

AN ACT concerning local government.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Illinois Municipal Code is amended by changing Sections 11-124-5 and 11-139-12 as follows:

(65 ILCS 5/11-124-5)

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

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

(b) Where a water system that is owned by a public utility

(as defined in the Public Utilities Act) provides water to customers located in 2 or more municipalities, the system may be acquired by a majority of the municipalities by eminent domain. If the system is to be acquired by more than one municipality, then there must be an intergovernmental agreement in existence between the acquiring municipalities providing for the acquisition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 10-5-10. Parties.

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

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

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

the proceeding.

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

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

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

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

provided by law.

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

(h) Notwithstanding subsection (g), 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, except for property to be acquired by a municipality with 140,000 or more inhabitants or a regional water commission formed under Article 11, Division 135.5 of the Illinois Municipal Code or a municipality that is a member of such a

regional water commission, only in furtherance of purposes authorized under Article 11, Division 135.5 of the Illinois Municipal Code, and limited solely to interests in real property and not improvements to or assets on the real property belonging to a public utility that provides water or sewer service and that is subject to the jurisdiction of the Illinois Commerce Commission. This subsection does not apply to any action commenced prior to the effective date of this amendatory Act of the 103rd General Assembly under this Section or Section 11-124-5 or 11-139-12 of the Illinois Municipal Code.

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

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