



Rep. Susana A. Mendoza

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1 AMENDMENT TO SENATE BILL 2612

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2612 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Electricity Infrastructure Maintenance Fee  
5 Law is amended by adding Section 5-10 as follows:

6 (35 ILCS 645/5-10 new)

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

8 (a) A municipality may conduct an audit of fees under this  
9 Act to determine the accuracy of the fees paid by an  
10 electricity deliverer.

11 (b) Not more than once every 2 years, a municipality that  
12 has imposed a fee under this Law may, subject to the  
13 limitations and protections stated in Section 16-122 of the  
14 Public Utilities Act, request any information from an  
15 electricity deliverer that the municipality reasonably  
16 requires in order to perform an audit under subsection (a). The

1 information that may be requested by the municipality includes,  
2 without limitation:

3 (1) in an electronic format, the database used by the  
4 electricity deliverer to determine the amount due to the  
5 municipality; provided, however, that, if the municipality  
6 has requested customer-specific billing, usage, and load  
7 shape data from an electricity deliverer that is an  
8 electric utility and has not provided the electric utility  
9 with the verifiable authorization required by Section  
10 16-122 of the Public Utilities Act, then the electric  
11 utility shall remove from the database all  
12 customer-specific billing, usage, and load shape data  
13 before providing it to the municipality; and

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

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

22 (1) 60 days after the date of the request if the  
23 population of the requesting municipality is 500,000 or  
24 less; or

25 (2) 90 days after the date of the request if the  
26 population of the requesting municipality exceeds 500,000.

1       The time in which an electricity deliverer must provide the  
2 information requested under subsection (b) may be extended by  
3 an agreement between the municipality and the electricity  
4 deliverer. If an electricity deliverer receives, during a  
5 single month, information requests from more than 2  
6 municipalities, or the aggregate population of the requesting  
7 municipalities is 100,000 customers or more, the electricity  
8 deliverer is entitled to an additional 30 days to respond to  
9 those requests.

10       (d) If an audit by the municipality or its agents finds an  
11 error by the electricity deliverer in the amount of fees  
12 collected or paid by the electricity deliverer, then the  
13 municipality must notify the electricity deliverer of the  
14 error. Any such notice must be issued pursuant to Section 30 of  
15 the Local Government Taxpayers' Bill of Rights Act or a lesser  
16 period of time from the date the fee was due that may be  
17 specified in the municipal ordinance imposing the fee. Upon  
18 such a notice, any audit shall be conducted pursuant Section 35  
19 of the Local Government Taxpayers' Bill of Rights Act subject  
20 to the timelines set forth in this subsection (d). The  
21 electricity deliverer must submit a written response within 60  
22 days after the date the notice was postmarked stating that it  
23 has corrected the error or stating the reason that the error is  
24 inapplicable or inaccurate. The municipality then has 60 days  
25 after the receipt of the electricity deliverer's response to  
26 review and contest the conclusion of the electricity deliverer.

1 If the parties are unable to agree on the disposition of the  
2 audit findings within 120 days after the notification of the  
3 error to the electricity deliverer, then either party may  
4 submit the matter for appeal as outlined in Section 40 of the  
5 Local Government Taxpayers' Bill of Rights Act. If the appeals  
6 process does not produce a satisfactory result, then either  
7 party may pursue the alleged error in a court of competent  
8 jurisdiction.

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

23 (f) All account specific information provided by an  
24 electricity deliverer under this Section may be used only for  
25 the purpose of an audit of fees conducted under this Section  
26 and the enforcement of any related claim. All such information

1 must be held in strict confidence by the municipality and its  
2 agents and may not be disclosed to the public under the Freedom  
3 of Information Act or under any other similar statutes allowing  
4 for or requiring public disclosure.

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

8 (h) This Section does not apply to any municipality having  
9 a population greater than 1,000,000.

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

12 (50 ILCS 45/10)

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

19 Consistent with the limitations provided by this Act, a  
20 municipality, other than municipality having a population  
21 greater than 1,000,000, may not impose any penalty with respect  
22 to a tax authorized by Section 8-11-2 of the Illinois Municipal  
23 Code or with respect to an audit authorized by Section 8-11-2.5  
24 of the Illinois Municipal Code, except as specified in Sections

1 50, 55, and 60 of this Act.

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

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

6 (50 ILCS 45/35)

7 Sec. 35. Audit procedures. Taxpayers have the right to be  
8 treated by officers, employees, and agents of the local tax  
9 administrator with courtesy, fairness, uniformity,  
10 consistency, and common sense. This Section applies to any  
11 audit of a tax imposed by a unit of local government other than  
12 a municipality having a population greater than 1,000,000,  
13 except to the extent otherwise provided in Section 8-11-2.5 of  
14 the Illinois Municipal Code. Taxpayers must be notified in  
15 writing by the local jurisdiction of a proposed audit of the  
16 taxpayer's books and records clearly identifying who will be  
17 conducting the audit. For audits being conducted by third-party  
18 providers, the local jurisdiction must provide written  
19 authorization for the third-party provider to review the books  
20 and records of the taxpayer. No contact may be made by the  
21 third-party provider until the local-jurisdiction  
22 authorization is received by the taxpayer. The notice of audit  
23 must specify the tax and time period to be audited and must  
24 detail the minimum documentation or books and records to be  
25 made available to the auditor. Audits must be held only during

1 reasonable times of the day and, unless impracticable, at times  
2 agreed to by the taxpayer. The auditor must sign a  
3 confidentiality agreement upon request by the taxpayer. Upon  
4 the completion of the audit, the local jurisdiction must issue  
5 an audit closure report to the taxpayer with the results of the  
6 audit. An auditor who determines that there has been an  
7 overpayment of tax during the course of the audit is obligated  
8 to identify the overpayment to the taxpayer so that the  
9 taxpayer can take the necessary steps to recover the  
10 overpayment. If the overpayment is the result of the  
11 application of some or all of the taxpayer's tax payment to an  
12 incorrect local government entity, then upon request by a unit  
13 of local government, the audit information must be given to any  
14 unit of local government that may be affected by an overpayment  
15 ~~the auditor must notify the correct local government entity of~~  
16 ~~the taxpayer's application error.~~

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

18 Section 15. The Counties Code is amended by adding Section  
19 5-1095.1 as follows:

20 (55 ILCS 5/5-1095.1 new)

21 Sec. 5-1095.1. County franchise fee review; requests for  
22 information.

23 (a) If pursuant to its franchise agreement with a community  
24 antenna television system (CATV) operator, a county imposes a

1 franchise fee authorized by 47 U.S.C. 542, then the county may  
2 conduct an audit of that CATV operator's franchise fees derived  
3 from the provision of cable and video services to subscribers  
4 within the franchise area to determine whether the amount of  
5 franchise fees paid by that CATV operator to the county was  
6 accurate. Any audit conducted under this subsection (a) shall  
7 determine any overpayment or underpayment to the county by the  
8 CATV operator, and the amount due to the county or CATV  
9 operator is limited to the net difference.

10 (b) Not more than once every 2 years, a county that has  
11 imposed a franchise fee authorized by 47 U.S.C. 542 may,  
12 subject to the limitations and protections stated in the Local  
13 Government Taxpayers' Bill of Rights Act, request information  
14 from the CATV operator in the format maintained by the CATV  
15 operator in the ordinary course of its business that the county  
16 reasonably requires in order to perform an audit under  
17 subsection (a). The information that may be requested by the  
18 county includes without limitation the following:

19 (1) in an electronic format used by the CATV operator  
20 in the ordinary course of its business, the database used  
21 by the CATV operator to determine the amount of the  
22 franchise fee due to the county; and

23 (2) in a format used by the CATV operator in the  
24 ordinary course of its business, summary data, as needed by  
25 the county, to determine the CATV operator's franchise fees  
26 derived from the provision of cable and video services to



1 subscribers within the CATV operator's franchise area.

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

4 (1) 60 days after the receipt of the request if the  
5 population of the requesting county is 500,000 or less; or

6 (2) 90 days after the receipt of the request if the  
7 population of the requesting county exceeds 500,000.

8 The time in which a CATV operator must provide the  
9 information requested under subsection (b) may be extended by  
10 an agreement between the county and the CATV operator.

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

1 operator the parties are unable to agree on the disposition of  
2 the audit findings.

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

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

22 (g) For the purposes of this Section, "CATV operator" means  
23 a person or entity that provides cable and video services under  
24 a franchise agreement with a county pursuant to Section 5-1095  
25 of the Counties Code and a holder authorized under Section  
26 21-401 of the Cable and Video Competition Law of 2007 as

1 consistent with Section 21-901 of that Law.

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

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

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

16 (k) Within 90 days after the effective date of this  
17 amendatory Act of the 96th General Assembly, a county shall  
18 provide to any CATV operator a complete list of addresses  
19 within the corporate limits of the county and shall annually  
20 update the list.

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

24 Section 20. The Illinois Municipal Code is amended by  
25 adding Sections 8-11-2.5 and 11-42-11.05 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.

3 (d) If an audit by the municipality or its agents finds an  
4 error by the public utility in the amount of taxes paid by the  
5 public utility, then the municipality must notify the public  
6 utility of the error. Any such notice must be issued pursuant  
7 to Section 30 of the Local Government Taxpayers' Bill of Rights  
8 Act or a lesser period of time from the date the tax was due  
9 that may be specified in the municipal ordinance imposing the  
10 tax. Upon such a notice, any audit shall be conducted pursuant  
11 to Section 35 of the Local Government Taxpayers' Bill of Rights  
12 Act subject to the timelines set forth in this subsection (d).  
13 The public utility must submit a written response within 60  
14 days after the date the notice was postmarked stating that it  
15 has corrected the error 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 for  
22 appeal as outlined in Section 40 of the Local Government  
23 Taxpayers' Bill of Rights Act. If the appeals process does not  
24 produce a satisfactory result, then either party may pursue the  
25 alleged error in a 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 negligence by the  
3 public utility in the collection or processing of required data  
4 and (ii) the municipality had not failed to respond in writing  
5 on an accurate and timely basis to any written request of the  
6 public utility to review and correct information used by the  
7 public utility to collect the municipality's tax if a diligent  
8 review of such information by the municipality reasonably could  
9 have been expected to discover such error. If, however, an  
10 error in past collections or payments resulted in a customer,  
11 who should not have owed a tax to any municipality, having paid  
12 a tax to a municipality, then the customer may, to the extent  
13 allowed by Section 9-252 of the Public Utilities Act, recover  
14 the tax from the public utility, and any amount so paid by the  
15 public utility may be deducted by that public utility from any  
16 taxes then or thereafter owed by the public utility to that  
17 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.

26 (g) The provisions of this Section shall not be construed

1 as diminishing or replacing any civil remedy available to a  
2 municipality, taxpayer, or tax collector.

3 (h) This Section does not apply to any municipality having  
4 a population greater than 1,000,000.

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

6 Sec. 11-42-11.05. Municipal franchise fee review; requests  
7 for information.

8 (a) If pursuant to its franchise agreement with a community  
9 antenna television system (CATV) operator, a municipality  
10 imposes a franchise fee authorized by 47 U.S.C. 542, then the  
11 municipality may conduct an audit of that CATV operator's  
12 franchise fees derived from the provision of cable and video  
13 services to subscribers within the franchise area to determine  
14 whether the amount of franchise fees paid by that CATV operator  
15 to the municipality was accurate. Any audit conducted under  
16 this subsection (a) shall determine any overpayment or  
17 underpayment to the municipality by the CATV operator, and the  
18 amount due to the municipality or CATV operator is limited to  
19 the net difference.

20 (b) Not more than once every 2 years, a municipality that  
21 has imposed a franchise fee authorized by 47 U.S.C. 542 may,  
22 subject to the limitations and protections stated in the Local  
23 Government Taxpayers' Bill of Rights Act, request information  
24 from the CATV operator in the format maintained by the CATV  
25 operator in the ordinary course of its business that the



1 municipality reasonably requires in order to perform an audit  
2 under subsection (a). The information that may be requested by  
3 the municipality includes without limitation the following:

4 (1) in an electronic format used by the CATV operator  
5 in the ordinary course of its business, the database used  
6 by the CATV operator to determine the amount of the  
7 franchise fee due to the municipality; and

8 (2) in a format used by the CATV operator in the  
9 ordinary course of its business, summary data, as needed by  
10 the municipality, to determine the CATV operator's  
11 franchise fees derived from the provision of cable and  
12 video services to subscribers within the CATV operator's  
13 franchise area.

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

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

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

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

24 (d) If an audit by the municipality or its agents finds an  
25 error by the CATV operator in the amount of the franchise fees  
26 paid by the CATV operator to the municipality, then the

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

17 (e) No CATV operator is liable for any error in past  
18 franchise fee payments that was unknown by the CATV operator  
19 prior to the audit process unless (i) the error was due to  
20 negligence on the part of the CATV operator in the collection  
21 or processing of required data and (ii) the municipality had  
22 not failed to respond in writing in a timely manner to any  
23 written request of the CATV operator to review and correct  
24 information used by the CATV operator to calculate the  
25 appropriate franchise fees if a diligent review of such  
26 information by the municipality reasonably could have been

1 expected to discover such error.

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

10 (g) For the purposes of this Section, "CATV operator" means  
11 a person or entity that provides cable and video services under  
12 a franchise agreement with a municipality pursuant to Section  
13 11-42-11 of the Municipal Code and a holder authorized under  
14 Section 21-401 of the Cable and Video Competition Law of 2007  
15 as consistent with Section 21-901 of that Law.

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

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

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

4       (k) Within 90 days after the effective date of this  
5 amendatory Act of the 96th General Assembly, a municipality  
6 shall provide to any CATV operator a complete list of addresses  
7 within the corporate limits of the municipality and shall  
8 annually update the list.

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

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

14       Section 99. Effective date. This Act takes effect upon  
15 becoming law."