



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB2612

Introduced 1/21/2010, 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
55 ILCS 5/5-1095.1 new
65 ILCS 5/8-11-2.5 new
65 ILCS 5/11-42-11.05 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. Provides that a municipality may audit a community antenna television system operator franchised by the municipality to provide video services. Sets forth the procedures concerning the audit. 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. Amends the Counties Code. Provides that a county may audit a community antenna television system operator franchised by the county to provide video services. Sets forth the procedures concerning the audit. Sets forth procedures concerning the audit findings, liability for errors, and confidentiality. Contains other provisions. Effective immediately.

LRB096 13422 RLJ 28151 b

FISCAL NOTE ACT
MAY APPLY

HOME RULE NOTE
ACT MAY APPLY

A BILL FOR

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 Taxpayers' 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.

6 (d) If an audit by the municipality or its agents finds an
7 error by the electricity deliverer in the amount of fees paid
8 by the electricity deliverer, then the municipality must notify
9 the electricity deliverer of the error. Any such notice must be
10 made by the municipality no later than 4 years after the date
11 the fee required to be paid under this Law was due or any
12 lesser period of time that may be specified in the municipal
13 ordinance imposing the fee. Upon such a notice, the electricity
14 deliverer must submit a written response within 60 days after
15 the date the notice was postmarked stating that it has
16 corrected the error or stating the reason that the error is
17 inapplicable or inaccurate. The municipality then has 60 days
18 after the receipt of the electricity deliverer's response to
19 review and contest the conclusion of the electricity deliverer.
20 If the parties are unable to agree on the disposition of the
21 audit findings within 120 days after the notification of the
22 error to the electricity deliverer, then either party may
23 submit the matter to mediation. Selection of the mediator shall
24 be by mutual agreement. If the mediation does not produce a
25 satisfactory result, then either party may pursue the alleged
26 error in a court of competent jurisdiction.

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

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

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

1 (50 ILCS 45/10)

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

8 Consistent with the limitations provided by this Act, a
9 municipality may not impose, under (i) any ordinance imposing a
10 tax authorized by Section 8-11-2 of the Illinois Municipal Code
11 or (ii) its franchise agreement with a public utility, any
12 penalty with respect to a tax authorized by Section 8-11-2 of
13 the Illinois Municipal Code or with respect to an audit
14 authorized by Section 8-11-2.5 of the Illinois Municipal Code,
15 except as specified in Sections 50, 55, and 60 of this Act. For
16 purposes of this Section, a penalty includes, without
17 limitation, (i) fines, assessments, forfeitures, fees, or
18 other similar charges, (ii) liens or encumbrances on property
19 of a public utility, (iii) a revocation or modification of any
20 existing license, permit, right, or franchise of a public
21 utility, and (iv) a refusal to renew or grant any license,
22 permit, right, or franchise to a public utility except on the
23 condition that the public utility agrees to any penalty.

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

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

2 (50 ILCS 45/35)

3 Sec. 35. Audit procedures. Taxpayers have the right to be
4 treated by officers, employees, and agents of the local tax
5 administrator with courtesy, fairness, uniformity,
6 consistency, and common sense. This Section applies to any
7 audit of a tax imposed by a unit of local government, except to
8 the extent otherwise provided in Section 8-11-2.5 of the
9 Illinois Municipal Code. Taxpayers must be notified in writing
10 by the local jurisdiction of a proposed audit of the taxpayer's
11 books and records clearly identifying who will be conducting
12 the audit. For audits being conducted by third-party providers,
13 the local jurisdiction must provide written authorization for
14 the third-party provider to review the books and records of the
15 taxpayer. No contact may be made by the third-party provider
16 until the local-jurisdiction authorization is received by the
17 taxpayer. The notice of audit must specify the tax and time
18 period to be audited and must detail the minimum documentation
19 or books and records to be made available to the auditor.
20 Audits must be held only during reasonable times of the day
21 and, unless impracticable, at times agreed to by the taxpayer.
22 The auditor must sign a confidentiality agreement upon request
23 by the taxpayer, and the taxpayer may require that an audit be
24 conducted at the taxpayer's place of books and records. Upon
25 the completion of the audit, the local jurisdiction must issue

1 an audit closure report to the taxpayer with the results of the
2 audit. An auditor who determines that there has been an
3 overpayment of tax during the course of the audit is obligated
4 to identify the overpayment to the taxpayer so that the
5 taxpayer can take the necessary steps to recover the
6 overpayment. If the overpayment is the result of the
7 application of some or all of the taxpayer's tax payment to an
8 incorrect local government entity, the auditor must notify the
9 correct local government entity of the taxpayer's application
10 error.

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

12 Section 15. The Counties Code is amended by adding Section
13 5-1095.1 as follows:

14 (55 ILCS 5/5-1095.1 new)

15 Sec. 5-1095.1. County franchise fee review; requests for
16 information.

17 (a) If pursuant to its franchise agreement with a community
18 antenna television system (CATV) operator, a county imposes a
19 franchise fee authorized by 47 U.S.C. 542, then the county may
20 conduct an audit of that CATV operator's gross revenues derived
21 from the provision of video services to subscribers within the
22 franchise area to determine whether the amount of franchise
23 fees paid by that CATV operator to the county was accurate.

24 (b) Not more than once every 2 years, a county that has

1 imposed a franchise fee authorized by 47 U.S.C. 542 may,
2 subject to the limitations and protections stated in Section
3 22-501 of the Cable and Video Customer Protection Law and in
4 the Local Government Taxpayers' Bill of Rights Act, request
5 information from the CATV operator in the format maintained by
6 the CATV operator in the ordinary course of its business that
7 the county reasonably requires in order to perform an audit
8 under subsection (a). The information that may be requested by
9 the county shall be limited to the following:

10 (1) in an electronic format used by the CATV operator
11 in the ordinary course of its business, the database used
12 by the CATV operator to determine the amount of the
13 franchise fee due to the county; and

14 (2) in a format used by the CATV operator in the
15 ordinary course of its business, summary data, as needed by
16 the county, to determine the CATV operator's gross revenues
17 derived from the provision of video services to subscribers
18 within the CATV operator's franchise area.

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

21 (1) 60 days after the receipt of the request if the
22 population of the requesting county is 500,000 or less; or

23 (2) 90 days after the receipt of the request if the
24 population of the requesting county exceeds 500,000.

25 The time in which a CATV operator must provide the
26 information requested under subsection (b) may be extended by

1 an agreement between the county and the CATV operator.

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

20 (e) No CATV operator is liable for any error in past
21 franchise fee payments that was unknown by the CATV operator
22 prior to the audit process unless (i) the error was due to
23 gross negligence on the part of the CATV operator in the
24 collection or processing of required data and (ii) the county
25 had not failed to respond in writing in a timely manner to any
26 written request of the CATV operator to review and correct

1 information used by the CATV operator to calculate the
2 appropriate franchise fees if a diligent review of such
3 information by the county reasonably could have been expected
4 to discover such error.

5 (f) All account specific information provided by a CATV
6 operator under this Section may be used only for the purpose of
7 an audit conducted under this Section and the enforcement of
8 any franchise fee delinquent claim. All such information must
9 be held in strict confidence by the county and its agents and
10 may not be disclosed to the public under the Freedom of
11 Information Act or under any other similar statutes allowing
12 for or requiring public disclosure.

13 (g) For the purposes of this Section, "CATV operator" means
14 a person or entity that provides video services under a
15 franchise agreement with a county pursuant to Section 5-1095 of
16 the Counties Code.

17 (h) This Section applies to any cable franchise agreement
18 between a CATV operator and a county in effect on or after the
19 effective date of this amendatory Act of the 96th General
20 Assembly, but only if the operator files a written declaration
21 with the county that the operator elects to have this Section
22 apply.

23 (i) This Section is a denial and limitation of home rule
24 powers and functions under subsection (h) of Section 6 of
25 Article VII of the Illinois Constitution.

1 Section 20. The Illinois Municipal Code is amended by
2 adding Sections 8-11-2.5 and 11-42-11.05 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 public utility that is subject to
9 the tax or that collects the tax from purchasers on behalf of
10 the municipality to determine whether the amount of tax that
11 was paid by the public utility was accurate.

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

22 (1) in an electronic format used by the public utility
23 in the ordinary course of its business, the database used
24 by the public utility to determine the amount of tax due to
25 the municipality; provided, however, that, if the

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

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

16 (c) Each public utility must provide the information
17 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 a public utility must provide the
24 information requested under subsection (b) may be extended by
25 an agreement between the municipality and the public utility.
26 If a public utility receives, during a single month,

1 information requests from more than 2 municipalities, or the
2 aggregate population of the requesting municipalities is
3 100,000 customers or more, the public utility is entitled to an
4 additional 30 days to respond to those requests.

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 mediation. Selection of the mediator shall be by mutual
23 agreement. If the mediation does not produce a satisfactory
24 result, then either party may pursue the alleged error in a
25 court of competent jurisdiction.

26 (e) No public utility is liable for any error in past

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

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

1 (65 ILCS 5/11-42-11.05 new)

2 Sec. 11-42-11.05. Municipal franchise fee review; requests
3 for information.

4 (a) If pursuant to its franchise agreement with a community
5 antenna television system (CATV) operator, a municipality
6 imposes a franchise fee authorized by 47 U.S.C. 542, then the
7 municipality may conduct an audit of that CATV operator's gross
8 revenues derived from the provision of video services to
9 subscribers within the franchise area to determine whether the
10 amount of franchise fees paid by that CATV operator to the
11 municipality was accurate.

12 (b) Not more than once every 2 years, a municipality that
13 has imposed a franchise fee authorized by 47 U.S.C. 542 may,
14 subject to the limitations and protections stated in Section
15 22-501 of the Cable and Video Customer Protection Law and in
16 the Local Government Taxpayers' Bill of Rights Act, request
17 information from the CATV operator in the format maintained by
18 the CATV operator in the ordinary course of its business that
19 the municipality reasonably requires in order to perform an
20 audit under subsection (a). The information that may be
21 requested by the municipality shall be limited to the
22 following:

23 (1) in an electronic format used by the CATV operator
24 in the ordinary course of its business, the database used
25 by the CATV operator to determine the amount of the
26 franchise fee due to the municipality; and

1 (2) in a format used by the CATV operator in the
2 ordinary course of its business, summary data, as needed by
3 the municipality, to determine the CATV operator's gross
4 revenues derived from the provision of video services to
5 subscribers within the CATV operator's franchise area.

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

8 (1) 60 days after the receipt of the request if the
9 population of the requesting municipality is 500,000 or
10 less; or

11 (2) 90 days after the receipt of the request if the
12 population of the requesting municipality exceeds 500,000.

13 The time in which a CATV operator must provide the
14 information requested under subsection (b) may be extended by
15 an agreement between the municipality and the CATV operator.

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

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

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

20 (f) All account specific information provided by a CATV
21 operator under this Section may be used only for the purpose of
22 an audit conducted under this Section and the enforcement of
23 any franchise fee delinquent claim. All such information must
24 be held in strict confidence by the municipality and its agents
25 and may not be disclosed to the public under the Freedom of
26 Information Act or under any other similar statutes allowing

1 for or requiring public disclosure.

2 (g) For the purposes of this Section, "CATV operator" means
3 a person or entity that provides video services under a
4 franchise agreement with a municipality pursuant to Section
5 11-42-11 of the Municipal Code.

6 (h) This Section applies to any cable franchise agreement
7 between a CATV operator and a municipality in effect on or
8 after the effective date of this amendatory Act of the 96th
9 General Assembly, but only if the operator files a written
10 declaration with the municipality that the operator elects to
11 have this Section apply.

12 (i) 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 Section 99. Effective date. This Act takes effect upon
16 becoming law.