

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, any body corporate and  
12 politic, or any combination thereof may, by intergovernmental  
13 agreement, establish a Municipal Joint Action Water Agency to  
14 provide adequate supplies of water on an economical and  
15 efficient basis for member municipalities, public water  
16 districts and other incorporated and unincorporated areas  
17 within such counties. ~~For purposes of this Act, the water~~  
18 ~~supply may only be derived from Lake Michigan, the Mississippi~~  
19 ~~River, the Missouri River, or the Sangamon River Valley~~  
20 ~~Alluvium.~~ Any such Agency shall itself be a municipal  
21 corporation, public body politic and corporate. A Municipal  
22 Joint Action Water Agency so created shall not itself have  
23 taxing power except as hereinafter 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, bodies  
27 corporate and politic, and counties, upon approval by an  
28 ordinance adopted by the corporate authorities of each member  
29 municipality, public water district, township, body corporate  
30 and politic, 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, bodies corporate and politic, and  
2 counties. The agreement may provide for additional  
3 municipalities, public water districts, any body corporate and  
4 politic, townships in counties with a population under 700,000,  
5 or counties to join the Agency upon adoption of an ordinance by  
6 the corporate authorities of the joining municipality, public  
7 water 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, bodies  
11 corporate and politic, 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, body  
32 corporate and politic, and county of the Municipal Joint Action  
33 Water Agency appointed by ordinance of the corporate  
34 authorities of the municipality, public water district,  
35 township, or county. Each Director shall have one vote. Each  
36 Director shall be the Mayor or President of the member

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

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

35 The agreement may provide for the establishment of an  
36 Executive Committee to consist of the municipal manager or

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

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

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

28 (i) to sue or be sued;

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

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

1 township, or county;

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

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

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

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

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

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

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

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

1           The changes in this Section made by this amendatory Act of  
2 1984 are intended to be declarative of existing law.

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

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

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

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

33 3. The resolution authorizing the issuance of bonds or  
34 notes by a Municipal Joint Action Water Agency shall pledge and  
35 provide for the application of revenues derived from the  
36 operation of the Agency's joint waterworks or water supply



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

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

23 4. (i) Except as provided in clauses (ii) and (iii) of this  
24 subparagraph 4 of this paragraph (e), all bonds and notes of  
25 the Municipal Joint Action Water Agency issued pursuant to this  
26 paragraph (e) shall be revenue bonds or notes. Such revenue  
27 bonds or notes shall have no claim for payment other than from  
28 revenues of the Agency derived from the operation of its joint  
29 waterworks or water supply system (including from contracts for  
30 the sale of water by the Agency) and investment earnings  
31 thereon, from bond or note proceeds and investment earnings  
32 thereon, or from such other receipts of the Agency as the  
33 agreement establishing the Agency may authorize to be pledged  
34 to the payment of revenue bonds or notes, all as and to the  
35 extent as provided in the resolution of the Board of Directors  
36 authorizing the issuance of the revenue bonds or notes. Revenue

1 bonds or notes issued by a Municipal Joint Action Water Agency  
2 pursuant to this paragraph (e) shall not constitute an  
3 indebtedness of the Agency or of any member municipality,  
4 public water district, township, or county within the meaning  
5 of any constitutional or statutory limitation. It shall be  
6 plainly stated on each revenue bond and note that it does not  
7 constitute an indebtedness of the Municipal Joint Action Water  
8 Agency or of any member municipality, public water district,  
9 township, or county within the meaning of any constitutional or  
10 statutory limitation.

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

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

31 (iii) No issue of general obligation bonds of the Municipal  
32 Joint Action Water Agency (except bonds to refund an existing  
33 bonded indebtedness) shall be authorized unless the Municipal  
34 Joint Action Water Agency certifies the proposition of issuing  
35 such bonds to the proper election authorities, who shall submit  
36 the proposition to the voters in the Service Area at an

1 election in accordance with the general election law, and the  
2 proposition has been approved by a majority of those voting on  
3 the proposition.

4 The proposition shall be substantially in the following  
5 form:

6 -----

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

15 -----

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

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

1 including the imposition of fees and charges, the collection of  
2 sufficient revenues and the proper application of revenues as  
3 provided in this paragraph (e) and the levying, extension and  
4 collection of such taxes.

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

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

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

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

15 (Source: P.A. 90-210, eff. 7-25-97; 90-595, eff. 1-1-99;  
16 91-134, eff. 1-1-00.)

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

19 (65 ILCS 5/11-124-5 new)

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

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

1 the water system existing within the acquiring municipality.

2 (b) Where a water system that is owned by a public utility  
3 (as defined in the Public Utilities Act) provides water to  
4 customers located entirely in 2 or more municipalities, the  
5 system may be acquired by either or both of the municipalities  
6 by eminent domain if there is in existence an intergovernmental  
7 agreement between the municipalities served providing for  
8 acquisition.

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

30 (d) In the case of acquisition by a municipality or  
31 municipalities or entity created by law to own or operate a  
32 water system under this Section, service must be provided to  
33 all retail customers of the system at the time of acquisition  
34 without discrimination in rates based on whether the customer  
35 is located within or outside the boundaries of the acquiring  
36 municipality or municipalities or entity.

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

12       (f) After a municipality adopts a resolution of intent to  
13 study the feasibility of purchasing any water system or  
14 waterworks, the municipality is entitled to review and inspect  
15 all of the financial and other records and both tangible and  
16 intangible assets of the utility related to the operation of  
17 the system or waterworks in order to determine the feasibility  
18 of the purchase. The utility must cooperate with any reasonable  
19 request by the municipality related to the municipality's study  
20 of the feasibility of the purchase. Additionally, the utility  
21 must make its employees or employees of related corporations or  
22 service providers available to the municipality in order to  
23 respond to inquiries related to the purchase. Information  
24 obtained by the municipality under this Section is not a public  
25 record and must be treated as confidential by the municipality  
26 and used only for the purpose of determining the feasibility of  
27 the purchase of the water system or waterworks.

28       (g) The valuation of all systems or waterworks acquired  
29 under this Section and any other Division of this Article 11  
30 may be pursuant to the formulas set forth in Section 11-139-12.  
31 In determining just compensation for a water system or  
32 waterworks system in an eminent domain action under this  
33 Section, the court may consider the amount of any land  
34 donations, impact fees, or similar payments by parties other  
35 than the utility used in the construction of the system or  
36 waterworks.



1       (h) Notwithstanding any other provision of law, the  
2       Illinois Commerce Commission has no approval authority of any  
3       eminent domain action brought by any governmental entity or  
4       combination of such entities to acquire water systems or  
5       waterworks.

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

8           (735 ILCS 5/7-102) (from Ch. 110, par. 7-102)

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

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

1 acquired in furtherance of actions under Section 3.1 of the  
2 Intergovernmental Cooperation Act, property that is a water  
3 system or waterworks pursuant to the home rule powers of a unit  
4 of local government, and property described as Site B in  
5 Section 2 of the Metropolitan Pier and Exposition Authority  
6 Act, belonging to a railroad or other public utility subject to  
7 the jurisdiction of the Illinois Commerce Commission may be  
8 taken or damaged, pursuant to the provisions of Article VII of  
9 this Act, without the prior approval of the Illinois Commerce  
10 Commission. This amendatory Act of 1991 (Public Act 87-760) is  
11 declaratory of existing law and is intended to remove possible  
12 ambiguities, thereby confirming the existing meaning of the  
13 Code of Civil Procedure and of the Illinois Municipal Code in  
14 effect before January 1, 1992 (the effective date of Public Act  
15 87-760).

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