



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB0082

Introduced 1/30/2009, by Sen. Pamela J. Althoff

SYNOPSIS AS INTRODUCED:

35 ILCS 645/5-5
35 ILCS 645/5-10 new
50 ILCS 45/10
50 ILCS 45/35
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 Local Government Taxpayers' Bill of Rights Act. Limits the authority of municipalities (including home rule municipalities) to impose penalties with respect to certain taxes imposed under the Illinois Municipal Code or with respect to the municipal electricity infrastructure maintenance fee. Effective immediately.

LRB096 03320 RLJ 13341 b

FISCAL NOTE ACT
MAY APPLY

HOME RULE 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 Electricity Infrastructure Maintenance Fee
5 Law is amended by changing Section 5-5 and by adding Section
6 5-10 as follows:

7 (35 ILCS 645/5-5)

8 Sec. 5-5. Municipal electricity infrastructure maintenance
9 fee.

10 (a) Any municipality that on the effective date of this Law
11 had in effect a franchise agreement with an electricity
12 deliverer may impose an infrastructure maintenance fee upon
13 electricity deliverers, as compensation for granting
14 electricity deliverers the privilege of using public rights of
15 way, in an amount specified in subsection (b) of this Section.
16 If more than one electricity deliverer is responsible for the
17 delivery of the same electricity to the same consumer, the fee
18 related to that electricity shall be imposed upon the
19 electricity deliverer who last physically uses the public way
20 for delivery of that electricity prior to its consumption.

21 (b) (1) In municipalities with a population greater than
22 500,000, the amount of the infrastructure maintenance fee
23 imposed under this Section shall not exceed the following

1 maximum rates for kilowatt-hours delivered within the
2 municipality to each purchaser:

3 (i) For the first 2,000 kilowatt-hours of electricity
4 used or consumed in a month: 0.53 cents per kilowatt-hour;

5 (ii) For the next 48,000 kilowatt-hours of electricity
6 used or consumed in a month: 0.35 cents per kilowatt-hour;

7 (iii) For the next 50,000 kilowatt-hours of
8 electricity used or consumed in a month: 0.31 cents per
9 kilowatt-hour;

10 (iv) For the next 400,000 kilowatt-hours of
11 electricity used or consumed in a month: 0.305 cents per
12 kilowatt-hour;

13 (v) For the next 500,000 kilowatt-hours of electricity
14 used or consumed in a month: 0.30 cents per kilowatt-hour;

15 (vi) For the next 2,000,000 kilowatt-hours of
16 electricity used or consumed in a month: 0.28 cents per
17 kilowatt-hour;

18 (vii) For the next 2,000,000 kilowatt-hours of
19 electricity used or consumed in a month: 0.275 cents per
20 kilowatt-hour;

21 (viii) For the next 5,000,000 kilowatt-hours of
22 electricity used or consumed in a month: 0.27 cents per
23 kilowatt-hour;

24 (ix) For the next 10,000,000 kilowatt-hours used or
25 consumed in a month: 0.265 cents per kilowatt-hour;

26 (x) For all kilowatt-hours of electricity in excess of

1 20,000,000 kilowatt-hours used or consumed in a month: 0.26
2 cents per kilowatt-hour.

3 (2) In municipalities with a population of 500,000 or less,
4 the amount of the infrastructure maintenance fee imposed under
5 this Section shall be imposed based on the kilowatt-hour
6 categories set forth above and shall be calculated on a monthly
7 basis for kilowatt-hours of electricity delivered to each
8 purchaser; provided, that if, immediately prior to imposing an
9 infrastructure maintenance fee, such municipality receives
10 franchise fees, permit fees, free electrical service, or other
11 forms of compensation pursuant to an existing franchise
12 agreement, the rates established for these kilowatt-hour
13 categories for such infrastructure maintenance fee during the
14 term of the franchise agreement shall not exceed rates
15 reasonably calculated, at the time such infrastructure
16 maintenance fee is initially imposed, to generate an amount of
17 revenue equivalent to the value of the compensation received or
18 provided under the franchise agreement.

19 (3) Notwithstanding any other provision of this subsection
20 (b), a fee shall not be imposed if and to the extent that
21 imposition or collection of the fee would violate the
22 Constitution or statutes of the United States or the statutes
23 or Constitution of the State of Illinois.

24 (c) Any electricity deliverer may collect the amount of a
25 fee imposed under this Section from the purchaser using or
26 consuming the electricity with respect to which the fee was

1 imposed. The fee may be collected by the electricity deliverer
2 from the purchaser as a separately stated charge on the
3 purchaser's bills or in any other manner permitted from time to
4 time by law or by the electricity deliverer's tariffs. The
5 electricity deliverer shall be allowed credit for any portion
6 of the fee related to deliveries of electricity the charges for
7 which are written off as uncollectible, provided, that if such
8 charges are thereafter collected, the electricity deliverer
9 shall be obligated to pay such fee. For purposes of this
10 Section, any partial payment not specifically identified by the
11 purchaser shall be deemed to be for the delivery of
12 electricity. No ordinance imposing the fee authorized by this
13 Section with respect to the kilowatt-hours delivered to
14 non-residential customers shall be effective until October 1,
15 1999. For purposes of this Law, the period of time from the
16 effective date of this Law through and including September 30,
17 1999 shall be referred to as the "Initial Period."

18 (d) As between the electricity deliverer and the
19 municipality, the fee authorized by this Section shall be
20 collected, enforced, and administered by the municipality
21 imposing the fee. Any municipality adopting an ordinance
22 imposing an infrastructure maintenance fee under this Law shall
23 give written notice to each electricity deliverer subject to
24 the fee not less than 60 days prior to the date the fee is
25 imposed.

26 (e) A municipality may not impose, under (i) any ordinance

1 imposing an infrastructure maintenance fee under this Law or
2 (ii) its franchise agreement with the electricity deliverer,
3 any penalty with respect to the infrastructure maintenance fees
4 permitted under this Law, except as that penalty would be
5 permitted under Sections 50, 55, and 60 of the Local Government
6 Taxpayer's Bill of Rights Act if the word "fee" were
7 substituted for the word "tax" each time it appears in those
8 Sections (except where the word tax appears immediately before
9 the word "administrator").

10 (Source: P.A. 90-561, eff. 8-1-98.)

11 (35 ILCS 645/5-10 new)

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

13 (a) A municipality may conduct an audit of fees under this
14 Act to determine the accuracy of the fees paid by an
15 electricity deliverer.

16 (b) Not more than once every 2 years, a municipality that
17 has imposed a fee under this Law may, subject to the
18 limitations and protections stated in Section 16-122 of the
19 Public Utilities Act, request any information from an
20 electricity deliverer that the municipality reasonably
21 requires in order to perform an audit under subsection (a). The
22 information that may be requested by the municipality includes,
23 without limitation:

24 (1) in an electronic format, the database used by the
25 electricity deliverer to determine the amount due to the

1 municipality; provided, however, that, if the municipality
2 has requested customer-specific billing, usage, and load
3 shape data from an electricity deliverer that is an
4 electric utility and has not provided the electric utility
5 with the verifiable authorization required by Section
6 16-122 of the Public Utilities Act, then the electric
7 utility shall remove from the database all
8 customer-specific billing, usage, and load shape data
9 before providing it to the municipality; and

10 (2) in a format used by the public utility in the
11 ordinary course of its business, summary data, as needed by
12 the municipality, to determine the unit consumption by
13 providing the gross kilowatt-hours or other units of
14 measurement subject to the fee imposed by this Law within
15 the municipal jurisdiction.

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

18 (1) 60 days after the date of the request if the
19 population of the requesting municipality is 500,000 or
20 less; or

21 (2) 90 days after the date of the request if the
22 population of the requesting municipality exceeds 500,000.

23 The time in which an electricity deliverer must provide the
24 information requested under subsection (b) may be extended by
25 an agreement between the municipality and the electricity
26 deliverer. If an electricity deliverer receives, during a

1 single month, information requests from more than 2
2 municipalities, or the aggregate population of the requesting
3 municipalities is 100,000 customers or more, the electricity
4 deliverer is entitled to an additional 30 days to respond to
5 those requests. The Illinois Department of Revenue may grant
6 the electricity deliverer additional extensions to respond.

7 (d) If an audit by the municipality or its agents finds an
8 error by the electricity deliverer in the amount of fees paid
9 by the electricity deliverer, then the municipality must notify
10 the electricity deliverer of the error. Any such notice must be
11 made by the municipality no later than 4 years after the date
12 the fee required to be paid under this Law was due or any
13 lesser period of time that may be specified in the municipal
14 ordinance imposing the fee. Upon such a notice, the electricity
15 deliverer must submit a written response within 60 days after
16 the date the notice was postmarked stating that it has
17 corrected the error or stating the reason that the error is
18 inapplicable or inaccurate. The municipality then has 60 days
19 after the receipt of the electricity deliverer's response to
20 review and contest the conclusion of the electricity deliverer.
21 If the parties are unable to agree on the disposition of the
22 audit findings within 120 days after the notification of the
23 error to the electricity deliverer, then either party may
24 submit the matter to the Illinois Department of Revenue for
25 resolution.

26 (e) Electricity deliverers and municipalities are not

1 liable for any error in past collections and payments that was
2 unknown to either the electricity deliverer or the municipality
3 prior to the audit process unless the error was due to gross
4 negligence in the collection or processing of required data.
5 If, however, an error in past collections or payments resulted
6 in a customer, who should not have owed a fee to any
7 municipality, having paid a fee to a municipality, then the
8 customer may, to the extent allowed by section 9-252 of the
9 Public Utilities Act, recover the fee from the electricity
10 deliverer, and any amount so paid by the electricity deliverer
11 may be deducted by that electricity deliverer from any fees or
12 taxes then or thereafter owed by the electricity deliverer to
13 that municipality.

14 (f) All account specific information provided by an
15 electricity deliverer under this Section may be used only for
16 the purpose of an audit of fees conducted under this Section
17 and the enforcement of any related claim. All such information
18 must be held in strict confidence by the municipality and its
19 agents and may not be disclosed to the public under the Freedom
20 of Information Act or under any other similar statutes allowing
21 for or requiring public disclosure.

22 (g) An electricity deliverer that pays less than \$1,000
23 annually in fees under this Law is exempt from the provisions
24 of subsections (a) through (e) of this Section.

25 (h) The Department of Revenue shall adopt any rules that
26 are required to effectively enforce this Section, and those

1 rules must be consistent with existing processes applicable to
2 the Electricity Excise Tax Law. The Department of Revenue has
3 the exclusive jurisdiction to resolve any disputes arising
4 under this Section, subject to review by the courts under the
5 Administrative Review Law.

6 (i) Any public utility that fails to comply with the
7 provisions of this Section shall pay for all costs of
8 enforcement, including reasonable legal fees.

9 Section 10. The Local Government Taxpayers' Bill of Rights
10 Act is amended by changing Sections 10 and 35 as follows:

11 (50 ILCS 45/10)

12 Sec. 10. Application and home rule preemption. The
13 limitations provided by this Act shall take precedence over any
14 provision of any tax ordinance imposed by a unit of local
15 government, as defined in this Act, in Illinois, including
16 without limitation any tax authorized under Section 8-11-2 of
17 the Illinois Municipal Code.

18 Consistent with the limitations provided by this Act, a
19 municipality may not impose, under (i) any ordinance imposing a
20 tax authorized by Section 8-11-2 of the Illinois Municipal Code
21 or (ii) its franchise agreement with a public utility, any
22 penalty with respect to a tax authorized by Section 8-11-2 of
23 the Illinois Municipal Code or with respect to an audit
24 authorized by Section 8-11-2.5 of the Illinois Municipal Code,

1 except as specified in Sections 50, 55, and 60 of this Act. For
2 purposes of this Section, a penalty includes, without
3 limitation, (i) fines, assessments, forfeitures, fees, or
4 other similar charges, (ii) liens or encumbrances on property
5 of a public utility, (iii) a revocation or modification of any
6 existing license, permit, right, or franchise of a public
7 utility, and (iv) a refusal to renew or grant or any license,
8 permit, right, or franchise to a public utility except on the
9 condition that the public utility agrees to any penalty.

10 This Act is a denial and limitation of home rule powers and
11 functions under subsection (g) of Section 6 of Article VII of
12 the Illinois Constitution.

13 (Source: P.A. 91-920, eff. 1-1-01.)

14 (50 ILCS 45/35)

15 Sec. 35. Audit procedures. Taxpayers have the right to be
16 treated by officers, employees, and agents of the local tax
17 administrator with courtesy, fairness, uniformity,
18 consistency, and common sense. This Section applies to any
19 audit of a tax imposed by a unit of local government, except to
20 the extent otherwise provided in Section 8-11-2.5 of the
21 Illinois Municipal Code. Taxpayers must be notified in writing
22 by the local jurisdiction of a proposed audit of the taxpayer's
23 books and records clearly identifying who will be conducting
24 the audit. For audits being conducted by third-party providers,
25 the local jurisdiction must provide written authorization for

1 the third-party provider to review the books and records of the
2 taxpayer. No contact may be made by the third-party provider
3 until the local-jurisdiction authorization is received by the
4 taxpayer. The notice of audit must specify the tax and time
5 period to be audited and must detail the minimum documentation
6 or books and records to be made available to the auditor.
7 Audits must be held only during reasonable times of the day
8 and, unless impracticable, at times agreed to by the taxpayer.
9 The auditor must sign a confidentiality agreement upon request
10 by the taxpayer, and the taxpayer may require that an audit be
11 conducted at the taxpayer's place of books and records. Upon
12 the completion of the audit, the local jurisdiction must issue
13 an audit closure report to the taxpayer with the results of the
14 audit. An auditor who determines that there has been an
15 overpayment of tax during the course of the audit is obligated
16 to identify the overpayment to the taxpayer so that the
17 taxpayer can take the necessary steps to recover the
18 overpayment. If the overpayment is the result of the
19 application of some or all of the taxpayer's tax payment to an
20 incorrect local government entity, the auditor must notify the
21 correct local government entity of the taxpayer's application
22 error.

23 (Source: P.A. 91-920, eff. 1-1-01.)

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

1 (65 ILCS 5/8-11-2.5 new)

2 Sec. 8-11-2.5. Municipal tax review; requests for
3 information.

4 (a) If a municipality has imposed a tax under Section
5 8-11-2, then the municipality may conduct an audit of tax
6 receipts collected from the public utility that is subject to
7 the tax or that collects the tax from purchasers on behalf of
8 the municipality to determine whether the amount of tax that
9 was paid by the public utility was accurate.

10 (b) Not more than once every 2 years, a municipality that
11 has imposed a tax under this Act may, subject to the
12 limitations and protections stated in Section 16-122 of the
13 Public Utilities Act and in the Local Government Taxpayers'
14 Bill of Rights Act, request any information from a utility in
15 the format maintained by the public utility in the ordinary
16 course of its business that the municipality reasonably
17 requires in order to perform an audit under subsection (a). The
18 information that may be requested by the municipality includes,
19 without limitation:

20 (1) in an electronic format used by the public utility
21 in the ordinary course of its business, the database used
22 by the public utility to determine the amount of tax due to
23 the municipality; provided, however, that, if the
24 municipality has requested customer-specific billing,
25 usage, and load shape data from a public utility that is an

1 electric utility and has not provided the electric utility
2 with the verifiable authorization required by Section
3 16-122 of the Public Utilities Act, then the electric
4 utility shall remove from the database all
5 customer-specific billing, usage, and load shape data
6 before providing it to the municipality; and

7 (2) in a format used by the public utility in the
8 ordinary course of its business, summary data, as needed by
9 the municipality, to determine the unit consumption of
10 utility services by providing the gross therms, kilowatts,
11 minutes or other units of measurement being taxed within
12 the municipal jurisdiction and the gross revenues
13 collected and the associated taxes assessed.

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

16 (1) 60 days after the date of the request if the
17 population of the requesting municipality is 500,000 or
18 less; or

19 (2) 90 days after the date of the request if the
20 population of the requesting municipality exceeds 500,000.

21 The time in which a public utility must provide the
22 information requested under subsection (b) may be extended by
23 an agreement between the municipality and the public utility.
24 If a public utility receives, during a single month,
25 information requests from more than 2 municipalities, or the
26 aggregate population of the requesting municipalities is

1 100,000 customers or more, the public utility is entitled to an
2 additional 30 days to respond to those requests. The Illinois
3 Department of Revenue may grant the public utility additional
4 extensions to respond.

5 (d) If an audit by the municipality or its agents finds an
6 error by the public utility in the amount of taxes paid by the
7 public utility, then the municipality may notify the public
8 utility of the error. Any such notice must be made by the
9 municipality no later than 4 years after the date the tax
10 required to be paid under this Law was due or any lesser period
11 of time that may be specified in the municipal ordinance
12 imposing the tax. Upon such a notice, the public utility must
13 submit a written response within 60 days after the date the
14 notice was postmarked stating that it has corrected the error
15 on a prospective basis or stating the reason that the error is
16 inapplicable or inaccurate. The municipality then has 60 days
17 after the receipt of the public utility's response to review
18 and contest the conclusion of the public utility. If the
19 parties are unable to agree on the disposition of the audit
20 findings within 120 days after the notification of the error to
21 the public utility, then either party may submit the matter to
22 the Illinois Department of Revenue for resolution.

23 (e) No public utility is liable for any error in past
24 collections and payments that was unknown by it prior to the
25 audit process unless (i) the error was due to gross negligence
26 by the public utility in the collection or processing of

1 required data and (ii) the municipality had not failed to
2 respond in writing on an accurate and timely basis to any
3 written request of the public utility to review and correct
4 information used by the public utility to collect the
5 municipality's tax if a diligent review of such information by
6 the municipality reasonably could have been expected to
7 discover such error. If, however, an error in past collections
8 or payments resulted in a customer, who should not have owed a
9 tax to any municipality, having paid a tax to a municipality,
10 then the customer may, to the extent allowed by section 9-252
11 of the Public Utilities Act, recover the tax from the public
12 utility, and any amount so paid by the public utility may be
13 deducted by that public utility from any taxes then or
14 thereafter owed by the public utility to that municipality.

15 (f) All account specific information provided by a public
16 utility under this Section may be used only for the purpose of
17 an audit of taxes conducted under this Section and the
18 enforcement of any related tax claim. All such information must
19 be held in strict confidence by the municipality and its agents
20 and may not be disclosed to the public under the Freedom of
21 Information Act or under any other similar statutes allowing
22 for or requiring public disclosure.

23 (g) A public utility that collects less than \$1,000
24 annually in taxes under this Act is exempt from the provisions
25 of subsections (a) through (e) of this Section.

26 (h) The Department of Revenue shall adopt any rules that

1 are required to effectively enforce this Section, and those
2 rules must be consistent with existing processes applicable to
3 the Electricity Excise Tax Law. The Department of Revenue has
4 the exclusive jurisdiction to resolve any disputes arising
5 under this Section, subject to review by the courts under the
6 Administrative Review Law.

7 (i) Any public utility that fails to comply with the
8 provisions of this Section shall pay for all costs of
9 enforcement, including reasonable legal fees.

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