

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 Counties Code is amended by changing Section
5 5-1095.1 as follows:

6 (55 ILCS 5/5-1095.1)

7 Sec. 5-1095.1. County franchise fee or service provider fee
8 review; requests for information.

9 (a) If pursuant to its franchise agreement with a community
10 antenna television system (CATV) operator, a county imposes a
11 franchise fee authorized by 47 U.S.C. 542 or if a community
12 antenna television system (CATV) operator providing cable or
13 video service in that county is required to pay the service
14 provider fees imposed by the Cable and Video Competition Law of
15 2007, then the county may conduct an audit of that CATV
16 operator's franchise fees or service provider fees derived from
17 the provision of cable and video services to subscribers within
18 the franchise area to determine whether the amount of franchise
19 fees or service provider fees paid by that CATV operator to the
20 county was accurate. Any audit conducted under this subsection
21 (a) shall determine, for a period of not more than 4 years
22 after the date the franchise fees or service provider fees were
23 due, any overpayment or underpayment to the county by the CATV

1 operator, and the amount due to the county or CATV operator is
2 limited to the net difference.

3 (b) Not more than once every 2 years, a county or its agent
4 that is authorized to perform an audit as set forth in
5 subsection (a) may, subject to the limitations and protections
6 stated in the Local Government Taxpayers' Bill of Rights Act,
7 request information from the CATV operator in the format
8 maintained by the CATV operator in the ordinary course of its
9 business that the county reasonably requires in order to
10 perform an audit under subsection (a). The information that may
11 be requested by the county includes without limitation the
12 following:

13 (1) in an electronic format used by the CATV operator
14 in the ordinary course of its business, the database used
15 by the CATV operator to determine the amount of the
16 franchise fee or service provider fee due to the county;
17 and

18 (2) in a format used by the CATV operator in the
19 ordinary course of its business, summary data, as needed by
20 the county, to determine the CATV operator's franchise fees
21 or service provider fees derived from the provision of
22 cable and video services to subscribers within the CATV
23 operator's franchise area.

24 (c) The CATV operator must provide the information
25 requested under subsection (b) within:

26 (1) 60 days after the receipt of the request if the

1 population of the requesting county is 500,000 or less; or
2 (2) 90 days after the receipt of the request if the
3 population of the requesting county exceeds 500,000.

4 The time in which a CATV operator must provide the
5 information requested under subsection (b) may be extended by
6 written agreement between the county or its agent and the CATV
7 operator.

8 (c-5) The county or its agent must provide an initial
9 report of its audit findings to the CATV operator no later than
10 90 days after the information set forth in subsection (b) of
11 this Section has been provided by the CATV operator. This
12 90-day timeline may be extended one time by written agreement
13 between the county or its agent and the CATV operator. However,
14 in no event shall an extension of time exceed 90 days. This
15 initial report of audit findings shall detail the basis of its
16 findings and provide, but not be limited to, the following
17 information: (i) any overpayments of franchise fees or service
18 provider fees, (ii) any underpayments of franchise fees or
19 service provider fees, (iii) the complete list of all addresses
20 within the corporate limits of the county for which the audit
21 is being conducted, (iv) all county addresses that should be
22 included in the CATV operator's database and attributable to
23 that county for determination of franchise fees or service
24 provider fees, and (v) ~~(iv)~~ addresses that should not be
25 included in the CATV operator's database and addresses that are
26 not attributable to that county for determination of franchise

1 fees or service provider fees. Generally accepted auditing
2 standards shall be utilized by the county and its agents in its
3 review of information provided by the CATV operator.

4 (c-10) In the event that the county or its agent does not
5 provide the initial report of the audit findings to the CATV
6 operator with the timeframes set forth in subsection (c-5) of
7 this Section, then the audit shall be deemed completed and to
8 have conclusively found that there was no overpayment or
9 underpayment by the CATV operator for the audit period.
10 Further, the county may not thereafter commence or conduct any
11 such audit for the same audit period or for any part of that
12 same audit period during the 24 months prior to the county or
13 its agents requesting the information set forth in subsection
14 (b) of this Section.

15 (d) If an audit by the county or its agents finds an error
16 by the CATV operator in the amount of the franchise fees or
17 service provider fees paid by the CATV operator to the county,
18 then the county shall notify the CATV operator of the error.
19 Any such notice must be given to the CATV operator by the
20 county or its agent within 90 days after the county or its
21 agent discovers the error, and no later than 4 years after the
22 date the franchise fee or service provider fee was due. Upon
23 such a notice, the CATV operator must submit a written response
24 within 60 days after receipt of the notice stating that the
25 CATV operator has corrected the error on a prospective basis or
26 stating the reason that the error is inapplicable or

1 inaccurate. The county or its agent then has 60 days after the
2 receipt of the CATV operator's response to review and contest
3 the conclusion of the CATV operator. No legal proceeding to
4 collect a deficiency or overpayment based upon an alleged error
5 shall be commenced unless within 180 days after the county's
6 notification of the error to the CATV operator the parties are
7 unable to agree on the disposition of the audit findings.

8 Any legal proceeding to collect a deficiency as set forth
9 in this subsection (d) shall be filed in the appropriate
10 circuit court.

11 (e) No CATV operator is liable for any error in past
12 franchise fee or service provider fee payments that was unknown
13 by the CATV operator prior to the audit process unless (i) the
14 error was due to negligence on the part of the CATV operator in
15 the collection or processing of required data and (ii) the
16 county had not failed to respond in writing in a timely manner
17 to any written request of the CATV operator to review and
18 correct information used by the CATV operator to calculate the
19 appropriate franchise fees or service provider fees if a
20 diligent review of such information by the county reasonably
21 could have been expected to discover such error.

22 (f) All account specific information provided by a CATV
23 operator under this Section may be used only for the purpose of
24 an audit conducted under this Section and the enforcement of
25 any franchise fee or service provider fee delinquent claim. All
26 such information must be held in strict confidence by the

1 county and its agents and may not be disclosed to the public
2 under the Freedom of Information Act or under any other similar
3 statutes allowing for or requiring public disclosure.

4 (f-5) All contracts by and between a county and a third
5 party for the purposes of conducting an audit as contemplated
6 in this Code shall be disclosed to the public under the Freedom
7 of Information Act or under similar statutes allowing for or
8 requiring public disclosure.

9 (g) For the purposes of this Section, "CATV operator" means
10 a person or entity that provides cable and video services under
11 a franchise agreement with a county pursuant to Section 5-1095
12 of the Counties Code and a holder authorized under Section
13 21-401 of the Cable and Video Competition Law of 2007 as
14 consistent with Section 21-901 of that Law.

15 (h) This Section does not apply to any action that was
16 commenced, to any complaint that was filed, or to any audit
17 that was commenced before the effective date of this amendatory
18 Act of the 96th General Assembly. This Section also does not
19 apply to any franchise agreement that was entered into before
20 the effective date of this amendatory Act of the 96th General
21 Assembly ~~unless the franchise agreement contains audit~~
22 ~~provisions but no specifics regarding audit procedures.~~

23 (h-5) The audit procedures set forth in this Section shall
24 be the exclusive audit procedures for: (i) any franchise
25 agreement entered into, amended, or renewed on or after the
26 effective date of this amendatory Act of the 100th General

1 Assembly; and (ii) any franchise fee or service provider fee
2 audit of a CATV operator commenced on or after the effective
3 date of this amendatory Act of the 100th General Assembly.

4 (i) The provisions of this Section shall not be construed
5 as diminishing or replacing any civil remedy available to a
6 county, taxpayer, or tax collector.

7 (j) If a contingent fee is paid to an auditor, then the
8 payment must be based upon the net difference of the complete
9 audit.

10 (k) ~~A Within 90 days after the effective date of this~~
11 ~~amendatory Act of the 96th General Assembly, a county shall~~
12 ~~provide to each any CATV operator an updated a complete list of~~
13 ~~addresses within the corporate limits of the county and shall~~
14 ~~annually update the list. In addition, the county shall provide~~
15 ~~a CATV operator the updated address list within 90 days after~~
16 ~~the date of a written request by the CATV operator.~~

17 As a prerequisite to performing an audit of a CATV
18 operator's franchise fees or service provider fees derived from
19 the provision of cable and video services to subscribers within
20 the franchise area, a county shall provide to a CATV operator
21 the complete list of addresses within the corporate limits of
22 the county for each calendar year subject to the audit. If an
23 address is not included in the list or if no list is provided,
24 the CATV operator shall be held harmless for any franchise fee
25 underpayments, including penalty and interest, from situsing
26 errors if it used a reasonable methodology to assign the

1 address or addresses to a county.

2 An address list provided by a county to a CATV operator
3 shall be maintained as confidential by the CATV operator and
4 shall only be used by the CATV operator for the purposes of
5 determining the situs of any franchise fee or service provider
6 fee. Any situs issues identified by a CATV operator as a result
7 of the provision of an address list by a county to the CATV
8 operator shall first be confirmed in writing to the county by
9 the CATV operator prior to the CATV operator making any situs
10 change that may result in a change of allocation of a franchise
11 fee or service provider fee to the county.

12 (1) This Section is a denial and limitation of home rule
13 powers and functions under subsection (h) of Section 6 of
14 Article VII of the Illinois Constitution.

15 (Source: P.A. 99-6, eff. 6-29-15.)

16 Section 10. The Illinois Municipal Code is amended by
17 changing Section 11-42-11.05 as follows:

18 (65 ILCS 5/11-42-11.05)

19 Sec. 11-42-11.05. Municipal franchise fee or service
20 provider fee review; requests for information.

21 (a) If pursuant to its franchise agreement with a community
22 antenna television system (CATV) operator, a municipality
23 imposes a franchise fee authorized by 47 U.S.C. 542 or if a
24 community antenna television system (CATV) operator providing

1 cable or video service in that municipality is required to pay
2 the service provider fees imposed by the Cable and Video
3 Competition Law of 2007, then the municipality may conduct an
4 audit of that CATV operator's franchise fees or service
5 provider fees derived from the provision of cable and video
6 services to subscribers within the franchise area to determine
7 whether the amount of franchise fees or service provider fees
8 paid by that CATV operator to the municipality was accurate.
9 Any audit conducted under this subsection (a) shall determine,
10 for a period of not more than 4 years after the date the
11 franchise fees or service provider fees were due, any
12 overpayment or underpayment to the municipality by the CATV
13 operator, and the amount due to the municipality or CATV
14 operator is limited to the net difference.

15 (b) Not more than once every 2 years, a municipality or its
16 agent that is authorized to perform an audit as set forth in
17 subsection (a) of this Section may, subject to the limitations
18 and protections stated in the Local Government Taxpayers' Bill
19 of Rights Act, request information from the CATV operator in
20 the format maintained by the CATV operator in the ordinary
21 course of its business that the municipality reasonably
22 requires in order to perform an audit under subsection (a). The
23 information that may be requested by the municipality includes
24 without limitation the following:

25 (1) in an electronic format used by the CATV operator
26 in the ordinary course of its business, the database used

1 by the CATV operator to determine the amount of the
2 franchise fee or service provider fee due to the
3 municipality; and

4 (2) in a format used by the CATV operator in the
5 ordinary course of its business, summary data, as needed by
6 the municipality, to determine the CATV operator's
7 franchise fees or service provider fees derived from the
8 provision of cable and video services to subscribers within
9 the CATV operator's franchise area.

10 (c) The CATV operator must provide the information
11 requested under subsection (b) within:

12 (1) 60 days after the receipt of the request if the
13 population of the requesting municipality is 500,000 or
14 less; or

15 (2) 90 days after the receipt of the request if the
16 population of the requesting municipality exceeds 500,000.

17 The time in which a CATV operator must provide the
18 information requested under subsection (b) may be extended by
19 written agreement between the municipality or its agent and the
20 CATV operator.

21 (c-5) The municipality or its agent must provide an initial
22 report of its audit findings to the CATV operator no later than
23 90 days after the information set forth in subsection (b) of
24 this Section has been provided by the CATV operator. This
25 90-day timeline may be extended one time by written agreement
26 between the municipality or its agents and the CATV operator.

1 However, in no event shall an extension of time exceed 90 days.
2 This initial report of audit findings shall detail the basis of
3 its findings and provide, but not be limited to, the following
4 information: (i) any overpayments of franchise fees or service
5 provider fees, (ii) any underpayments of franchise fees or
6 service provider fees, (iii) the complete list of all addresses
7 within the corporate limits of the municipality for which the
8 audit is being conducted, (iv) all municipal addresses that
9 should be included in the CATV operator's database and
10 attributable to that municipality for determination of
11 franchise fees or service provider fees, and (v) ~~(iv)~~ addresses
12 that should not be included in the CATV operator's database and
13 addresses that are not attributable to that municipality for
14 determination of franchise fees or service provider fees.
15 Generally accepted auditing standards shall be utilized by the
16 municipality and its agents in its review of information
17 provided by the CATV operator.

18 (c-10) In the event that the municipality or its agent does
19 not provide the initial report of the audit findings to the
20 CATV operator with the timeframes set forth in subsection (c-5)
21 of this Section, then the audit shall be deemed completed and
22 to have conclusively found that there was no overpayment or
23 underpayment by the CATV operator for the audit period.
24 Further, the municipality may not thereafter commence or
25 conduct any such audit for the same audit period or for any
26 part of that same audit period ~~during the 24 months prior to~~

1 ~~the municipality or its agents requesting the information set~~
2 ~~forth in subsection (b) of this Section.~~

3 (d) If an audit by the municipality or its agents finds an
4 error by the CATV operator in the amount of the franchise fees
5 or service provider fees paid by the CATV operator to the
6 municipality, then the municipality shall notify the CATV
7 operator of the error. Any such notice must be given to the
8 CATV operator by the municipality or its agent within 90 days
9 after the municipality or its agent discovers the error, and no
10 later than 4 years after the date the franchise fee or service
11 provider fee was due. Upon such a notice, the CATV operator
12 must submit a written response within 60 days after receipt of
13 the notice stating that the CATV operator has corrected the
14 error on a prospective basis or stating the reason that the
15 error is inapplicable or inaccurate. The municipality or its
16 agent then has 60 days after the receipt of the CATV operator's
17 response to review and contest the conclusion of the CATV
18 operator. No legal proceeding to collect a deficiency or
19 overpayment based upon an alleged error shall be commenced
20 unless within 180 days after the municipality's notification of
21 the error to the CATV operator the parties are unable to agree
22 on the disposition of the audit findings.

23 Any legal proceeding to collect a deficiency as set forth
24 in this subsection (d) shall be filed in the appropriate
25 circuit court.

26 (e) No CATV operator is liable for any error in past

1 franchise fee or service provider fee payments that was unknown
2 by the CATV operator prior to the audit process unless (i) the
3 error was due to negligence on the part of the CATV operator in
4 the collection or processing of required data and (ii) the
5 municipality had not failed to respond in writing in a timely
6 manner to any written request of the CATV operator to review
7 and correct information used by the CATV operator to calculate
8 the appropriate franchise fees or service provider fees if a
9 diligent review of such information by the municipality
10 reasonably could have been expected to discover such error.

11 (f) All account specific information provided by a CATV
12 operator under this Section may be used only for the purpose of
13 an audit conducted under this Section and the enforcement of
14 any franchise fee or service provider fee delinquent claim. All
15 such information must be held in strict confidence by the
16 municipality and its agents and may not be disclosed to the
17 public under the Freedom of Information Act or under any other
18 similar statutes allowing for or requiring public disclosure.

19 (f-5) All contracts by and between a municipality and a
20 third party for the purposes of conducting an audit as
21 contemplated in this Article shall be disclosed to the public
22 under the Freedom of Information Act or under similar statutes
23 allowing for or requiring public disclosure.

24 (g) For the purposes of this Section, "CATV operator" means
25 a person or entity that provides cable and video services under
26 a franchise agreement with a municipality pursuant to Section

1 11-42-11 of the Municipal Code and a holder authorized under
2 Section 21-401 of the Cable and Video Competition Law of 2007
3 as consistent with Section 21-901 of that Law.

4 (h) This Section does not apply to any action that was
5 commenced, to any complaint that was filed, or to any audit
6 that was commenced before the effective date of this amendatory
7 Act of the 96th General Assembly. This Section also does not
8 apply to any franchise agreement that was entered into before
9 the effective date of this amendatory Act of the 96th General
10 Assembly ~~unless the franchise agreement contains audit~~
11 ~~provisions but no specifics regarding audit procedures.~~

12 (h-5) The audit procedures set forth in this Section shall
13 be the exclusive audit procedures for: (i) any franchise
14 agreement entered into, amended, or renewed on or after the
15 effective date of this amendatory Act of the 100th General
16 Assembly; and (ii) any franchise fee or service provider fee
17 audit of a CATV operator commenced on or after the effective
18 date of this amendatory Act of the 100th General Assembly.

19 (i) The provisions of this Section shall not be construed
20 as diminishing or replacing any civil remedy available to a
21 municipality, taxpayer, or tax collector.

22 (j) If a contingent fee is paid to an auditor, then the
23 payment must be based upon the net difference of the complete
24 audit.

25 (k) ~~A Within 90 days after the effective date of this~~
26 ~~amendatory Act of the 96th General Assembly, a municipality~~

1 shall provide to each ~~any~~ CATV operator an updated ~~a~~ complete
2 list of addresses within the corporate limits of the
3 municipality ~~and shall annually update the list.~~ In addition,
4 the municipality shall provide a CATV operator the updated
5 address list within 90 days after the date of a written request
6 by the CATV operator.

7 As a prerequisite to performing an audit of a CATV
8 operator's franchise fees or service provider fees derived from
9 the provision of cable and video services to subscribers within
10 the franchise area, a municipality shall provide to a CATV
11 operator the complete list of addresses within the corporate
12 limits of the municipality for each calendar year subject to
13 the audit. If an address is not included in the list or if no
14 list is provided, the CATV operator shall be held harmless for
15 any franchise fee underpayments, including penalty and
16 interest, from situsing errors if it used a reasonable
17 methodology to assign the address or addresses to a
18 municipality.

19 An address list provided by a municipality to a CATV
20 operator shall be maintained as confidential by the CATV
21 operator and shall only be used by the CATV operator for the
22 purposes of determining the situs of any franchise fee or
23 service provider fee. Any situs issues identified by a CATV
24 provider as a result of the provision of an address list by a
25 municipality to the CATV operator shall first be confirmed in
26 writing to the municipality by the CATV operator prior to the

1 CATV operator making any situs change that may result in a
2 change of allocation of a franchise fee or service provider fee
3 to the municipality.

4 (l) This Section is a denial and limitation of home rule
5 powers and functions under subsection (h) of Section 6 of
6 Article VII of the Illinois Constitution.

7 (m) This Section does not apply to any municipality having
8 a population of more than 1,000,000.

9 (Source: P.A. 99-6, eff. 6-29-15.)

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