



Sen. M. Maggie Crotty

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1 AMENDMENT TO SENATE BILL 3046

2 AMENDMENT NO. _____. Amend Senate Bill 3046 by replacing
3 everything after the enacting clause with the following:

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

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

1 of State of Illinois.

2 (b) The governing body of any Municipal Joint Action Water
3 Agency established pursuant to this Section 3.1 shall be a
4 Board of Directors. There shall be one Director from each
5 member municipality, public water district, township, body
6 corporate and politic, and county of the Municipal Joint Action
7 Water Agency appointed by ordinance of the corporate
8 authorities of the municipality, public water district,
9 township, or county. Each Director shall have one vote. Each
10 Director shall be the Mayor or President of the member
11 municipality, or the chairman of the board of trustees of the
12 member public water district, the supervisor of the member
13 township, the appointee of the body corporate and politic, or
14 the chairman of the county board or chief executive officer of
15 the member county or a county board member appointed by the
16 chairman of the county board of the member county, appointing
17 the Director; an elected member of the corporate authorities of
18 that municipality, public water district, township, or county;
19 or other elected official of the appointing municipality,
20 public water district, township, or county. Any agreement
21 establishing a Municipal Joint Action Water Agency shall
22 specify the period during which a Director shall hold office
23 and may provide for the appointment of Alternate Directors from
24 member municipalities, public water districts, townships, or
25 counties. The Board of Directors shall elect one Director to
26 serve as Chairman, and shall elect persons, who need not be
27 Directors, to such other offices as shall be designated in the
28 agreement.

29 The Board of Directors shall determine the general policy
30 of the Municipal Joint Action Water Agency, shall approve the
31 annual budget, shall make all appropriations (which may include
32 appropriations made at any time in addition to those made in
33 any annual appropriation document), shall approve all
34 contracts for the purchase or sale of water, shall adopt any

1 resolutions providing for the issuance of bonds or notes by the
2 Agency, shall adopt its by-laws, rules and regulations, and
3 shall have such other powers and duties as may be prescribed in
4 the agreement. Such agreement may further specify those powers
5 and actions of the Municipal Joint Action Water Agency which
6 shall be authorized only upon votes of greater than a majority
7 of all Directors or only upon consents of the corporate
8 authorities of a certain number of member municipalities,
9 public water districts, townships, bodies corporate and
10 politic, or counties.

11 The agreement may provide for the establishment of an
12 Executive Committee to consist of the municipal manager or
13 other elected or appointed official of each member
14 municipality, public water district, township, body corporate
15 and politic, or county, as designated by ordinance or other
16 official action, from time to time by the corporate authorities
17 of the member municipality, public water district, township,
18 body corporate and politic, or county, and may prescribe powers
19 and duties of the Executive Committee for the efficient
20 administration of the Agency.

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

1 corporate limits of any member municipality.

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

6 (i) to sue or be sued;

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

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

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

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

24 Member municipalities, public water districts, townships,
25 bodies corporate and politic, or counties may, for the purposes
26 of, and upon request by, the Municipal Joint Action Water
27 Agency, exercise the power of eminent domain available to them,
28 convey property so acquired to the Agency for the cost of
29 acquisition, and be reimbursed for all expenses related to this
30 exercise of eminent domain power on behalf of the Agency.

31 All property, income and receipts of or transactions by a
32 Municipal Joint Action Water Agency shall be exempt from all
33 taxation, the same as if it were the property, income or
34 receipts of or transaction by the member municipalities, public

1 water districts, townships, bodies corporate and politic, or
2 counties.

3 (d) A Municipal Joint Action Water Agency established
4 pursuant to this Section 3.1 shall have the power to buy water
5 and to enter into contracts with any person, corporation or
6 public agency (including any member municipality, public water
7 district, township, or county) for that purpose. Any such
8 contract made by an Agency for a supply of water may contain
9 provisions whereby the Agency is obligated to pay for the
10 supply of water without setoff or counterclaim and irrespective
11 of whether the supply of water is ever furnished, made
12 available or delivered to the Agency or whether any project for
13 the supply of water contemplated by any such contract is
14 completed, operable or operating and notwithstanding any
15 suspension, interruption, interference, reduction or
16 curtailment of the supply of water from such project. Any such
17 contract may provide that if one or more of the other
18 purchasers defaults in the payment of its obligations under
19 such contract or a similar contract made with the supplier of
20 the water one or more of the remaining purchasers party to such
21 contract or such similar contract shall be required to pay for
22 all or a portion of the obligations of the defaulting
23 purchasers. No such contract may have a term in excess of 50
24 years.

25 A Municipal Joint Action Water Agency shall have the power
26 to sell water and to enter into contracts with any person,
27 corporation or public agency (including any member
28 municipality, any public water district, any township, any body
29 corporate and politic, or any county on behalf of a county
30 service area as set forth in this Section) for that purpose. No
31 such contract may have a term in excess of 50 years. Any such
32 contract entered into to sell water to a public agency may
33 provide that the payments to be made thereunder by such public
34 agency shall be made solely from revenues to be derived by such

1 public agency from the operation of its waterworks system or
2 its combined waterworks and sewerage system. Any public agency
3 so contracting to purchase water shall establish from time to
4 time such fees and charges for its water service or combined
5 water and sewer service as will produce revenues sufficient at
6 all times to pay its obligations to the Agency under the
7 purchase contract. Any such contract so providing shall not
8 constitute indebtedness of such public agency so contracting to
9 buy water within the meaning of any statutory or constitutional
10 limitation. Any such contract of a public agency to buy water
11 shall be a continuing, valid and binding obligation of such
12 public agency payable from such revenues.

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

19 The changes in this Section made by this amendatory Act of
20 1984 are intended to be declarative of existing law.

21 (e) 1. A Municipal Joint Action Water Agency established
22 pursuant to this Section 3.1 may, from time to time, borrow
23 money and, in evidence of its obligation to repay the
24 borrowing, issue its negotiable water revenue bonds or notes
25 pursuant to this paragraph (e) for any of the following
26 purposes: for paying costs of constructing, acquiring,
27 improving or extending a joint waterworks or water supply
28 system; for paying other expenses incident to or incurred in
29 connection with such construction, acquisition, improvement or
30 extension; for repaying advances made to or by the Agency for
31 such purposes; for paying interest on the bonds or notes until
32 the estimated date of completion of any such construction,
33 acquisition, improvement or extension and for such period after
34 the estimated completion date as the Board of Directors of the

1 Agency shall determine; for paying financial, legal,
2 administrative and other expenses of the authorization,
3 issuance, sale or delivery of bonds or notes; for paying costs
4 of insuring payment of the bonds or notes; for providing or
5 increasing a debt service reserve fund with respect to any or
6 all of the Agency's bonds or notes; and for paying, refunding
7 or redeeming any of the Agency's bonds or notes before, after
8 or at their maturity, including paying redemption premiums or
9 interest accruing or to accrue on such bonds or notes being
10 paid or redeemed or for paying any other costs in connection
11 with any such payment or redemption.

12 2. Any bonds or notes issued pursuant to this paragraph (e)
13 by a Municipal Joint Action Water Agency shall be authorized by
14 a resolution of the Board of Directors of the Agency adopted by
15 the affirmative vote of Directors from a majority of the member
16 municipalities, public water districts, townships, bodies
17 corporate and politic, and counties, and any additional
18 requirements as may be set forth in the agreement establishing
19 the Agency. The authorizing resolution may be effective
20 immediately upon its adoption. The authorizing resolution
21 shall describe in a general way any project contemplated to be
22 financed by the bonds or notes, shall set forth the estimated
23 cost of the project and shall determine its period of
24 usefulness. The authorizing resolution shall determine the
25 maturity or maturities of the bonds or notes, the rate or rates
26 at which the bonds or notes are to bear interest and all the
27 other terms and details of the bonds or notes. All such bonds
28 or notes shall mature within the period of estimated usefulness
29 of the project with respect to which such bonds or notes are
30 issued, as determined by the Board of Directors, but in any
31 event not more than 50 years from their date of issue. The
32 bonds and notes may bear interest, payable at such times, at a
33 rate or rates not exceeding the maximum rate established in the
34 Bond Authorization Act, as from time to time in effect. Bonds

1 or notes of a Municipal Joint Action Water Agency shall be sold
2 in such manner as the Board of Directors of the Agency shall
3 determine, either at par or at a premium or discount, but such
4 that the effective interest cost (excluding any redemption
5 premium) to the Agency of the bonds or notes shall not exceed a
6 rate equal to the rate of interest specified in the Act
7 referred to in the preceding sentence.

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

19 3. The resolution authorizing the issuance of bonds or
20 notes by a Municipal Joint Action Water Agency shall pledge and
21 provide for the application of revenues derived from the
22 operation of the Agency's joint waterworks or water supply
23 system (including from contracts for the sale of water by the
24 Agency) and investment earnings thereon to the payment of the
25 cost of operation and maintenance of the system (including
26 costs of purchasing water), to provision of adequate
27 depreciation, reserve or replacement funds with respect to the
28 system or the bonds or notes, and to the payment of principal,
29 premium, if any, and interest on the bonds or notes of the
30 Agency (including amounts for the purchase of such bonds or
31 notes). The resolution shall provide that revenues of the
32 Municipal Joint Action Water Agency so derived from the
33 operation of the system, sufficient (together with other
34 receipts of the Agency which may be applied to such purposes)

1 to provide for such purposes, shall be set aside as collected
2 in a separate fund or funds and used for such purposes. The
3 resolution may provide that revenues not required for such
4 purposes may be used for any proper purpose of the Agency or
5 may be returned to member municipalities.

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

11 4. (i) Except as provided in clauses (ii) and (iii) of this
12 subparagraph 4 of this paragraph (e), all bonds and notes of
13 the Municipal Joint Action Water Agency issued pursuant to this
14 paragraph (e) shall be revenue bonds or notes. Such revenue
15 bonds or notes shall have no claim for payment other than from
16 revenues of the Agency derived from the operation of its joint
17 waterworks or water supply system (including from contracts for
18 the sale of water by the Agency) and investment earnings
19 thereon, from bond or note proceeds and investment earnings
20 thereon, or from such other receipts of the Agency as the
21 agreement establishing the Agency may authorize to be pledged
22 to the payment of revenue bonds or notes, all as and to the
23 extent as provided in the resolution of the Board of Directors
24 authorizing the issuance of the revenue bonds or notes. Revenue
25 bonds or notes issued by a Municipal Joint Action Water Agency
26 pursuant to this paragraph (e) shall not constitute an
27 indebtedness of the Agency or of any member municipality,
28 public water district, township, or county within the meaning
29 of any constitutional or statutory limitation. It shall be
30 plainly stated on each revenue bond and note that it does not
31 constitute an indebtedness of the Municipal Joint Action Water
32 Agency or of any member municipality, public water district,
33 township, or county within the meaning of any constitutional or
34 statutory limitation.

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

1 such tax for property transferred to or released from such
2 Service Area shall be determined in the same manner as for
3 general obligation bonds of such county, if in an
4 unincorporated area, and of such municipality, if within the
5 boundaries thereof. The clerk or other officer of the Municipal
6 Joint Action Water Agency shall file a certified copy of the
7 resolution or ordinance by which such bonds are authorized to
8 be issued and such tax is levied with the County Clerk or
9 Clerks of the county or counties containing the Service Area,
10 and such filing shall constitute, without the doing of any
11 other act, full and complete authority for such County Clerk or
12 Clerks to extend such tax for collection upon all the taxable
13 property within the Service Area subject to such tax in each
14 and every year, as required, in amounts sufficient to pay the
15 principal of and interest on such bonds, as aforesaid, without
16 limit as to rate or amount. Such tax shall be in addition to
17 and in excess of all other taxes authorized to be levied by the
18 Municipal Joint Action Water Agency or by such county,
19 municipality, township, or public water district. The issuance
20 of such general obligation bonds shall be subject to the other
21 provisions of this paragraph (e), except for the provisions of
22 clause (i) of this subparagraph 4.

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

32 The proposition shall be substantially in the following
33 form:

34 -----

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

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

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

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

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

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

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

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

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

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

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

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

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

1 is located within or outside the boundaries of the acquiring
2 municipality or municipalities or entity.

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

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

30 (g) The valuation of all systems or waterworks acquired
31 under this Section and any other Division of this Article 11
32 may be pursuant to the formulas set forth in Section 11-139-12.
33 In determining just compensation for a water system or
34 waterworks system in an eminent domain action under this

1 Section, the court must consider the amount of any land
2 donations, impact fees, or similar payments by parties other
3 than the utility used in the construction of the system or
4 waterworks.

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

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

12 (735 ILCS 5/7-102) (from Ch. 110, par. 7-102)

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

1 authority in the premises, the purpose for which the property
2 is sought to be taken or damaged, a description of the
3 property, the names of all persons interested therein as owners
4 or otherwise as appearing of record, if known, or if not known
5 stating that fact and praying such court to cause the
6 compensation to be paid to the owner to be assessed. If it
7 appears that any person not in being, upon coming into being,
8 is, or may become or may claim to be, entitled to any interest
9 in the property sought to be appropriated or damaged the court
10 shall appoint some competent and disinterested person as
11 guardian ad litem, to appear for and represent such interest in
12 the proceeding and to defend the proceeding on behalf of the
13 person not in being, and any judgment entered in the proceeding
14 shall be as effectual for all purposes as though the person was
15 in being and was a party to the proceeding. If the proceeding
16 seeks to affect the property of persons under guardianship, the
17 guardians shall be made parties defendant. Persons interested,
18 whose names are unknown, may be made parties defendant by the
19 same descriptions and in the same manner as provided in other
20 civil cases. Where the property to be taken or damaged is a
21 common element of property subject to a declaration of
22 condominium ownership pursuant to the Condominium Property Act
23 or of a common interest community, the complaint shall name the
24 unit owners' association in lieu of naming the individual unit
25 owners and lienholders on individual units. Unit owners,
26 mortgagees and other lienholders may intervene as parties
27 defendant. For the purposes of this Section "common interest
28 community" shall have the same meaning as set forth in
29 subsection (c) of Section 9-102 of the Code of Civil Procedure.
30 "Unit owners' association" or "association" shall refer to both
31 the definition contained in Section 2 of the Condominium
32 Property Act and subsection (c) of Section 9-102 of the Code of
33 Civil Procedure. Where the property is sought to be taken or
34 damaged by the state for the purposes of establishing,

1 operating or maintaining any state house or state charitable or
2 other institutions or improvements, the complaint shall be
3 signed by the governor or such other person as he or she shall
4 direct, or as is provided by law. No property, except property
5 described in ~~either~~ Section 3 of the Sports Stadium Act,
6 property to be acquired in furtherance of actions under or
7 Article 11, Divisions 124, 126, 128, 130, 135, 136, and
8 Division 139, of the Illinois Municipal Code, property to be
9 acquired in furtherance of actions under Section 3.1 of the
10 Intergovernmental Cooperation Act, property that is a water
11 system or waterworks pursuant to the home rule powers of a unit
12 of local government, and property described as Site B in
13 Section 2 of the Metropolitan Pier and Exposition Authority
14 Act, belonging to a railroad or other public utility subject to
15 the jurisdiction of the Illinois Commerce Commission may be
16 taken or damaged, pursuant to the provisions of Article VII of
17 this Act, without the prior approval of the Illinois Commerce
18 Commission. This amendatory Act of 1991 (Public Act 87-760) is
19 declaratory of existing law and is intended to remove possible
20 ambiguities, thereby confirming the existing meaning of the
21 Code of Civil Procedure and of the Illinois Municipal Code in
22 effect before January 1, 1992 (the effective date of Public Act
23 87-760).

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