



Filed: 2/8/2006

09400HB4333ham001

LRB094 16381 BDD 55574 a

1 AMENDMENT TO HOUSE BILL 4333

2 AMENDMENT NO. _____. Amend House Bill 4333 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, and
3 counties, upon approval by an ordinance adopted by the
4 corporate authorities of each member municipality, public
5 water district, township, or county. This agreement may be
6 amended at any time upon the adoption of concurring ordinances
7 by the corporate authorities of all member municipalities,
8 public water districts, townships, and counties. The agreement
9 may provide for additional municipalities, public water
10 districts, townships in counties with a population under
11 700,000, or counties to join the Agency upon adoption of an
12 ordinance by the corporate authorities of the joining
13 municipality, public water district, township, or county, and
14 upon such consents, conditions and approvals of the governing
15 body of the Municipal Joint Action Water Agency and of existing
16 member municipalities, public water districts, townships, and
17 counties as shall be provided in the agreement. The agreement
18 shall provide the manner and terms on which any municipality,
19 public water district, township, or county may withdraw from
20 membership in the Municipal Joint Action Water Agency and on
21 which the Agency may terminate and dissolve in whole or in
22 part. The agreement shall set forth the corporate name of the
23 Municipal Joint Action Water Agency and its duration. Promptly
24 upon any agreement establishing a Municipal Joint Action Water
25 Agency being entered into, or upon the amending of any such
26 agreement, a copy of such agreement or amendment shall be filed
27 in the office of the Secretary of State of Illinois. Promptly
28 upon the addition or withdrawal of any municipality, public
29 water district, township in a county with a population under
30 700,000, or county, or upon the dissolution of a Municipal
31 Joint Action Water Agency, that fact shall be certified by an
32 officer of the Agency to the Secretary of State of Illinois.

33 (b) The governing body of any Municipal Joint Action Water
34 Agency established pursuant to this Section 3.1 shall be a

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

24 The Board of Directors shall determine the general policy
25 of the Municipal Joint Action Water Agency, shall approve the
26 annual budget, shall make all appropriations (which may include
27 appropriations made at any time in addition to those made in
28 any annual appropriation document), shall approve all
29 contracts for the purchase or sale of water, shall adopt any
30 resolutions providing for the issuance of bonds or notes by the
31 Agency, shall adopt its by-laws, rules and regulations, and
32 shall have such other powers and duties as may be prescribed in
33 the agreement. Such agreement may further specify those powers
34 and actions of the Municipal Joint Action Water Agency which

1 shall be authorized only upon votes of greater than a majority
2 of all Directors or only upon consents of the corporate
3 authorities of a certain number of member municipalities,
4 public water districts, townships, or counties.

5 The agreement may provide for the establishment of an
6 Executive Committee to consist of the municipal manager or
7 other elected or appointed official of each member
8 municipality, public water district, township, or county, as
9 designated by ordinance from time to time by the corporate
10 authorities of the member municipality, public water district,
11 township, or county, and may prescribe powers and duties of the
12 Executive Committee for the efficient administration of the
13 Agency.

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

29 A Municipal Joint Action Water Agency shall have such
30 powers as shall be provided in the agreement establishing it,
31 which may include, but need not be limited to, the following
32 powers:

33 (i) to sue or be sued;

34 (ii) to apply for and accept gifts or grants or loans

1 of funds or property or financial or other aid from any
2 public agency or private entity;

3 (iii) to acquire, hold, sell, lease as lessor or
4 lessee, transfer or dispose of such real or personal
5 property, or interests therein, as it deems appropriate in
6 the exercise of its powers, and to provide for the use
7 thereof by any member municipality, public water district,
8 township, or county;

9 (iv) to make and execute all contracts and other
10 instruments necessary or convenient to the exercise of its
11 powers (including contracts with member municipalities,
12 with public water districts, with townships, and with
13 counties on behalf of county service areas); and

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

17 Member municipalities, public water districts, townships,
18 or counties may, for the purposes of, and upon request by, the
19 Municipal Joint Action Water Agency, exercise the power of
20 eminent domain available to them, convey property so acquired
21 to the Agency for the cost of acquisition, and be reimbursed
22 for all expenses related to this exercise of eminent domain
23 power on behalf of the Agency.

24 All property, income and receipts of or transactions by a
25 Municipal Joint Action Water Agency shall be exempt from all
26 taxation, the same as if it were the property, income or
27 receipts of or transaction by the member municipalities, public
28 water districts, townships, or counties.

29 (d) A Municipal Joint Action Water Agency established
30 pursuant to this Section 3.1 shall have the power to buy water
31 and to enter into contracts with any person, corporation or
32 public agency (including any member municipality, public water
33 district, township, or county) for that purpose. Any such
34 contract made by an Agency for a supply of water may contain

1 provisions whereby the Agency is obligated to pay for the
2 supply of water without setoff or counterclaim and irrespective
3 of whether the supply of water is ever furnished, made
4 available or delivered to the Agency or whether any project for
5 the supply of water contemplated by any such contract is
6 completed, operable or operating and notwithstanding any
7 suspension, interruption, interference, reduction or
8 curtailment of the supply of water from such project. Any such
9 contract may provide that if one or more of the other
10 purchasers defaults in the payment of its obligations under
11 such contract or a similar contract made with the supplier of
12 the water one or more of the remaining purchasers party to such
13 contract or such similar contract shall be required to pay for
14 all or a portion of the obligations of the defaulting
15 purchasers. No such contract may have a term in excess of 50
16 years.

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

1 any statutory or constitutional limitation. Any such contract
2 of a public agency to buy water shall be a continuing, valid
3 and binding obligation of such public agency payable from such
4 revenues.

5 A Municipal Joint Action Water Agency shall establish fees
6 and charges for the purchase of water from it or for the use of
7 its facilities. No prior appropriation shall be required by
8 either the Municipal Joint Action Water Agency or any public
9 agency before entering into any contract authorized by this
10 paragraph (d).

11 The changes in this Section made by this amendatory Act of
12 1984 are intended to be declarative of existing law.

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

1 interest accruing or to accrue on such bonds or notes being
2 paid or redeemed or for paying any other costs in connection
3 with any such payment or redemption.

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

34 The resolution authorizing the issuance of any bonds or

1 notes pursuant to this paragraph (e) shall constitute a
2 contract with the holders of the bonds and notes. The
3 resolution may contain such covenants and restrictions with
4 respect to the purchase or sale of water by the Agency and the
5 contracts for such purchases or sales, the operation of the
6 joint waterworks system or water supply system, the issuance of
7 additional bonds or notes by the Agency, the security for the
8 bonds and notes, and any other matters, as may be deemed
9 necessary or advisable by the Board of Directors to assure the
10 payment of the bonds or notes of the Agency.

11 3. The resolution authorizing the issuance of bonds or
12 notes by a Municipal Joint Action Water Agency shall pledge and
13 provide for the application of revenues derived from the
14 operation of the Agency's joint waterworks or water supply
15 system (including from contracts for the sale of water by the
16 Agency) and investment earnings thereon to the payment of the
17 cost of operation and maintenance of the system (including
18 costs of purchasing water), to provision of adequate
19 depreciation, reserve or replacement funds with respect to the
20 system or the bonds or notes, and to the payment of principal,
21 premium, if any, and interest on the bonds or notes of the
22 Agency (including amounts for the purchase of such bonds or
23 notes). The resolution shall provide that revenues of the
24 Municipal Joint Action Water Agency so derived from the
25 operation of the system, sufficient (together with other
26 receipts of the Agency which may be applied to such purposes)
27 to provide for such purposes, shall be set aside as collected
28 in a separate fund or funds and used for such purposes. The
29 resolution may provide that revenues not required for such
30 purposes may be used for any proper purpose of the Agency or
31 may be returned to member municipalities.

32 Any notes of a Municipal Joint Action Water Agency issued
33 in anticipation of the issuance of bonds by it may, in
34 addition, be secured by a pledge of proceeds of bonds to be

1 issued by the Agency, as specified in the resolution
2 authorizing the issuance of such notes.

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

27 (ii) If the Agreement so provides and subject to the
28 referendum provided for in clause (iii) of this subparagraph 4
29 of this paragraph (e), the Municipal Joint Action Water Agency
30 may borrow money for corporate purposes on the credit of the
31 Municipal Joint Action Water Agency, and issue general
32 obligation bonds therefor, in such amounts and form and on such
33 conditions as it shall prescribe, but shall not become indebted
34 in any manner or for any purpose in an amount including

1 existing indebtedness in the aggregate which exceeds 5.75% of
2 the aggregate value of the taxable property within the
3 boundaries of the participating municipalities, public water
4 districts, townships, and county service areas within a member
5 county determined by the governing body of the county by
6 resolution to be served by the Municipal Joint Action Water
7 Agency (including any territory added to the Agency after the
8 issuance of such general obligation bonds), collectively
9 defined as the "Service Area", as equalized and assessed by the
10 Department of Revenue and as most recently available at the
11 time of the issue of said bonds. Before or at the time of
12 incurring any such general obligation indebtedness, the
13 Municipal Joint Action Water Agency shall provide for the
14 collection of a direct annual tax, which shall be unlimited as
15 to rate or amount, sufficient to pay the interest on such debt
16 as it falls due and also to pay and discharge the principal
17 thereof at maturity, which shall be within 40 years after the
18 date of issue thereof. Such tax shall be levied upon and
19 collected from all of the taxable property within the
20 territorial boundaries of such Service Area at the time of the
21 referendum provided for in clause (iii) and shall be levied
22 upon and collected from all taxable property within the
23 boundaries of any territory subsequently added to the Service
24 Area. Dissolution of the Municipal Joint Action Water Agency
25 for any reason shall not relieve the taxable property within
26 such Service Area from liability for such tax. Liability for
27 such tax for property transferred to or released from such
28 Service Area shall be determined in the same manner as for
29 general obligation bonds of such county, if in an
30 unincorporated area, and of such municipality, if within the
31 boundaries thereof. The clerk or other officer of the Municipal
32 Joint Action Water Agency shall file a certified copy of the
33 resolution or ordinance by which such bonds are authorized to
34 be issued and such tax is levied with the County Clerk or

1 Clerks of the county or counties containing the Service Area,
 2 and such filing shall constitute, without the doing of any
 3 other act, full and complete authority for such County Clerk or
 4 Clerks to extend such tax for collection upon all the taxable
 5 property within the Service Area subject to such tax in each
 6 and every year, as required, in amounts sufficient to pay the
 7 principal of and interest on such bonds, as aforesaid, without
 8 limit as to rate or amount. Such tax shall be in addition to
 9 and in excess of all other taxes authorized to be levied by the
 10 Municipal Joint Action Water Agency or by such county,
 11 municipality, township, or public water district. The issuance
 12 of such general obligation bonds shall be subject to the other
 13 provisions of this paragraph (e), except for the provisions of
 14 clause (i) of this subparagraph 4.

15 (iii) No issue of general obligation bonds of the Municipal
 16 Joint Action Water Agency (except bonds to refund an existing
 17 bonded indebtedness) shall be authorized unless the Municipal
 18 Joint Action Water Agency certifies the proposition of issuing
 19 such bonds to the proper election authorities, who shall submit
 20 the proposition to the voters in the Service Area at an
 21 election in accordance with the general election law, and the
 22 proposition has been approved by a majority of those voting on
 23 the proposition.

24 The proposition shall be substantially in the following
 25 form:

26 -----
 27 Shall general obligation
 28 bonds for the purpose of (state
 29 purpose), in the sum not to
 30 exceed \$....(insert amount), Yes
 31 be issued by the -----
 32 (insert corporate name of the No
 33 Municipal Joint Action Water
 34 Agency)?

1 -----

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

17 6. A holder of any bond or note issued pursuant to this
18 paragraph (e) may, in any civil action, mandamus or other
19 proceeding, enforce and compel performance of all duties
20 required to be performed by the Agency or such counties, as
21 provided in the authorizing resolution, or by any of the public
22 agencies contracting with the Agency to purchase water,
23 including the imposition of fees and charges, the collection of
24 sufficient revenues and the proper application of revenues as
25 provided in this paragraph (e) and the levying, extension and
26 collection of such taxes.

27 7. In addition, the resolution authorizing any bonds or
28 notes issued pursuant to this paragraph (e) may provide for a
29 pledge, assignment, lien or security interest, for the benefit
30 of the holders of any or all bonds or notes of the Agency, (i)
31 on any or all revenues derived from the operation of the joint
32 waterworks or water supply system (including from contracts for
33 the sale of water) and investment earnings thereon or (ii) on
34 funds or accounts securing the payment of the bonds or notes as

1 provided in the authorizing resolution. In addition, such a
2 pledge, assignment, lien or security interest may be made with
3 respect to any receipts of the Agency which the agreement
4 establishing the Agency authorizes it to apply to payment of
5 bonds or notes. Any such pledge, assignment, lien or security
6 interest for the benefit of holders of bonds or notes shall be
7 valid and binding from the time the bonds or notes are issued,
8 without any physical delivery or further act, and shall be
9 valid and binding as against or prior to any claims of any
10 other party having any claims of any kind against the Agency
11 irrespective of whether such other parties have notice of such
12 pledge, assignment, lien or security interest.

13 A resolution of a Municipal Joint Water Agency authorizing
14 the issuance of bonds or notes pursuant to this paragraph (e)
15 may provide for the appointment of a corporate trustee with
16 respect to any or all of such bonds or notes (which trustee may
17 be any trust company or state or national bank having the power
18 of a trust company within Illinois). In that event, the
19 resolution shall prescribe the rights, duties and powers of the
20 trustee to be exercised for the benefit of the Agency and the
21 protection of the holders of such bonds or notes. The
22 resolution may provide for the trustee to hold in trust, invest
23 and use amounts in funds and accounts created as provided in
24 the resolution. The resolution authorizing the bonds or notes
25 may provide for the assignment and direct payment to the
26 trustee of amounts owed by public agencies to the Municipal
27 Joint Action Water Agency under water sales contracts for
28 application by the trustee to the purposes for which such
29 revenues are to be used as provided in this paragraph (e) and
30 as provided in the authorizing resolution. Upon receipt of
31 notice of such assignment, the public agency shall thereafter
32 make the assigned payments directly to such trustee.

33 Nothing in this Section authorizes a Joint Action Water
34 Agency to provide water service directly to residents within a

1 municipality or in territory within one mile or less of the
2 corporate limits of a municipality that operates a public water
3 supply unless the municipality has consented in writing to such
4 service being provided.

5 (Source: P.A. 90-210, eff. 7-25-97; 90-595, eff. 1-1-99;
6 91-134, eff. 1-1-00.)

7 Section 10. The Illinois Municipal Code is amended by
8 adding Section 11-124-5.1 as follows:

9 (65 ILCS 5/11-124-5.1 new)

10 Sec. 11-124-5.1. Acquisition of water systems by eminent
11 domain.

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

26 (b) Where a water system that is owned by a public utility
27 (as defined in the Public Utilities Act) provides water to
28 customers located entirely in 2 or more municipalities, the
29 system may be acquired by either or both of the municipalities
30 by eminent domain if there is in existence an intergovernmental
31 agreement between the municipalities served providing for
32 acquisition.

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

23 (d) In the case of acquisition by a municipality or
24 municipalities or entity created by law to own or operate a
25 water system under this Section, service must be provided to
26 all retail customers of the system at the time of acquisition
27 without discrimination in rates based on whether the customer
28 is located within or outside the boundaries of the acquiring
29 municipality or municipalities or entity.

30 (e) For the purposes of this Section, "system" includes all
31 assets reasonably necessary to provide water service to a
32 contiguous or compact geographical service area and include,
33 but are not limited to, interests in real estate, all wells,
34 pipes, treatment plants, pumps and other physical apparatus,

1 data and records of facilities and customers, fire hydrants,
2 equipment, or vehicles and also includes service agreements and
3 obligations derived from use of the assets, whether or not the
4 assets are contiguous to the municipality, municipalities, or
5 entity created for the purpose of owning or operating a water
6 system.

7 (f) The valuation of all systems or waterworks acquired
8 under this Section and any other Division of this Article 11
9 shall be pursuant to the formulas set forth in Section
10 11-139-12.

11 (g) Notwithstanding any other provision of law, the
12 Illinois Commerce Commission has no approval authority of any
13 eminent domain action brought by any governmental entity or
14 combination of such entities to acquire water systems or water
15 works.

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

18 (735 ILCS 5/7-102) (from Ch. 110, par. 7-102)

19 Sec. 7-102. Parties. Where the right to take private
20 property for public use, without the owner's consent or the
21 right to construct or maintain any public road, railroad,
22 plankroad, turnpike road, canal or other public work or
23 improvement, or which may damage property not actually taken
24 has been heretofore or shall hereafter be conferred by general
25 law or special charter upon any corporate or municipal
26 authority, public body, officer or agent, person, commissioner
27 or corporation and the compensation to be paid for or in
28 respect of the property sought to be appropriated or damaged
29 for the purposes mentioned cannot be agreed upon by the parties
30 interested, or in case the owner of the property is incapable
31 of consenting, or the owner's name or residence is unknown, or
32 the owner is a nonresident of the state, the party authorized

1 to take or damage the property so required, or to construct,
2 operate and maintain any public road, railroad, plankroad,
3 turnpike road, canal or other public work or improvement, may
4 apply to the circuit court of the county where the property or
5 any part thereof is situated, by filing with the clerk a
6 complaint, setting forth, by reference, his, her or their
7 authority in the premises, the purpose for which the property
8 is sought to be taken or damaged, a description of the
9 property, the names of all persons interested therein as owners
10 or otherwise as appearing of record, if known, or if not known
11 stating that fact and praying such court to cause the
12 compensation to be paid to the owner to be assessed. If it
13 appears that any person not in being, upon coming into being,
14 is, or may become or may claim to be, entitled to any interest
15 in the property sought to be appropriated or damaged the court
16 shall appoint some competent and disinterested person as
17 guardian ad litem, to appear for and represent such interest in
18 the proceeding and to defend the proceeding on behalf of the
19 person not in being, and any judgment entered in the proceeding
20 shall be as effectual for all purposes as though the person was
21 in being and was a party to the proceeding. If the proceeding
22 seeks to affect the property of persons under guardianship, the
23 guardians shall be made parties defendant. Persons interested,
24 whose names are unknown, may be made parties defendant by the
25 same descriptions and in the same manner as provided in other
26 civil cases. Where the property to be taken or damaged is a
27 common element of property subject to a declaration of
28 condominium ownership pursuant to the Condominium Property Act
29 or of a common interest community, the complaint shall name the
30 unit owners' association in lieu of naming the individual unit
31 owners and lienholders on individual units. Unit owners,
32 mortgagees and other lienholders may intervene as parties
33 defendant. For the purposes of this Section "common interest
34 community" shall have the same meaning as set forth in

1 subsection (c) of Section 9-102 of the Code of Civil Procedure.
2 "Unit owners' association" or "association" shall refer to both
3 the definition contained in Section 2 of the Condominium
4 Property Act and subsection (c) of Section 9-102 of the Code of
5 Civil Procedure. Where the property is sought to be taken or
6 damaged by the state for the purposes of establishing,
7 operating or maintaining any state house or state charitable or
8 other institutions or improvements, the complaint shall be
9 signed by the governor or such other person as he or she shall
10 direct, or as is provided by law. No property, except property
11 described in ~~either~~ Section 3 of the Sports Stadium Act,
12 property to be acquired in furtherance of actions under ~~or~~
13 Article 11, Divisions 124, 126, 128, 130, 135, 136, and
14 ~~Division~~ 139, of the Illinois Municipal Code, property to be
15 acquired in furtherance of actions under Section 3.1 of the
16 Intergovernmental Cooperation Act, property that is a water
17 system or waterworks pursuant to the home rule powers of a unit
18 of local government, and property described as Site B in
19 Section 2 of the Metropolitan Pier and Exposition Authority
20 Act, belonging to a railroad or other public utility subject to
21 the jurisdiction of the Illinois Commerce Commission may be
22 taken or damaged, pursuant to the provisions of Article VII of
23 this Act, without the prior approval of the Illinois Commerce
24 Commission. This amendatory Act of 1991 (Public Act 87-760) is
25 declaratory of existing law and is intended to remove possible
26 ambiguities, thereby confirming the existing meaning of the
27 Code of Civil Procedure and of the Illinois Municipal Code in
28 effect before January 1, 1992 (the effective date of Public Act
29 87-760).

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