

HB1934



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB1934

by Rep. Emily McAsey

SYNOPSIS AS INTRODUCED:

65 ILCS 5/11-124-5

Amends the Illinois Municipal Code. Provides that if a water system owned by a public utility is to be acquired by a majority of the affected municipalities by eminent domain, then there must be an intergovernmental agreement in existence between the acquiring municipalities providing for the acquisition. Effective July 1, 2011.

LRB097 09074 KMW 49209 b

A BILL FOR

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 Section 11-124-5 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 part
14 of its water distribution system, the municipality has the
15 right to exercise eminent domain to acquire all or part of the
16 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 that
19 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 16 Utilities Act) provides water to
2 customers located in 2 or more municipalities, the system may
3 be acquired by a majority ~~either or all~~ of the municipalities
4 by eminent domain ~~if there is in existence an intergovernmental~~
5 ~~agreement between the municipalities served providing for~~
6 ~~acquisition.~~ If the system is to be acquired by more than one
7 municipality, then there must be an intergovernmental
8 agreement in existence between the acquiring municipalities
9 providing for the acquisition.

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

1 presumed to be the total number of customers within the system.
2 The public utility shall provide information relative to the
3 number of customers within each municipality and within the
4 system within 60 days after any such request by a municipality.

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

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

1 contiguous to the municipality, municipalities, or entity
2 created for the purpose of owning or operating a water system.

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

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

25 In the absence of other agreement, the utility must respond
26 to any notice by the municipality concerning its review and

1 inspection within 21 days after receiving the notice. The
2 review and inspection of the assets of the company shall be
3 over such period of time and carried out in such manner as is
4 reasonable under the circumstances.

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

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

25 The municipality and the utility shall cooperate to resolve
26 any dispute arising under this subsection. In the event the

1 dispute under this subsection cannot be resolved, either party
2 may request relief from the circuit court in any county in
3 which the water system is located, with the prevailing party to
4 be awarded such relief as the court deems appropriate under the
5 discovery abuse sanctions currently set forth in the Illinois
6 Code of Civil Procedure.

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

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

24 (g) Notwithstanding any other provision of law, the
25 Illinois Commerce Commission has no approval authority of any
26 eminent domain action brought by any governmental entity or

1 combination of such entities to acquire water systems or water
2 works.

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 Utilities
10 Act for the reorganization of the public utility company or
11 (ii) the majority control of the company changes through a
12 stock sale, a sale of assets, a merger (other than an internal
13 reorganization) or otherwise. For the purpose of this Section,
14 "public utility company" means the public utility providing
15 water service and includes any of its corporate parents,
16 subsidiaries, or affiliates possessing a franchised water
17 service in the State.

18 (Source: P.A. 94-1007, eff. 1-1-07.)

19 Section 99. Effective date. This Act takes effect July 1,
20 2011.