



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB4726

Introduced 2/18/2020, by Rep. Jay Hoffman

SYNOPSIS AS INTRODUCED:

65 ILCS 5/11-124-5
65 ILCS 5/11-139-12
735 ILCS 30/10-5-10

from Ch. 24, par. 11-139-12
was 735 ILCS 5/7-102

Amends the Illinois Municipal Code and the Eminent Domain Act. Provides that no property belonging to a public utility providing water or sewer service subject to the jurisdiction of the Illinois Commerce Commission may be taken or damaged by eminent domain without prior approval of the Illinois Commerce Commission. Excludes eminent domain actions commenced prior to the effective date of the amendatory Act. Effective immediately.

LRB101 15672 AWJ 65021 b

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 Illinois Municipal Code is amended by
5 changing Sections 11-124-5 and 11-139-12 as follows:

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

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

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

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

1 (as defined in the Public Utilities Act) provides water to
2 customers located in 2 or more municipalities, the system may
3 be acquired by a majority of the municipalities by eminent
4 domain. If the system is to be acquired by more than one
5 municipality, then there must be an intergovernmental
6 agreement in existence between the acquiring municipalities
7 providing for the acquisition.

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

1 number of customers within each municipality and within the
2 system within 60 days after any such request by a municipality.

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

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

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

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

23 In the absence of other agreement, the utility must respond
24 to any notice by the municipality concerning its review and
25 inspection within 21 days after receiving the notice. The
26 review and inspection of the assets of the company shall be

1 over such period of time and carried out in such manner as is
2 reasonable under the circumstances.

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

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

23 The municipality and the utility shall cooperate to resolve
24 any dispute arising under this subsection. In the event the
25 dispute under this subsection cannot be resolved, either party
26 may request relief from the circuit court in any county in

1 which the water system is located, with the prevailing party to
2 be awarded such relief as the court deems appropriate under the
3 discovery abuse sanctions currently set forth in the Illinois
4 Code of Civil Procedure.

5 The municipality's right to inspect physical assets and
6 records in connection with the purpose of this Section shall
7 not be exercised with respect to any system more than one time
8 during a 5-year period, unless a substantial change in the size
9 of the system or condition of the operating assets of the
10 system has occurred since the previous inspection. Rights under
11 franchise agreements and other agreements or statutory or
12 regulatory provisions are not limited by this Section and are
13 preserved.

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

22 (g) Notwithstanding any other provision of law other than
23 as provided in subsection (g-5), the Illinois Commerce
24 Commission has no approval authority of any eminent domain
25 action brought by any governmental entity or combination of
26 such entities to acquire water systems or water works.

1 (g-5) No property belonging to a public utility providing
2 water or sewer service subject to the jurisdiction of the
3 Illinois Commerce Commission may be taken or damaged under the
4 provisions of this Section without prior approval of the
5 Illinois Commerce Commission. This subsection does not apply to
6 any action under this Section commenced prior to the effective
7 date of this amendatory Act of the 101st General Assembly.

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

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

23 (j) Any contractor or subcontractor that performs work on a
24 water system acquired by a municipality or municipalities under
25 this Section shall comply with the requirements of Section
26 30-22 of the Illinois Procurement Code. The contractor or

1 subcontractor shall submit evidence of compliance with Section
2 30-22 to the municipality or municipalities.

3 (k) The municipality or municipalities acquiring the water
4 system shall offer available employee positions to the
5 qualified employees of the acquired water system.

6 (Source: P.A. 97-586, eff. 8-26-11; 97-813, eff. 7-13-12.)

7 (65 ILCS 5/11-139-12) (from Ch. 24, par. 11-139-12)

8 Sec. 11-139-12. (a) For the purpose of acquiring,
9 constructing, extending, or improving any combined waterworks
10 and sewerage system under this Division 139, or any property
11 necessary or appropriate therefor, any municipality has the
12 right of eminent domain, as provided by the Eminent Domain Act.

13 The fair cash market value of an existing waterworks and
14 sewerage system, or portion thereof, acquired under this
15 Division 139, which existing system is a special use property,
16 may be determined by considering Section 15 of Article I of the
17 Illinois Constitution, the Eminent Domain Act, and the Uniform
18 Standards of Professional Appraisal Practice and giving due
19 consideration to the income, cost, and market approaches to
20 valuation based on the type and character of the assets being
21 acquired. In making the valuation determination, the
22 historical and projected revenue attributable to the assets,
23 the costs of the assets, and the condition and remaining useful
24 life of the assets may be considered while giving due account
25 to the special use nature of the property as used for water and

1 sewerage purposes.

2 Additionally, in determining the fair cash market value of
3 existing utility facilities, whether real or personal,
4 consideration may be given to the depreciated value of all
5 facilities and fixtures constructed by the utility company and
6 payments made by the utility company in connection with the
7 acquisition or donation of any waterworks or sanitary sewage
8 system.

9 For the purposes of this Section no prior approval of the
10 Illinois Commerce Commission, or any other body having
11 jurisdiction over the existing system, shall be required,
12 except as provided in subsection (b).

13 (b) No property belonging to a public utility providing
14 water or sewer service subject to the jurisdiction of the
15 Illinois Commerce Commission may be taken or damaged under the
16 provisions of this Section without prior approval of the
17 Illinois Commerce Commission. This subsection does not apply to
18 any action under this Section commenced prior to the effective
19 date of this amendatory Act of the 101st General Assembly.

20 (Source: P.A. 96-1468, eff. 8-20-10.)

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

23 (735 ILCS 30/10-5-10) (was 735 ILCS 5/7-102)

24 Sec. 10-5-10. Parties.

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

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

11 (c) If the proceeding seeks to affect the property of
12 persons under guardianship, the guardians shall be made parties
13 defendant.

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

17 (e) When the property to be taken or damaged is a common
18 element of property subject to a declaration of condominium
19 ownership, pursuant to the Condominium Property Act, or of a
20 common interest community, the complaint shall name the unit
21 owners' association in lieu of naming the individual unit
22 owners and lienholders on individual units. Unit owners,
23 mortgagees, and other lienholders may intervene as parties
24 defendant. For the purposes of this Section, "common interest
25 community" has the same meaning as set forth in subsection (c)
26 of Section 9-102 of the Code of Civil Procedure. "Unit owners'

1 association" or "association" shall refer to both the
2 definition contained in Section 2 of the Condominium Property
3 Act and subsection (c) of Section 9-102 of the Code of Civil
4 Procedure.

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

11 (g) No property, except property described in Section 3 of
12 the Sports Stadium Act, property to be acquired in furtherance
13 of actions under Article 11, Divisions 124, 126, 128, 130, 135,
14 136, and 139, of the Illinois Municipal Code, property to be
15 acquired in furtherance of actions under Section 3.1 of the
16 Intergovernmental Cooperation Act, property to be acquired
17 that is a water system or waterworks pursuant to the home rule
18 powers of a unit of local government (other than as provided in
19 subsection (h)), ~~and~~ property described as Site B in Section 2
20 of the Metropolitan Pier and Exposition Authority Act, and
21 property that may be taken as provided in the Public-Private
22 Agreements for the South Suburban Airport Act belonging to a
23 railroad or other public utility subject to the jurisdiction of
24 the Illinois Commerce Commission, may be taken or damaged,
25 pursuant to the provisions of this Act, without the prior
26 approval of the Illinois Commerce Commission.

1 (h) No property belonging to a public utility providing
2 water or sewer service subject to the jurisdiction of the
3 Illinois Commerce Commission may be taken or damaged by eminent
4 domain without prior approval of the Illinois Commerce
5 Commission. This subsection does not apply to any action under
6 this Section commenced prior to the effective date of this
7 amendatory Act of the 101st General Assembly.

8 (Source: P.A. 98-109, eff. 7-25-13.)

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.