



Sen. John G. Mulroe

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10000SB3464sam001

LRB100 20847 AWJ 37458 a

1 AMENDMENT TO SENATE BILL 3464

2 AMENDMENT NO. _____. Amend Senate Bill 3464 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Counties Code is amended by changing
5 Section 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

1 the provision of cable and video services to subscribers within
2 the franchise area to determine whether the amount of franchise
3 fees or service provider fees paid by that CATV operator to the
4 county was accurate. Any audit conducted under this subsection
5 (a) shall determine, for a period of not more than 4 years
6 after the date the franchise fees or service provider fees were
7 due, any overpayment or underpayment to the county by the CATV
8 operator, and the amount due to the county or CATV operator is
9 limited to the net difference.

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

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

25 (2) in a format used by the CATV operator in the
26 ordinary course of its business, summary data, as needed by

1 the county, to determine the CATV operator's franchise fees
2 or service provider fees derived from the provision of
3 cable and video services to subscribers within the CATV
4 operator's franchise area.

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

7 (1) 60 days after the receipt of the request if the
8 population of the requesting county is 500,000 or less; or

9 (2) 90 days after the receipt of the request if the
10 population of the requesting county exceeds 500,000.

11 The time in which a CATV operator must provide the
12 information requested under subsection (b) may be extended by
13 written agreement between the county or its agent and the CATV
14 operator.

15 (c-5) The county or its agent must provide an initial
16 report of its audit findings to the CATV operator no later than
17 90 days after the information set forth in subsection (b) of
18 this Section has been provided by the CATV operator. This
19 90-day timeline may be extended one time by written agreement
20 between the county or its agent and the CATV operator. However,
21 in no event shall an extension of time exceed 90 days. This
22 initial report of audit findings shall detail the basis of its
23 findings and provide, but not be limited to, the following
24 information: (i) any overpayments of franchise fees or service
25 provider fees, (ii) any underpayments of franchise fees or
26 service provider fees, (iii) the complete list of all addresses

1 within the corporate limits of the county for which the audit
2 is being conducted, (iv) all county addresses that should be
3 included in the CATV operator's database and attributable to
4 that county for determination of franchise fees or service
5 provider fees, and (v) ~~(iv)~~ addresses that should not be
6 included in the CATV operator's database and addresses that are
7 not attributable to that county for determination of franchise
8 fees or service provider fees. Generally accepted auditing
9 standards shall be utilized by the county and its agents in its
10 review of information provided by the CATV operator.

11 (c-10) In the event that the county or its agent does not
12 provide the initial report of the audit findings to the CATV
13 operator with the timeframes set forth in subsection (c-5) of
14 this Section, then the audit shall be deemed completed and to
15 have conclusively found that there was no overpayment or
16 underpayment by the CATV operator for the audit period.
17 Further, the county may not thereafter commence or conduct any
18 such audit for the same audit period or for any part of that
19 same audit period ~~during the 24 months prior to the county or~~
20 ~~its agents requesting the information set forth in subsection~~
21 ~~(b) of this Section.~~

22 (d) If an audit by the county or its agents finds an error
23 by the CATV operator in the amount of the franchise fees or
24 service provider fees paid by the CATV operator to the county,
25 then the county shall notify the CATV operator of the error.
26 Any such notice must be given to the CATV operator by the

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

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

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

1 diligent review of such information by the county reasonably
2 could have been expected to discover such error.

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

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

16 (g) For the purposes of this Section, "CATV operator" means
17 a person or entity that provides cable and video services under
18 a franchise agreement with a county pursuant to Section 5-1095
19 of the Counties Code and a holder authorized under Section
20 21-401 of the Cable and Video Competition Law of 2007 as
21 consistent with Section 21-901 of that Law.

22 (h) This Section does not apply to any action that was
23 commenced, to any complaint that was filed, or to any audit
24 that was commenced before the effective date of this amendatory
25 Act of the 96th General Assembly. This Section also does not
26 apply to any franchise agreement that was entered into before

1 the effective date of this amendatory Act of the 96th General
2 Assembly ~~unless the franchise agreement contains audit~~
3 ~~provisions but no specifics regarding audit procedures.~~

4 (h-5) The audit procedures set forth in this Section shall
5 be the exclusive audit procedures for: (i) any franchise
6 agreement entered into, amended, or renewed on or after the
7 effective date of this amendatory Act of the 100th General
8 Assembly; and (ii) any franchise fee or service provider fee
9 audit of a CATV operator commenced or conducted pursuant to
10 this Section on or after the effective date of this amendatory
11 Act of the 100th General Assembly regardless of when the
12 applicable franchise agreement was entered into.

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

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

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

26 As a prerequisite to performing an audit of a CATV

1 operator's franchise fees or service provider fees derived from
2 the provision of cable and video services to subscribers within
3 the franchise area, a county shall provide to a CATV operator
4 the complete list of addresses within the corporate limits of
5 the county for each calendar year subject to the audit. If an
6 address is not included in the list or if no list is provided,
7 the CATV operator shall be held harmless for any franchise fee
8 underpayments, including penalty and interest, from situsing
9 errors if it used a reasonable methodology to assign the
10 address or addresses to a county.

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

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

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

17 (65 ILCS 5/11-42-11.05)

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

20 (a) If pursuant to its franchise agreement with a community
21 antenna television system (CATV) operator, a municipality
22 imposes a franchise fee authorized by 47 U.S.C. 542 or if a
23 community antenna television system (CATV) operator providing
24 cable or video service in that municipality is required to pay

1 the service provider fees imposed by the Cable and Video
2 Competition Law of 2007, then the municipality may conduct an
3 audit of that CATV operator's franchise fees or service
4 provider fees derived from the provision of cable and video
5 services to subscribers within the franchise area to determine
6 whether the amount of franchise fees or service provider fees
7 paid by that CATV operator to the municipality was accurate.
8 Any audit conducted under this subsection (a) shall determine,
9 for a period of not more than 4 years after the date the
10 franchise fees or service provider fees were due, any
11 overpayment or underpayment to the municipality by the CATV
12 operator, and the amount due to the municipality or CATV
13 operator is limited to the net difference.

14 (b) Not more than once every 2 years, a municipality or its
15 agent that is authorized to perform an audit as set forth in
16 subsection (a) of this Section may, subject to the limitations
17 and protections stated in the Local Government Taxpayers' Bill
18 of Rights Act, request information from the CATV operator in
19 the format maintained by the CATV operator in the ordinary
20 course of its business 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 the following:

24 (1) in an electronic format used by the CATV operator
25 in the ordinary course of its business, the database used
26 by the CATV operator to determine the amount of the

1 franchise fee or service provider fee due to the
2 municipality; and

3 (2) in a format used by the CATV operator in the
4 ordinary course of its business, summary data, as needed by
5 the municipality, to determine the CATV operator's
6 franchise fees or service provider fees derived from the
7 provision of cable and video services to subscribers within
8 the CATV operator's franchise area.

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

11 (1) 60 days after the receipt of the request if the
12 population of the requesting municipality is 500,000 or
13 less; or

14 (2) 90 days after the receipt of the request if the
15 population of the requesting municipality exceeds 500,000.

16 The time in which a CATV operator must provide the
17 information requested under subsection (b) may be extended by
18 written agreement between the municipality or its agent and the
19 CATV operator.

20 (c-5) The municipality or its agent must provide an initial
21 report of its audit findings to the CATV operator no later than
22 90 days after the information set forth in subsection (b) of
23 this Section has been provided by the CATV operator. This
24 90-day timeline may be extended one time by written agreement
25 between the municipality or its agents and the CATV operator.
26 However, in no event shall an extension of time exceed 90 days.

1 This initial report of audit findings shall detail the basis of
2 its findings and provide, but not be limited to, the following
3 information: (i) any overpayments of franchise fees or service
4 provider fees, (ii) any underpayments of franchise fees or
5 service provider fees, (iii) the complete list of all addresses
6 within the corporate limits of the municipality for which the
7 audit is being conducted, (iv) all municipal addresses that
8 should be included in the CATV operator's database and
9 attributable to that municipality for determination of
10 franchise fees or service provider fees, and (v) ~~(iv)~~ addresses
11 that should not be included in the CATV operator's database and
12 addresses that are not attributable to that municipality for
13 determination of franchise fees or service provider fees.
14 Generally accepted auditing standards shall be utilized by the
15 municipality and its agents in its review of information
16 provided by the CATV operator.

17 (c-10) In the event that the municipality or its agent does
18 not provide the initial report of the audit findings to the
19 CATV operator with the timeframes set forth in subsection (c-5)
20 of this Section, then the audit shall be deemed completed and
21 to have conclusively found that there was no overpayment or
22 underpayment by the CATV operator for the audit period.
23 Further, the municipality may not thereafter commence or
24 conduct any such audit for the same audit period or for any
25 part of that same audit period ~~during the 24 months prior to~~
26 ~~the municipality or its agents requesting the information set~~

1 ~~forth in subsection (b) of this Section.~~

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

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

25 (e) No CATV operator is liable for any error in past
26 franchise fee or service provider fee payments that was unknown

1 by the CATV operator prior to the audit process unless (i) the
2 error was due to negligence on the part of the CATV operator in
3 the collection or processing of required data and (ii) the
4 municipality had not failed to respond in writing in a timely
5 manner to any written request of the CATV operator to review
6 and correct information used by the CATV operator to calculate
7 the appropriate franchise fees or service provider fees if a
8 diligent review of such information by the municipality
9 reasonably could have been expected to discover such error.

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

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

23 (g) For the purposes of this Section, "CATV operator" means
24 a person or entity that provides cable and video services under
25 a franchise agreement with a municipality pursuant to Section
26 11-42-11 of the Municipal Code and a holder authorized under

1 Section 21-401 of the Cable and Video Competition Law of 2007
2 as consistent with Section 21-901 of that Law.

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

11 (h-5) The audit procedures set forth in this Section shall
12 be the exclusive audit procedures for: (i) any franchise
13 agreement entered into, amended, or renewed on or after the
14 effective date of this amendatory Act of the 100th General
15 Assembly; and (ii) any franchise fee or service provider fee
16 audit of a CATV operator commenced or conducted pursuant to
17 this Section on or after the effective date of this amendatory
18 Act of the 100th General Assembly regardless of when the
19 applicable franchise agreement was entered into.

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

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

26 (k) A ~~Within 90 days after the effective date of this~~

1 ~~amendatory Act of the 96th General Assembly,~~ a municipality
2 shall provide to each ~~any~~ CATV operator an updated ~~a~~ complete
3 list of addresses within the corporate limits of the
4 municipality ~~and shall annually update the list.~~ In addition,
5 the municipality shall provide a CATV operator the updated
6 address list within 90 days after the date of a written request
7 by the CATV operator.

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

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

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

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

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.".