



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB2503

Introduced 1/18/2006, by Sen. Pamela J. Althoff

SYNOPSIS AS INTRODUCED:

5 ILCS 140/7 from Ch. 116, par. 207
35 ILCS 645/5-10 new
65 ILCS 5/8-11-2.5 new

Amends the Electricity Infrastructure Maintenance Fee Law and the Illinois Municipal Code. Authorizes municipalities that impose certain taxes or fees on or collected by public utilities to conduct audits of those utilities to determine the accuracy of the taxes or fees paid to the municipality. Sets forth procedures under which a municipality may collect information from a public utility that is necessary to perform an audit. Sets forth procedures concerning the audit findings, liability for errors, penalties, confidentiality, and exemptions. Amends the Freedom of Information Act to exempt information provided by a public utility to a municipality in the course of an audit from the Act's inspection requirements. Effective immediately.

LRB094 18519 BDD 53847 b

FISCAL NOTE ACT
MAY APPLY

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 Freedom of Information Act is amended by
5 changing Section 7 as follows:

6 (5 ILCS 140/7) (from Ch. 116, par. 207)

7 Sec. 7. Exemptions.

8 (1) The following shall be exempt from inspection and
9 copying:

10 (a) Information specifically prohibited from
11 disclosure by federal or State law or rules and regulations
12 adopted under federal or State law.

13 (b) Information that, if disclosed, would constitute a
14 clearly unwarranted invasion of personal privacy, unless
15 the disclosure is consented to in writing by the individual
16 subjects of the information. The disclosure of information
17 that bears on the public duties of public employees and
18 officials shall not be considered an invasion of personal
19 privacy. Information exempted under this subsection (b)
20 shall include but is not limited to:

21 (i) files and personal information maintained with
22 respect to clients, patients, residents, students or
23 other individuals receiving social, medical,
24 educational, vocational, financial, supervisory or
25 custodial care or services directly or indirectly from
26 federal agencies or public bodies;

27 (ii) personnel files and personal information
28 maintained with respect to employees, appointees or
29 elected officials of any public body or applicants for
30 those positions;

31 (iii) files and personal information maintained
32 with respect to any applicant, registrant or licensee

1 by any public body cooperating with or engaged in
2 professional or occupational registration, licensure
3 or discipline;

4 (iv) information required of any taxpayer in
5 connection with the assessment or collection of any tax
6 unless disclosure is otherwise required by State
7 statute;

8 (v) information revealing the identity of persons
9 who file complaints with or provide information to
10 administrative, investigative, law enforcement or
11 penal agencies; provided, however, that identification
12 of witnesses to traffic accidents, traffic accident
13 reports, and rescue reports may be provided by agencies
14 of local government, except in a case for which a
15 criminal investigation is ongoing, without
16 constituting a clearly unwarranted per se invasion of
17 personal privacy under this subsection; and

18 (vi) the names, addresses, or other personal
19 information of participants and registrants in park
20 district, forest preserve district, and conservation
21 district programs.

22 (c) Records compiled by any public body for
23 administrative enforcement proceedings and any law
24 enforcement or correctional agency for law enforcement
25 purposes or for internal matters of a public body, but only
26 to the extent that disclosure would:

27 (i) interfere with pending or actually and
28 reasonably contemplated law enforcement proceedings
29 conducted by any law enforcement or correctional
30 agency;

31 (ii) interfere with pending administrative
32 enforcement proceedings conducted by any public body;

33 (iii) deprive a person of a fair trial or an
34 impartial hearing;

35 (iv) unavoidably disclose the identity of a
36 confidential source or confidential information

1 furnished only by the confidential source;

2 (v) disclose unique or specialized investigative
3 techniques other than those generally used and known or
4 disclose internal documents of correctional agencies
5 related to detection, observation or investigation of
6 incidents of crime or misconduct;

7 (vi) constitute an invasion of personal privacy
8 under subsection (b) of this Section;

9 (vii) endanger the life or physical safety of law
10 enforcement personnel or any other person; or

11 (viii) obstruct an ongoing criminal investigation.

12 (d) Criminal history record information maintained by
13 State or local criminal justice agencies, except the
14 following which shall be open for public inspection and
15 copying:

16 (i) chronologically maintained arrest information,
17 such as traditional arrest logs or blotters;

18 (ii) the name of a person in the custody of a law
19 enforcement agency and the charges for which that
20 person is being held;

21 (iii) court records that are public;

22 (iv) records that are otherwise available under
23 State or local law; or

24 (v) records in which the requesting party is the
25 individual identified, except as provided under part
26 (vii) of paragraph (c) of subsection (1) of this
27 Section.

28 "Criminal history record information" means data
29 identifiable to an individual and consisting of
30 descriptions or notations of arrests, detentions,
31 indictments, informations, pre-trial proceedings, trials,
32 or other formal events in the criminal justice system or
33 descriptions or notations of criminal charges (including
34 criminal violations of local municipal ordinances) and the
35 nature of any disposition arising therefrom, including
36 sentencing, court or correctional supervision,

1 rehabilitation and release. The term does not apply to
2 statistical records and reports in which individuals are
3 not identified and from which their identities are not
4 ascertainable, or to information that is for criminal
5 investigative or intelligence purposes.

6 (e) Records that relate to or affect the security of
7 correctional institutions and detention facilities.

8 (f) Preliminary drafts, notes, recommendations,
9 memoranda and other records in which opinions are
10 expressed, or policies or actions are formulated, except
11 that a specific record or relevant portion of a record
12 shall not be exempt when the record is publicly cited and
13 identified by the head of the public body. The exemption
14 provided in this paragraph (f) extends to all those records
15 of officers and agencies of the General Assembly that
16 pertain to the preparation of legislative documents.

17 (g) Trade secrets and commercial or financial
18 information obtained from a person or business where the
19 trade secrets or information are proprietary, privileged
20 or confidential, or where disclosure of the trade secrets
21 or information may cause competitive harm, including:

22 (i) All information determined to be confidential
23 under Section 4002 of the Technology Advancement and
24 Development Act.

25 (ii) All trade secrets and commercial or financial
26 information obtained by a public body, including a
27 public pension fund, from a private equity fund or a
28 privately held company within the investment portfolio
29 of a private equity fund as a result of either
30 investing or evaluating a potential investment of
31 public funds in a private equity fund. The exemption
32 contained in this item does not apply to the aggregate
33 financial performance information of a private equity
34 fund, nor to the identity of the fund's managers or
35 general partners. The exemption contained in this item
36 does not apply to the identity of a privately held

1 company within the investment portfolio of a private
2 equity fund, unless the disclosure of the identity of a
3 privately held company may cause competitive harm.

4 Nothing contained in this paragraph (g) shall be construed
5 to prevent a person or business from consenting to disclosure.

6 (h) Proposals and bids for any contract, grant, or
7 agreement, including information which if it were
8 disclosed would frustrate procurement or give an advantage
9 to any person proposing to enter into a contractor
10 agreement with the body, until an award or final selection
11 is made. Information prepared by or for the body in
12 preparation of a bid solicitation shall be exempt until an
13 award or final selection is made.

14 (i) Valuable formulae, computer geographic systems,
15 designs, drawings and research data obtained or produced by
16 any public body when disclosure could reasonably be
17 expected to produce private gain or public loss. The
18 exemption for "computer geographic systems" provided in
19 this paragraph (i) does not extend to requests made by news
20 media as defined in Section 2 of this Act when the
21 requested information is not otherwise exempt and the only
22 purpose of the request is to access and disseminate
23 information regarding the health, safety, welfare, or
24 legal rights of the general public.

25 (j) Test questions, scoring keys and other examination
26 data used to administer an academic examination or
27 determined the qualifications of an applicant for a license
28 or employment.

29 (k) Architects' plans, engineers' technical
30 submissions, and other construction related technical
31 documents for projects not constructed or developed in
32 whole or in part with public funds and the same for
33 projects constructed or developed with public funds, but
34 only to the extent that disclosure would compromise
35 security, including but not limited to water treatment
36 facilities, airport facilities, sport stadiums, convention

1 centers, and all government owned, operated, or occupied
2 buildings.

3 (l) Library circulation and order records identifying
4 library users with specific materials.

5 (m) Minutes of meetings of public bodies closed to the
6 public as provided in the Open Meetings Act until the
7 public body makes the minutes available to the public under
8 Section 2.06 of the Open Meetings Act.

9 (n) Communications between a public body and an
10 attorney or auditor representing the public body that would
11 not be subject to discovery in litigation, and materials
12 prepared or compiled by or for a public body in
13 anticipation of a criminal, civil or administrative
14 proceeding upon the request of an attorney advising the
15 public body, and materials prepared or compiled with
16 respect to internal audits of public bodies.

17 (o) Information received by a primary or secondary
18 school, college or university under its procedures for the
19 evaluation of faculty members by their academic peers.

20 (p) Administrative or technical information associated
21 with automated data processing operations, including but
22 not limited to software, operating protocols, computer
23 program abstracts, file layouts, source listings, object
24 modules, load modules, user guides, documentation
25 pertaining to all logical and physical design of
26 computerized systems, employee manuals, and any other
27 information that, if disclosed, would jeopardize the
28 security of the system or its data or the security of
29 materials exempt under this Section.

30 (q) Documents or materials relating to collective
31 negotiating matters between public bodies and their
32 employees or representatives, except that any final
33 contract or agreement shall be subject to inspection and
34 copying.

35 (r) Drafts, notes, recommendations and memoranda
36 pertaining to the financing and marketing transactions of

1 the public body. The records of ownership, registration,
2 transfer, and exchange of municipal debt obligations, and
3 of persons to whom payment with respect to these
4 obligations is made.

5 (s) The records, documents and information relating to
6 real estate purchase negotiations until those negotiations
7 have been completed or otherwise terminated. With regard to
8 a parcel involved in a pending or actually and reasonably
9 contemplated eminent domain proceeding under Article VII
10 of the Code of Civil Procedure, records, documents and
11 information relating to that parcel shall be exempt except
12 as may be allowed under discovery rules adopted by the
13 Illinois Supreme Court. The records, documents and
14 information relating to a real estate sale shall be exempt
15 until a sale is consummated.

16 (t) Any and all proprietary information and records
17 related to the operation of an intergovernmental risk
18 management association or self-insurance pool or jointly
19 self-administered health and accident cooperative or pool.

20 (u) Information concerning a university's adjudication
21 of student or employee grievance or disciplinary cases, to
22 the extent that disclosure would reveal the identity of the
23 student or employee and information concerning any public
24 body's adjudication of student or employee grievances or
25 disciplinary cases, except for the final outcome of the
26 cases.

27 (v) Course materials or research materials used by
28 faculty members.

29 (w) Information related solely to the internal
30 personnel rules and practices of a public body.

31 (x) Information contained in or related to
32 examination, operating, or condition reports prepared by,
33 on behalf of, or for the use of a public body responsible
34 for the regulation or supervision of financial
35 institutions or insurance companies, unless disclosure is
36 otherwise required by State law.

1 (y) Information the disclosure of which is restricted
2 under Section 5-108 of the Public Utilities Act.

3 (z) Manuals or instruction to staff that relate to
4 establishment or collection of liability for any State tax
5 or that relate to investigations by a public body to
6 determine violation of any criminal law.

7 (aa) Applications, related documents, and medical
8 records received by the Experimental Organ Transplantation
9 Procedures Board and any and all documents or other records
10 prepared by the Experimental Organ Transplantation
11 Procedures Board or its staff relating to applications it
12 has received.

13 (bb) Insurance or self insurance (including any
14 intergovernmental risk management association or self
15 insurance pool) claims, loss or risk management
16 information, records, data, advice or communications.

17 (cc) Information and records held by the Department of
18 Public Health and its authorized representatives relating
19 to known or suspected cases of sexually transmissible
20 disease or any information the disclosure of which is
21 restricted under the Illinois Sexually Transmissible
22 Disease Control Act.

23 (dd) Information the disclosure of which is exempted
24 under Section 30 of the Radon Industry Licensing Act.

25 (ee) Firm performance evaluations under Section 55 of
26 the Architectural, Engineering, and Land Surveying
27 Qualifications Based Selection Act.

28 (ff) Security portions of system safety program plans,
29 investigation reports, surveys, schedules, lists, data, or
30 information compiled, collected, or prepared by or for the
31 Regional Transportation Authority under Section 2.11 of
32 the Regional Transportation Authority Act or the St. Clair
33 County Transit District under the Bi-State Transit Safety
34 Act.

35 (gg) Information the disclosure of which is restricted
36 and exempted under Section 50 of the Illinois Prepaid

1 Tuition Act.

2 (hh) Information the disclosure of which is exempted
3 under the State Officials and Employees Ethics Act.

4 (ii) Beginning July 1, 1999, information that would
5 disclose or might lead to the disclosure of secret or
6 confidential information, codes, algorithms, programs, or
7 private keys intended to be used to create electronic or
8 digital signatures under the Electronic Commerce Security
9 Act.

10 (jj) Information contained in a local emergency energy
11 plan submitted to a municipality in accordance with a local
12 emergency energy plan ordinance that is adopted under
13 Section 11-21.5-5 of the Illinois Municipal Code.

14 (kk) Information and data concerning the distribution
15 of surcharge moneys collected and remitted by wireless
16 carriers under the Wireless Emergency Telephone Safety
17 Act.

18 (ll) Vulnerability assessments, security measures, and
19 response policies or plans that are designed to identify,
20 prevent, or respond to potential attacks upon a community's
21 population or systems, facilities, or installations, the
22 destruction or contamination of which would constitute a
23 clear and present danger to the health or safety of the
24 community, but only to the extent that disclosure could
25 reasonably be expected to jeopardize the effectiveness of
26 the measures or the safety of the personnel who implement
27 them or the public. Information exempt under this item may
28 include such things as details pertaining to the
29 mobilization or deployment of personnel or equipment, to
30 the operation of communication systems or protocols, or to
31 tactical operations.

32 (mm) Maps and other records regarding the location or
33 security of a utility's generation, transmission,
34 distribution, storage, gathering, treatment, or switching
35 facilities.

36 (nn) Law enforcement officer identification

1 information or driver identification information compiled
2 by a law enforcement agency or the Department of
3 Transportation under Section 11-212 of the Illinois
4 Vehicle Code.

5 (oo) Records and information provided to a residential
6 health care facility resident sexual assault and death
7 review team or the Residential Health Care Facility
8 Resident Sexual Assault and Death Review Teams Executive
9 Council under the Residential Health Care Facility
10 Resident Sexual Assault and Death Review Team Act.

11 (pp) Information provided to the predatory lending
12 database created pursuant to Article 3 of the Residential
13 Real Property Disclosure Act, except to the extent
14 authorized under that Article.

15 (qq) ~~(pp)~~ Defense budgets and petitions for
16 certification of compensation and expenses for court
17 appointed trial counsel as provided under Sections 10 and
18 15 of the Capital Crimes Litigation Act. This subsection
19 (qq) ~~(pp)~~ shall apply until the conclusion of the trial and
20 appeal of the case, even if the prosecution chooses not to
21 pursue the death penalty prior to trial or sentencing.

22 (rr) Information collected from a public utility in the
23 course of a municipal audit under Section 5-10 of the
24 Electricity Infrastructure Maintenance Fee Law or Section
25 8-11-2.5 of the Illinois Municipal Code.

26 (2) This Section does not authorize withholding of
27 information or limit the availability of records to the public,
28 except as stated in this Section or otherwise provided in this
29 Act.

30 (Source: P.A. 93-43, eff. 7-1-03; 93-209, eff. 7-18-03; 93-237,
31 eff. 7-22-03; 93-325, eff. 7-23-03, 93-422, eff. 8-5-03;
32 93-577, eff. 8-21-03; 93-617, eff. 12-9-03; 94-280, eff.
33 1-1-06; 94-508, eff. 1-1-06; 94-664, eff. 1-1-06; revised
34 8-29-05.)

35 Section 10. The Electricity Infrastructure Maintenance Fee

1 Law is amended by adding Section 5-10 as follows:

2 (35 ILCS 645/5-10 new)

3 Sec. 5-10. Municipal tax review; requests for information.

4 (a) A municipality may conduct an audit of fees under this
5 Act to determine the accuracy of the fees paid by an
6 electricity deliverer.

7 (b) Not more than once each year, a municipality that has
8 imposed a fee under this Act may request any information from
9 an electricity deliverer that the municipality reasonably
10 requires to perform an audit under subsection (a). The
11 information that may be requested by the municipality includes,
12 without limitation:

13 (1) in an electronic format, the database used by the
14 deliverer to determine the fee amount due to the
15 municipality, which, at a minimum, must provide the service
16 or location address, the billing address, and the usage by
17 account, including gross kilowatt-hours and any fees
18 collected by account from the purchaser, of all purchasers;
19 and

20 (2) in a format required by the municipality, summary
21 data as needed by the municipality to determine the unit
22 consumption by providing the gross kilowatt-hours or other
23 units of measurement being taxed within the municipal
24 jurisdiction.

25 (c) Each electricity deliverer must provide the
26 information requested under subsection (b) within:

27 (1) 30 days after the date of the request if the
28 population of the requesting municipality is 500,000 or
29 less; or

30 (2) 90 days after the date of the request if the
31 population of the requesting municipality exceeds 500,000.

32 The time in which an electricity deliverer must provide the
33 information requested under subsection (b) may be extended by
34 an agreement between the municipality and the electricity
35 deliverer or, when the parties cannot agree, by application to

1 the Illinois Commerce Commission by the electricity deliverer
2 with a written notice provided to the municipality within the
3 original time required for providing the requested
4 information.

5 (d) If an audit by the municipality or its agents finds an
6 error by the electricity deliverer in the payment of the fee,
7 then the municipality may notify the electricity deliverer of
8 the error. Upon such a notice, the electricity deliverer must
9 submit a written response within 30 days after the notice
10 stating that it has corrected the error or stating the reason
11 that the error is inapplicable or inaccurate. The municipality
12 then has 30 days after the receipt of the electricity
13 deliverer's response to review and contest the conclusion of
14 the electricity deliverer. If the parties are unable to agree
15 on the disposition of the audit findings within 60 days after
16 the notification of the error to the electricity deliverer,
17 then either party may submit the matter to the Illinois
18 Commerce Commission for resolution.

19 (e) Electricity deliverers and municipalities are not
20 liable for any error in past collections and payments that were
21 unknown to the electricity deliverer or municipality prior to
22 the audit process unless the error was due to gross negligence
23 in collection or processing of required data.

24 (f) All information provided by an electricity deliverer
25 under this Section must be held in strict confidence by the
26 municipality and its agents and is excluded from disclosure to
27 the public under the Freedom of Information Act.

28 (g) Any electricity deliverer that fails to comply with the
29 provisions of this Section is subject to a civil penalty of
30 \$500 for each day that the electricity deliverer is in
31 noncompliance.

32 (h) An electricity deliverer that collects less than \$1,000
33 annually in taxes under this Act is exempt from the provisions
34 of this Section. The Illinois Commerce Commission must adopt
35 any rules that are required to effectively enforce this
36 Section.

1 Section 15. The Illinois Municipal Code is amended by
2 adding Section 8-11-2.5 as follows:

3 (65 ILCS 5/8-11-2.5 new)

4 Sec. 8-11-2.5. Municipal tax review; requests for
5 information.

6 (a) If a municipality has imposed a tax under Section
7 8-11-2, then the municipality may conduct an audit of tax
8 receipts collected from the utility that is subject to the tax
9 or that collects the tax from purchasers on behalf of the
10 municipality to determine whether the amount of tax that was
11 paid by the utility was accurate.

12 (b) Not more than once each year, a municipality that has
13 imposed a tax under this Act may request any information from a
14 utility that the municipality reasonably requires to perform an
15 audit under subsection (a). The information that may be
16 requested by the municipality includes, without limitation:

17 (1) in an electronic format, the database used by the
18 utility to determine the amount of tax due to the
19 municipality, which, at a minimum, must provide the service
20 or location address, the billing address, and the usage by
21 account, gross taxable revenues, and any tax revenue
22 collected from the purchaser, of all purchasers; and

23 (2) in a format required by the municipality, summary
24 data as needed by the municipality to determine the unit
25 consumption of utility services by providing the gross
26 therms, kilowatts, minutes or other units of measurement
27 being taxed within the municipal jurisdiction and the gross
28 revenues collected and the associated taxes assessed.

29 (c) Each public utility must provide the information
30 requested under subsection (b) within:

31 (1) 30 days after the date of the request if the
32 population of the requesting municipality is 500,000 or
33 less; or

34 (2) 90 days after the date of the request if the

1 population of the requesting municipality exceeds 500,000.

2 The time in which a public utility must provide the
3 information requested under subsection (b) may be extended by
4 an agreement between the municipality and the public utility
5 or, when the parties cannot agree, by application to the
6 Illinois Commerce Commission by the public utility with a
7 written notice provided to the municipality within the original
8 time required for providing the requested information.

9 (d) If an audit by the municipality or its agents finds an
10 error by the public utility in the amount of taxes paid by the
11 public utility, then the municipality may notify the public
12 utility of the error. Upon such a notice, the public utility
13 must submit a written response within 30 days after the notice
14 stating that it has corrected the error or stating the reason
15 that the error is inapplicable or inaccurate. The municipality
16 then has 30 days after the receipt of the public utility's
17 response to review and contest the conclusion of the public
18 utility. If the parties are unable to agree on the disposition
19 of the audit findings within 60 days after the notification of
20 the error to the public utility, then either party may submit
21 the matter to the Illinois Commerce Commission for resolution.

22 (e) Public utilities and municipalities are not liable for
23 any error in past collections and payments that were unknown to
24 the public utility or municipality prior to the audit process
25 unless the error was due to gross negligence in collection or
26 processing of required data.

27 (f) All information provided by a public utility under this
28 Section must be held in strict confidence by the municipality
29 and its agents and is excluded from disclosure to the public
30 under the Freedom of Information Act.

31 (g) Any public utility that fails to comply with the
32 provisions of this Section is subject to a civil penalty of
33 \$500 for each day that the public utility is in noncompliance.

34 (h) A public utility that collects less than \$1,000
35 annually in taxes under this Act is exempt from the provisions
36 of this Section. The Illinois Commerce Commission must adopt

1 any rules that are required to effectively enforce this
2 Section.

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