

AN ACT concerning local government.

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

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

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

Sec. 3.1. Municipal Joint Action Water Agency.

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

A Municipal Joint Action Water Agency shall be established by an intergovernmental agreement among the various member municipalities, public water districts, townships, State universities, and counties, upon approval by an ordinance adopted by the corporate authorities of each member municipality, public water district, township, State university, or county. This agreement may be amended at any time upon the adoption of concurring ordinances by the corporate authorities of all member municipalities, public

water districts, townships, State universities, and counties. The agreement may provide for additional municipalities, public water districts, any State universities, townships in counties with a population under 700,000, or counties to join the Agency upon adoption of an ordinance by the corporate authorities of the joining municipality, public water district, township, or county, and upon such consents, conditions and approvals of the governing body of the Municipal Joint Action Water Agency and of existing member municipalities, public water districts, townships, State universities, and counties as shall be provided in the agreement. The agreement shall provide the manner and terms on which any municipality, public water district, township, or county may withdraw from membership in the Municipal Joint Action Water Agency and on which the Agency may terminate and dissolve in whole or in part. The agreement shall set forth the corporate name of the Municipal Joint Action Water Agency and its duration. Promptly upon any agreement establishing a Municipal Joint Action Water Agency being entered into, or upon the amending of any such agreement, a copy of such agreement or amendment shall be filed in the office of the Secretary of State of Illinois. Promptly upon the addition or withdrawal of any municipality, public water district, township in a county with a population under 700,000, or county, or upon the dissolution of a Municipal Joint Action Water Agency, that fact shall be certified by an officer of the Agency to the Secretary of State of Illinois.

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

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

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

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

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

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

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

(i) to sue or be sued;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the proposition.

The proposition shall be substantially in the following form:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(220 ILCS 5/7-213 new)

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

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

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

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

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

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

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

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

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