



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB1105

Introduced 1/12/2023, 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 property belonging to a public utility that provides water or sewer service and that is subject to the jurisdiction of the Illinois Commerce Commission may not 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.

LRB103 00106 AWJ 45107 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, the
24 Illinois Commerce Commission has no approval authority of any
25 eminent domain action brought by any governmental entity or
26 combination of such entities to acquire water systems or water

1 works except as is provided in subsection (h) of Section
2 10-5-10 of the Eminent Domain Act.

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

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

18 (j) Any contractor or subcontractor that performs work on
19 a water system acquired by a municipality or municipalities
20 under this Section shall comply with the requirements of
21 Section 30-22 of the Illinois Procurement Code. The contractor
22 or subcontractor shall submit evidence of compliance with
23 Section 30-22 to the municipality or municipalities.

24 (k) The municipality or municipalities acquiring the water
25 system shall offer available employee positions to the
26 qualified employees of the acquired water system.

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

2 (65 ILCS 5/11-139-12) (from Ch. 24, par. 11-139-12)

3 Sec. 11-139-12. Acquisition by eminent domain. For the
4 purpose of acquiring, constructing, extending, or improving
5 any combined waterworks and sewerage system under this
6 Division 139, or any property necessary or appropriate
7 therefor, any municipality has the right of eminent domain, as
8 provided by the Eminent Domain Act.

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

23 Additionally, in determining the fair cash market value of
24 existing utility facilities, whether real or personal,
25 consideration may be given to the depreciated value of all

1 facilities and fixtures constructed by the utility company and
2 payments made by the utility company in connection with the
3 acquisition or donation of any waterworks or sanitary sewage
4 system.

5 Except as is provided in subsection (h) of Section 10-5-10
6 of the Eminent Domain Act, ~~For the purposes of this Section~~ no
7 prior approval of the Illinois Commerce Commission, or any
8 other body having jurisdiction over the existing system, is
9 ~~shall be~~ required.

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

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

13 (735 ILCS 30/10-5-10) (was 735 ILCS 5/7-102)

14 Sec. 10-5-10. Parties.

15 (a) When the right (i) to take private property for public
16 use, without the owner's consent, (ii) to construct or
17 maintain any public road, railroad, plankroad, turnpike road,
18 canal, or other public work or improvement, or (iii) to damage
19 property not actually taken has been or is conferred by
20 general law or special charter upon any corporate or municipal
21 authority, public body, officer or agent, person,
22 commissioner, or corporation and when (i) the compensation to
23 be paid for or in respect of the property sought to be
24 appropriated or damaged for the purposes mentioned cannot be

1 agreed upon by the parties interested, (ii) the owner of the
2 property is incapable of consenting, (iii) the owner's name or
3 residence is unknown, or (iv) the owner is a nonresident of the
4 State, then the party authorized to take or damage the
5 property so required, or to construct, operate, and maintain
6 any public road, railroad, plankroad, turnpike road, canal, or
7 other public work or improvement, may apply to the circuit
8 court of the county where the property or any part of the
9 property is situated, by filing with the clerk a complaint.
10 The complaint shall set forth, by reference, (i) the
11 complainant's authority in the premises, (ii) the purpose for
12 which the property is sought to be taken or damaged, (iii) a
13 description of the property, and (iv) the names of all persons
14 interested in the property as owners or otherwise, as
15 appearing of record, if known, or if not known stating that
16 fact; and shall pray the court to cause the compensation to be
17 paid to the owner to be assessed.

18 (b) If it appears that any person not in being, upon coming
19 into being, is, or may become or may claim to be, entitled to
20 any interest in the property sought to be appropriated or
21 damaged, the court shall appoint some competent and
22 disinterested person as guardian ad litem to appear for and
23 represent that interest in the proceeding and to defend the
24 proceeding on behalf of the person not in being. Any judgment
25 entered in the proceeding shall be as effectual for all
26 purposes as though the person was in being and was a party to

1 the proceeding.

2 (c) If the proceeding seeks to affect the property of
3 persons under guardianship, the guardians shall be made
4 parties defendant.

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

8 (e) When the property to be taken or damaged is a common
9 element of property subject to a declaration of condominium
10 ownership, pursuant to the Condominium Property Act, or of a
11 common interest community, the complaint shall name the unit
12 owners' association in lieu of naming the individual unit
13 owners and lienholders on individual units. Unit owners,
14 mortgagees, and other lienholders may intervene as parties
15 defendant. For the purposes of this Section, "common interest
16 community" has the same meaning as set forth in subsection (c)
17 of Section 9-102 of the Code of Civil Procedure. "Unit owners'
18 association" or "association" shall refer to both the
19 definition contained in Section 2 of the Condominium Property
20 Act and subsection (c) of Section 9-102 of the Code of Civil
21 Procedure.

22 (f) When the property is sought to be taken or damaged by
23 the State for the purposes of establishing, operating, or
24 maintaining any State house or State charitable or other
25 institutions or improvements, the complaint shall be signed by
26 the Governor, or the Governor's designee, or as otherwise

1 provided by law.

2 (g) No property, except property described in Section 3 of
3 the Sports Stadium Act, property to be acquired in furtherance
4 of actions under Article 11, Divisions 124, 126, 128, 130,
5 135, 136, and 139, of the Illinois Municipal Code, property to
6 be acquired in furtherance of actions under Section 3.1 of the
7 Intergovernmental Cooperation Act, property to be acquired
8 that is a water system or waterworks pursuant to the home rule
9 powers of a unit of local government, ~~and~~ property described
10 as Site B in Section 2 of the Metropolitan Pier and Exposition
11 Authority Act, and property that may be taken as provided in
12 the Public-Private Agreements for the South Suburban Airport
13 Act belonging to a railroad or other public utility subject to
14 the jurisdiction of the Illinois Commerce Commission, may be
15 taken or damaged, pursuant to the provisions of this Act,
16 without the prior approval of the Illinois Commerce
17 Commission.

18 (h) Notwithstanding subsection (g), property belonging to
19 a public utility that provides water or sewer service and that
20 is subject to the jurisdiction of the Illinois Commerce
21 Commission may not be taken or damaged by eminent domain
22 without prior approval of the Illinois Commerce Commission.
23 This subsection does not apply to any action commenced prior
24 to the effective date of this amendatory Act of the 103rd
25 General Assembly under this Section or Section 11-124-5 or
26 11-139-12 of the Illinois Municipal Code.

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

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.