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TO: Allison M. W. Swisher, City of Joliet, Director, Department of Public Utilities

FROM: Barbara A. Adams, Special Counsel

Re: Joliet Alternative Water Source Program
Alternative Forms of Governance and Operation—Lake Michigan Water System

As the City of Joliet continues its work toward obtaining a source of supply of Lake Michigan water, City staff has had discussions with other municipalities in the region about options for intergovernmental cooperation in acquiring, constructing and managing a new water supply and system. This memo outlines and analyzes the legal structures that are available, including special units of government that focus on water, such as a water commission, joint action water agency and public water district, as well as the contract-based alternative of the City taking on the role of primary water wholesaler to other municipalities.

EXECUTIVE SUMMARY

The City of Joliet has a range of alternatives available for engaging in intergovernmental cooperation with other municipalities in the region to bring Lake Michigan water to the region. Across the range of issues that should be considered, you will find that on certain topics, the powers, duties and procedures for the various specialty water entities are rather similar. For example, the powers to acquire a water supply, construct and install a water system, sell water (at least within an entity's borders) and set water rates are quite similar in many ways, perhaps in part because these subjects are key to the ability of specialty water entities to issue bonds and otherwise borrow funds.

The City will find, however, that there are some differences across the options that can significantly affect the City's interests and policy choices. These may include:

- The creation of and membership in the board governing the water entity, including who is empowered to make the appointments to the board and the number of board members each member municipality can appoint.
- The relative voting rights of the board members. In all of the water entities discussed in this memo, each board member is entitled to one vote.
- The ability to construct water system facilities outside of the water entity's

boundaries. Since there is no water supply source immediately proximate to the City limits, the ability to construct sufficient facilities to connect to a water supply source will be important.

- The ability to provide water service outside of the territory of the water entity's boundaries. Some entities allow service outside of the entity's territory, while others largely prohibit it or allow it only with consent of nearby municipalities.
- The ability to issue general obligation bonds, including the ability to impose a tax, such as sales or property tax, to provide for repayment of those bonds. This can be useful in the early stages of development of a water system, when the receipt of water system revenues will not occur for a longer period of time.
- The ability to acquire the rights in land necessary to construct and install the water system facilities. The power of eminent domain is important, and all but the joint action water agency have this direct power. The right to use highways for water system facilities is also important, and neither the joint action water agency on its own nor the City have this power.

Depending on the City's desired options, some changes to existing statutes may be required. These will need to be reviewed with other participating municipalities as well as presented to the General Assembly to gain support and approval.

In addition, the existing Public Water Commission may provide a vehicle for the pursuit of a Lake Michigan water supply, if the members of that Commission wish to move in that direction. In the alternative, the existing PWC can continue to exist and pursue the Kankakee River water option, or various members can withdraw if they wish. If all members withdraw, the Public Water Commission would be dissolved.

I. TYPES OF WATER ENTITIES AND THEIR FEATURES

To establish a new unit of government for governance and operation of a water source of supply and water system, a variety of topics should be considered in order to determine the best structure to address the primary concerns. Illinois statutes contain four major types of water entities:

- the public water district ("PWD"), governed by the Public Water District Act, 70 ILCS 3705/0.01 *et seq.*;
- the joint action water agency ("JAWA"), governed by Section 3.1 of the Intergovernmental Cooperation Act, 5 ILCS 220/3.1;
- the water commission ("WC"), governed by Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135; and
- the county water commission ("CWC"), governed by both Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135, and the Water Commission Act of 1985, 70 ILCS 3720/0.001 *et seq.*

Information on key features of each type are included in the table accompanying this memo, entitled "Comparisons of Types of Water Entity Organizations Under Illinois Law." The discussion below describes how a range of topics are addressed for each type of entity, to assist

in making comparisons of the features that are most important to the City. The alternative of the City of Joliet serving as a wholesale water provider is also discussed.

A. Creation of Water Entities: Members

PWDs, JAWAs, WCs and CWCs are each considered a separate unit of government under Illinois law. Each is created through a different type of process, and some can be created more quickly than others.

The only entity created through the judicial system is the PWD, which is created by a referendum of the voters in the proposed PWD after the court finds that a petition to create a PWD meets the standards of the Public Water District Act, 70 ILCS 3705/0.01 *et seq.* PWDs do not have “members.” The PWD must have a contiguous land area with a population not more than 500,000. This is likely to be the longest process for creating a water entity.

JAWAs are created through approval of an intergovernmental agreement by its members, which can be municipal corporations, counties, townships (in counties under 700,000 population), PWDs, and state universities. 5 ILCS 220/3.1(a).

WCs and CWCs are created when municipal corporations and other water commissions each adopt an ordinance or resolution to jointly acquire or construct and operate a waterworks system and/or common source of supply. 65 ILCS 5/11-135-2. Each municipal corporation or water commission passing such an ordinance or resolution is a member of the WC or CWC.

If the City decides to become a wholesale provider of water to other communities, no special entity structure is required; the legal relationship will be established by the water purchase and sale contract between the City and the customer municipality.

B. Governing Bodies: Voting

Appointments of members of the governing boards of these entities occur in different ways, and this can affect the extent of influence and control each participant may have in the different types of entities. In all of the entities described in this memo, each member of the governing body has one vote. However, the composition of the governing board may not be limited to the members of the entity. For example, the standard WC includes a county representative, and a CWC has a board with both county and municipal appointees.

PWDs are governed by a board of trustees, typically with seven members. If the PWD is not located in a single township or municipality but instead is in one or more counties, the trustees are appointed: (1) if the PWD is located in a single county, by the presiding officer of the county board with advice and consent of the county board; or (2) if the PWD is located in more than one county, trustees who reside in each county are to be proportionately selected by the county presiding officers and county boards of each county, with the proportion based on the number of residents in each county to the total number of residents in the PWD. Election of trustees by the voters can be approved by a referendum of the voters in a PWD. PWD trustees serve five-year terms and each trustee has one vote. Officers of the PWD board are elected by the PWD trustees.

JAWAs are governed by a board of directors that is largely made up of elected officials. For new JAWAs (created after August 24, 2018), each member appoints a director by ordinance. That director is to be appointed from the following officials, depending on the type of entity is making the appointment:

- Municipalities: Mayor/President or elected member of corporate authorities or another elected official.
- PWDs: Chairman or elected member of board or another elected official.
- Counties: County board chairman, chief executive officer, county board member appointed by County board chairman, or another elected official.
- Townships: Supervisor or elected member of corporate authorities or another elected official.
- State universities: an appointee.

Each director has one vote. The intergovernmental agreement creating the JAWA provides for the term of each director, and can authorize appointment of alternate directors for all members other than state universities. The board elects its own officers.

JAWAs can also provide for an executive committee and establish its powers and duties in the intergovernmental agreement. Typically, this committee has a more administrative or managerial focus, while the board of directors sets policy direction. Each member may appoint a municipal manager or other elected or appointed official to the executive committee.

WCs are governed by a board of commissioners. Each member municipality or water commission appoints one commissioner. In addition, one commissioner is appointed by the County Board chairman for the county in which the major part of the water works of the commission are (or will be) located. Commissioners must be from the following categories:

- Municipalities: an elector, chief administrator, member of the governing body, municipal officer or employee, appointed by Mayor/President with approval of corporate authorities.
- Water commissions: appointed by water commission board.
- Counties: an elector in the County, member of the county governing board or a county officer or employee, appointed by presiding officer of the county board with advice and consent of county board.

Each commissioner has one vote and serves a six-year term; terms are staggered by lot when the commission is formed. The board elects its own officers.

CWCs are also governed by a board of commissioners. However, the Water Commission Act of 1985, which governs DuPage Water Commission, changes the composition and appointment of the board from that of the standard WC. Two commissioners are appointed from each county board district: one by the county board chairman with advice and consent of the county board, and one elected by the mayors of municipalities having their greatest percentage of population residing within the district. The mayors in each county board district meet to elect a commissioner at a meeting called by the mayor of the municipal member of the CWC having the greatest population within that district; not less than 10 days' notice shall be given to each mayor entitled to vote. The chairman of the CWC is appointed by the county board chairman, with the advice and consent of the county board, and is not one of the county board district positions. The vice-chairman is appointed by and from the commissioners appointed by the municipal mayors.

If the City acts as wholesale water provider, no new governing body is required. In some cases, water purchase and sale contracts may include a method for purchaser input to be obtained.

C. Additional Members; Withdrawing Members

JAWAs can add new members upon the consents, conditions and approvals of the JAWA Board and the governing bodies of the existing members, as provided in the intergovernmental agreement. Members may withdraw in the manner and on the terms provided in the intergovernmental agreement, if there are no outstanding bonds or notes of the JAWA.

WCs or CWCs can add new members upon adoption of an ordinance or resolution of the new member, and approval of both (1) the majority of the water commissioners, and (2) ratification by the corporate authorities of a majority of the existing members (if the WC or CWC has more than 2 members). Members may withdraw by adoption of an ordinance repealing its membership ordinance or resolution, with the consent of the water commission board, before the issuance or sale of revenue bonds and if there is no outstanding obligation to pay a proportionate share of the costs of the waterworks system or source of supply.

Neither a PWD nor the City as wholesale provider will have “members.”

D. Territory Within the Water Entity

A PWD’s territory is established by the court order creating the PWD. Additional territory can be added pursuant to a petition to the court in a process similar to the process for creation of a new PWD. If the court finds the petition complies with state law, then two-thirds of the PWD board must approve the addition to make the addition effective. Territory can be disconnected from a PWD by petition of the owners of that property; if the petition is found to meet the standards of the statute based on a court hearing on the petition, the court may order disconnection, but the property will continue to be obligated for property taxes to pay off any outstanding bonded debt contracted for prior to the filing of the petition for disconnection.

The territory of a JAWA includes all the territory within all of its members other than counties, for which only county water service areas are included in the JAWA territory. The territory within the JAWA expands if a county member expands its service area or any other types of members annex territory. The territory of a JAWA is reduced if a member withdraws from the JAWA, if land disconnects from a member entity, or a county service area is reduced.

The territory of WCs and CWCs aligns with the territory of its members, as the members’ borders are modified from time to time through annexation and disconnection. Territory is removed from the WC or CWC if the member withdraws.

If the City acts as wholesale provider, the primary territory of concern will be that each area being served with water has an allocation permit to receive Lake Michigan water.

E. Acquisition of Water Supply; Construction of Water System

PWDs can construct and acquire waterworks properties, or purchase a water supply for a maximum term of 40 years.

JAWAs may purchase water supply on a take-or-pay basis for not more than 50 years; these contracts can also require members to make payments to make up for another member's failure to make required payments. These provisions are included to provide assurance to purchasers of JAWA revenue bonds that the necessary revenues will be available to pay off the bonds. JAWAs also have the power to construct, finance, and operate a waterworks or water system. JAWA facilities can be located within or outside the limits of a member municipality.

WCs and CWCs also have the power to acquire and operate a common source of supply of water or a waterworks system on a take-or-pay basis. The contracts can provide that members must pay all or a portion of another member's failure to pay. Like the JAWA provisions, these requirements provide assurance to purchasers of WC or CWC revenue bonds that the necessary revenues will be available to pay off the bonds.

If the City is wholesale provider, there are several statutes that allow it to acquire a source of water supply and to construct, operate and maintain a water system.

F. Power to Sell Water; Water Rates

PWDs may contract to furnish a supply of water to any city, village or incorporated town within the PWD's boundaries for distribution by that municipality to its customers, but cannot operate a water distribution system within any of those entities except in limited circumstances provided by law. A PWD also cannot sell water to a city, village or incorporated town outside the PWD boundaries unless the sale is "merely incidental" to maintenance and operation of the PWD's waterworks to benefit residents of PWD.

JAWAs may sell water to any person, corporation or public agency by contracts not exceeding 50 years. JAWAs may not sell water within a municipality or within one mile or less of the corporate limits of a municipality that operates a public water supply without consent of that municipality. These contracts may provide that payments to a JAWA by public agencies must be solely water revenues of that public agency.

WCs and CWCs also may sell water to the municipalities and water commissions that created it, by contracts not exceeding 50 years. WCs and CWCs may also sell water to any municipality, political subdivision or private person or corporation, and construct water transmission and distribution lines within a 25-mile radius outside the members' corporate limits. And municipalities within that 25-mile radius may request that a WC or CWC provide water service to them, if the municipality does not wish to own or operate a water system, and the WC or CWC can determine if it is in the interest of public health and the public interest as well as the WC's or CWC's interest to do so.

The Water Commission Act of 1985, which governs the DuPage Water Commission, was amended to require that the Commission provide water to unincorporated areas having a well water supply that was found to be tainted or contaminated, even though these areas were neither

members of the Commission nor party to the water purchase and sale contract between the commission and the members. This water must be provided through the system of the municipality that the Commission found to be best able to deliver the water to the retail customers.

All of these entities have the power to establish rates and charges for the provision of water, with some containing more specificity about the elements of the rates.

If the City is wholesale provider, there are several statutes that allow municipalities to sell water to other units of government and private entities and for other units of government to purchase a water supply. As a home rule unit, the City has additional authority in this area. As a practical matter, the ability to sell outside the City's limits will depend in part on the ability of either the City or its customer to acquire the land rights to install the necessary water system components.

G. Financing and Bonds

The power to issue revenue bonds is similar for the PWD, JAWA, WC and CWC, all of which are structured to be repaid from revenues of the water system. However, the JAWA and CWC also have the power to issue general obligation bonds, which are backed by either a property tax levy or, in the case of the CWC, a sales tax levy. The option to borrow funds through the issuance of general obligation bonds can be helpful when a new entity is established and needs to obtain a source of funds before the water system is constructed and water system revenues will be received.

PWDs can issue revenue bonds for terms not exceeding 40 years for a variety of purposes, including acquisition, improvement and extension of waterworks properties, reimbursing or paying costs of creating the PWD, principal and interest, and depreciation fund contributions. Revenue bonds are backed by the water payments revenues received by the PWD. PWDs do not have the authority to issue general obligation bonds.

JAWAs can also issue revenue bonds backed by water payments for terms not exceeding 50 years for a variety of purposes including constructing, acquiring, improving or extending a water supply system and various expenses, advances, interest and other expenses. JAWAs can also issue general obligation bonds for up to 40 years backed by a property tax levy of up to 5.75% of value if authorized by voter referendum. JAWAs have no authority to impose other taxes, such as a sales tax.

WCs and CWCs are authorized to issue revenue bonds backed by water payments for terms not exceeding 50 years for a variety of purposes including constructing, acquiring, improving, or extending a water system or source of supply, interest, and other expenses. CWCs may also issue general obligation bonds for up to 40 years backed by either a property tax levy of up to 5.75% or one-quarter of one percent sales tax, with voter referendum required for either option. For example, the sales tax option was approved by DuPage County voters in the 1980s to provide backing for bonds that provided initial funding for the DuPage Water Commission.

If the City is the wholesale provider, it also has various statutory powers to issue revenue bonds as well general obligation bonds. In addition, as a home rule municipality, the City is not subject to a referendum requirement to do so.

H. Land Acquisition and Right-of-Way Use

The ability to timely obtain the necessary real estate and other rights in land for the construction and installation of water system facilities can be key to making the new water system operational on the desired schedule. While all of the water entities have the ability to acquire real estate, a JAWA does not have a direct power of eminent domain and must rely on its members to obtain land by eminent domain. Eminent domain is generally limited to acquisition of privately owned property, unless there is clear authority to allow its use to acquire property owned by another government. Neither the JAWA nor the City have additional special rights for the use of highways for water facilities, like that of the PWD, WC and CWC.

PWDs have the power to acquire and hold land, and to sell or dispose of it, including the power of eminent domain to acquire real estate and waterworks. In addition, PWDs have the right to construct, maintain, alter and extend District water mains as a proper use of highways, streets, alleys or public ground of the state, including those of municipalities, with a 60-day advance notice.

JAWAs have the power to acquire, hold, sell, lease, transfer or dispose of real estate, and to allow member entities (other than state universities) to use the real estate, but do not have direct power of eminent domain. Instead, members of the JAWA may exercise eminent domain to acquire property for the JAWA on JAWA's request, and the member then conveys the property to the JAWA.

WCs and CWCs have the power to acquire, hold, sell, lease, transfer or dispose of real estate. They also have the power of eminent domain to acquire or construct waterworks properties including mains, pumping stations, reservoirs and other items.

Illinois law provides for a procedure called "quick-take" which allows the unit of government seeking to acquire the property to take possession and/or title to the property early in the eminent domain process, before the value of the property is established. For example, the DuPage Water Commission and the Anna-Jonesboro Water Commission were each granted authority to use the "quick-take" procedure for eminent domain for a period of 18 months; this requires a special action of the General Assembly to approve. See 735 ILCS 30/25-7-103.10; 735 ILCS 30/25-7-103.38

In addition, WCs and CWCs have the right to construct, maintain, alter and extend commission water mains as a proper use of highways, streets, alleys or public ground of the state, including those of municipalities, with a 60-day advance notice.

If the City is the wholesale provider, it has general powers to acquire land as well as specific statutory powers to do so, including eminent domain; eminent domain is typically limited to property within its boundaries unless statutory authority is provided to do so. However, the City does not have the power to use public highways outside of its limits in the same manner that WCs and CWCs, and PWDs do.

Exemption of properties from real estate taxation that are owned by this range of entities is not addressed in the specific statutes creating each one, other than the JAWA statute, but it is addressed in the Illinois Revenue Code.

I. Dissolution

Dissolution of a PWD requires three steps: (1) two-thirds of the PWD Board votes to dissolve; (2) a petition is filed in court and the court determines there will be no adverse effect if there is dissolution; and (3) the voters in the PWD approve a referendum to dissolve the PWD.

JAWAs may be dissolved in whole or in part based on the terms of the intergovernmental agreement, and subject to the terms of any outstanding bonds and notes.

For WCs, dissolution is not clearly addressed by statute. In order to dissolve, the withdrawal of members process can be used. For a CWC, dissolution by withdrawal of members is also an option. In addition, the Water Commission Act of 1985 contains a reference to “cessation” of the commission organization if consolidated with another unit of government, and provides that dissolution of a CWC does not relieve property owners from payment of property taxes that secure repayment of outstanding bonds.

If the City is the wholesale provider, the legal relationship between the City and its wholesale customers and options for termination will be governed by the water purchase and sale contract.

J. Regulatory Oversight

All users of Lake Michigan water are required to obtain an allocation permit from the Illinois Department of Natural Resources, and to abide by the regulations and conditions relating to those permits. Therefore, each municipality receiving water must obtain its own allocation.

For many years, municipal and governmental utilities have not been subject to regulation by the Illinois Commerce Commission. This would also be true for the PWD, JAWA, WC and CWC.

Exemption from local regulation, such as zoning and building codes, is not established in the specific statutes governing this group of entities, but is addressed (at least in part) in case law or statutes, depending on the nature of the particular regulation.

II. TIMELINE FOR ESTABLISHING A NEW ENTITY

A. Public Water District

Creation of a public water district will require the longest time frame to complete, because it requires approval by both the court system and the voters by referendum. Depending on when the effort begins, this process could take one to two years to complete, and longer if legislative changes are required.

B. Joint Action Water Agency

JAWAs are created pursuant to intergovernmental agreement, so the first step will be achieving consensus among the potential members and preparing a draft intergovernmental agreement. Such an effort could take three to six months, or longer, depending on the extent to which there is consensus. Then the governing bodies of each of the members must approve the intergovernmental agreement and appoint their respective board member and executive committee member, if applicable.

Like the WC, the board of commissioners would have to convene and adopt various organizational items by ordinance or resolution.

If any of the legislative provisions governing the JAWA are not consistent with what the members/prospective members want, then legislative changes or an overlay act will require additional time. Any such effort would need to be coordinated with the General Assembly's legislative schedule and could require six months or more to complete.

C. Water Commission/County Water Commission

WCs require the shortest amount of time to be created, with only adoption of an ordinance or resolution required by at least two municipalities or water commissions to establish an entity. The "standard" WC is created under Division 11-135 of the Illinois Municipal Code. When the DuPage Water Commission was created, it was subject to Division 11-135 but also to the Water Commission Act of 1985. This Act serves as a sort of "overlay" on Division 11-135 that modifies and supplements certain provisions of that Division.

If a WC is established in the Joliet regional area, it will be important to determine whether the population standards of the 1985 Act will make it applicable to the new WC in addition to Division 11-135. To be governed by both, a commission must include "municipalities which in the aggregate have within their corporate limits more than 50% of the population of a county" and that county is contiguous to a county which has a population over 1,000,000 (Cook County). Will County is adjacent to Cook County. If the 1985 Act will or may apply to a new Joliet regional WC, and if the WC members do not want the 1985 Act to apply, then specific legislation will be required to make it inapplicable and/or to establish new legislative provisions that may be helpful to the new WC's formation and operation (such as an "overlay" as was done in the 1985 Act). This would allow the WC and its members to have certainty about the form of organization being created and obtain the applicable amendments or additional legislation that may be necessary to clarify matters in state law.

Establishing a standard WC, with no legislative changes, could be accomplished in 45-90 days if there is consensus among the participating municipalities to proceed. Once created, in order to get under way, the board of commissioners would have to convene and adopt various organizational items by ordinance or resolution.

Pursuit of a standard WC with legislative changes or an overlay act would require additional time, in order to allow the General Assembly and Governor to take action. Any such effort would need to be coordinated with the legislative schedule and could require six months or more to complete.

D. City as Wholesale Water Provider

Water purchase and sale contracts for the City to sell water at wholesale will require development of a model contract and discussions with prospective customers. If there is substantial consensus between the City and the other communities who are prospective customers, this could be completed in the range of four to six months. If not, the process of negotiating the purchase and sale contract can be substantially longer.

III. STATUS OF EXISTING PUBLIC WATER COMMISSION.

The City is currently a member of the Public Water Commission (“PWC”), which was created under Division 11-135. The other members of the PWC are Frankfort, Lockport, New Lenox, Rockdale, and Romeoville. The PWC currently holds a permit from the Illinois Department of Natural Resources to take water from the Kankakee River for public water supply. The PWC also owns 80 acres of land near the Kankakee River, which was obtained by private donation.

Some have suggested that the City and other interested municipalities use the PWC to pursue a supply of Lake Michigan water. This would eliminate the need to create a new water entity. In practice, for this approach to work, all members of the PWC would need to agree on the goal of pursuing Lake Michigan water. If there is not agreement on that goal, then the PWC members will have a decision to make about whether it makes sense to remain organized as a legal entity. PWC members could also decide to move forward with plans for a Kankakee River water supply. If this plan is pursued, members not interested in this water supply will have to decide if they want to remain a member of the PWC or withdraw from the PWC.¹

It is not uncommon for various WCs or JAWAs to be formed with various combinations of municipalities as they explore, study and pursue different water sources, because WCs are the easiest specialty water entity to create, followed by the JAWA. However, once there is a clear direction of a majority of the involved municipalities to begin making financial commitments to a particular water supply and plan, those municipalities who are not interested in that option typically withdraw from the WC or JAWA. Withdrawal at this point is important because, as noted in Sections I.C and I.I above, once the WC or JAWA issues bonds or creates other debt that is incurred and outstanding, it is difficult or impossible for a member to withdraw from a WC or JAWA.

If the PWC members no longer have a common mission or goal and wish to go their separate ways on the issue of water supply, all municipalities can request to withdraw membership in the PWC. The effect of this would be to dissolve the PWC. It has been suggested that court approval of the dissolution of the PWC also be obtained, as a dissolution process is required for dissolution of a PWD. While not required by Division 11-135, obtaining a declaratory order from a court that the dissolution is valid could be useful. Such a proceeding could also assist in resolving any issues regarding distribution of PWC assets, particularly if the parties do not agree.

¹ See Section I.C above for the procedure for withdrawal from a WC.

COMPARISON OF TYPES OF WATER ENTITY ORGANIZATIONS UNDER ILLINOIS LAW

| ISSUE | JOINT ACTION WATER AGENCY (Intergovernmental Cooperation Act [IGCA], 5 ILCS 220/3.1) | WATER COMMISSION (Illinois Municipal Code, 65 ILCS 5/11-135-1 <i>et seq.</i>) | COUNTY WATER COMMISSION (Illinois Municipal Code, 65 ILCS 5/11-135-1 <i>et seq.</i> ; 70 ILCS 3720/0.001 <i>et seq.</i>) | PUBLIC WATER DISTRICT (70 ILCS 3705/0.01 <i>et seq.</i>) | PRIMARY WHOLESALE PROVIDER (Intergovernmental Cooperation Act, 5 ILCS 220/1 <i>et seq.</i>) |
|---------------------------------------|--|---|--|--|---|
| NATURE/ TYPE OF ENTITY | Separate body politic | Separate body | Separate body politic and corporate (separate from county, even though it bears home county's name) Sec. 2(a)(ii) | Separate body | No entity is created. One unit of government determines to sell water to municipalities and other governments (and other parties) on a wholesale basis. |
| | Municipal Joint Action Water Agency is both a municipal corporation and public body politic and corporate IGCA, Sec. 3.1(a) | Water commission is both a commission and public corporation Sec. 11-135-2 | County water commission is a body politic and corporate and political subdivision and unit of local government Sec. 2(a)(ii) | Public water district is both a public corporation and political subdivision. Sec. 2 | |
| CREATION OF ENTITY | Intergovernmental Agreement among members IGCA, Sec. 3.1(a) | Adoption of ordinance or resolution to jointly acquire or construct and operate a waterworks system and/or common source of supply; commission enters into water supply contracts with members who created it. Sec. 11-135-2 | Applies to water commission created under 11-135-1 <i>et seq.</i> in any county with more than 50% of its population in municipalities, and county is adjacent to county with population over 1,000,000. No other water commission under 11-135 may be created in any home county to provide water from any source outside the home county Sec. 2(a) | Petition to Circuit Court to allow creation of proposed district; hearing by Court; Court determined limits and boundaries; referendum of voters to be ordered. Area of proposed district must be contiguous and have not more than 500,000 population Sec. 1, 2 | No entity is created. The relationship is governed by terms of water purchase and sale contracts. |

| ISSUE | JOINT ACTION WATER AGENCY (Intergovernmental Cooperation Act [IGCA], 5 ILCS 220/3.1) | WATER COMMISSION (Illinois Municipal Code, 65 ILCS 5/11-135-1 <i>et seq.</i>) | COUNTY WATER COMMISSION (Illinois Municipal Code, 65 ILCS 5/11-135-1 <i>et seq.</i> ; 70 ILCS 3720/0.001 <i>et seq.</i>) | PUBLIC WATER DISTRICT (70 ILCS 3705/0.01 <i>et seq.</i>) | PRIMARY WHOLESALE PROVIDER (Intergovernmental Cooperation Act, 5 ILCS 220/1 <i>et seq.</i>) |
|-----------------------|---|---|---|--|---|
| MEMBER-SHIP | Eligible Members are: Municipal Corporations (such as Cities and Villages) Counties Townships (in counties with population under 700,000) Public water districts State universities IGCA, Sec. 3.1(a) | Eligible Members are: Municipal Corporations Water Commissions Sec. 11-135-2, 11-135-3 | Eligible Members are: Municipal Corporations Water Commissions Sec. 11-135-2, 11-135-3 | Public water districts are unified organizations that do not have member governments or entities | No membership relationship is established |
| Additional Members | May be added upon the consents, conditions, and approvals of the JAWA Board and the governing bodies of the existing members as provided in the inter-governmental agreement. IGCA, Sec. 3.1(a) | May be added upon adoption of ordinance or resolution of new member, and approval of majority vote of water commissioners and ratification (if more than 2 members) by corporate authorities of majority of existing members Sec. 11-135-3 | May be added upon adoption of ordinance or resolution of new member, and approval of majority vote of water commissioners and ratification (if more than 2 members) by corporate authorities of majority of existing members Sec. 11-135-3 | Not applicable | |
| Withdrawal of Members | May withdraw in the manner and terms provided in the intergovernmental agreement. Must be no outstanding bonds or notes IGCA, Sec. 3.1(a), (e)(5) | Members may withdraw by adoption of ordinance repealing its membership ordinance or resolution, with consent of the water commission, before issuance/sale of revenue bonds and if no outstanding obligation to pay a proportionate share of costs of waterworks system or source of supply. Sec. 11-135-1, 11-135-9 | Members may withdraw by adoption of ordinance repealing its membership ordinance or resolution, with consent of the water commission, before issuance/sale of revenue bonds and if no outstanding obligation to pay a proportionate share of costs of waterworks system or source of supply. Sec. 11-135-1, 11-135-9 | Not applicable | |

| ISSUE | JOINT ACTION WATER AGENCY (Intergovernmental Cooperation Act [IGCA], 5 ILCS 220/3.1) | WATER COMMISSION (Illinois Municipal Code, 65 ILCS 5/11-135-1 <i>et seq.</i>) | COUNTY WATER COMMISSION (Illinois Municipal Code, 65 ILCS 5/11-135-1 <i>et seq.</i> ; 70 ILCS 3720/0.001 <i>et seq.</i>) | PUBLIC WATER DISTRICT (70 ILCS 3705/0.01 <i>et seq.</i>) | PRIMARY WHOLESALE PROVIDER (Intergovernmental Cooperation Act, 5 ILCS 220/1 <i>et seq.</i>) |
|------------------------|--|---|---|---|--|
| GOVERN-ING BODY | Board of Directors: One Director for each member municipality, public water district, township, State university and county, to be appointed by ordinance of the member entity IGCA, Sec. 3.1(b) | Board of Commissioners: One Commissioner for each member municipality or water commission and one for the county in which the major part of the water works of the commission are (will be) located Sec. 11-135-2, 11-135-3 | Board of Commissioners: equal number of county and municipal appointees, based on county board districts Sec 0.001(a) | Board of Trustees: Standard number is 7, but court can determine that 5 or 3 is more appropriate Sec. 4 | No governing body is established. In some cases, water purchase and sale agreements may create advisory committee or group of purchasers to provide negotiated types of input to wholesale seller. |
| | For any JAWA established after August 24, 2018, Directors shall be one of the following elected officials for each member, or an appointed official of a member municipality, public water district, township, state university or county: | Commissioners shall be one of the following: | All Commissioners shall be residents of the home county or an included municipality Sec 0.001(b) | Trustees shall be appointed in one of the following ways, depending on where the territory within the district is located (Sec. 4), unless a referendum is held to select trustees by election (Sec. 4.2). An appointing authority may remove a trustee from office for misconduct, official misconduct or neglect of office (Sec. 4) | |
| | Municipalities: Mayor/-President or elected member of corporate authorities or other elected official | Municipalities: An elector or chief administrator of the municipality, appointed by Mayor/President with approval of corporate authorities. May be a member of the municipality's governing body or a municipal officer or employee | One Commissioner appointed from each county board district, by vote of the majority of mayors of municipalities having their greatest percentage of populations residing within the district Sec 0.001(a)(3) | If the district is wholly within a municipality, the governing board of the municipality shall appoint Sec. 4(2) | |

| ISSUE | JOINT ACTION WATER AGENCY (Intergovernmental Cooperation Act [IGCA], 5 ILCS 220/3.1) | WATER COMMISSION (Illinois Municipal Code, 65 ILCS 5/11-135-1 <i>et seq.</i>) | COUNTY WATER COMMISSION (Illinois Municipal Code, 65 ILCS 5/11-135-1 <i>et seq.</i> ; 70 ILCS 3720/0.001 <i>et seq.</i>) | PUBLIC WATER DISTRICT (70 ILCS 3705/0.01 <i>et seq.</i>) | PRIMARY WHOLESALE PROVIDER (Intergovernmental Cooperation Act, 5 ILCS 220/1 <i>et seq.</i>) |
|-------|---|---|--|--|---|
| | Public Water District: Chairman of Board of Trustees or elected member of corporate authorities or other elected official | Water Commission: Appointed by water commission board | Not applicable | If the district is wholly within a township and not also wholly within a municipality, the township board of trustees shall appoint (township trustees not eligible) Sec. 4(1) | |
| | County: Chairman of County Board, Chief Executive Officer, County Board Member appointed by Chairman of County Board, or other elected official | County: An elector of the county in which the major works of the Commission are (will be) located, appointed by presiding officer of county board with advice and consent of county board. May be a member of the county's governing body or a county officer or employee | One Commissioner appointed from each county board district, by county board chairperson with advice and consent of the county board Sec 0.001(a)(2) | If the district is wholly contained within a single county, the presiding officer of the county board shall appoint, with advice and consent of the county board. Sec. 4(3) | |
| | Township: Supervisor or elected member of corporate authorities or other elected official | Not applicable | Not applicable | If the district is located in more than one county, the number of district trustees who are resident in one county shall be in proportion to the number of residents of the district who reside in the county to the number of residents in the district. Appointment by county board of the respective counties. Sec. 4(4) | |
| | State University: An appointee | Not applicable | Not applicable | Not applicable | |

| ISSUE | JOINT ACTION WATER AGENCY (Intergovernmental Cooperation Act [IGCA], 5 ILCS 220/3.1) | WATER COMMISSION (Illinois Municipal Code, 65 ILCS 5/11-135-1 <i>et seq.</i>) | COUNTY WATER COMMISSION (Illinois Municipal Code, 65 ILCS 5/11-135-1 <i>et seq.</i> ; 70 ILCS 3720/0.001 <i>et seq.</i>) | PUBLIC WATER DISTRICT (70 ILCS 3705/0.01 <i>et seq.</i>) | PRIMARY WHOLESALE PROVIDER (Intergovernmental Cooperation Act, 5 ILCS 220/1 <i>et seq.</i>) |
|-----------------------|--|---|---|--|--|
| Alternates | For all members except State Universities, may be authorized in Intergovernmental Agreement. IGCA, Sec. 3.1(b) | None | None | None | |
| Bylaws/ Rules | General power of Board of Directors to adopt bylaws, rules and regulations IGCA, Sec. 3.1(b) | General power of Board of Commissioners to adopt rules of procedure Sec. 11-135-3 | General power of Board of Commissioners to adopt rules of proceeding Sec. 2(c) | General power of Board of Trustees to manage all District affairs Sec. 5 | |
| Voting | Each Director has one vote. IGCA, Sec. 3.1(b) | Each Commissioner has one vote | Each Commissioner has one vote | Each trustee has one vote | |
| Term | Term of Directors to be provided in Intergovernmental Agreement. IGCA, Sec. 3.1(b) | Six-year terms, to be staggered by lots drawn at formation of Commission Sec. 11-135-2 | Six-year terms, to be staggered by lots drawn at formation of Commission Sec. 0.001(c) | Five-year terms, to be staggered by appointing authority Sec. 4, 4.1 | |
| BOARD OFFICERS | Chairman (who must be a Director) and such others as provided in the Intergovernmental Agreement. Board of Directors to elect all officers IGCA, Sec. 3.1(b) | Chairman (who must be a Commissioner), and a clerk and treasurer (who need not be commissioners) Board of Commissioners to elect all officers Sec. 11-135-3 | Chairman appointed by home county board chair, with advice and consent of county board Vice-Chairman appointed by and from those commissioners appointed by municipal mayors Sec 0.001(a)(1), (3) Clerk & treasurer (who need not be commissioners) appointed by Board of Commissioners; general manager, finance director and treasurer appointments subject to advice and consent of county board of home county Sec. 11-135-3; Sec. 0.001a | Chairman and Vice-Chairman (who must be a Trustee), and Secretary and Treasurer (neither of whom may be a Trustee). Board of Trustees to elect all officers Sec. 5 | Not applicable |

| ISSUE | JOINT ACTION WATER AGENCY (Intergovernmental Cooperation Act [IGCA], 5 ILCS 220/3.1) | WATER COMMISSION (Illinois Municipal Code, 65 ILCS 5/11-135-1 <i>et seq.</i>) | COUNTY WATER COMMISSION (Illinois Municipal Code, 65 ILCS 5/11-135-1 <i>et seq.</i> ; 70 ILCS 3720/0.001 <i>et seq.</i>) | PUBLIC WATER DISTRICT (70 ILCS 3705/0.01 <i>et seq.</i>) | PRIMARY WHOLESALE PROVIDER (Intergovernmental Cooperation Act, 5 ILCS 220/1 <i>et seq.</i>) |
|--------------------------------|---|---|--|---|---|
| EXECUTIVE COMMITTEE Members | Municipal manager or other elected or appointed official of each member; designated by ordinance or other official action of that member's corporate authorities | Not applicable | Not applicable | Not applicable | |
| How established | Intergovernmental Agreement may provide for an Executive Committee and powers and duties of Committee IGCA, Sec. 3.1(b) | Not applicable | Not applicable | Not applicable | |
| LAND WITHIN ENTITY | Territory of the JAWA is all of the land within the corporate boundaries of all of its members other than counties, for which only service areas are included in territory ICGA, Sec. 3.1(c), (e)(4)(ii) | Territory of the Commission is all of the land within the corporate boundaries of all of its members Sec. 11-135-3 | Territory of the Commission is all of the land within the "home county"; within corporate boundaries of all of its members (with some excluded units of government) Sec. 2(b) | Territory of the District set by Court that reviews petition to create District | |
| Adding Land | Territory of the JAWA expands when county member expands its service area or any of its other members add territory ICGA, Sec.3.1(c) | Territory of the Commission continues to align with the territory of its members when they add territory Sec. 11-135-3 | Territory of the Commission continues to align with territory of its members when they add territory Sec. 2(b) | Petition to add territory follow similar process to creation of District; petition to court and hearing, if court finds the territory complies with the Act, then 2/3 of District trustees must approve Sec. 26-28 | |
| Removing Land | Territory of the JAWA is reduced if land disconnects from a member entity or a member withdraws or a county service area becomes smaller ICGA, Sec. 3.1(c) | Territory is removed if municipality withdraws Sec. 11-135-9 | Territory is removed if municipality withdraws Sec. 11-135-9 | Petition to disconnect to court by owners of property meeting certain standards; court holds hearing and can order disconnection, subject to payment on any outstanding bonds Sec. 28.1 | |

| ISSUE | JOINT ACTION WATER AGENCY (Intergovernmental Cooperation Act [IGCA], 5 ILCS 220/3.1) | WATER COMMISSION (Illinois Municipal Code, 65 ILCS 5/11-135-1 <i>et seq.</i>) | COUNTY WATER COMMISSION (Illinois Municipal Code, 65 ILCS 5/11-135-1 <i>et seq.</i> ; 70 ILCS 3720/0.001 <i>et seq.</i>) | PUBLIC WATER DISTRICT (70 ILCS 3705/0.01 <i>et seq.</i>) | PRIMARY WHOLESALE PROVIDER (Intergovernmental Cooperation Act, 5 ILCS 220/1 <i>et seq.</i>) |
|--|--|---|---|---|--|
| ACQUISITION OF WATER SUPPLY Water Purchase | JAWA has power to purchase water supply on take or pay basis for term not greater than 50 years. The purchase contract may provide that if one member defaults on its share under the contract with supplier, one or more of the remaining purchasers shall be required to pay for all or a portion of the amount on which there is default. ICGA, Sec. 3.1(d) | Commission may acquire, by purchase or construction, and operate a common source of supply of water on a take or pay basis. If one member defaults, one or more of the remaining purchasers shall be required to pay all or a portion of the amount on which there is default. Sec. 11-135-1, 11-135-8 | Commission may acquire, by purchase or construction, and operate a common source of supply of water on a take or pay basis. If one member defaults, one or more of the remaining purchasers shall be required to pay all or a portion of the amount on which there is default. Sec. 11-135-1, 11-135-8 | District may enter into contracts to purchase a supply of water, for a term not more than 40 years Sec. 11 | Municipalities and counties have various statutory (and home rule) powers to purchase water. |
| Joint Waterworks or Water Supply System | JAWA may plan, construct, improve, extend, acquire, finance, operate, maintain and contract for a joint waterworks or water supply system, including facilities for receiving, storing and transmitting water from any source to supply members and county service areas and other public agencies, persons, or corporations. JAWA facilities may be located within or without the corporate limits of any member municipality. ICGA, Sec. 3.1(c) | Commission may acquire, by purchase or construction, and operate a waterworks system on a take or pay basis. If one member defaults, one or more of the remaining purchasers shall be required to pay all or a portion of the amount on which there is default. Sec. 11-135-1, 11-135-8 | Commission may acquire, by purchase or construction, and operate a waterworks system on a take or pay basis. If one member defaults, one or more of the remaining purchasers shall be required to pay all or a portion of the amount on which there is default. Sec. 11-135-1, 11-135-8 | District may construct or acquire, by purchase or otherwise, and maintain, operate, manage and extend waterworks properties, including wells, springs, streams or any other sort of water supply, pumping equipment, treatment or purification plants, distribution mains, cisterns, reservoirs, fire protection equipment and other equipment; but may not operate distribution system within a city, village or incorporated town within the district, except as provided by the Act. District may purchase, lease, or otherwise acquire any part of waterworks of a city, | Ownership of water transmission mains and other facilities may be established in water purchase and sale agreement; ownership may depend on the statutory or home rule authority relied upon by the wholesaler and the purchasing parties. |

| ISSUE | JOINT ACTION WATER AGENCY (Intergovernmental Cooperation Act [IGCA], 5 ILCS 220/3.1) | WATER COMMISSION (Illinois Municipal Code, 65 ILCS 5/11-135-1 et seq.) | COUNTY WATER COMMISSION (Illinois Municipal Code, 65 ILCS 5/11-135-1 et seq.; 70 ILCS 3720/0.001 et seq.) | PUBLIC WATER DISTRICT (70 ILCS 3705/0.01 et seq.) | PRIMARY WHOLESALE PROVIDER (Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq.) |
|---------------------------------------|---|--|--|---|---|
| | | | | village, incorporated town, or private corporation which owns/operates a waterworks system within the District or partially within and partially without the District. Sec. 1, 12, 41 | |
| SERVICE OPTIONS Water Sales | JAWA has power to sell water to any person, corporation or public agency in contracts with terms not exceeding 50 years. JAWA statute does not authorize provision of water service within a municipality or within 1 mile or less of corporate limits of a municipality that operates a public water supply without written consent of that municipality. Contracts may provide that payments by public agencies to JAWA are solely from waterworks or waterworks/-sewerage system revenues of that agency. Obligations to pay are not “indebtedness of public agency” for purpose of any statutory or constitutional limitation. No prior appropriation required. IGCA, Sec. 3.1(d), (e)(7) | Commission has power to sell water to the municipalities and water commissions that created it in contracts with terms not exceeding 50 years. Statute also allows sales to any municipality, political subdivision, private person or corporation, and to construct water transmission and distribution lines within 25-mile radius outside corporate limits of members. Municipalities within 25-mile radius that do not desire to own or operate a waterworks system may request that commission serve them; commission may determine whether it is in interest of public interest and public health and best interest of the Commission to do so. Sec. 11-135-3, 11-135-8. | Commission has power to sell water to the municipalities and water commissions that created it in contracts with terms not exceeding 50 years. Statute also allows sales to any municipality, political subdivision, private person or corporation, and to construct water transmission and distribution lines within 25-mile radius outside corporate limits of members. Municipalities within 25-mile radius that do not desire to own or operate a waterworks system may request that commission serve them; commission may determine whether it is in interest of public interest and public health and best interest of the Commission to do so. Sec. 11-135-3, 11-135-8 Commission also must serve: any “included unit” municipality that requests | District has power to contract, including to furnish a supply of water for the distribution system of any city, village or incorporated town within the District’s boundaries. District may also contract to supply water to any city, village or incorporated town or other area outside the District if merely incidental to maintenance and operation of its waterworks properties to benefit the District’s inhabitants Sec. 2, 19, 20 | Municipalities and counties can identify statutory (or home rule) powers to sell water. |

| ISSUE | JOINT ACTION WATER AGENCY (Intergovernmental Cooperation Act [IGCA], 5 ILCS 220/3.1) | WATER COMMISSION (Illinois Municipal Code, 65 ILCS 5/11-135-1 <i>et seq.</i>) | COUNTY WATER COMMISSION (Illinois Municipal Code, 65 ILCS 5/11-135-1 <i>et seq.</i> ; 70 ILCS 3720/0.001 <i>et seq.</i>) | PUBLIC WATER DISTRICT (70 ILCS 3705/0.01 <i>et seq.</i>) | PRIMARY WHOLESALE PROVIDER (Intergovernmental Cooperation Act, 5 ILCS 220/1 <i>et seq.</i>) |
|---|--|---|--|--|--|
| | | | water, up to its IDNR allocation limit unincorporated areas found to have tainted or contaminated water supply Sec. 2(b) | | |
| FINANCING General Obligation Bonds/ Notes | JAWA may issue for corporate purposes, in amount not to exceed 5.75% of aggregate value of taxable property within participating municipalities, public water districts, townships, and county service areas within a member county; maximum 40-year term. Requires referendum of voters in participating Service Area of JAWA ICGA, Sec. 3.1(e)(4) | Not applicable | Commission may issue for corporate purposes, in an amount not to exceed 5.75% of aggregate value of taxable property within commission territory (all of home county other than “excluded units” and all parts of municipalities that are “included units” located outside the home county), maximum 40-year term. Referendum of voters in participating municipalities. Also may issue bonds backed by 1/4 of 1% sales tax, which must be approved be referendum. Sec. 2(d), 4, 5 | Not applicable | Provider of water may issue general obligation bonds (if home rule, without referendum) to finance waterworks system and seek to recover shares of cost from wholesale customers of the system |

| ISSUE | JOINT ACTION WATER AGENCY (Intergovernmental Cooperation Act [IGCA], 5 ILCS 220/3.1) | WATER COMMISSION (Illinois Municipal Code, 65 ILCS 5/11-135-1 et seq.) | COUNTY WATER COMMISSION (Illinois Municipal Code, 65 ILCS 5/11-135-1 et seq.; 70 ILCS 3720/0.001 et seq.) | PUBLIC WATER DISTRICT (70 ILCS 3705/0.01 et seq.) | PRIMARY WHOLESALE PROVIDER (Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq.) |
|-------------------------|--|--|--|---|---|
| Revenue Bonds/ Notes | <p>JAWA may issue (max. 50 years) to pay for:</p> <ul style="list-style-type: none"> Costs of constructing, acquiring, improving or extending a joint waterworks or water supply system Other expenses incident to or incurred in connection with same Repaying advances Interest on bonds or notes Financial, legal, administrative and other expenses for bonds or notes Costs of insuring payment Debt service reserve Paying, refunding or redeeming JAWA bonds or notes <p>IGCA, Sec. 3.1(e)(1)</p> | <p>Commission may issue (max. 50 years) to pay for:</p> <ul style="list-style-type: none"> Developing, acquiring, constructing, extending or improving a waterworks system or common source of supply of water Funding or refunding of principal of, redemption premium, and interest on bonds Interest to one year after completion of system Payment of engineering, legal and other expenses Establish or increase reserves Working Capital Payment of all other costs/expenses to carry out its corporate purposes <p>Sec. 11-135-4</p> | <p>Commission may issue (max. 50 years) to pay for:</p> <ul style="list-style-type: none"> Developing, acquiring, constructing, extending or improving a waterworks system or common source of supply of water Funding or refunding of principal of, redemption premium, and interest on bonds Interest to one year after completion of system Payment of engineering, legal and other expenses Establish or increase reserves Working Capital Payment of all other costs/expenses to carry out its corporate purposes <p>Sec. 11-135-4</p> | <p>District may issue to pay for:</p> <ul style="list-style-type: none"> Acquisition, improvement and extension of waterworks properties Reimbursing or paying costs of creating the District Principal and interest on bonds Depreciation fund payments Sec. 13, 16 Also may issue to pay for waterworks and sewerage properties Sec. 23a-23f | <p>Provider of water may issue revenue bonds to finance waterworks system and seek to recover shares of cost from wholesale customers of the system</p> |
| Rates and Charges | <p>JAWA may establish fees and charges for purchase of water from it or use of its facilities.</p> <p>IGCA, Sec. 3.1(d)</p> | <p>Commission may establish rates and charges for purchase of water from it; statute requires specific costs to be included as elements of rates/charges</p> <p>Sec. 11-135-5</p> | <p>Commission may establish rates and charges for purchase of water from it, subject to limits set forth in Sec. 0.02</p> <p>Sec. 11-135-5</p> | <p>District may establish rates and charges for purchase of water and water service</p> <p>Sec. 12, 22, 23</p> | <p>Provider entity will establish rates and charges</p> |

| ISSUE | JOINT ACTION WATER AGENCY (Intergovernmental Cooperation Act [IGCA], 5 ILCS 220/3.1) | WATER COMMISSION (Illinois Municipal Code, 65 ILCS 5/11-135-1 <i>et seq.</i>) | COUNTY WATER COMMISSION (Illinois Municipal Code, 65 ILCS 5/11-135-1 <i>et seq.</i> ; 70 ILCS 3720/0.001 <i>et seq.</i>) | PUBLIC WATER DISTRICT (70 ILCS 3705/0.01 <i>et seq.</i>) | PRIMARY WHOLESALE PROVIDER (Intergovernmental Cooperation Act, 5 ILCS 220/1 <i>et seq.</i>) |
|---|--|--|--|--|---|
| PROPERTY RIGHTS Real Estate and Personal Property | JAWA has right to acquire, hold, sell, lease (as lessor or lessee), transfer or dispose of real or personal property (or interests in same), and provide for use of same by member municipalities, public water districts, townships or counties [State universities notably absent] ICGA, Sec. 3.1(c)(iii) | Commission has right to acquire, hold, sell, lease (as lessor or lessee), transfer or dispose of real or personal property (or interests in same) Sec. 11-135-6 | Commission has right to acquire, hold, sell, lease (as lessor or lessee), transfer or dispose of real or personal property (or interests in same) Sec. 11-135-6 | District has right to acquire and hold real and personal property and to sell and dispose of property no longer needed. Sec. 2, 8, 11 | Provider will acquire real estate, permits or other approvals to construct the necessary facilities |
| Eminent Domain | Members may exercise eminent domain powers for JAWA purposes on JAWA request and convey to JAWA and be reimbursed by JAWA for same. IGCA, Sec. 3.1(c) | Commission may exercise eminent domain powers for construction or acquisition of any waterworks properties, improvements or extensions or mains, pumping stations, reservoirs and other appurtenances Sec. 11-135-6 | Commission may exercise eminent domain powers for construction or acquisition of any waterworks properties, improvements or extensions or mains, pumping stations, reservoirs and other appurtenances Sec. 11-135-6 | District may exercise eminent domain powers to acquire real estate and waterworks Sec. 8, 12.5 | In some instances, there is power to exercise eminent domain outside of municipal boundaries |
| Tax Exempt | All property, income and receipts of, or transactions by, a JAWA are exempt from all taxation to the same extent as if it were that of the members. IGCA, Sec. 3.1(c) | Not addressed in Municipal Code; look to Revenue Code | Not addressed in Municipal Code; look to Revenue Code | Not addressed in District's Act, look to Revenue Code | Look to Revenue Code |

| ISSUE | JOINT ACTION WATER AGENCY (Intergovernmental Cooperation Act [IGCA], 5 ILCS 220/3.1) | WATER COMMISSION (Illinois Municipal Code, 65 ILCS 5/11-135-1 et seq.) | COUNTY WATER COMMISSION (Illinois Municipal Code, 65 ILCS 5/11-135-1 et seq.; 70 ILCS 3720/0.001 et seq.) | PUBLIC WATER DISTRICT (70 ILCS 3705/0.01 et seq.) | PRIMARY WHOLESALE PROVIDER (Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq.) |
|--|---|---|---|---|---|
| Use of Other Public Property and Rights-of-Way | Not provided | Right to construct, maintain, alter and extend Commission water mains as a proper use of highways, along, upon, under and across highways, streets, alleys, or public ground in the state, including those in municipalities, so as not to inconvenience public use. 60-day notice required; no fees may be charged to Commission Sec. 11-135-7 | Right to construct, maintain, alter and extend Commission water mains as a proper use of highways, along highways, streets, alleys, or public ground in the state, including those in municipalities, so as not to inconvenience public use. 60-day notice required; no fees may be charged to Commission Sec. 11-135-7 | Right to construct, maintain, alter and extend District water mains as a proper use of highways, along highways, streets, alleys, or public ground of the state, including those in municipalities, so as not to inconvenience public use. Also right to construct, maintain and operate conduit, water pipes, wholly or partially buried or otherwise, in, upon, and along any lands owned by State under public waters. Sec. 9 | Permits, approvals and agreements to use public property and rights-of-ways of other governmental units and agencies would need to be obtained. |
| REGULATORY OVERSIGHT | JAWA statute is silent on the following issues, some of which are covered elsewhere in state law: State Freedom from ICC Freedom from DNR No Other Significant Oversight Local Express Zoning Code Exemption Express Building Code Exemption Express Freedom from Other Regulation There is case law on some of these issues | Commission statute is silent on the following issues, some of which are covered elsewhere in state law: State Freedom from ICC Freedom from DNR No Other Significant Oversight Local Express Zoning Code Exemption Express Building Code Exemption Express Freedom from Other Regulation There is case law on some of these issues | Commission statutes are silent on the following issues, some of which are covered elsewhere in state law: State Freedom from ICC Freedom from DNR No Other Significant Oversight Local Express Zoning Code Exemption Express Building Code Exemption Express Freedom from Other Regulation There is case law on some of these issues | District's Act is silent on the following issues, some of which are covered elsewhere in state law: State Freedom from ICC Freedom from DNR No Other Significant Oversight Local Express Zoning Code Exemption Express Building Code Exemption Express Freedom from Other Regulation There is case law on some of these issues | Treated the same as any other municipal project |

| ISSUE | JOINT ACTION WATER AGENCY (Intergovernmental Cooperation Act [IGCA], 5 ILCS 220/3.1) | WATER COMMISSION (Illinois Municipal Code, 65 ILCS 5/11-135-1 <i>et seq.</i>) | COUNTY WATER COMMISSION (Illinois Municipal Code, 65 ILCS 5/11-135-1 <i>et seq.</i> ; 70 ILCS 3720/0.001 <i>et seq.</i>) | PUBLIC WATER DISTRICT (70 ILCS 3705/0.01 <i>et seq.</i>) | PRIMARY WHOLESALE PROVIDER (Intergovernmental Cooperation Act, 5 ILCS 220/1 <i>et seq.</i>) |
|--|---|---|--|---|---|
| WATER USE REGULATION Allocations and Limitations | JAWA statute is silent; use of Lake Michigan water is governed by Level of Lake Michigan Act. | Commission statute is silent; use of Lake Michigan water is governed by Level of Lake Michigan Act. | Certain municipalities must be provided Lake Michigan water up to their allocation amount assigned by IDNR; otherwise governed by Level of Lake Michigan Act. Sec. 2(b) | District Act is silent; use of Lake Michigan water is governed by Level of Lake Michigan Act. | Use of Lake Michigan water is governed by Level of Lake Michigan Act. |
| IMMUNITIES Tort Immunity | JAWAs appear to be a “local public entity” entitled to tort immunity under the Local Government and Local Governmental Employees Tort Immunity Act in the same manner as municipalities, counties, townships. 745 ILCS 10/1-206 | Commissions appear to be a “local public entity” entitled to tort immunity under the Local Government and Local Governmental Employees Tort Immunity Act in the same manner as municipalities, counties, townships. 745 ILCS 10/1-206 | Commissions appear to be a “local public entity” entitled to tort immunity under the Local Government and Local Governmental Employees Tort Immunity Act in the same manner as municipalities, counties, townships. 745 ILCS 10/1-206 | Districts appear to be a “local public entity” entitled to tort immunity under the Local Government and Local Governmental Employees Tort Immunity Act in the same manner as municipalities, counties, townships. 745 ILCS 10/1-206 | Municipalities and counties are “local public entities” under the Local Government and Local Governmental Employees Tort Immunity Act. 745 ILCS 10/1-206 |
| DISSOLUTION | May be dissolved in whole or in part, as provided in the intergovernmental agreement, subject to terms of bonds/notes outstanding. IGCA, Sec. 3.1(a), (e)(5) | Dissolution not expressly addressed by statute, but withdrawal process above would apply Sec. 11-135-9 | Dissolution not expressly addressed by statute, but withdrawal process above would apply Sec. 11-135-9 Process for cessation of commission organization if consolidated with another unit of government. Sec. 2.1 Dissolution does not relieve property owners from payment of property taxes for bonds Sec. 2(d) | May be dissolved through a process that includes: 2/3 vote of District Board to dissolve; petition in circuit court of county; if court determines no adverse effect of dissolution, referendum within the district is held on whether to dissolve. Sec. 29-34 | Termination provisions in water purchase and sale agreements would govern the end of the relationship. |