlimited as to rate or  
5 amount, sufficient to pay the interest on such debt as it falls  
6 due and also to pay and discharge the principal thereof at  
7 maturity, which shall be within 40 years after the date of  
8 issue thereof. Such tax shall be levied upon and collected from  
9 all of the taxable property within the territory of the county  
10 water commission. Dissolution of the county water commission  
11 for any reason shall not relieve the taxable property within  
12 such territory of the county water commission from liability  
13 for such tax. The clerk of the commission shall file a  
14 certified copy of the resolution or ordinance by which such  
15 bonds are authorized to be issued and such tax is levied with  
16 the County Clerk of each county in which any of the territory  
17 of the county water commission is located and such filing shall  
18 constitute, without the doing of any other act, full and  
19 complete authority for each such County Clerk to extend such  
20 tax for collection upon all the taxable property within the  
21 territory of the county water commission subject to such tax in  
22 each and every year required sufficient to pay the principal of  
23 and interest on such bonds, as aforesaid, without limit as to  
24 rate or amount, and shall be in addition to and in excess of  
25 all other taxes authorized to be levied by the commission or  
26 any included unit. The general obligation bonds shall be issued

1 pursuant to an ordinance or resolution and may be issued in one  
2 or more series, and shall bear such date or dates, mature at  
3 such time or times and in any event not more than 40 years from  
4 the date thereof, be sold at such price at private or public  
5 sale as determined by a county water commission, bear interest  
6 at such rate or rates such that the net effective interest rate  
7 received upon the sale of such bonds does not exceed the  
8 maximum rate determined under Section 2 of the Bond  
9 Authorization Act, which rates may be fixed or variable, be in  
10 such denominations, be in such form, either coupon or  
11 registered, carry such conversion, registration, and exchange  
12 privileges, be executed in such manner, be payable in such  
13 medium of payment at such place or places within or without the  
14 State of Illinois, be subject to such terms of redemption, and  
15 contain or be subject to such other terms as the ordinance or  
16 resolution may provide, and shall not be restricted by the  
17 provisions of any other terms of obligations of public agencies  
18 or private persons.

19 (e) No issue of general obligation bonds by a county water  
20 commission (except bonds to refund an existing bonded  
21 indebtedness) shall be authorized unless the commission  
22 certifies the proposition of issuing such bonds to the proper  
23 election officials, who shall submit the proposition to the  
24 voters at an election in accordance with the general election  
25 law, and the proposition has been approved by a majority of  
26 those voting on the proposition.

1 The proposition shall be in the form provided in Section 5  
2 or shall be substantially in the following form:

3 -----

4 Shall general obligation  
5 bonds for the purpose of  
6 (state purpose), in the YES  
7 sum of \$....(insert amount), -----  
8 be issued by the ..... NO  
9 (insert corporate name of  
10 the county water commission)?

11 -----

12 (f) In order to carry out and perform its powers and  
13 functions and duties under the provisions of this Act and  
14 Division 135 of the Illinois Municipal Code, as modified and  
15 supplemented by this Act, the governing body of any county  
16 water commission may by ordinance levy annually upon all  
17 taxable property within its territory a tax at a rate not to  
18 exceed .005% of the value of such property, as equalized or  
19 assessed by the Department of Revenue for the year in which the  
20 levy is made. In addition, any county water commission may by  
21 ordinance levy upon all taxable property within its territory,  
22 for one year only, an additional tax for such purposes at a  
23 rate not to exceed .20% of the value of such property, as  
24 equalized or assessed by the Department of Revenue for that  
25 year; provided, however, that such tax may not be levied more  
26 than once in any county water commission.

1           (g) Any county water commission shall have the power to  
2 borrow money, subject to the indebtedness limitation provided  
3 in subsection (d), from the home county or included units, in  
4 such amounts and in such terms as agreed by the governing  
5 bodies of the commission and the home county or included units.

6           (h) No county water commission constituted pursuant to the  
7 Act shall engage in the retail sale or distribution of water to  
8 residents or customers of any municipality.

9           (i) Nothing in the Section requires any municipality to  
10 contract with a county water commission for a supply of water.

11           (j) The State of Illinois recognizes that any such contract  
12 for the supply of water executed by a unit of local government  
13 and a county water commission may contain terms and conditions  
14 intended by the parties thereto to be absolute conditions  
15 thereof. The State of Illinois also recognizes that persons may  
16 loan funds to a county water commission (including, without  
17 limitation, the purchase of revenue or general obligation bonds  
18 of such commission) in reliance upon the terms and conditions  
19 of any such contract for the supply of water. Therefore, the  
20 State of Illinois pledges and agrees to those parties and  
21 persons which make loans of funds to a county water commission  
22 that it will not impair or limit the power or ability of a  
23 county water commission or a unit of local government fully to  
24 carry out the financial obligations and obligation to furnish  
25 water pursuant to the terms of any contract for the supply of  
26 water entered into by such county water commission or unit of

1 local government for the term of such contracts or loans. All  
2 other terms and conditions of such contracts and  
3 intergovernmental agreements shall be binding to the extent  
4 that they are not inconsistent with this amendatory Act of the  
5 93rd General Assembly.

6 (Source: P.A. 93-226, eff. 7-22-03.)