



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB3464

Introduced 2/16/2018, by Sen. John G. Mulroe

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-1095.1
65 ILCS 5/11-42-11.05

Amends the Counties Code and Illinois Municipal Code. Provides that a county's or municipality's initial report of its audit findings to CATV operators shall include the complete list of all addresses within the corporate limits of the county or municipality. Limits the scope of provisions concerning franchise fees and service provider fee reviews. Provides that contingent fees paid to auditors, including subcontractors, may not exceed 25% of the net amount recovered, inclusive of interest and penalties. Provides that counties and municipalities shall provide to each CATV operator an updated complete list of addresses within the corporate limits of the county or municipality annually. In addition, the county or municipality shall provide a CATV operator the updated address list within 90 days after the date of a written request by the CATV operator and before a CATV operator's franchise fees or service provider fees are derived. Holds harmless the CATV operator for any franchise fee underpayment if the county or municipality does not provide the updated address list. Makes other changes.

LRB100 20847 AWJ 36341 b

FISCAL NOTE ACT
MAY APPLY

HOME RULE NOTE
ACT MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

1 AN ACT concerning local government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

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

6 (55 ILCS 5/5-1095.1)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 collect a deficiency or overpayment based upon an alleged error
2 shall be commenced unless within 180 days after the county's
3 notification of the error to the CATV operator the parties are
4 unable to agree on the disposition of the audit findings.

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

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

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

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

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

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

20 (h-5) This Section applies to: (i) any franchise agreement
21 entered into, amended or renewed on or after the effective date
22 of this Amendatory Act of the 100th General Assembly; and (ii)
23 any franchise fee or service provider fee audit of a CATV
24 operator conducted pursuant to this Section on or after the
25 effective date of this Amendatory Act of the 100th General
26 Assembly.

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

4 (j) If a contingent fee is paid to an auditor, then the
5 payment must be based upon the net difference of the complete
6 audit, and the fee paid to auditors, including subcontractors,
7 may not exceed 25% of the net amount recovered, inclusive of
8 interest and penalties.

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

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

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

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

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

7 (65 ILCS 5/11-42-11.05)

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

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

1 overpayment or underpayment to the municipality by the CATV
2 operator, and the amount due to the municipality or CATV
3 operator is limited to the net difference.

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

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

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

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

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

4 (2) 90 days after the receipt of the request if the
5 population of the requesting municipality exceeds 500,000.

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

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

1 that should not be included in the CATV operator's database and
2 addresses that are not attributable to that municipality for
3 determination of franchise fees or service provider fees.
4 Generally accepted auditing standards shall be utilized by the
5 municipality and its agents in its review of information
6 provided by the CATV operator.

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

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 or service provider fees paid by the CATV operator to the
19 municipality, then the municipality shall notify the CATV
20 operator of the error. Any such notice must be given to the
21 CATV operator by the municipality or its agent within 90 days
22 after the municipality or its agent discovers the error, and no
23 later than 4 years after the date the franchise fee or service
24 provider fee was due. Upon such a notice, the CATV operator
25 must submit a written response within 60 days after receipt of
26 the notice stating that the CATV operator has corrected the

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

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

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

24 (f) All account specific information provided by a CATV
25 operator under this Section may be used only for the purpose of
26 an audit conducted under this Section and the enforcement of

1 any franchise fee or service provider fee delinquent claim. All
2 such information must be held in strict confidence by the
3 municipality and its agents and may not be disclosed to the
4 public under the Freedom of Information Act or under any other
5 similar statutes allowing for or requiring public disclosure.

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

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

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

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26 entered into, amended or renewed on or after the effective date

1 of this Amendatory Act of the 100th General Assembly; and (ii)
2 any franchise fee or service provider fee audit of a CATV
3 operator conducted pursuant to this Section on or after the
4 effective date of this Amendatory Act of the 100th General
5 Assembly.

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

9 (j) If a contingent fee is paid to an auditor, then the
10 payment must be based upon the net difference of the complete
11 audit, and the fee paid to auditors, including subcontractors,
12 may not exceed 25% of the net amount recovered, inclusive of
13 interest and penalties.

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

22 As a prerequisite to performing an audit of a CATV
23 operator's franchise fees or service provider fees derived from
24 the provision of cable and video services to subscribers within
25 the franchise area, a county shall provide to a CATV operator
26 the complete list of addresses within the corporate limits of

1 the county for each calendar year subject to the audit. If an
2 address is not included in the list or if no list is provided,
3 the CATV operator shall be held harmless for any franchise fee
4 underpayments, including penalty and interest, from situsing
5 errors if it used a reasonable methodology to assign the
6 address or addresses to a municipality.

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

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

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