



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

**HB4289**

Introduced 1/5/2022, 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.

LRB102 20005 AWJ 28813 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  
14 part of its water distribution system, the municipality has  
15 the right to exercise eminent domain to acquire all or part of  
16 the 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  
19 that 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  
15 or otherwise, by either a municipality under subsection (a) or  
16 an 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  
26 system. The public utility shall provide information relative

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

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

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

1 created for the purpose of owning or operating a water system.

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

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

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

1 notice. The review and inspection of the assets of the company  
2 shall be over such period of time and carried out in such  
3 manner as is reasonable under the circumstances.

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

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

24 The municipality and the utility shall cooperate to  
25 resolve any dispute arising under this subsection. In the  
26 event the dispute under this subsection cannot be resolved,

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

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

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

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

1 such entities to acquire water systems or water works.

2 (g-5) No property belonging to a public utility providing  
3 water or sewer service subject to the jurisdiction of the  
4 Illinois Commerce Commission may be taken or damaged under the  
5 provisions of this Section without prior approval of the  
6 Illinois Commerce Commission. This subsection does not apply  
7 to any action under this Section commenced prior to the  
8 effective date of this amendatory Act of the 102nd General  
9 Assembly.

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

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

25 (j) Any contractor or subcontractor that performs work on  
26 a water system acquired by a municipality or municipalities



1 under this Section shall comply with the requirements of  
2 Section 30-22 of the Illinois Procurement Code. The contractor  
3 or subcontractor shall submit evidence of compliance with  
4 Section 30-22 to the municipality or municipalities.

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

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

9 (65 ILCS 5/11-139-12) (from Ch. 24, par. 11-139-12)

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

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

1 the costs of the assets, and the condition and remaining  
2 useful life of the assets may be considered while giving due  
3 account to the special use nature of the property as used for  
4 water and sewerage purposes.

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

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

16 (b) No property belonging to a public utility providing  
17 water or sewer service subject to the jurisdiction of the  
18 Illinois Commerce Commission may be taken or damaged under the  
19 provisions of this Section without prior approval of the  
20 Illinois Commerce Commission. This subsection does not apply  
21 to any action under this Section commenced prior to the  
22 effective date of this amendatory Act of the 102nd General  
23 Assembly.

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

25 Section 10. The Eminent Domain Act is amended by changing

1 Section 10-5-10 as follows:

2 (735 ILCS 30/10-5-10) (was 735 ILCS 5/7-102)

3 Sec. 10-5-10. Parties.

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

1 description of the property, and (iv) the names of all persons  
2 interested in the property as owners or otherwise, as  
3 appearing of record, if known, or if not known stating that  
4 fact; and shall pray the court to cause the compensation to be  
5 paid to the owner to be assessed.

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

16 (c) If the proceeding seeks to affect the property of  
17 persons under guardianship, the guardians shall be made  
18 parties defendant.

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

22 (e) When the property to be taken or damaged is a common  
23 element of property subject to a declaration of condominium  
24 ownership, pursuant to the Condominium Property Act, or of a  
25 common interest community, the complaint shall name the unit  
26 owners' association in lieu of naming the individual unit

1 owners and lienholders on individual units. Unit owners,  
2 mortgagees, and other lienholders may intervene as parties  
3 defendant. For the purposes of this Section, "common interest  
4 community" has the same meaning as set forth in subsection (c)  
5 of Section 9-102 of the Code of Civil Procedure. "Unit owners'  
6 association" or "association" shall refer to both the  
7 definition contained in Section 2 of the Condominium Property  
8 Act and subsection (c) of Section 9-102 of the Code of Civil  
9 Procedure.

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

16 (g) No property, except property described in Section 3 of  
17 the Sports Stadium Act, property to be acquired in furtherance  
18 of actions under Article 11, Divisions 124, 126, 128, 130,  
19 135, 136, and 139, of the Illinois Municipal Code, property to  
20 be acquired in furtherance of actions under Section 3.1 of the  
21 Intergovernmental Cooperation Act, property to be acquired  
22 that is a water system or waterworks pursuant to the home rule  
23 powers of a unit of local government (other than as provided in  
24 subsection (h)), ~~and~~ property described as Site B in Section 2  
25 of the Metropolitan Pier and Exposition Authority Act, and  
26 property that may be taken as provided in the Public-Private

1 Agreements for the South Suburban Airport Act belonging to a  
2 railroad or other public utility subject to the jurisdiction  
3 of the Illinois Commerce Commission, may be taken or damaged,  
4 pursuant to the provisions of this Act, without the prior  
5 approval of the Illinois Commerce Commission.

6 (h) No property belonging to a public utility providing  
7 water or sewer service subject to the jurisdiction of the  
8 Illinois Commerce Commission may be taken or damaged by  
9 eminent domain without prior approval of the Illinois Commerce  
10 Commission. This subsection does not apply to any action under  
11 this Section commenced prior to the effective date of this  
12 amendatory Act of the 102nd General Assembly.

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

14 Section 99. Effective date. This Act takes effect upon  
15 becoming law.