



Sen. Pamela J. Althoff

Filed: 3/25/2009

09600SB0082sam004

LRB096 03320 RLJ 24297 a

1 AMENDMENT TO SENATE BILL 82

2 AMENDMENT NO. _____. Amend Senate Bill 82 on page 10, by
3 replacing line 20 with the following: "the extent otherwise
4 provided in Section 5-1095.1 of the Counties Code and Sections
5 8-11-2.5 and 11-42-11.05 of the"; and

6 on page 11, immediately below line 23, by inserting the
7 following:

8 "Section 15. The Counties Code is amended by adding Section
9 5-1095.1 as follows:

10 (55 ILCS 5/5-1095.1 new)

11 Sec. 5-1095.1. County tax and franchise fee review;
12 requests for information.

13 (a) If a county has imposed a tax or franchisee fee under
14 Section 5-1095, then the county may conduct an audit of tax
15 receipts or franchise fees collected from the incumbent cable

1 operator that is subject to the tax or franchise fee or that
2 collects the tax or franchise fee from purchasers on behalf of
3 the county to determine whether the amount of tax or franchise
4 fee that was paid by the incumbent cable operator was accurate.

5 (b) Not more than once every 2 years, a county that has
6 imposed a tax or franchise fee under this Act may, subject to
7 the limitations and protections stated in Section 22-501 of the
8 Cable and Video Customer Protection Law and in the Local
9 Government Taxpayers' Bill of Rights Act, request any
10 information from the incumbent cable operator in the format
11 maintained by the incumbent cable operator in the ordinary
12 course of its business that the county reasonably requires in
13 order to perform an audit under subsection (a). The information
14 that may be requested by the county includes, without
15 limitation:

16 (1) in an electronic format used by the incumbent cable
17 operator in the ordinary course of its business, the
18 database used by the incumbent cable operator to determine
19 the amount of tax or franchise fee due to the county; and

20 (2) in a format used by the incumbent cable operator in
21 the ordinary course of its business, summary data, as
22 needed by the county, to determine the gross revenues
23 collected and the associated taxes or franchise fees
24 assessed.

25 (c) Each incumbent cable operator must provide the
26 information requested under subsection (b) within:

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

3 (2) 90 days after the date of the request if the
4 population of the requesting county exceeds 500,000.

5 The time in which an incumbent cable operator must provide
6 the information requested under subsection (b) may be extended
7 by an agreement between the county and the incumbent cable
8 operator. If an incumbent cable operator receives, during a
9 single month, information requests from more than 2 counties,
10 or the aggregate population of the requesting counties is
11 100,000 customers or more, the incumbent cable operator is
12 entitled to an additional 30 days to respond to those requests.
13 The Illinois Department of Revenue may grant the incumbent
14 cable operator additional extensions to respond.

15 (d) If an audit by the county or its agents finds an error
16 by the incumbent cable operator in the amount of taxes or
17 franchise fees paid by the incumbent cable operator, then the
18 county may notify the incumbent cable operator of the error.
19 Any such notice must be made by the county no later than 4
20 years after the date the tax or franchise fee required to be
21 paid under this Law was due or any lesser period of time that
22 may be specified in the county ordinance imposing the tax or
23 franchise fee. Upon such a notice, the incumbent cable operator
24 must submit a written response within 60 days after the date
25 the notice was postmarked stating that it has corrected the
26 error on a prospective basis or stating the reason that the

1 error is inapplicable or inaccurate. The county then has 60
2 days after the receipt of the incumbent cable operator's
3 response to review and contest the conclusion of the incumbent
4 cable operator. If the parties are unable to agree on the
5 disposition of the audit findings within 120 days after the
6 notification of the error to the incumbent cable operator, then
7 either party may submit the matter to the Illinois Department
8 of Revenue for resolution.

9 (e) No incumbent cable operator is liable for any error in
10 past collections and payments that was unknown by it prior to
11 the audit process unless (i) the error was due to gross
12 negligence by the incumbent cable operator in the collection or
13 processing of required data and (ii) the county had not failed
14 to respond in writing on an accurate and timely basis to any
15 written request of the incumbent cable operator to review and
16 correct information used by the incumbent cable operator to
17 collect the county's tax or franchise fee if a diligent review
18 of such information by the county reasonably could have been
19 expected to discover such error. If, however, an error in past
20 collections or payments resulted in a customer who should not
21 have owed a tax or franchise fee to any county, having paid a
22 tax or franchise fee to a county, then the customer may recover
23 the tax or franchise fee from the incumbent cable operator, and
24 any amount so paid by the incumbent cable operator may be
25 deducted by that incumbent cable operator from any taxes or
26 franchise fees then or thereafter owed by the incumbent cable

1 operator to that county.

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

11 (g) An incumbent cable operator that collects less than
12 \$1,000 annually in taxes and franchise fees under this Act is
13 exempt from the provisions of subsections (a) through (e) of
14 this Section.

15 (h) The Department of Revenue shall adopt any rules that
16 are required to effectively enforce this Section. The
17 Department of Revenue has the exclusive jurisdiction to resolve
18 any disputes arising under this Section, subject to review by
19 the courts under the Administrative Review Law.

20 (i) Any incumbent cable operator that fails to comply with
21 the provisions of subsection (c) or (d) of this Section shall
22 pay for all costs of enforcement by the Illinois Department of
23 Revenue, including reasonable legal fees.

24 (j) For the purposes of this Section, "incumbent cable
25 operator" means a person or entity that provided cable services
26 or video services in a particular area under a franchise

1 agreement with a unit of local government pursuant to Section
2 11-42-11 of the Illinois Municipal Code or Section 5-1095 of
3 the Counties Code on January 1, 2007."; and

4 on page 11, by replacing lines 24 and 25 with the following:

5 "Section 20. The Illinois Municipal Code is amended by
6 adding Sections 8-11-2.5 and 11-42-11.05 as follows:"; and

7 on page 16, immediately above line 10, by inserting the
8 following:

9 "(65 ILCS 5/11-42-11.05 new)

10 Sec. 11-42-11.05. Municipal tax and franchise fee review;
11 requests for information.

12 (a) If a municipality has imposed a tax or franchise fee
13 under Section 11-42-11, then the municipality may conduct an
14 audit of tax or franchise fee receipts collected from the
15 incumbent cable operator that is subject to the tax or
16 franchise fee or that collects the tax or franchise fee from
17 purchasers on behalf of the municipality to determine whether
18 the amount of tax or franchise fee that was paid by the
19 incumbent cable operator was accurate.

20 (b) Not more than once every 2 years, a municipality that
21 has imposed a tax or franchise fee under this Act may, subject
22 to the limitations and protections stated in Section 22-501 of
23 the Cable and Video Customer Protection Law and in the Local

1 Government Taxpayers' Bill of Rights Act, request any
2 information from the incumbent cable operator in the format
3 maintained by the incumbent cable operator in the ordinary
4 course of its business that the municipality reasonably
5 requires in order to perform an audit under subsection (a). The
6 information that may be requested by the municipality includes,
7 without limitation:

8 (1) in an electronic format used by the incumbent cable
9 operator in the ordinary course of its business, the
10 database used by the incumbent cable operator to determine
11 the amount of tax or franchise fee due to the municipality;
12 and

13 (2) in a format used by the incumbent cable operator in
14 the ordinary course of its business, summary data, as
15 needed by the municipality, to determine the gross revenues
16 collected and the associated taxes or franchise fees
17 assessed.

18 (c) Each incumbent cable operator must provide the
19 information requested under subsection (b) within:

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

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

25 The time in which an incumbent cable operator must provide
26 the information requested under subsection (b) may be extended

1 by an agreement between the municipality and the incumbent
2 cable operator. If an incumbent cable operator receives, during
3 a single month, information requests from more than 2
4 municipalities, or the aggregate population of the requesting
5 municipalities is 100,000 customers or more, the incumbent
6 cable operator is entitled to an additional 30 days to respond
7 to those requests. The Illinois Department of Revenue may grant
8 the incumbent cable operator additional extensions to respond.

9 (d) If an audit by the municipality or its agents finds an
10 error by the incumbent cable operator in the amount of taxes or
11 franchise fees paid by the incumbent cable operator, then the
12 municipality may notify the incumbent cable operator of the
13 error. Any such notice must be made by the municipality no
14 later than 4 years after the date the tax or franchise fee
15 required to be paid under this Law was due or any lesser period
16 of time that may be specified in the municipal ordinance
17 imposing the tax or franchise fee. Upon such a notice, the
18 incumbent cable operator must submit a written response within
19 60 days after the date the notice was postmarked stating that
20 it has corrected the error on a prospective basis or stating
21 the reason that the error is inapplicable or inaccurate. The
22 municipality then has 60 days after the receipt of the
23 incumbent cable operator's response to review and contest the
24 conclusion of the incumbent cable operator. If the parties are
25 unable to agree on the disposition of the audit findings within
26 120 days after the notification of the error to the incumbent

1 cable operator, then either party may submit the matter to the
2 Illinois Department of Revenue for resolution.

3 (e) No incumbent cable operator is liable for any error in
4 past collections and payments that was unknown by it prior to
5 the audit process unless (i) the error was due to gross
6 negligence by the incumbent cable operator in the collection or
7 processing of required data and (ii) the municipality had not
8 failed to respond in writing on an accurate and timely basis to
9 any written request of the incumbent cable operator to review
10 and correct information used by the incumbent cable operator to
11 collect the municipality's tax or franchise fee if a diligent
12 review of such information by the municipality reasonably could
13 have been expected to discover such error. If, however, an
14 error in past collections or payments resulted in a customer
15 who should not have owed a tax or franchise fee to any
16 municipality, having paid a tax or franchise fee to a
17 municipality, then the customer may recover the tax or
18 franchise fee from the incumbent cable operator, and any amount
19 so paid by the incumbent cable operator may be deducted by that
20 incumbent cable operator from any taxes or franchise fees then
21 or thereafter owed by the incumbent cable operator to that
22 municipality.

23 (f) All account specific information provided by an
24 incumbent cable operator under this Section may be used only
25 for the purpose of an audit of taxes or franchise fees
26 conducted under this Section and the enforcement of any related

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

6 (g) An incumbent cable operator that collects less than
7 \$1,000 annually in taxes and franchise fees under this Act is
8 exempt from the provisions of subsections (a) through (e) of
9 this Section.

10 (h) The Department of Revenue shall adopt any rules that
11 are required to effectively enforce this Section. The
12 Department of Revenue has the exclusive jurisdiction to resolve
13 any disputes arising under this Section, subject to review by
14 the courts under the Administrative Review Law.

15 (i) Any incumbent cable operator that fails to comply with
16 the provisions of subsection (c) or (d) of this Section shall
17 pay for all costs of enforcement by the Illinois Department of
18 Revenue, including reasonable legal fees.

19 (j) For the purposes of this Section, "incumbent cable
20 operator" means a person or entity that provided cable services
21 or video services in a particular area under a franchise
22 agreement with a unit of local government pursuant to Section
23 11-42-11 of the Illinois Municipal Code or Section 5-1095 of
24 the Counties Code on January 1, 2007."