SENATE JOURNAL

STATE OF ILLINOIS

NINETY-SECOND GENERAL ASSEMBLY

56TH LEGISLATIVE DAY

THURSDAY, NOVEMBER 15, 2001

9:40 O'CLOCK A.M.

No. 56
[Nov. 15, 2001]

The Senate met pursuant to adjournment.
Honorable James "Pate" Philip, Wood Dale, Illinois, presiding.
Prayer by Pastor Donald Pritchard, Zion Lutheran Church, Pleasant Plains, Illinois.
Senator Radogno led the Senate in the Pledge of Allegiance.

Senator Myers moved that reading and approval of the Journal of Wednesday, November 14, 2001 be postponed pending arrival of the printed Journal.
The motion prevailed.

REPORT RECEIVED

The Secretary placed before the Senate the following report:

A report on the Overview of Health Care Programs in the State of Illinois submitted by the Illinois Economic and Fiscal Commission.

The foregoing report was ordered received and placed on file in the Secretary's Office.

LEGISLATIVE MEASURES FILED

The following floor amendment to the House Bill listed below has been filed with the Secretary, and referred to the Committee on Rules:

Senate Amendment No. 2 to House Bill 2299

The following Conference Committee Report has been filed with the Secretary, and referred to the Committee on Rules:

First Conference Committee Report to House Bill 1840

REPORTS FROM STANDING COMMITTEES

Senator Cronin, Chairperson of the Committee on Education, to which was referred **Senate Joint Resolution No. 42** reported the same back with the recommendation that the resolution be adopted.
Under the rules, **Senate Joint Resolution 42** was placed on the Secretary's Desk.

Senator Peterson, Chairperson of the Committee on Revenue to which was referred the following Senate floor amendment, reported that the Committee recommends that it be approved for consideration:

Amendment No. 2 to Senate Bill 88

Under the rules, the foregoing floor amendment is eligible for consideration on second reading.

MOTIONS IN WRITING

Senator Lauzen submitted the following Motion in Writing:

I move that **Senate Bill No. 603** do pass, the veto of the Governor

to the contrary notwithstanding.

DATE: November 13, 2001 Chris Lauzen
Senator

Senator Lauzen submitted the following Motion in Writing:

I move to accept the specific recommendations of the Governor as to **Senate Bill 653** in manner and form as follows:

AMENDMENT TO SENATE BILL 653
IN ACCEPTANCE OF GOVERNOR'S RECOMMENDATIONS

Amend Senate Bill 653 on page 5, line 31, by deleting "4 felony, except that if"; and
on page 5, line 32, by replacing "A--misdemeanor,--unless" with "A misdemeanor, unless"; and
on page 6, line 3, by replacing "3 4" with "4"; and
on page 6, line 16, by replacing "4 felony" with "A misdemeanor"; and
on page 6, line 18, by replacing "3" with "4".

DATE: November 13, 2001 Chris Lauzen
Senator

The foregoing Motion in Writings were filed with the Secretary and placed on the Senate Calendar.

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

A message from the House by
Mr. Rossi, Clerk:

Mr. President -- I am directed to inform the Senate that the House of Representatives has passed a bill of the following title, in the passage of which I am instructed to ask the concurrence of the Senate, to-wit:

HOUSE BILL NO. 2691

A bill for AN ACT in relation to pensions.

Passed the House, November 14, 2001.
ANTHONY D. ROSSI, Clerk of the House

The foregoing **House Bill No. 2691** was taken up, ordered printed and placed on first reading.

A message from the House by
Mr. Rossi, Clerk:

Mr. President -- I am directed to inform the Senate that the House of Representatives has passed a bill of the following title, in the passage of which I am instructed to ask the concurrence of the Senate, to-wit:

HOUSE BILL NO. 2935

A bill for AN ACT in relation to unemployment insurance.

Passed the House, November 14, 2001.
ANTHONY D. ROSSI, Clerk of the House

The foregoing **House Bill No. 2935** was taken up, ordered printed and placed on first reading.

[Nov. 15, 2001]

At the hour of 9:46 o'clock a.m., Senator Dudycz presiding.

PRESENTATION OF RESOLUTIONS

SENATE RESOLUTION NO. 254

Offered by Senator Sullivan and all Senators:
Mourns the death of former State Senator Walter Duda of Chicago.

SENATE RESOLUTION NO. 255

Offered by Senator Noland and all Senators:
Mourns the deaths of F. Merrill and Margery M. "Sis" Lindsay, Jr. of Decatur.

The foregoing resolutions were referred to the Resolutions Consent Calendar.

INTRODUCTION OF A BILL

SENATE BILL NO. 1533. Introduced by Senator del Valle, a bill for AN ACT concerning employment.
The bill was taken up, read by title a first time, ordered printed and referred to the Committee on Rules.

READING BILL FROM THE HOUSE OF REPRESENTATIVES A FIRST TIME

House Bill No. 2935, sponsored by Senator del Valle was taken up, read by title a first time and referred to the Committee on Rules.

SENATE BILL RECALLED

On motion of Senator Rauschenberger, **Senate Bill No. 88** was recalled from the order of third reading to the order of second reading.
Senator Rauschenberger offered the following amendment and moved its adoption:

AMENDMENT NO. 2

AMENDMENT NO. 2. Amend Senate Bill 88, AS AMENDED, by replacing the title with the following:
"AN ACT concerning telecommunications."; and
by replacing everything after the enacting clause with the following:

"ARTICLE 5

Section 5-1. Short title. This Act may be cited as the Simplified Municipal Telecommunications Tax Act.
Section 5-5. Legislative intent. The General Assembly has authorized the corporate authorities of any municipality to impose various fees and taxes on the privilege of originating or receiving telecommunications, and on retailers engaged in the business of transmitting such telecommunications, all of which are remitted by such retailers directly to the imposing municipality. To simplify the imposition and collection of municipal telecommunications taxes and to reduce complication and burden, the General Assembly is repealing the municipal telecommunications tax, the municipal tax on the occupation or privilege of transmitting messages, and the municipal infrastructure maintenance fee, and is enacting this Simplified

Municipal Telecommunications Tax Act which provides for a single municipally imposed telecommunications tax which, for municipalities with populations of less than 500,000, will be collected by the Illinois Department of Revenue, but which, for municipalities of 500,000 or more, will continue to be collected by such municipalities.

Section 5-7. Definitions. For purposes of the taxes authorized by this Act:

"Amount paid" means the amount charged to the taxpayer's service address in such municipality regardless of where such amount is billed or paid.

"Department" means the Illinois Department of Revenue.

"Gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in such municipality and for all services and equipment provided in connection therewith by a retailer, valued in money whether paid in money or otherwise, including cash, credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of the materials used, labor or service costs or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. "Gross charges" for private line service shall include charges imposed at each channel point within this State, charges for the channel mileage between each channel point within this State, and charges for that portion of the interstate inter-office channel provided within Illinois. However, "gross charge" shall not include:

(1) any amounts added to a purchaser's bill because of a charge made pursuant to: (i) the tax imposed by this Act, (ii) the tax imposed by the Telecommunications Excise Tax Act, (iii) the tax imposed by Section 4251 of the Internal Revenue Code, (iv) 911 surcharges, or (v) charges added to customers' bills pursuant to the provisions of Section 9-221 or 9-222 of the Public Utilities Act, as amended, or any similar charges added to customers' bills by retailers who are not subject to rate regulation by the Illinois Commerce Commission for the purpose of recovering any of the tax liabilities or other amounts specified in those provisions of the Public Utilities Act;

(2) charges for a sent collect telecommunication received outside of such municipality;

(3) charges for leased time on equipment or charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content. Such equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment or accounting equipment and also includes the usage of computers under a time-sharing agreement;

(4) charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges;

(5) charges to business enterprises certified as exempt under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the Department of Commerce and Community Affairs;

(6) charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries when the tax imposed under this Act has already been paid to a retailer and only to the extent that the charges between the parent corporation and wholly owned

subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit for the corporation rendering such service;

(7) bad debts ("bad debt" means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable federal income tax standards; if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made);

(8) charges paid by inserting coins in coin-operated telecommunication devices; or

(9) amounts paid by telecommunications retailers under the Telecommunications Infrastructure Maintenance Fee Act.

"Interstate telecommunications" means all telecommunications that either originate or terminate outside this State.

"Intrastate telecommunications" means all telecommunications that originate and terminate within this State.

"Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, or a receiver, trustee, guardian, or other representative appointed by order of any court, the Federal and State governments, including State universities created by statute, or any city, town, county, or other political subdivision of this State.

"Purchase at retail" means the acquisition, consumption or use of telecommunications through a sale at retail.

"Retailer" means and includes every person engaged in the business of making sales at retail as defined in this Section. The Department may, in its discretion, upon application, authorize the collection of the tax hereby imposed by any retailer not maintaining a place of business within this State, who, to the satisfaction of the Department, furnishes adequate security to insure collection and payment of the tax. Such retailer shall be issued, without charge, a permit to collect such tax. When so authorized, it shall be the duty of such retailer to collect the tax upon all of the gross charges for telecommunications in this State in the same manner and subject to the same requirements as a retailer maintaining a place of business within this State. The permit may be revoked by the Department at its discretion.

"Retailer maintaining a place of business in this State", or any like term, means and includes any retailer having or maintaining within this State, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State.

"Sale at retail" means the transmitting, supplying or furnishing of telecommunications and all services and equipment provided in connection therewith for a consideration, to persons other than the Federal and State governments, and State universities created by statute and other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries for their use or consumption and not for resale.

"Service address" means the location of telecommunications equipment from which telecommunications services are originated or at

which telecommunications services are received by a taxpayer. In the event this may not be a defined location, as in the case of mobile phones, paging systems, and maritime systems, service address means the customer's place of primary use as defined in the Mobile Telecommunications Sourcing Conformity Act. For air-to-ground systems and the like, "service address" shall mean the location of a taxpayer's primary use of the telecommunications equipment as defined by telephone number, authorization code, or location in Illinois where bills are sent.

"Taxpayer" means a person who individually or through his or her agents, employees, or permittees engages in the act or privilege of originating or receiving telecommunications in a municipality and who incurs a tax liability as authorized by this Act.

"Telecommunications", in addition to the meaning ordinarily and popularly ascribed to it, includes, without limitation, messages or information transmitted through use of local, toll, and wide area telephone service, private line services, channel services, telegraph services, teletypewriter, computer exchange services, cellular mobile telecommunications service, specialized mobile radio, stationary two-way radio, paging service, or any other form of mobile and portable one-way or two-way communications, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. As used in this Act, "private line" means a dedicated non-traffic sensitive service for a single customer, that entitles the customer to exclusive or priority use of a communications channel or group of channels, from one or more specified locations to one or more other specified locations. The definition of "telecommunications" shall not include value added services in which computer processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission. "Telecommunications" shall not include purchases of telecommunications by a telecommunications service provider for use as a component part of the service provided by such provider to the ultimate retail consumer who originates or terminates the taxable end-to-end communications. Carrier access charges, right of access charges, charges for use of inter-company facilities, and all telecommunications resold in the subsequent provision of, used as a component of, or integrated into, end-to-end telecommunications service shall be non-taxable as sales for resale. Prepaid telephone calling arrangements shall not be considered "telecommunications" subject to the tax imposed under this Act. For purposes of this Section, "prepaid telephone calling arrangements" means that term as defined in Section 2-27 of the Retailers' Occupations Tax Act.

Section 5-10. Authority. The corporate authorities of any municipality in this State may tax any and all of the following acts or privileges:

(a) The act or privilege of originating in such municipality or receiving in such municipality intrastate telecommunications by a person. However, such tax is not imposed on such act or privilege to the extent such act or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by municipalities in this State.

(b) The act or privilege of originating in such municipality or receiving in such municipality interstate telecommunications by a person. To prevent actual multi-state taxation of the act or privilege that is subject to taxation under this subsection, any taxpayer, upon proof that the taxpayer has paid a tax in another state on such event, shall be allowed a credit against any tax enacted pursuant to or authorized by this Section to the extent of

the amount of such tax properly due and paid in such other state which was not previously allowed as a credit against any other state or local tax in this State. However, such tax is not imposed on the act or privilege to the extent such act or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by municipalities in this State.

Section 5-15. Maximum rates.

(a) For municipalities with a population of less than 500,000, the tax authorized by this Act may be imposed at a rate not to exceed 6% of the gross charge for telecommunications purchased at retail. If imposed, the tax must be in increments of 0.25%.

(b) For municipalities with a population of 500,000 or more, the tax authorized by this Act may be imposed at a rate not to exceed 7% of the gross charge for telecommunications purchased at retail. If imposed, the tax must be in increments of 0.25%.

Section 5-20. Imposition.

(a) On and after January 1, 2003, for municipalities with populations of less than 500,000, the tax authorized by this Act shall be imposed (except as provided in Sections 5-25 and 5-30 of this Act), amended, or repealed by an ordinance adopted by the municipality, which ordinance shall be filed by the municipality with the Department pursuant to the rules of the Department.

(1) Any ordinance adopted by a municipality with a population of less than 500,000 which attempts to impose, amend or repeal the tax authorized by this Act shall be of no force and effect until properly filed with an appropriate form with the Department.

(2) Any certified copy of an ordinance filed with the Department prior to October 1, 2002 shall be effective with respect to gross charges billed by telecommunications retailers on or after January 1, 2003 and thereafter any certified copy of an ordinance filed with the Department prior to any April 1 or October 1 shall be effective with respect to gross charges billed by telecommunications retailers on or after the following July 1 or January 1, respectively.

(b) On and after January 1, 2003, for municipalities with populations of 500,000 or more, the tax authorized by this Act shall be imposed, amended, or repealed, and any authorized exemptions granted, by the adoption of an ordinance.

Section 5-25. Existing telecommunications taxes and fees.

(a) Between July 1, 2002 and August 1, 2002, the Department shall publish a list of the municipalities with a population of less than 500,000 that have, at any time before the effective date of this Act, enacted ordinances imposing any taxes or fees authorized by subparagraph 1 of Section 8-11-2 of the Illinois Municipal Code, Section 8-11-17 of the Illinois Municipal Code, or Section 20 of the Telecommunications Infrastructure Maintenance Fee Act. Such list shall include the name of each such municipality, the rates at which such taxes or fees are imposed as of the effective date of this Act, and the rate of the new Simplified Municipal Telecommunications Tax, as calculated pursuant to Section 5-30 of this Act.

(b) In compiling the list described in this Section, the Department shall collect information from retailers, municipalities, the Illinois Commerce Commission, and other sources deemed by the Department to be reliable.

(c) Any municipality appearing on the list published pursuant to this Section shall not be required to adopt and file an ordinance implementing the tax authorized by this Act. The list shall be conclusive evidence of the imposition of the tax authorized by this Act at the rate appearing on such list. Any tax imposed in such

manner shall take effect with respect to gross charges billed by telecommunications retailers on or after January 1, 2003. A municipality may alter such tax only by filing an ordinance with the Department pursuant to Section 5-20 of this Act.

Section 5-30. Calculation of rates for certain municipalities. The rate of the Simplified Municipal Telecommunications Tax for municipalities on the list described in Section 5-25 of this Act shall be measured by the sum of the following rates set forth in ordinances enacted by the municipalities at the rates in effect on the effective date of this Act:

(1) The rate equal to 70% of the rate set forth in such ordinance pursuant to subparagraph 1 of Section 8-11-2 of the Illinois Municipal Code, rounded to the nearest even 0.25% increment; plus

(2) The rate set forth in such ordinance pursuant to Section 8-11-17 of the Illinois Municipal Code, rounded to the nearest even 0.25% increment; plus

(3) The rate set forth in such ordinance pursuant to Section 20 of the Telecommunications Infrastructure Maintenance Fee Act.

Section 5-35. Rebates and exemptions. Any municipality may implement the following rebates and exemptions:

(1) A municipality that imposes the tax authorized by this Act and whose territory includes part of another unit of local government or a school district, may, by separate ordinance, rebate some or all of the amount of such tax paid by the other unit of local government or school district. Any such rebate shall be paid by the municipality directly to the other unit of local government or school district qualifying for the rebate as determined by the municipality's ordinance, which shall not be filed with the Department.

(2) A municipality that imposes the tax authorized by this Act may, by separate ordinance, rebate some or all of the amount of such tax to persons 65 years of age or older. Any tax related to such rebate shall be rebated from the municipality directly to persons qualified for the rebate as determined by the municipality's ordinance, which shall not be filed with the Department.

(3) A municipality with a population of 500,000 or more that imposes the tax authorized by this Act may, by separate ordinance, exempt from the tax authorized by this Act, charges for inbound toll-free telecommunications service commonly known as "800", "877", or "888" or for a similar service, to the extent such municipality has passed an ordinance providing for this exemption.

Section 5-40. Collection.

(a) For municipalities with populations of less than 500,000, the tax authorized by this Act shall be collected from the taxpayer by a retailer maintaining a place of business in this State and shall be remitted by such retailer to the Department. Any tax required to be collected pursuant to or as authorized by this Act and any such tax collected by such retailer and required to be remitted to the Department shall constitute a debt owed by the retailer to the State. Retailers shall collect the tax from the taxpayer by adding the tax to the gross charge for the act or privilege of originating or receiving telecommunications when sold for use, in the manner prescribed by the Department. The tax authorized by this Act shall constitute a debt of the taxpayer to the retailer until paid, and, if unpaid, is recoverable at law in the same manner as the original charge for such sale at retail. If the retailer fails to collect the

tax from the taxpayer, then the taxpayer shall be required to pay the tax directly to the Department in the manner provided by the Department.

(b) For municipalities with populations of 500,000 or more, the tax authorized by this Act shall be collected from the taxpayer by a retailer making or effectuating the sale at retail and shall be remitted by such retailer to such municipality. Any tax required to be collected pursuant to an ordinance authorized by this Act and any such tax collected by a retailer shall constitute a debt owed by the retailer to such municipality. Retailers shall collect the tax from the taxpayer by adding the tax to the gross charge for the act or privilege of originating or receiving telecommunications when sold for use, in the manner prescribed by such municipality. The tax authorized by this Act shall constitute a debt of the taxpayer to the retailer who made or effectuated the sale at retail until paid and, if unpaid, is recoverable at law in the same manner as the original charge for the sale at retail. If the retailer fails to collect the tax from the taxpayer, then the taxpayer shall be required to pay the tax directly to such municipality in the manner provided by such municipality. The municipality imposing the tax shall provide for its administration and enforcement.

(c) Retailers filing tax returns pursuant to this Act shall, at the time of filing such return, pay to a municipality with a population of 500,000 or more or to the Department for all other municipalities, the amount of the tax collected, less a discount of 1% which is allowed to reimburse the retailer for the expenses incurred in keeping records, billing the customer, preparing and filing returns, remitting the tax and supplying data to a municipality or the Department upon request. No discount may be claimed by a retailer on returns not timely filed and for taxes not timely remitted.

(d) Whenever possible, the tax authorized by this Act shall, when collected, be stated as a distinct item separate and apart from the gross charge for telecommunications.

Section 5-45. Resellers.

(a) If a person who originates or receives telecommunications claims to be a reseller of such telecommunications, such person shall apply to a municipality with a population of 500,000 or more or to the Department for all other municipalities, for a resale number. Such applicant shall state facts which will show a municipality with a population of 500,000 or more or the Department for all other municipalities, why such applicant is not liable for tax authorized by this Act on any of such purchases and shall furnish such additional information as a municipality with a population of 500,000 or more or the Department for all other municipalities, may reasonably require.

(b) Upon approval of the application, a municipality with a population of 500,000 or more or the Department for all other municipalities, shall assign a resale number to the applicant and shall certify such number to the applicant. A municipality with a population of 500,000 or more or the Department for all other municipalities, may cancel any number which is obtained through misrepresentation, or which is used to send or receive such telecommunication tax-free when such actions in fact are not for resale, or which no longer applies because of the person's having discontinued the making of resales.

(c) Except as provided hereinabove in this Section, the act or privilege of originating or receiving telecommunications in this State shall not be made tax-free on the ground of being a sale for resale unless the person has an active resale number from a

municipality with a population of 500,000 or more or the Department for all other municipalities, and furnishes that number to the retailer in connection with certifying to the retailer that any sale to such person is non-taxable because of being a sale for resale.

Section 5-50. Returns to the Department.

(a) Commencing on February 1, 2003, for the tax imposed under subsection (a) of Section 5-20 of this Act, every retailer maintaining a place of business in this State shall, on or before the last day of each month make a return to the Department for the preceding calendar month, stating:

(1) Its name;

(2) The address of its principal place of business or the address of the principal place of business (if that is a different address) from which it engages in the business of transmitting telecommunications;

(3) Total amount of gross charges billed by it during the preceding calendar month for providing telecommunications during the calendar month;

(4) Total amount received by it during the preceding calendar month on credit extended;

(5) Deductions allowed by law;

(6) Gross charges that were billed by it during the preceding calendar month and upon the basis of which the tax is imposed;

(7) Amount of tax (computed upon Item 6);

(8) The municipalities to which the Department shall remit the taxes and the amount of such remittances;

(9) Such other reasonable information as the Department may require.

(b) Any retailer required to make payments under this Section may make the payments by electronic funds transfer. The Department shall adopt rules necessary to effectuate a program of electronic funds transfer. Any retailer who has average monthly tax billings due to the Department under this Act and the Telecommunications Excise Tax Act that exceed $1,000 shall make all payments by electronic funds transfer as required by rules of the Department.

(c) If the retailer's average monthly tax billings due to the Department under this Act and the Telecommunications Excise Tax Act do not exceed $1,000, the Department may authorize such retailer's returns to be filed on a quarter-annual basis, with the return for January, February, and March of a given year being due by April 30th of that year; with the return for April, May, and June of a given year being due by July 31st of that year; with the return for July, August, and September of a given year being due by October 31st of that year; and with the return for October, November, and December of a given year being due by January 31st of the following year.

(d) If the retailer is otherwise required to file a monthly or quarterly return and if the retailer's average monthly tax billings due to the Department under this Act and the Telecommunications Excise Tax Act do not exceed $400, the Department may authorize such retailer's return to be filed on an annual basis, with the return for a given year being due by January 31st of the following year.

(e) Each retailer whose average monthly remittance to the Department under this Act and the Telecommunications Excise Tax Act was $25,000 or more during the preceding calendar year, excluding the month of highest remittance and the month of lowest remittance in such calendar year, and who is not operated by a unit of local government, shall make estimated payments to the Department on or before the 7th, 15th, 22nd, and last day of the month during which the tax remittance is owed to the Department in an amount not less

than the lower of either 22.5% of the retailer's actual tax collections for the month or 25% of the retailer's actual tax collections for the same calendar month of the preceding year. The amount of such quarter-monthly payments shall be credited against the final remittance of the retailer's return for that month. Any outstanding credit, approved by the Department, arising from the retailer's overpayment of its final remittance for any month may be applied to reduce the amount of any subsequent quarter-monthly payment or credited against the final remittance of the retailer's return for any subsequent month. If any quarter-monthly payment is not paid at the time or in the amount required by this Section, the retailer shall be liable for penalty and interest on the difference between the minimum amount due as a payment and the amount of such payment actually and timely paid, except insofar as the retailer has previously made payments for that month to the Department or received credits in excess of the minimum payments previously due.

(f) Notwithstanding any other provision of this Section containing the time within which a retailer may file his or her return, in the case of any retailer who ceases to engage in a kind of business that makes him or her responsible for filing returns under this Section, the retailer shall file a final return under this Section with the Department not more than one month after discontinuing such business.

(g) In making such return, the retailer shall determine the value of any consideration other than money received by it and such retailer shall include the value in its return. Such determination shall be subject to review and revision by the Department in the manner hereinafter provided for the correction of returns.

(h) Any retailer who has average monthly tax billings due to the Department under this Act and the Telecommunications Excise Tax Act that exceed $1,000 shall file the return required by this Section by electronic means as required by rules of the Department.

(i) The retailer filing the return herein provided for shall, at the time of filing the return, pay to the Department the amounts due pursuant to this Act. The Department shall immediately pay over to the State Treasurer, ex officio, as trustee, 99.5% of all taxes, penalties, and interest collected hereunder for deposit into the Municipal Telecommunications Fund, which is hereby created. The remaining 0.5% received by the Department pursuant to this Act shall be deposited into the Tax Compliance and Administration Fund and shall be used by the Department, subject to appropriation, to cover the costs of the Department. On or before the 25th day of each calendar month, the Department shall prepare and certify to the Comptroller the disbursement of stated sums of money to be paid to named municipalities from the Municipal Telecommunications Fund for amounts collected during the second preceding calendar month. The named municipalities shall be those municipalities identified by a retailer in such retailer's return as having imposed the tax authorized by the Act. The amount of money to be paid to each municipality shall be the amount (not including credit memoranda) collected hereunder during the second preceding calendar month by the Department, plus an amount the Department determines is necessary to offset any amounts that were erronenously paid to a different taxing body, and not including an amount equal to the amount of refunds made during the second preceding calendar month by the Department on behalf of such municipality, and not including any amount that the Department determines is necessary to offset any amount that were payable to a different taxing body but were erroneously paid to the municipality. Within 10 days after receipt by the Comptroller of the disbursement certification from the Department, the Comptroller shall

cause the orders to be drawn for the respective amounts in accordance with the directions contained in the certification. When certifying to the Comptroller the amount of a monthly disbursement to a municipality under this Section, the Department shall increase or decrease the amount by an amount necessary to offset any misallocation of previous disbursements. The offset amount shall be the amount erroneously disbursed within the previous 6 months from the time a misallocation is discovered.

(j) For municipalities with populations of less than 500,000, whenever the Department determines that a refund shall be made under this Section to a claimant instead of issuing a credit memorandum, the Department shall notify the State Comptroller, who shall cause the order to be drawn for the amount specified and to the person named in the notification from the Department. The refund shall be paid by the State Treasurer out of the Municipal Telecommunications Fund.

Section 5-55. Pledged revenues. If a municipality has, by contract, pledged or dedicated any or all of the revenues collected under any of its taxes imposed pursuant to subparagraph 1 of Section 8-11-2 of the Illinois Municipal Code, Section 8-11-17 of the Illinois Municipal Code, or Section 20 of the Telecommunications Infrastructure Maintenance Fee Act as shown on the list described in Section 5-25 of this Act, then the equivalent portion of revenues collected from the tax authorized by this Act shall be deemed pledged or dedicated in a manner substantially similar to the pledge of the then existing taxes so as to prevent disruption of such contract.

Section 5-60. Waiver of franchise fees.

(a) Any municipality shall be deemed to have waived its right to receive all fees, charges and other compensation that might accrue to the municipality after the effective date of this Act, under any franchise agreement, license, or similar agreement, executed on or before January 1, 1998 with telecommunications retailers if:

(1) the municipality imposes the tax authorized by this Act at a rate exceeding 5%;

(2) the municipality affirmatively waives such fees; or

(3) the municipality is included in the list described in Section 5-25 of this Act as having an infrastructure maintenance fee in place.

(b) This waiver shall be effective only during the time that either the infrastructure maintenance fee or the simplified tax authorized under this Act is subject to being lawfully imposed on the telecommunications retailer, collected by the municipality or the Department, and paid over to the municipality.

(c) No portion of this Act shall be construed to have repealed or amended the prohibition on franchise fees or other charges set forth in Section 30 of the Telecommunications Infrastructure Maintenance Fee Act.

Section 5-65. Incorporation by reference. On and after January 1, 2003, for municipalities with populations of less than 500,000, all of the provisions of Sections 7, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19 of the Telecommunications Excise Tax Act, Sections 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5i, 5j, 6, 6a, 6b, and 6c of the Retailers' Occupation Tax Act, and all the provisions of the Uniform Penalty and Interest Act, which are not inconsistent with this Act, shall apply, as far as practicable, to the subject matter of this Act to the same extent as if such provisions were included herein. References in such incorporated Sections of the Retailers' Occupation Tax Act to retailers, to sellers, or to persons engaged in the business of selling tangible personal property mean retailers, as defined in this Act, or persons engaged in the act or privilege of

originating or receiving telecommunications. References in such incorporated Sections of the Retailers' Occupation Tax Act to purchasers of tangible personal property mean purchasers of telecommunications as defined in this Act. References in such incorporated Sections of the Retailers' Occupation Tax Act to sales of tangible personal property mean the act or privilege of originating or receiving telecommunications as defined in this Act.

Section 5-90. Home rule. The authorization to impose municipal telecommunications taxes and fees is an exclusive power and function of the State. A home rule municipality may not impose municipal telecommunications taxes and fees other than as authorized under this Act. This Act is a denial and limitation of municipal home rule powers and functions under subsection (g) of Section 6 of Article VII of the Illinois Constitution.

ARTICLE 90

Section 90-5. The State Revenue Sharing Act is amended by changing Section 12 as follows:

(30 ILCS 115/12) (from Ch. 85, par. 616)

Sec. 12. Personal Property Tax Replacement Fund. There is hereby created the Personal Property Tax Replacement Fund, a special fund in the State Treasury into which shall be paid all revenue realized:

(a) all amounts realized from the additional personal property tax replacement income tax imposed by subsections (c) and (d) of Section 201 of the Illinois Income Tax Act, except for those amounts deposited into the Income Tax Refund Fund pursuant to subsection (c) of Section 901 of the Illinois Income Tax Act; and

(b) all amounts realized from the additional personal property replacement invested capital taxes imposed by Section 2a.1 of the Messages Tax Act, Section 2a.1 of the Gas Revenue Tax Act, Section 2a.1 of the Public Utilities Revenue Act, and Section 3 of the Water Company Invested Capital Tax Act, and amounts payable to the Department of Revenue under the Telecommunications ~~Municipal~~ Infrastructure Maintenance Fee Act.

As soon as may be after the end of each month, the Department of Revenue shall certify to the Treasurer and the Comptroller the amount of all refunds paid out of the General Revenue Fund through the preceding month on account of overpayment of liability on taxes paid into the Personal Property Tax Replacement Fund. Upon receipt of such certification, the Treasurer and the Comptroller shall transfer the amount so certified from the Personal Property Tax Replacement Fund into the General Revenue Fund.

The payments of revenue into the Personal Property Tax Replacement Fund shall be used exclusively for distribution to taxing districts as provided in this Section, payment of the expenses of the Department of Revenue incurred in administering the collection and distribution of monies paid into the Personal Property Tax Replacement Fund and transfers due to refunds to taxpayers for overpayment of liability for taxes paid into the Personal Property Tax Replacement Fund.

As soon as may be after the effective date of this amendatory Act of 1980, the Department of Revenue shall certify to the Treasurer the amount of net replacement revenue paid into the General Revenue Fund prior to that effective date from the additional tax imposed by Section 2a.1 of the Messages Tax Act; Section 2a.1 of the Gas Revenue Tax Act; Section 2a.1 of the Public Utilities Revenue Act; Section 3 of the Water Company Invested Capital Tax Act; amounts collected by the Department of Revenue under the Telecommunications ~~Municipal~~ Infrastructure Maintenance Fee Act; and the additional personal property tax replacement income tax imposed by the Illinois Income Tax Act, as amended by Public Act 81-1st Special Session-1. Net

replacement revenue shall be defined as the total amount paid into and remaining in the General Revenue Fund as a result of those Acts minus the amount outstanding and obligated from the General Revenue Fund in state vouchers or warrants prior to the effective date of this amendatory Act of 1980 as refunds to taxpayers for overpayment of liability under those Acts.

All interest earned by monies accumulated in the Personal Property Tax Replacement Fund shall be deposited in such Fund. All amounts allocated pursuant to this Section are appropriated on a continuing basis.

Prior to December 31, 1980, as soon as may be after the end of each quarter beginning with the quarter ending December 31, 1979, and on and after December 31, 1980, as soon as may be after January 1, March 1, April 1, May 1, July 1, August 1, October 1 and December 1 of each year, the Department of Revenue shall allocate to each taxing district as defined in Section 1-150 of the Property Tax Code, in accordance with the provisions of paragraph (2) of this Section the portion of the funds held in the Personal Property Tax Replacement Fund which is required to be distributed, as provided in paragraph (1), for each quarter. Provided, however, under no circumstances shall any taxing district during each of the first two years of distribution of the taxes imposed by this amendatory Act of 1979 be entitled to an annual allocation which is less than the funds such taxing district collected from the 1978 personal property tax. Provided further that under no circumstances shall any taxing district during the third year of distribution of the taxes imposed by this amendatory Act of 1979 receive less than 60% of the funds such taxing district collected from the 1978 personal property tax. In the event that the total of the allocations made as above provided for all taxing districts, during either of such 3 years, exceeds the amount available for distribution the allocation of each taxing district shall be proportionately reduced. Except as provided in Section 13 of this Act, the Department shall then certify, pursuant to appropriation, such allocations to the State Comptroller who shall pay over to the several taxing districts the respective amounts allocated to them.

Any township which receives an allocation based in whole or in part upon personal property taxes which it levied pursuant to Section 6-507 or 6-512 of the Illinois Highway Code and which was previously required to be paid over to a municipality shall immediately pay over to that municipality a proportionate share of the personal property replacement funds which such township receives.

Any municipality or township, other than a municipality with a population in excess of 500,000, which receives an allocation based in whole or in part on personal property taxes which it levied pursuant to Sections 3-1, 3-4 and 3-6 of the Illinois Local Library Act and which was previously required to be paid over to a public library shall immediately pay over to that library a proportionate share of the personal property tax replacement funds which such municipality or township receives; provided that if such a public library has converted to a library organized under The Illinois Public Library District Act, regardless of whether such conversion has occurred on, after or before January 1, 1988, such proportionate share shall be immediately paid over to the library district which maintains and operates the library. However, any library that has converted prior to January 1, 1988, and which hitherto has not received the personal property tax replacement funds, shall receive such funds commencing on January 1, 1988.

Any township which receives an allocation based in whole or in part on personal property taxes which it levied pursuant to Section

1c of the Public Graveyards Act and which taxes were previously required to be paid over to or used for such public cemetery or cemeteries shall immediately pay over to or use for such public cemetery or cemeteries a proportionate share of the personal property tax replacement funds which the township receives.

Any taxing district which receives an allocation based in whole or in part upon personal property taxes which it levied for another governmental body or school district in Cook County in 1976 or for another governmental body or school district in the remainder of the State in 1977 shall immediately pay over to that governmental body or school district the amount of personal property replacement funds which such governmental body or school district would receive directly under the provisions of paragraph (2) of this Section, had it levied its own taxes.

(1) The portion of the Personal Property Tax Replacement Fund required to be distributed as of the time allocation is required to be made shall be the amount available in such Fund as of the time allocation is required to be made.

The amount available for distribution shall be the total amount in the fund at such time minus the necessary administrative expenses as limited by the appropriation and the amount determined by: (a) $2.8 million for fiscal year 1981; (b) for fiscal year 1982, .54% of the funds distributed from the fund during the preceding fiscal year; (c) for fiscal year 1983 through fiscal year 1988, .54% of the funds distributed from the fund during the preceding fiscal year less .02% of such fund for fiscal year 1983 and less .02% of such funds for each fiscal year thereafter, or (d) for fiscal year 1989 and beyond no more than 105% of the actual administrative expenses of the prior fiscal year. Such portion of the fund shall be determined after the transfer into the General Revenue Fund due to refunds, if any, paid from the General Revenue Fund during the preceding quarter. If at any time, for any reason, there is insufficient amount in the Personal Property Tax Replacement Fund for payment of costs of administration or for transfers due to refunds at the end of any particular month, the amount of such insufficiency shall be carried over for the purposes of transfers into the General Revenue Fund and for purposes of costs of administration to the following month or months. Net replacement revenue held, and defined above, shall be transferred by the Treasurer and Comptroller to the Personal Property Tax Replacement Fund within 10 days of such certification.

(2) Each quarterly allocation shall first be apportioned in the following manner: 51.65% for taxing districts in Cook County and 48.35% for taxing districts in the remainder of the State.

The Personal Property Replacement Ratio of each taxing district outside Cook County shall be the ratio which the Tax Base of that taxing district bears to the Downstate Tax Base. The Tax Base of each taxing district outside of Cook County is the personal property tax collections for that taxing district for the 1977 tax year. The Downstate Tax Base is the personal property tax collections for all taxing districts in the State outside of Cook County for the 1977 tax year. The Department of Revenue shall have authority to review for accuracy and completeness the personal property tax collections for each taxing district outside Cook County for the 1977 tax year.

The Personal Property Replacement Ratio of each Cook County taxing district shall be the ratio which the Tax Base of that taxing district bears to the Cook County Tax Base. The Tax Base of each Cook County taxing district is the personal property tax collections for that taxing district for the 1976 tax year. The Cook County Tax Base is the personal property tax collections for all taxing districts in Cook County for the 1976 tax year. The Department of

Revenue shall have authority to review for accuracy and completeness the personal property tax collections for each taxing district within Cook County for the 1976 tax year.

For all purposes of this Section 12, amounts paid to a taxing district for such tax years as may be applicable by a foreign corporation under the provisions of Section 7-202 of the Public Utilities Act, as amended, shall be deemed to be personal property taxes collected by such taxing district for such tax years as may be applicable. The Director shall determine from the Illinois Commerce Commission, for any tax year as may be applicable, the amounts so paid by any such foreign corporation to any and all taxing districts. The Illinois Commerce Commission shall furnish such information to the Director. For all purposes of this Section 12, the Director shall deem such amounts to be collected personal property taxes of each such taxing district for the applicable tax year or years.

Taxing districts located both in Cook County and in one or more other counties shall receive both a Cook County allocation and a Downstate allocation determined in the same way as all other taxing districts.

If any taxing district in existence on July 1, 1979 ceases to exist, or discontinues its operations, its Tax Base shall thereafter be deemed to be zero. If the powers, duties and obligations of the discontinued taxing district are assumed by another taxing district, the Tax Base of the discontinued taxing district shall be added to the Tax Base of the taxing district assuming such powers, duties and obligations.

If two or more taxing districts in existence on July 1, 1979, or a successor or successors thereto shall consolidate into one taxing district, the Tax Base of such consolidated taxing district shall be the sum of the Tax Bases of each of the taxing districts which have consolidated.

If a single taxing district in existence on July 1, 1979, or a successor or successors thereto shall be divided into two or more separate taxing districts, the tax base of the taxing district so divided shall be allocated to each of the resulting taxing districts in proportion to the then current equalized assessed value of each resulting taxing district.

If a portion of the territory of a taxing district is disconnected and annexed to another taxing district of the same type, the Tax Base of the taxing district from which disconnection was made shall be reduced in proportion to the then current equalized assessed value of the disconnected territory as compared with the then current equalized assessed value within the entire territory of the taxing district prior to disconnection, and the amount of such reduction shall be added to the Tax Base of the taxing district to which annexation is made.

If a community college district is created after July 1, 1979, beginning on the effective date of this amendatory Act of 1995, its Tax Base shall be 3.5% of the sum of the personal property tax collected for the 1977 tax year within the territorial jurisdiction of the district.

The amounts allocated and paid to taxing districts pursuant to the provisions of this amendatory Act of 1979 shall be deemed to be substitute revenues for the revenues derived from taxes imposed on personal property pursuant to the provisions of the "Revenue Act of 1939" or "An Act for the assessment and taxation of private car line companies", approved July 22, 1943, as amended, or Section 414 of the Illinois Insurance Code, prior to the abolition of such taxes and shall be used for the same purposes as the revenues derived from ad valorem taxes on real estate.

Monies received by any taxing districts from the Personal Property Tax Replacement Fund shall be first applied toward payment of the proportionate amount of debt service which was previously levied and collected from extensions against personal property on bonds outstanding as of December 31, 1978 and next applied toward payment of the proportionate share of the pension or retirement obligations of the taxing district which were previously levied and collected from extensions against personal property. For each such outstanding bond issue, the County Clerk shall determine the percentage of the debt service which was collected from extensions against real estate in the taxing district for 1978 taxes payable in 1979, as related to the total amount of such levies and collections from extensions against both real and personal property. For 1979 and subsequent years' taxes, the County Clerk shall levy and extend taxes against the real estate of each taxing district which will yield the said percentage or percentages of the debt service on such outstanding bonds. The balance of the amount necessary to fully pay such debt service shall constitute a first and prior lien upon the monies received by each such taxing district through the Personal Property Tax Replacement Fund and shall be first applied or set aside for such purpose. In counties having fewer than 3,000,000 inhabitants, the amendments to this paragraph as made by this amendatory Act of 1980 shall be first applicable to 1980 taxes to be collected in 1981.

(Source: P.A. 89-327, eff. 1-1-96; 90-154, eff. 1-1-98.)

Section 90-10. The Telecommunications Excise Tax Act is amended by changing Sections 2, 6, and 15 as follows:

(35 ILCS 630/2) (from Ch. 120, par. 2002)

(Text of Section before amendment by P.A. 92-474)

Sec. 2. As used in this Article, unless the context clearly requires otherwise:

(a) "Gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money whether paid in money or otherwise, including cash, credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of materials used, labor or service costs or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. "Gross charges" for private line service shall include charges imposed at each channel point within this State, charges for the channel mileage between each channel point within this State, and charges for that portion of the interstate inter-office channel provided within Illinois. However, "gross charges" shall not include:

(1) any amounts added to a purchaser's bill because of a charge made pursuant to (i) the tax imposed by this Article; (ii) charges added to customers' bills pursuant to the provisions of Sections 9-221 or 9-222 of the Public Utilities Act, as amended, or any similar charges added to customers' bills by retailers who are not subject to rate regulation by the Illinois Commerce Commission for the purpose of recovering any of the tax liabilities or other amounts specified in such provisions of such Act; ~~or~~ (iii) the tax imposed by Section 4251 of the Internal Revenue Code; (iv) 911 surcharges; or (v) the tax imposed by the Simplified Municipal Telecommunications Tax Act;

(2) charges for a sent collect telecommunication received outside of the State;

(3) charges for leased time on equipment or charges for the storage of data or information for subsequent retrieval or the

processing of data or information intended to change its form or content. Such equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment or accounting equipment and also includes the usage of computers under a time-sharing agreement;

(4) charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges;

(5) charges to business enterprises certified under Section 9-222.1 of the Public Utilities Act, as amended, to the extent of such exemption and during the period of time specified by the Department of Commerce and Community Affairs;

(6) charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries when the tax imposed under this Article has already been paid to a retailer and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit for the corporation rendering such service;

(7) bad debts. Bad debt means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectable, as determined under applicable federal income tax standards. If the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made;

(8) charges paid by inserting coins in coin-operated telecommunication devices;

(9) amounts paid by telecommunications retailers under the Telecommunications ~~Municipal~~ Infrastructure Maintenance Fee Act.

(b) "Amount paid" means the amount charged to the taxpayer's service address in this State regardless of where such amount is billed or paid.

(c) "Telecommunications", in addition to the meaning ordinarily and popularly ascribed to it, includes, without limitation, messages or information transmitted through use of local, toll and wide area telephone service; private line services; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two way radio; paging service; or any other form of mobile and portable one-way or two-way communications; or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber-optics, laser, microwave, radio, satellite or similar facilities. As used in this Act, "private line" means a dedicated non-traffic sensitive service for a single customer, that entitles the customer to exclusive or priority use of a communications channel or group of channels, from one or more specified locations to one or more other specified locations. The definition of "telecommunications" shall not include value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission. "Telecommunications" shall not include purchases of telecommunications by a telecommunications service provider for use as a component part of the service provided by him to the ultimate retail consumer who originates or terminates the taxable end-to-end communications. Carrier access charges, right of

access charges, charges for use of inter-company facilities, and all telecommunications resold in the subsequent provision of, used as a component of, or integrated into end-to-end telecommunications service shall be non-taxable as sales for resale.

(d) "Interstate telecommunications" means all telecommunications that either originate or terminate outside this State.

(e) "Intrastate telecommunications" means all telecommunications that originate and terminate within this State.

(f) "Department" means the Department of Revenue of the State of Illinois.

(g) "Director" means the Director of Revenue for the Department of Revenue of the State of Illinois.

(h) "Taxpayer" means a person who individually or through his agents, employees or permittees engages in the act or privilege of originating or receiving telecommunications in this State and who incurs a tax liability under this Article.

(i) "Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, or a receiver, trustee, guardian or other representative appointed by order of any court, the Federal and State governments, including State universities created by statute or any city, town, county or other political subdivision of this State.

(j) "Purchase at retail" means the acquisition, consumption or use of telecommunication through a sale at retail.

(k) "Sale at retail" means the transmitting, supplying or furnishing of telecommunications and all services and equipment provided in connection therewith for a consideration to persons other than the Federal and State governments, and State universities created by statute and other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries for their use or consumption and not for resale.

(l) "Retailer" means and includes every person engaged in the business of making sales at retail as defined in this Article. The Department may, in its discretion, upon application, authorize the collection of the tax hereby imposed by any retailer not maintaining a place of business within this State, who, to the satisfaction of the Department, furnishes adequate security to insure collection and payment of the tax. Such retailer shall be issued, without charge, a permit to collect such tax. When so authorized, it shall be the duty of such retailer to collect the tax upon all of the gross charges for telecommunications in this State in the same manner and subject to the same requirements as a retailer maintaining a place of business within this State. The permit may be revoked by the Department at its discretion.

(m) "Retailer maintaining a place of business in this State", or any like term, means and includes any retailer having or maintaining within this State, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State.

(n) "Service address" means the location of telecommunications equipment from which the telecommunications services are originated or at which telecommunications services are received by a taxpayer. In the event this may not be a defined location, as in the case of mobile phones, paging systems, maritime systems, air-to-ground

systems and the like, service address shall mean the location of a taxpayer's primary use of the telecommunications equipment as defined by telephone number, authorization code, or location in Illinois where bills are sent.

(o) "Prepaid telephone calling arrangements" mean the right to exclusively purchase telephone or telecommunications services that must be paid for in advance and enable the origination of one or more intrastate, interstate, or international telephone calls or other telecommunications using an access number, an authorization code, or both, whether manually or electronically dialed, for which payment to a retailer must be made in advance, provided that, unless recharged, no further service is provided once that prepaid amount of service has been consumed. Prepaid telephone calling arrangements include the recharge of a prepaid calling arrangement. For purposes of this subsection, "recharge" means the purchase of additional prepaid telephone or telecommunications services whether or not the purchaser acquires a different access number or authorization code. "Prepaid telephone calling arrangement" does not include an arrangement whereby a customer purchases a payment card and pursuant to which the service provider reflects the amount of such purchase as a credit on an invoice issued to that customer under an existing subscription plan.

(Source: P.A. 90-562, eff. 12-16-97; 91-870, eff. 6-22-00.)

(Text of Section after amendment by P.A. 92-474)

Sec. 2. As used in this Article, unless the context clearly requires otherwise:

(a) "Gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money whether paid in money or otherwise, including cash, credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of materials used, labor or service costs or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. "Gross charges" for private line service shall include charges imposed at each channel point within this State, charges for the channel mileage between each channel point within this State, and charges for that portion of the interstate inter-office channel provided within Illinois. However, "gross charges" shall not include:

(1) any amounts added to a purchaser's bill because of a charge made pursuant to (i) the tax imposed by this Article; (ii) charges added to customers' bills pursuant to the provisions of Sections 9-221 or 9-222 of the Public Utilities Act, as amended, or any similar charges added to customers' bills by retailers who are not subject to rate regulation by the Illinois Commerce Commission for the purpose of recovering any of the tax liabilities or other amounts specified in such provisions of such Act; ~~or~~ (iii) the tax imposed by Section 4251 of the Internal Revenue Code; <u>(iv) 911 surcharges; or (v) the tax imposed by the Simplified Municipal Telecommunications Tax Act;</u>

(2) charges for a sent collect telecommunication received outside of the State;

(3) charges for leased time on equipment or charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content. Such equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment or accounting equipment and also includes the usage of computers under a time-sharing agreement;

(4) charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges;

(5) charges to business enterprises certified under Section 9-222.1 of the Public Utilities Act, as amended, to the extent of such exemption and during the period of time specified by the Department of Commerce and Community Affairs;

(6) charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries when the tax imposed under this Article has already been paid to a retailer and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit for the corporation rendering such service;

(7) bad debts. Bad debt means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectable, as determined under applicable federal income tax standards. If the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made;

(8) charges paid by inserting coins in coin-operated telecommunication devices;

(9) amounts paid by telecommunications retailers under the Telecommunications Municipal Infrastructure Maintenance Fee Act.

(b) "Amount paid" means the amount charged to the taxpayer's service address in this State regardless of where such amount is billed or paid.

(c) "Telecommunications", in addition to the meaning ordinarily and popularly ascribed to it, includes, without limitation, messages or information transmitted through use of local, toll and wide area telephone service; private line services; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two way radio; paging service; or any other form of mobile and portable one-way or two-way communications; or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber-optics, laser, microwave, radio, satellite or similar facilities. As used in this Act, "private line" means a dedicated non-traffic sensitive service for a single customer, that entitles the customer to exclusive or priority use of a communications channel or group of channels, from one or more specified locations to one or more other specified locations. The definition of "telecommunications" shall not include value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission. "Telecommunications" shall not include purchases of telecommunications by a telecommunications service provider for use as a component part of the service provided by him to the ultimate retail consumer who originates or terminates the taxable end-to-end communications. Carrier access charges, right of access charges, charges for use of inter-company facilities, and all telecommunications resold in the subsequent provision of, used as a component of, or integrated into end-to-end telecommunications service shall be non-taxable as sales for resale.

(d) "Interstate telecommunications" means all telecommunications

that either originate or terminate outside this State.

(e) "Intrastate telecommunications" means all telecommunications that originate and terminate within this State.

(f) "Department" means the Department of Revenue of the State of Illinois.

(g) "Director" means the Director of Revenue for the Department of Revenue of the State of Illinois.

(h) "Taxpayer" means a person who individually or through his agents, employees or permittees engages in the act or privilege of originating or receiving telecommunications in this State and who incurs a tax liability under this Article.

(i) "Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, or a receiver, trustee, guardian or other representative appointed by order of any court, the Federal and State governments, including State universities created by statute or any city, town, county or other political subdivision of this State.

(j) "Purchase at retail" means the acquisition, consumption or use of telecommunication through a sale at retail.

(k) "Sale at retail" means the transmitting, supplying or furnishing of telecommunications and all services and equipment provided in connection therewith for a consideration to persons other than the Federal and State governments, and State universities created by statute and other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries for their use or consumption and not for resale.

(l) "Retailer" means and includes every person engaged in the business of making sales at retail as defined in this Article. The Department may, in its discretion, upon application, authorize the collection of the tax hereby imposed by any retailer not maintaining a place of business within this State, who, to the satisfaction of the Department, furnishes adequate security to insure collection and payment of the tax. Such retailer shall be issued, without charge, a permit to collect such tax. When so authorized, it shall be the duty of such retailer to collect the tax upon all of the gross charges for telecommunications in this State in the same manner and subject to the same requirements as a retailer maintaining a place of business within this State. The permit may be revoked by the Department at its discretion.

(m) "Retailer maintaining a place of business in this State", or any like term, means and includes any retailer having or maintaining within this State, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State.

(n) "Service address" means the location of telecommunications equipment from which the telecommunications services are originated or at which telecommunications services are received by a taxpayer. In the event this may not be a defined location, as in the case of mobile phones, paging systems, maritime systems, service address means the customer's place of primary use as defined in the Mobile Telecommunications Sourcing Conformity Act. For air-to-ground systems and the like, service address shall mean the location of a taxpayer's primary use of the telecommunications equipment as defined by telephone number, authorization code, or location in Illinois

where bills are sent.

(o) "Prepaid telephone calling arrangements" mean the right to exclusively purchase telephone or telecommunications services that must be paid for in advance and enable the origination of one or more intrastate, interstate, or international telephone calls or other telecommunications using an access number, an authorization code, or both, whether manually or electronically dialed, for which payment to a retailer must be made in advance, provided that, unless recharged, no further service is provided once that prepaid amount of service has been consumed. Prepaid telephone calling arrangements include the recharge of a prepaid calling arrangement. For purposes of this subsection, "recharge" means the purchase of additional prepaid telephone or telecommunications services whether or not the purchaser acquires a different access number or authorization code. "Prepaid telephone calling arrangement" does not include an arrangement whereby a customer purchases a payment card and pursuant to which the service provider reflects the amount of such purchase as a credit on an invoice issued to that customer under an existing subscription plan.

(Source: P.A. 91-870, eff. 6-22-00; 92-474, eff. 8-1-02.)

(35 ILCS 630/6) (from Ch. 120, par. 2006)

Sec. 6. Except as provided hereinafter in this Section, on or before the last ~~15th~~ day of each month, each retailer maintaining a place of business in this State shall make a return to the Department for the preceding calendar month, stating:

1. His name;

2. The address of his principal place of business, or ~~and~~ the address of the principal place of business (if that is a different address) from which he engages in the business of transmitting telecommunications;

3. Total amount of gross charges billed by him during the preceding calendar month for providing telecommunications during such calendar month;

4. Total amount received by him during the preceding calendar month on credit extended;

5. Deductions allowed by law;

6. Gross charges which were billed by him during the preceding calendar month and upon the basis of which the tax is imposed;

7. Amount of tax (computed upon Item 6);

8. Such other reasonable information as the Department may require.

Any taxpayer required to make payments under this Section may make the payments by electronic funds transfer. The Department shall adopt rules necessary to effectuate a program of electronic funds transfer. Any taxpayer who has average monthly tax billings due to the Department under this Act and the Simplified Municipal Telecommunications Tax Act that exceed $1,000 shall make all payments by electronic funds transfer as required by rules of the Department and shall file the return required by this Section by electronic means as required by rules of the Department.

If the retailer's average monthly tax billings due to the Department under this Act and the Simplified Municipal Telecommunications Tax Act do not exceed $1,000 ~~$200~~, the Department may authorize his returns to be filed on a quarter annual basis, with the return for January, February and March of a given year being due by April 30 ~~15~~ of such year; with the return for April, May and June of a given year being due by July 31st ~~15~~ of such year; with the return for July, August and September of a given year being due by October 31st ~~15~~ of such year; and with the return of October,

November and December of a given year being due by January 31st ~~15~~ of the following year.

If the retailer is otherwise required to file a monthly or quarterly return and if the retailer's average monthly tax billings due to the Department under this Act and the Simplified Municipal Telecommunications Tax Act do not exceed $400 ~~$50~~, the Department may authorize his or her return to be filed on an annual basis, with the return for a given year being due by January 31st ~~15th~~ of the following year.

Notwithstanding any other provision of this Article containing the time within which a retailer may file his return, in the case of any retailer who ceases to engage in a kind of business which makes him responsible for filing returns under this Article, such retailer shall file a final return under this Article with the Department not more than one month after discontinuing such business.

In making such return, the retailer shall determine the value of any consideration other than money received by him and he shall include such value in his return. Such determination shall be subject to review and revision by the Department in the manner hereinafter provided for the correction of returns.

Each retailer whose average monthly liability to the Department under this Article and the Simplified Municipal Telecommunications Tax Act was $25,000 ~~$10,000~~ or more during the preceding calendar year, excluding the month of highest liability and the month of lowest liability in such calendar year, and who is not operated by a unit of local government, shall make estimated payments to the Department on or before the 7th, 15th, 22nd and last day of the month during which tax collection liability to the Department is incurred in an amount not less than the lower of either 22.5% of the retailer's actual tax collections for the month or 25% of the retailer's actual tax collections for the same calendar month of the preceding year. The amount of such quarter monthly payments shall be credited against the final liability of the retailer's return for that month. Any outstanding credit, approved by the Department, arising from the retailer's overpayment of its final liability for any month may be applied to reduce the amount of any subsequent quarter monthly payment or credited against the final liability of the retailer's return for any subsequent month. If any quarter monthly payment is not paid at the time or in the amount required by this Section, the retailer shall be liable for penalty and interest on the difference between the minimum amount due as a payment and the amount of such payment actually and timely paid, except insofar as the retailer has previously made payments for that month to the Department in excess of the minimum payments previously due.

~~If the Director finds that the information required for the making of an accurate return cannot reasonably be compiled by a retailer within 15 days after the close of the calendar month for which a return is to be made, he may grant an extension of time for the filing of such return for a period of not to exceed 31 calendar days. The granting of such an extension may be conditioned upon the deposit by the retailer with the Department of an amount of money not exceeding the amount estimated by the Director to be due with the return so extended. All such deposits, including any heretofore made with the Department, shall be credited against the retailer's liabilities under this Article. If any such deposit exceeds the retailer's present and probable future liabilities under this Article, the Department shall issue to the retailer a credit memorandum, which may be assigned by the retailer to a similar retailer under this Article, in accordance with reasonable rules and regulations to be prescribed by the Department.~~

The retailer making the return herein provided for shall, at the time of making such return, pay to the Department the amount of tax herein imposed, less a discount of 1% which is allowed to reimburse the retailer for the expenses incurred in keeping records, billing the customer, preparing and filing returns, remitting the tax, and supplying data to the Department upon request. No discount may be claimed by a retailer on returns not timely filed and for taxes not timely remitted. On and after the effective date of this Article of 1985, $1,000,000 of the moneys received by the Department of Revenue pursuant to this Article shall be paid each month into the Common School Fund and the remainder into the General Revenue Fund. On and after February 1, 1998, however, of the moneys received by the Department of Revenue pursuant to the additional taxes imposed by this amendatory Act of 1997 one-half shall be deposited into the School Infrastructure Fund and one-half shall be deposited into the Common School Fund. On and after the effective date of this amendatory Act of the 91st General Assembly, if in any fiscal year the total of the moneys deposited into the School Infrastructure Fund under this Act is less than the total of the moneys deposited into that Fund from the additional taxes imposed by Public Act 90-548 during fiscal year 1999, then, as soon as possible after the close of the fiscal year, the Comptroller shall order transferred and the Treasurer shall transfer from the General Revenue Fund to the School Infrastructure Fund an amount equal to the difference between the fiscal year total deposits and the total amount deposited into the Fund in fiscal year 1999.

(Source: P.A. 90-16, eff. 6-16-97; 90-548, eff. 12-4-97; 91-541, eff. 8-13-99; 91-870, 6-22-00.)

(35 ILCS 630/15) (from Ch. 120, par. 2015)

Sec. 15. Confidential information. All information received by the Department from returns filed under this Article, or from any investigations conducted under this Article, shall be confidential, except for official purposes, and any person who divulges any such information in any manner, except in accordance with a proper judicial order or as otherwise provided by law, shall be guilty of a Class B misdemeanor.

Provided, that nothing contained in this Article shall prevent the Director from publishing or making available to the public the names and addresses of retailers or taxpayers filing returns under this Article, or from publishing or making available reasonable statistics concerning the operation of the tax wherein the contents of returns are grouped into aggregates in such a way that the information contained in any individual return shall not be disclosed.

And provided, that nothing contained in this Article shall prevent the Director from making available to the United States Government or the government of any other state, or any officer or agency thereof, for exclusively official purposes, information received by the Department in the administration of this Article, if such other governmental agency agrees to divulge requested tax information to the Department.

The furnishing upon request of the Auditor General, or his authorized agents, for official use, of returns filed and information related thereto under this Article is deemed to be an official purpose within the meaning of this Section.

The furnishing of financial information to a municipality that has imposed a tax under the Simplified Municipal Telecommunications Tax Act, upon request of the chief executive thereof, is an official purpose within the meaning of this Section, provided that the municipality agrees in writing to the requirements of this Section.

Information so provided shall be subject to all confidentiality provisions of this Section. The written agreement shall provide for reciprocity, limitations on access, disclosure, and procedures for requesting information.

The Director shall make available for public inspection in the Department's principal office and for publication, at cost, administrative decisions issued on or after January 1, 1995. These decisions are to be made available in a manner so that the following taxpayer information is not disclosed:

(1) The names, addresses, and identification numbers of the taxpayer, related entities, and employees.

(2) At the sole discretion of the Director, trade secrets or other confidential information identified as such by the taxpayer, no later than 30 days after receipt of an administrative decision, by such means as the Department shall provide by rule.

The Director shall determine the appropriate extent of the deletions allowed in paragraph (2). In the event the taxpayer does not submit deletions, the Director shall make only the deletions specified in paragraph (1).

The Director shall make available for public inspection and publication an administrative decision within 180 days after the issuance of the administrative decision. The term "administrative decision" has the same meaning as defined in Section 3-101 of Article III of the Code of Civil Procedure. Costs collected under this Section shall be paid into the Tax Compliance and Administration Fund.

Nothing contained in this Act shall prevent the Director from divulging information to any person pursuant to a request or authorization made by the taxpayer or by an authorized representative of the taxpayer.

(Source: P.A. 90-491, eff. 1-1-98.)

Section 90-15. The Telecommunications Municipal Infrastructure Maintenance Fee Act is amended by changing Sections 1, 5, 10, 15, 20, 25, 27, 27.35, 30, and 35 as follows:

(35 ILCS 635/1)

Sec. 1. Short title. This Act may be cited as the Telecommunications ~~Municipal~~ Infrastructure Maintenance Fee Act.

(Source: P.A. 90-154, eff. 1-1-98.)

(35 ILCS 635/5)

Sec. 5. Legislative intent.

(a) The General Assembly imposed a tax on invested capital of utilities to partially replace the personal property tax that was abolished by the Illinois Constitution of 1970. Since that tax was imposed, telecommunications retailers have evolved from utility status into an increasingly competitive industry serving the public.

(b) This Act is intended to abolish the invested capital tax on telecommunications retailers (that is, persons engaged in the business of transmitting messages and acting as a retailer of telecommunications as defined in Section 2 of the Telecommunications Excise Tax Act). Cellular telecommunications retailers have already been excluded from application of the invested capital tax by earlier legislative action.

(c) For the period prior to the effective date of this amendatory Act of the 92nd General Assembly, this Act is also intended to abolish municipal franchise fees with respect to telecommunications retailers, create a uniform system for the collection and distribution of fees associated with the privilege of use of the public right of way for telecommunications activity, and provide municipalities with a comprehensive method of compensation

for telecommunications activity including the recovery of reasonable costs of regulating the use of the public rights-of-way for telecommunications activity.

(d) For the period from the effective date of this amendatory Act of the 92nd General Assembly through December 31, 2002, it is the intent of the General Assembly that the municipal infrastructure maintenance fee and its rate are subject only to the limits prescribed in Section 20, and that the fee and the rate of the fee do not relate to use of the public rights-of-way or the costs associated with maintaining and regulating the use of the public rights-of-way. It is also the intent of the General Assembly that proceeds of the municipal infrastructure maintenance fee may be used for any lawful corporate purpose. It is not the intent of the General Assembly that the municipal infrastructure maintenance fee is in any way compensation for use of the public rights-of-way. It is the intent of the General Assembly that the fee be paid by all telecommunications retailers, regardless of whether they have equipment in the public rights-of-way.

(e) This amendatory Act of the 92nd General Assembly is intended to repeal the municipal infrastructure maintenance fee and the optional infrastructure maintenance fee effective January 1, 2003.

(Source: P.A. 90-154, eff. 1-1-98; 91-533, eff. 8-13-99.)

(35 ILCS 635/10)

(Text of Section before amendment by P.A. 92-474)

Sec. 10. Definitions.

(a) "Gross charges" means the amount paid to a telecommunications retailer for the act or privilege of originating or receiving telecommunications in this State ~~or the municipality imposing the fee under this Act, as the context requires,~~ and for all services rendered in connection therewith, valued in money whether paid in money or otherwise, including cash, credits, services, and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of the materials used, labor or service costs, or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. "Gross charges" for private line service shall include charges imposed at each channel point within this State ~~or the municipality imposing the fee under this Act~~, charges for the channel mileage between each channel point within this State ~~or the municipality imposing the fee under this Act~~, and charges for that portion of the interstate inter-office channel provided within Illinois ~~or the municipality imposing the fee under this Act~~. However, "gross charges" shall not include:

(1) any amounts added to a purchaser's bill because of a charge made under: (i) the fee imposed by this Section, (ii) additional charges added to a purchaser's bill under Section 9-221 or 9-222 of the Public Utilities Act, (iii) ~~amounts collected under Section 8-11-17 of the Illinois Municipal Code, (iv)~~ the tax imposed by the Telecommunications Excise Tax Act, (iv) ~~(v)~~ 911 surcharges, (v) ~~or (vi)~~ the tax imposed by Section 4251 of the Internal Revenue Code, or (vi) the tax imposed by the simplified Municipal Telecommunications Tax Act;

(2) charges for a sent collect telecommunication received outside of this State ~~or the municipality imposing the fee, as the context requires~~;

(3) charges for leased time on equipment or charges for the storage of data or information or subsequent retrieval or the processing of data or information intended to change its form or content. Such equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating

equipment, or accounting equipment and also includes the usage of computers under a time-sharing agreement.

(4) charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges;

(5) charges to business enterprises certified under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the Department of Commerce and Community Affairs ~~or by the municipality imposing the fee under the Act, as the context requires~~;

(6) charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit other than a regulatory required profit for the corporation rendering such services;

(7) bad debts ("bad debt" means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable federal income tax standards; if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made); or

(8) charges paid by inserting coins in coin-operated telecommunication devices.~~; or~~

~~(9) charges for telecommunications and all services and equipment provided to a municipality imposing the infrastructure maintenance fee.~~

(a-5) "Department" means the Illinois Department of Revenue.

(b) "Telecommunications" includes, but is not limited to, messages or information transmitted through use of local, toll, and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange services, private line services, specialized mobile radio services, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. Unless the context clearly requires otherwise, "telecommunications" shall also include wireless telecommunications as hereinafter defined. "Telecommunications" shall not include value added services in which computer processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission. "Telecommunications" shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by him or her to the ultimate retail consumer who originates or terminates the end-to-end communications. Retailer access charges, right of access charges, charges for use of intercompany facilities, and all telecommunications resold in the subsequent provision and used as a component of, or integrated into, end-to-end telecommunications service shall not be included in gross charges as sales for resale. "Telecommunications" shall not include the provision of cable services through a cable system as defined in the Cable Communications Act of 1984 (47 U.S.C. Sections 521 and following) as

now or hereafter amended or through an open video system as defined in the Rules of the Federal Communications Commission (47 C.D.F. 76.1550 and following) as now or hereafter amended. Beginning January 1, 2001, prepaid telephone calling arrangements shall not be considered "telecommunications" subject to the tax imposed under this Act. For purposes of this Section, "prepaid telephone calling arrangements" means that term as defined in Section 2-27 of the Retailers' Occupation Tax Act.

(c) "Wireless telecommunications" includes cellular mobile telephone services, personal wireless services as defined in Section 704(C) of the Telecommunications Act of 1996 (Public Law No. 104-104) as now or hereafter amended, including all commercial mobile radio services, and paging services.

(d) "Telecommunications retailer" or "retailer" or "carrier" means and includes every person engaged in the business of making sales of telecommunications at retail as defined in this Section. The ~~Illinois~~ Department ~~of Revenue or the municipality imposing the fee, as the case may be,~~ may, in its discretion, upon applications, authorize the collection of the fee hereby imposed by any retailer not maintaining a place of business within this State, who, to the satisfaction of the Department ~~or municipality~~, furnishes adequate security to insure collection and payment of the fee. When so authorized, it shall be the duty of such retailer to pay the fee upon all of the gross charges for telecommunications in the same manner and subject to the same requirements as a retailer maintaining a place of business within this ~~the~~ State ~~or municipality imposing the fee~~.

(e) "Retailer maintaining a place of business in this State", or any like term, means and includes any retailer having or maintaining within this State, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse, or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State.

(f) "Sale of telecommunications at retail" means the transmitting, supplying, or furnishing of telecommunications and all services rendered in connection therewith for a consideration, other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, when the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for sale.

(g) "Service address" means the location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received. If this is not a defined location, as in the case of wireless telecommunications, paging systems, maritime systems, air-to-ground systems, and the like, "service address" shall mean the location of the customer's primary use of the telecommunications equipment as defined by the location in Illinois where bills are sent.

(Source: P.A. 90-154, eff. 1-1-98; 90-562, eff. 12-16-97; 91-870, eff. 6-22-00.)

(Text of Section after amendment by P.A. 92-474)

Sec. 10. Definitions.

(a) "Gross charges" means the amount paid to a telecommunications retailer for the act or privilege of originating or receiving telecommunications in this State ~~or the municipality~~

~~imposing the fee under this Act, as the context requires,~~ and for all services rendered in connection therewith, valued in money whether paid in money or otherwise, including cash, credits, services, and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of the materials used, labor or service costs, or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. "Gross charges" for private line service shall include charges imposed at each channel point within this State ~~or the municipality imposing the fee under this Act~~, charges for the channel mileage between each channel point within this State ~~or the municipality imposing the fee under this Act~~, and charges for that portion of the interstate inter-office channel provided within Illinois ~~or the municipality imposing the fee under this Act~~. However, "gross charges" shall not include:

(1) any amounts added to a purchaser's bill because of a charge made under: (i) the fee imposed by this Section, (ii) additional charges added to a purchaser's bill under Section 9-221 or 9-222 of the Public Utilities Act, (iii) ~~amounts collected under Section 8-11-17 of the Illinois Municipal Code,~~ ~~(iv)~~ the tax imposed by the Telecommunications Excise Tax Act, <u>(iv)</u> ~~(v)~~ 911 surcharges, <u>(v)</u> ~~or (vi)~~ the tax imposed by Section 4251 of the Internal Revenue Code<u>, or (vi) the tax imposed by the Simplified Municipal Telecommunications Tax Act</u>;

(2) charges for a sent collect telecommunication received outside of this State ~~or the municipality imposing the fee, as the context requires~~;

(3) charges for leased time on equipment or charges for the storage of data or information or subsequent retrieval or the processing of data or information intended to change its form or content. Such equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment, or accounting equipment and also includes the usage of computers under a time-sharing agreement;

(4) charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges;

(5) charges to business enterprises certified under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the Department of Commerce and Community Affairs ~~or by the municipality imposing the fee under the Act, as the context requires~~;

(6) charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit other than a regulatory required profit for the corporation rendering such services;

(7) bad debts ("bad debt" means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable federal income tax standards; if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is

made); or

(8) charges paid by inserting coins in coin-operated telecommunication devices.~~;~~ ~~or~~

~~(9) charges for telecommunications and all services and equipment provided to a municipality imposing the infrastructure maintenance fee.~~

(a-5) "Department" means the Illinois Department of Revenue.

(b) "Telecommunications" includes, but is not limited to, messages or information transmitted through use of local, toll, and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange services, private line services, specialized mobile radio services, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. Unless the context clearly requires otherwise, "telecommunications" shall also include wireless telecommunications as hereinafter defined. "Telecommunications" shall not include value added services in which computer processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission. "Telecommunications" shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by him or her to the ultimate retail consumer who originates or terminates the end-to-end communications. Retailer access charges, right of access charges, charges for use of intercompany facilities, and all telecommunications resold in the subsequent provision and used as a component of, or integrated into, end-to-end telecommunications service shall not be included in gross charges as sales for resale. "Telecommunications" shall not include the provision of cable services through a cable system as defined in the Cable Communications Act of 1984 (47 U.S.C. Sections 521 and following) as now or hereafter amended or through an open video system as defined in the Rules of the Federal Communications Commission (47 C.D.F. 76.1550 and following) as now or hereafter amended. Beginning January 1, 2001, prepaid telephone calling arrangements shall not be considered "telecommunications" subject to the tax imposed under this Act. For purposes of this Section, "prepaid telephone calling arrangements" means that term as defined in Section 2-27 of the Retailers' Occupation Tax Act.

(c) "Wireless telecommunications" includes cellular mobile telephone services, personal wireless services as defined in Section 704(C) of the Telecommunications Act of 1996 (Public Law No. 104-104) as now or hereafter amended, including all commercial mobile radio services, and paging services.

(d) "Telecommunications retailer" or "retailer" or "carrier" means and includes every person engaged in the business of making sales of telecommunications at retail as defined in this Section. The ~~Illinois~~ Department ~~of Revenue or the municipality imposing the fee, as the case may be,~~ may, in its discretion, upon applications, authorize the collection of the fee hereby imposed by any retailer not maintaining a place of business within this State, who, to the satisfaction of the Department ~~or municipality~~, furnishes adequate security to insure collection and payment of the fee. When so authorized, it shall be the duty of such retailer to pay the fee upon all of the gross charges for telecommunications in the same manner and subject to the same requirements as a retailer maintaining a place of business within this ~~the~~ State ~~or municipality imposing the~~ fee.

(e) "Retailer maintaining a place of business in this State", or

any like term, means and includes any retailer having or maintaining within this State, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse, or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State.

(f) "Sale of telecommunications at retail" means the transmitting, supplying, or furnishing of telecommunications and all services rendered in connection therewith for a consideration, other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, when the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for sale.

(g) "Service address" means the location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received. If this is not a defined location, as in the case of wireless telecommunications, paging systems, maritime systems, service address means the customer's place of primary use as defined in the Mobile Telecommunications Sourcing Conformity Act. For air-to-ground systems, and the like, "service address" shall mean the location of the customer's primary use of the telecommunications equipment as defined by the location in Illinois where bills are sent.

(Source: P.A. 91-870, eff. 6-22-00; 92-474, eff. 8-1-02.)

(35 ILCS 635/15)

Sec. 15. State telecommunications infrastructure maintenance fees.

(a) A State infrastructure maintenance fee is hereby imposed upon telecommunications retailers as a replacement for the personal property tax in an amount specified in subsection (b).

(b) The amount of the State infrastructure maintenance fee imposed upon a telecommunications retailer under this Section shall be equal to 0.5% of all gross charges charged by the telecommunications retailer to service addresses in this State for telecommunications, other than wireless telecommunications, originating or received in this State. However, the State infrastructure maintenance fee is not imposed in any case in which the imposition of the fee would violate the Constitution or statutes of the United States.

(c) (Blank). ~~An optional infrastructure maintenance fee is hereby created. A telecommunications retailer may elect to pay the optional infrastructure maintenance fee with respect to the gross charges charged by the telecommunications retailer to service addresses in a particular municipality for telecommunications, other than wireless telecommunications, originating or received in the municipality if (1) the telecommunications retailer is not required to pay any compensation to the municipality under an existing franchise agreement and (2) the municipality has not imposed a municipal infrastructure maintenance fee as authorized in Section 20 of this Act. A telecommunications retailer electing to pay the optional infrastructure maintenance fee shall notify the Department of such election on the application for certificate of registration. If a telecommunications retailer elects to pay this fee with respect to the gross charges charged by the telecommunications retailer to service addresses in a particular municipality, such election shall remain in full force and effect until such time as the municipality~~

~~imposes a municipal infrastructure maintenance fee.~~

(d) (Blank). ~~The amount of the optional infrastructure maintenance fee which a telecommunications retailer may elect to pay with respect to a particular municipality shall be equal to 25% of the maximum amount of the municipal infrastructure maintenance fee which the municipality could impose under Section 20 of this Act.~~

(e) The State infrastructure maintenance fee ~~and the optional infrastructure maintenance fee~~ authorized by this Section shall be collected, enforced, and administered as set forth in subsection (b) of Section 25 of this Act.

(Source: P.A. 90-154, eff. 1-1-98; 90-562, eff. 12-16-97.)

(35 ILCS 635/20)

Sec. 20. Municipal telecommunications infrastructure maintenance fee.

(a) A municipality may impose a municipal infrastructure maintenance fee upon telecommunications retailers in an amount specified in subsection (b). On and after the effective date of this amendatory Act of 1997, a certified copy of an ordinance or resolution imposing a fee under this Section shall be filed with the Department within 30 days after the effective date of this amendatory Act or the effective date of the ordinance or resolution imposing such fee, whichever is later. Failure to file a certified copy of the ordinance or resolution imposing a fee under this Section shall have no effect on the validity of the ordinance or resolution. The Department shall create and maintain a list of all ordinances and resolutions filed pursuant to this Section and make that list, as well as copies of the ordinances and resolutions, available to the public for a reasonable fee.

(b) The amount of the municipal infrastructure maintenance fee imposed upon a telecommunications retailer under this Section shall not exceed: (i) in a municipality with a population of more than 500,000, 2.0% of all gross charges charged by the telecommunications retailer to service addresses in the municipality for telecommunications originating or received in the municipality; and (ii) in a municipality with a population of 500,000 or less, 1.0% of all gross charges charged by the telecommunications retailer to service addresses in the municipality for telecommunications originating or received in the municipality which fee, for the period commencing on the effective date of this amendatory Act of the 92nd General Assembly through December 31, 2002, may be imposed at the rates set forth herein without regard to the provisions of Sections 8-11-2 and 8-11-17 of the Illinois Municipal Code. If imposed, the municipal telecommunications infrastructure fee must be in 1/4% increments. However, the fee shall not be imposed in any case in which the imposition of the fee would violate the Constitution or statutes of the United States.

(c) The municipal telecommunications infrastructure fee authorized by this Section shall be collected, enforced, and administered as set forth in subsection (c) of Section 25 of this Act.

(d) A municipality with a population of more than 500,000 that imposes a municipal infrastructure maintenance fee under this Section may, by ordinance, exempt from the fee all charges for the inbound toll-free telecommunications service commonly known as "800", "877", or "888" or for a similar service.

(e) For the period from the effective date of this amendatory Act of the 92nd General Assembly through December 31, 2002, any ordinance previously enacted for the purpose of imposing a municipal infrastructure maintenance fee shall be valid and effective for the purpose of imposing the municipal infrastructure maintenance fee

described in subsection (d) of Section 5 of this Act.

(f) This Section is repealed on January 1, 2003.

(Source: P.A. 90-154, eff. 1-1-98; 90-562, eff. 12-16-97; 91-870, eff. 6-22-00.)

(35 ILCS 635/25)

Sec. 25. Collection, enforcement, and administration of State telecommunications infrastructure maintenance fees.

(a) A telecommunications retailer shall charge each customer an additional charge equal to ~~the sum of (1) an amount equal to~~ the State infrastructure maintenance fee attributable to that customer's service address ~~and (2) an amount equal to the optional infrastructure maintenance fee, if any, attributable to that customer's service address and (3) an amount equal to the municipal infrastructure maintenance fee, if any, attributable to that customer's service address.~~ Such additional charge shall be shown separately on the bill to each customer.

(b) The State infrastructure maintenance fee ~~and the optional infrastructure maintenance fee~~ shall be designated as a replacement for the personal property tax and shall be remitted by the telecommunications retailer to the ~~Illinois~~ Department ~~of Revenue~~; provided, however, that the telecommunications retailer may retain an amount not to exceed 2% of the State infrastructure maintenance fee ~~and the optional infrastructure maintenance fee, if any,~~ paid to the Department, with a timely paid and timely filed return to reimburse itself for expenses incurred in collecting, accounting for, and remitting the fee. All amounts herein remitted to the Department shall be transferred to the Personal Property Tax Replacement Fund in the State Treasury.

~~(c) The municipal infrastructure maintenance fee shall be remitted by the telecommunications retailer to the municipality imposing the municipal infrastructure maintenance fee; provided, however, that the telecommunications retailer may retain an amount not to exceed 2% of the municipal infrastructure maintenance fee collected by it to reimburse itself for expenses incurred in accounting for and remitting the fee. The municipality imposing the municipal infrastructure maintenance fee shall collect, enforce, and administer the fee.~~

~~(d) Except as provided in subsection (e), During any period of time when a municipality receives any compensation other than the municipal infrastructure maintenance fee set forth in Section 20, for a telecommunications retailer's use of the public right-of-way, no municipal infrastructure maintenance fee may be imposed by such municipality pursuant to this Act.~~

~~(e) A municipality that, pursuant to a franchise agreement in existence on the effective date of this Act, receives compensation from a telecommunications retailer for the use of the public right-of-way, may impose a municipal infrastructure maintenance fee pursuant to this Act only on the condition that such municipality (1) waives its right to receive all fees, charges and other compensation under all existing franchise agreements or the like with telecommunications retailers during the time that the municipality imposes a municipal infrastructure maintenance fee and (2) imposes by ordinance (or other proper means) a municipal infrastructure maintenance fee which becomes effective no sooner than 90 days after such municipality has provided written notice by certified mail to each telecommunications retailer with whom the municipality has an existing franchise agreement, that the municipality waives all compensation under such existing franchise agreement.~~

(Source: P.A. 90-154, eff. 1-1-98; 90-562, eff. 12-16-97; 90-655, eff. 7-30-98.)

(35 ILCS 635/27)

Sec. 27. Returns by telecommunications retailer; extensions. Except as provided hereinafter in this Section, on or before the 30th day of each month each telecommunications retailer maintaining a place of business in this State shall make a return and payment of fees to the Department for the preceding calendar month on a form prescribed and furnished by the Department. The return shall be signed by the telecommunications retailer under penalties of perjury and shall contain the following information:

1. His or her name;

2. The address of his or her principal place of business, or ~~and~~ the address of the principal place of business (if that is a different address) from which he or she engages in the business of transmitting telecommunications;

3. The total amount of gross charges charged by him or her during the preceding calendar month for providing telecommunications during such calendar month;

4. The total amount received by him or her during the preceding calendar month on credit extended;

5. Deductions allowed by law;

6. Gross charges that were charged by him or her during the preceding calendar month and upon the basis of which the State infrastructure maintenance fee is imposed;

7. (Blank) ~~Gross charges that were charged by him or her during the preceding calendar month and upon the basis of which the optional infrastructure maintenance fee, if any, is imposed for each particular municipality~~;

8. Amounts of fees due;

9. Such other reasonable information as the Department may require.

If the telecommunications retailer's average monthly liability to the Department does not exceed $100, the Department may authorize his or her returns to be filed on a quarter annual basis, with the return for January, February, and March of a given year being due by April 15 of such year; with the return for April, May, and June of a given year being due by July 15 of such year; with the return for July, August, and September of a given year being due by October 15 of such year; and with the return of October, November, and December of a given year being due by January 15 of the following year.

Notwithstanding any other provision of this Act concerning the time within which a telecommunications retailer may file his or her return, in the case of any telecommunications retailer who ceases to engage in a kind of business which makes him or her responsible for filing returns under this Act, such telecommunications retailer shall file a final return under this Act with the Department not more than one month after discontinuing such business.

In making such return, the telecommunications retailer shall determine the value of any consideration other than money received by him or her and he or she shall include such value in his or her return. Such determination shall be subject to review and revision by the Department in the manner hereinafter provided for the correction of returns.

If any payment provided for in this Section exceeds the telecommunications retailer's liabilities under this Act, as shown on an original monthly return, the Department may authorize the telecommunications retailer to credit such excess payment against liability subsequently to be remitted to the Department under this Act, in accordance with reasonable rules and regulations prescribed by the Department. If the Department subsequently determines that all or any part of the credit taken was not actually due to the

telecommunications retailer, the telecommunications retailer's 2% discount shall be reduced by 2% of the difference between the credit taken and that actually due, and that telecommunications retailer shall be liable for penalties and interest on such difference.

~~If the Director finds that the information required for the making of an accurate return cannot reasonably be compiled by a telecommunications retailer within 15 days after the close of the calendar month for which a return is to be made, he or she may grant an extension of time for the filing of such return for a period of not to exceed 31 calendar days. The granting of such an extension may be conditioned upon the deposit by the telecommunications retailer with the Department of an amount of money not exceeding the amount estimated by the Director to be due with the return so extended. All such deposits, including any heretofore made with the Department, shall be credited against the telecommunications retailer's liabilities under this Act. If any such deposit exceeds the telecommunications retailer's present and probable future liabilities under this Act, the Department shall issue to the telecommunications retailer a credit memorandum, which may be assigned by the telecommunications retailer to a similar telecommunications retailer under this Act, in accordance with reasonable rules and regulations to be prescribed by the Department.~~

Any telecommunications retailer required to make payments under this Section may make the payments by electronic funds transfer. The Department shall adopt rules necessary to effectuate a program of electronic funds transfer.

(Source: P.A. 90-562, eff. 12-16-97.)

(35 ILCS 635/27.35)

Sec. 27.35. Rules and regulations; notice to telecommunications retailer; hearings. The Department may make, promulgate, and enforce such reasonable rules and regulations relating to the administration and enforcement of only the State infrastructure maintenance fee ~~and the optional infrastructure maintenance fee~~ authorized by this Act. ~~Such rules and regulations shall not apply to the administration and enforcement of the municipal infrastructure maintenance fee authorized by this Act.~~

Whenever notice to a telecommunications retailer is required by this Act, such notice may be given by United States certified or registered mail, addressed to the telecommunications retailer concerned at his or her last known address, and proof of such mailing shall be sufficient for the purposes of this Act. In the case of a notice of hearing, such notice shall be mailed not less than 7 days prior to the day fixed for the hearing.

All hearings provided for in this Act with respect to a telecommunications retailer having his or her principal place of business other than in Cook County shall be held at the Department's office nearest to the location of the telecommunications retailer's principal place of business: Provided that if the telecommunications retailer has his or her principal place of business in Cook County, such hearing shall be held in Cook County; and provided further that if the telecommunications retailer does not have his principal place of business in this State, such hearings shall be held in Sangamon County.

Whenever any proceeding provided by this Act has been begun by the Department or by a person subject thereto and such person thereafter dies or becomes a person under legal disability before the proceeding has been concluded, the legal representative of the deceased person or a person under legal disability shall notify the Department of such death or legal disability. The legal representative, as such, shall then be substituted by the Department

in place of and for the person. Within 20 days after notice to the legal representative of the time fixed for that purpose, the proceeding may proceed in all respects and with like effect as though the person had not died or become a person under legal disability.
(Source: P.A. 90-562, eff. 12-16-97.)

(35 ILCS 635/30)

Sec. 30. Validity of existing franchise fees and agreements.

(a) ~~Upon the effective date of this Act, the municipal infrastructure maintenance fee authorized by this Act shall be the only fee or compensation for recovering the reasonable costs of regulating the use of the public rights-of-way and for the use of public rights-of-way that may be levied by or otherwise required by ordinance, resolution, or contract to be paid to a municipality for the use of its public way by telecommunications retailers.~~ No new franchise fees or other charges for the use of the public rights-of-way, including charges for the recovery of reasonable costs of regulating the use of the public rights-of-way, shall be imposed upon, levied on, or otherwise required of telecommunications retailers by ordinance, resolution, or contract, nor shall any ~~or~~ other new charges be required from telecommunications retailers by municipalities from and after the effective date of this Act. ~~No telecommunications retailer paying either the applicable municipal infrastructure maintenance fee or the optional infrastructure maintenance fee authorized by this Act may be denied the use, directly or indirectly, of the public way of the municipality either imposing the municipal infrastructure maintenance fee or to which the optional infrastructure maintenance fee relates, as the case may be, as authorized under the Telephone Company Act.~~ Nothing in this Act shall excuse any person or entity from obligations imposed under any law concerning generally applicable taxes or standards for construction on, over, under, or within, use of or repair of the public rights-of-way, including standards relating to free standing towers and other structures upon the public way, nor shall any person or entity be excused from any liability imposed by any such law for the failure to comply with such generally applicable taxes or standards governing construction on, over, under, or within, use of or repair of the public rights-of-way.

(b) Agreements between telecommunications retailers and municipalities entered into before the effective date of this Act regarding use of the public ways shall remain valid according to and for their stated terms, except as to fees or charges waived under Section 5-60 of the Simplified Municipal Telecommunications Tax Act. ~~If, following the effective date of this Act, such an agreement is renewed automatically or by agreement of the parties, the compensation or fee under the agreement shall be equal to the maximum amount of the municipal infrastructure maintenance fee which the municipality could impose under Section 20 of this Act.~~

(c) The regulation of the terms and conditions upon which poles, conduits, and other facilities located in the public way may be shared by or between telecommunications retailers shall be committed exclusively to the jurisdiction of the Illinois Commerce Commission and the Federal Communications Commission, and such regulation shall not be among the home rule powers and functions described in subsection (h) of Section 6 of Article VII of the Illinois Constitution. Moreover, no municipality may enter into any contract or agreement with a telecommunications retailer with respect to the terms and conditions upon which poles, conduits, and other facilities located in the public way may be shared by or between telecommunications retailers.
(Source: P.A. 90-154, eff. 1-1-98.)

(35 ILCS 635/35)

Sec. 35. Home rule. The authorization of infrastructure maintenance fees ~~and other fees relating to the use of the public right-of-way for telecommunications activity imposed upon telecommunications retailers~~ is an exclusive power and function of the State. A home rule municipality may not impose franchise or other fees upon or require other compensation from telecommunications retailers for use of the public way~~, other than the municipal infrastructure maintenance fee authorized by this Act~~. This Act is a denial and limitation of municipal home rule powers and functions under subsection (g) ~~(h)~~ of Section 6 of Article VII of the Illinois Constitution.

(Source: P.A. 90-154, eff. 1-1-98.)

Section 90-20. The Emergency Telephone System Act is amended by changing Section 15.3 as follows:

(50 ILCS 750/15.3) (from Ch. 134, par. 45.3)

(Text of Section before amendment by P.A. 92-474)

Sec. 15.3. (a) The corporate authorities of any municipality or any county may, subject to the limitations of subsections (c), (d), and (h), and in addition to any tax levied pursuant to the Simplified Municipal Telecommunications Tax Act ~~Section 8-11-2 of the Illinois Municipal Code~~, impose a monthly surcharge on billed subscribers of network connection provided by telecommunication carriers engaged in the business of transmitting messages by means of electricity originating within the corporate limits of the municipality or county imposing the surcharge at a rate per network connection determined in accordance with subsection (c). A municipality may enter into an intergovernmental agreement with any county in which it is partially located, when the county has adopted an ordinance to impose a surcharge as provided in subsection (c), to include that portion of the municipality lying outside the county in that county's surcharge referendum. If the county's surcharge referendum is approved, the portion of the municipality identified in the intergovernmental agreement shall automatically be disconnected from the county in which it lies and connected to the county which approved the referendum for purposes of a surcharge on telecommunications carriers.

(b) For purposes of computing the surcharge imposed by subsection (a), the network connections to which the surcharge shall apply shall be those in-service network connections, other than those network connections assigned to the municipality or county, where the service address for each such network connection or connections is located within the corporate limits of the municipality or county levying the surcharge. The "service address" shall mean the location of the primary use of the network connection or connections. With respect to network connections provided for use with pay telephone services for which there is no billed subscriber, the telecommunications carrier providing the network connection shall be deemed to be its own billed subscriber for purposes of applying the surcharge.

(c) Upon the passage of an ordinance to impose a surcharge under this Section the clerk of the municipality or county shall certify the question of whether the surcharge may be imposed to the proper election authority who shall submit the public question to the electors of the municipality or county in accordance with the general election law; provided that such question shall not be submitted at a consolidated primary election. The public question shall be in substantially the following form:

Shall the county (or city, village

or incorporated town) of...impose a surcharge of up to..¢ per month per network connection, which surcharge will be added to the monthly bill you receive for telephone or telecommunications charges, for the purpose of installing (or improving) a 9-1-1 Emergency Telephone System?	YES --- NO

If a majority of the votes cast upon the public question are in favor thereof, the surcharge shall be imposed.

However, if a Joint Emergency Telephone System Board is to be created pursuant to an intergovernmental agreement under Section 15.4, the ordinance to impose the surcharge shall be subject to the approval of a majority of the total number of votes cast upon the public question by the electors of all of the municipalities or counties, or combination thereof, that are parties to the intergovernmental agreement.

The referendum requirement of this subsection (c) shall not apply to any municipality with a population over 500,000 or to any county in which a proposition as to whether a sophisticated 9-1-1 Emergency Telephone System should be installed in the county, at a cost not to exceed a specified monthly amount per network connection, has previously been approved by a majority of the electors of the county voting on the proposition at an election conducted before the effective date of this amendatory Act of 1987.

(d) A county may not impose a surcharge, unless requested by a municipality, in any incorporated area which has previously approved a surcharge as provided in subsection (c) or in any incorporated area where the corporate authorities of the municipality have previously entered into a binding contract or letter of intent with a telecommunications carrier to provide sophisticated 9-1-1 service through municipal funds.

(e) A municipality or county may at any time by ordinance change the rate of the surcharge imposed under this Section if the new rate does not exceed the rate specified in the referendum held pursuant to subsection (c).

(f) The surcharge authorized by this Section shall be collected from the subscriber by the telecommunications carrier providing the subscriber the network connection as a separately stated item on the subscriber's bill.

(g) The amount of surcharge collected by the telecommunications carrier shall be paid to the particular municipality or county or Joint Emergency Telephone System Board not later than 30 days after the surcharge is collected, net of any network or other 9-1-1 or sophisticated 9-1-1 system charges then due the particular telecommunications carrier, as shown on an itemized bill. The telecommunications carrier collecting the surcharge shall also be entitled to deduct 3% of the gross amount of surcharge collected to reimburse the telecommunications carrier for the expense of accounting and collecting the surcharge.

(h) A municipality with a population over 500,000 may not impose a monthly surcharge in excess of $1.25 per network connection.

(i) Any municipality or county or joint emergency telephone system board that has imposed a surcharge pursuant to this Section prior to the effective date of this amendatory Act of 1990 shall hereafter impose the surcharge in accordance with subsection (b) of this Section.

(j) The corporate authorities of any municipality or county may issue, in accordance with Illinois law, bonds, notes or other

obligations secured in whole or in part by the proceeds of the surcharge described in this Section. Notwithstanding any change in law subsequent to the issuance of any bonds, notes or other obligations secured by the surcharge, every municipality or county issuing such bonds, notes or other obligations shall be authorized to impose the surcharge as though the laws relating to the imposition of the surcharge in effect at the time of issuance of the bonds, notes or other obligations were in full force and effect until the bonds, notes or other obligations are paid in full. The State of Illinois pledges and agrees that it will not limit or alter the rights and powers vested in municipalities and counties by this Section to impose the surcharge so as to impair the terms of or affect the security for bonds, notes or other obligations secured in whole or in part with the proceeds of the surcharge described in this Section.

(k) Any surcharge collected by or imposed on a telecommunications carrier pursuant to this Section shall be held to be a special fund in trust for the municipality, county or Joint Emergency Telephone Board imposing the surcharge. Except for the 3% deduction provided in subsection (g) above, the special fund shall not be subject to the claims of creditors of the telecommunication carrier.

(Source: P.A. 86-101; 86-1344.)

(Text of Section after amendment by P.A. 92-474)

Sec. 15.3. (a) The corporate authorities of any municipality or any county may, subject to the limitations of subsections (c), (d), and (h), and in addition to any tax levied pursuant to the Simplified Municipal Telecommunications Tax Act ~~Section 8-11-2 of the Illinois Municipal Code~~, impose a monthly surcharge on billed subscribers of network connection provided by telecommunication carriers engaged in the business of transmitting messages by means of electricity originating within the corporate limits of the municipality or county imposing the surcharge at a rate per network connection determined in accordance with subsection (c). For mobile telecommunications services, if a surcharge is imposed it shall be imposed based upon the municipality or county that encompasses the customer's place of primary use as defined in the Mobile Telecommunications Sourcing Conformity Act. A municipality may enter into an intergovernmental agreement with any county in which it is partially located, when the county has adopted an ordinance to impose a surcharge as provided in subsection (c), to include that portion of the municipality lying outside the county in that county's surcharge referendum. If the county's surcharge referendum is approved, the portion of the municipality identified in the intergovernmental agreement shall automatically be disconnected from the county in which it lies and connected to the county which approved the referendum for purposes of a surcharge on telecommunications carriers.

(b) For purposes of computing the surcharge imposed by subsection (a), the network connections to which the surcharge shall apply shall be those in-service network connections, other than those network connections assigned to the municipality or county, where the service address for each such network connection or connections is located within the corporate limits of the municipality or county levying the surcharge. Except for mobile telecommunication services, the "service address" shall mean the location of the primary use of the network connection or connections. For mobile telecommunication services, "service address" means the customer's place of primary use as defined in the Mobile Telecommunications Sourcing Conformity Act. With respect to network connections provided for use with pay telephone services for which there is no billed subscriber, the telecommunications carrier providing the network connection shall be

deemed to be its own billed subscriber for purposes of applying the surcharge.

(c) Upon the passage of an ordinance to impose a surcharge under this Section the clerk of the municipality or county shall certify the question of whether the surcharge may be imposed to the proper election authority who shall submit the public question to the electors of the municipality or county in accordance with the general election law; provided that such question shall not be submitted at a consolidated primary election. The public question shall be in substantially the following form:

Shall the county (or city, village or incorporated town) of...impose a surcharge of up to..¢ per month per network connection, which surcharge will be added to the monthly bill you receive for telephone or telecommunications charges, for the purpose of installing (or improving) a 9-1-1 Emergency Telephone System?	YES --- NO

If a majority of the votes cast upon the public question are in favor thereof, the surcharge shall be imposed.

However, if a Joint Emergency Telephone System Board is to be created pursuant to an intergovernmental agreement under Section 15.4, the ordinance to impose the surcharge shall be subject to the approval of a majority of the total number of votes cast upon the public question by the electors of all of the municipalities or counties, or combination thereof, that are parties to the intergovernmental agreement.

The referendum requirement of this subsection (c) shall not apply to any municipality with a population over 500,000 or to any county in which a proposition as to whether a sophisticated 9-1-1 Emergency Telephone System should be installed in the county, at a cost not to exceed a specified monthly amount per network connection, has previously been approved by a majority of the electors of the county voting on the proposition at an election conducted before the effective date of this amendatory Act of 1987.

(d) A county may not impose a surcharge, unless requested by a municipality, in any incorporated area which has previously approved a surcharge as provided in subsection (c) or in any incorporated area where the corporate authorities of the municipality have previously entered into a binding contract or letter of intent with a telecommunications carrier to provide sophisticated 9-1-1 service through municipal funds.

(e) A municipality or county may at any time by ordinance change the rate of the surcharge imposed under this Section if the new rate does not exceed the rate specified in the referendum held pursuant to subsection (c).

(f) The surcharge authorized by this Section shall be collected from the subscriber by the telecommunications carrier providing the subscriber the network connection as a separately stated item on the subscriber's bill.

(g) The amount of surcharge collected by the telecommunications carrier shall be paid to the particular municipality or county or Joint Emergency Telephone System Board not later than 30 days after the surcharge is collected, net of any network or other 9-1-1 or sophisticated 9-1-1 system charges then due the particular telecommunications carrier, as shown on an itemized bill. The telecommunications carrier collecting the surcharge shall also be

entitled to deduct 3% of the gross amount of surcharge collected to reimburse the telecommunications carrier for the expense of accounting and collecting the surcharge.

(h) A municipality with a population over 500,000 may not impose a monthly surcharge in excess of $1.25 per network connection.

(i) Any municipality or county or joint emergency telephone system board that has imposed a surcharge pursuant to this Section prior to the effective date of this amendatory Act of 1990 shall hereafter impose the surcharge in accordance with subsection (b) of this Section.

(j) The corporate authorities of any municipality or county may issue, in accordance with Illinois law, bonds, notes or other obligations secured in whole or in part by the proceeds of the surcharge described in this Section. Notwithstanding any change in law subsequent to the issuance of any bonds, notes or other obligations secured by the surcharge, every municipality or county issuing such bonds, notes or other obligations shall be authorized to impose the surcharge as though the laws relating to the imposition of the surcharge in effect at the time of issuance of the bonds, notes or other obligations were in full force and effect until the bonds, notes or other obligations are paid in full. The State of Illinois pledges and agrees that it will not limit or alter the rights and powers vested in municipalities and counties by this Section to impose the surcharge so as to impair the terms of or affect the security for bonds, notes or other obligations secured in whole or in part with the proceeds of the surcharge described in this Section.

(k) Any surcharge collected by or imposed on a telecommunications carrier pursuant to this Section shall be held to be a special fund in trust for the municipality, county or Joint Emergency Telephone Board imposing the surcharge. Except for the 3% deduction provided in subsection (g) above, the special fund shall not be subject to the claims of creditors of the telecommunication carrier.

(Source: P.A. 92-474, eff. 8-1-02.)

Section 90-22. The Wireless Emergency Telephone Safety Act is amended by changing Sections 17 and 45 as follows:

(50 ILCS 751/17)

(Section scheduled to be repealed on April 1, 2005)

Sec. 17. Wireless carrier surcharge.

(a) Except as provided in Section 45, each wireless carrier shall impose a monthly wireless carrier surcharge per CMRS connection that either has a telephone number within an area code assigned to Illinois by the North American Numbering Plan Administrator or has a billing address in this State. No wireless carrier shall impose the surcharge authorized by this Section upon any subscriber who is subject to the surcharge imposed by a unit of local government pursuant to Section 45. The wireless carrier that provides wireless service to the subscriber shall collect the surcharge set by the Wireless Enhanced 9-1-1 Board from the subscriber. <u>For mobile telecommunications services provided on and after August 1, 2002, any surcharge imposed under this Act shall be imposed based upon the municipality or county that encompasses the customer's place of primary use as defined in the Mobile Telecommunications Sourcing Conformity Act.</u> The surcharge shall be stated as a separate item on the subscriber's monthly bill. The wireless carrier shall begin collecting the surcharge on bills issued within 90 days after the Wireless Enhanced 9-1-1 Board sets the monthly wireless surcharge. State and local taxes shall not apply to the wireless carrier surcharge.

(b) Except as provided in Section 45, a wireless carrier shall,

within 45 days of collection, remit, either by check or by electronic funds transfer, to the State Treasurer the amount of the wireless carrier surcharge collected from each subscriber. Of the amounts remitted under this subsection, the State Treasurer shall deposit one-third into the Wireless Carrier Reimbursement Fund and two-thirds into the Wireless Service Emergency Fund.

(c) The first such remittance by wireless carriers shall include the number of customers by zip code, and the 9-digit zip code if currently being used or later implemented by the carrier, that shall be the means by which the Department of Central Management Services shall determine distributions from the Wireless Service Emergency Fund. This information shall be updated no less often than every year. Wireless carriers are not required to remit surcharge moneys that are billed to subscribers but not yet collected.

(Source: P.A. 91-660, eff. 12-22-99.)

(50 ILCS 751/45)

(Section scheduled to be repealed on April 1, 2005)

Sec. 45. Continuation of current practices. Notwithstanding any other provision of this Act, a unit of local government or emergency telephone system board providing wireless 9-1-1 service and imposing and collecting a wireless carrier surcharge prior to July 1, 1998 may continue its practices of imposing and collecting its wireless carrier surcharge, but in no event shall that monthly surcharge exceed $1.25 per commercial mobile radio service (CMRS) connection or in-service telephone number billed on a monthly basis. For mobile telecommunications services provided on and after August 1, 2002, any surcharge imposed shall be imposed based upon the municipality or county that encompasses the customer's place of primary use as defined in the Mobile Telecommunications Sourcing Conformity Act.

(Source: P.A. 91-660, eff. 12-22-99.)

Section 90-25. The Illinois Municipal Code is amended by changing Section 8-11-2 as follows:

(65 ILCS 5/8-11-2) (from Ch. 24, par. 8-11-2)

(Text of Section before amendment by P.A. 92-474)

Sec. 8-11-2. The corporate authorities of any municipality may tax any or all of the following occupations or privileges:

1. (Blank). ~~Persons engaged in the business of transmitting messages by means of electricity or radio magnetic waves, or fiber optics, at a rate not to exceed 5% of the gross receipts from that business originating within the corporate limits of the municipality. Beginning January 1, 2001, prepaid telephone calling arrangements shall not be subject to the tax imposed under this Section. For purposes of this Section, "prepaid telephone calling arrangements" means that term as defined in Section 2-27 of the Retailers' Occupation Tax Act.~~

2. Persons engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption within the corporate limits of a municipality of 500,000 or fewer population, and not for resale, at a rate not to exceed 5% of the gross receipts therefrom.

2a. Persons engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption within the corporate limits of a municipality of over 500,000 population, and not for resale, at a rate not to exceed 8% of the gross receipts therefrom. If imposed, this tax shall be paid in monthly payments.

3. The privilege of using or consuming electricity acquired in a purchase at retail and used or consumed within the corporate limits of the municipality at rates not to exceed the following maximum rates, calculated on a monthly basis for each purchaser:

(i) For the first 2,000 kilowatt-hours used or consumed in a month; 0.61 cents per kilowatt-hour;

(ii) For the next 48,000 kilowatt-hours used or consumed in a month; 0.40 cents per kilowatt-hour;

(iii) For the next 50,000 kilowatt-hours used or consumed in a month; 0.36 cents per kilowatt-hour;

(iv) For the next 400,000 kilowatt-hours used or consumed in a month; 0.35 cents per kilowatt-hour;

(v) For the next 500,000 kilowatt-hours used or consumed in a month; 0.34 cents per kilowatt-hour;

(vi) For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.32 cents per kilowatt-hour;

(vii) For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.315 cents per kilowatt-hour;

(viii) For the next 5,000,000 kilowatt-hours used or consumed in a month; 0.31 cents per kilowatt-hour;

(ix) For the next 10,000,000 kilowatt-hours used or consumed in a month; 0.305 cents per kilowatt-hour; and

(x) For all electricity used or consumed in excess of 20,000,000 kilowatt-hours in a month, 0.30 cents per kilowatt-hour.

If a municipality imposes a tax at rates lower than either the maximum rates specified in this Section or the alternative maximum rates promulgated by the Illinois Commerce Commission, as provided below, the tax rates shall be imposed upon the kilowatt hour categories set forth above with the same proportional relationship as that which exists among such maximum rates. Notwithstanding the foregoing, until December 31, 2008, no municipality shall establish rates that are in excess of rates reasonably calculated to produce revenues that equal the maximum total revenues such municipality could have received under the tax authorized by this subparagraph in the last full calendar year prior to the effective date of Section 65 of this amendatory Act of 1997; provided that this shall not be a limitation on the amount of tax revenues actually collected by such municipality.

Upon the request of the corporate authorities of a municipality, the Illinois Commerce Commission shall, within 90 days after receipt of such request, promulgate alternative rates for each of these kilowatt-hour categories that will reflect, as closely as reasonably practical for that municipality, the distribution of the tax among classes of purchasers as if the tax were based on a uniform percentage of the purchase price of electricity. A municipality that has adopted an ordinance imposing a tax pursuant to subparagraph 3 as it existed prior to the effective date of Section 65 of this amendatory Act of 1997 may, rather than imposing the tax permitted by this amendatory Act of 1997, continue to impose the tax pursuant to that ordinance with respect to gross receipts received from residential customers through July 31, 1999, and with respect to gross receipts from any non-residential customer until the first bill issued to such customer for delivery services in accordance with Section 16-104 of the Public Utilities Act but in no case later than the last bill issued to such customer before December 31, 2000. No ordinance imposing the tax permitted by this amendatory Act of 1997 shall be applicable to any non-residential customer until the first bill issued to such customer for delivery services in accordance with Section 16-104 of the Public Utilities Act but in no case later than the last bill issued to such non-residential customer before December 31, 2000.

4. Persons engaged in the business of distributing,

supplying, furnishing, or selling water for use or consumption within the corporate limits of the municipality, and not for resale, at a rate not to exceed 5% of the gross receipts therefrom.

None of the taxes authorized by this Section may be imposed with respect to any transaction in interstate commerce or otherwise to the extent to which the business or privilege may not, under the constitution and statutes of the United States, be made the subject of taxation by this State or any political sub-division thereof; nor shall any persons engaged in the business of distributing, supplying, furnishing, selling or transmitting gas, water, or electricity, ~~or engaged in the business of transmitting messages,~~ or using or consuming electricity acquired in a purchase at retail, be subject to taxation under the provisions of this Section for those transactions that are or may become subject to taxation under the provisions of the "Municipal Retailers' Occupation Tax Act" authorized by Section 8-11-1; nor shall any tax authorized by this Section be imposed upon any person engaged in a business or on any privilege unless the tax is imposed in like manner and at the same rate upon all persons engaged in businesses of the same class in the municipality, whether privately or municipally owned or operated, or exercising the same privilege within the municipality.

Any of the taxes enumerated in this Section may be in addition to the payment of money, or value of products or services furnished to the municipality by the taxpayer as compensation for the use of its streets, alleys, or other public places, or installation and maintenance therein, thereon or thereunder of poles, wires, pipes or other equipment used in the operation of the taxpayer's business.

(a) If the corporate authorities of any home rule municipality have adopted an ordinance that imposed a tax on public utility customers, between July 1, 1971, and October 1, 1981, on the good faith belief that they were exercising authority pursuant to Section 6 of Article VII of the 1970 Illinois Constitution, that action of the corporate authorities shall be declared legal and valid, notwithstanding a later decision of a judicial tribunal declaring the ordinance invalid. No municipality shall be required to rebate, refund, or issue credits for any taxes described in this paragraph, and those taxes shall be deemed to have been levied and collected in accordance with the Constitution and laws of this State.

(b) In any case in which (i) prior to October 19, 1979, the corporate authorities of any municipality have adopted an ordinance imposing a tax authorized by this Section (or by the predecessor provision of the "Revised Cities and Villages Act") and have explicitly or in practice interpreted gross receipts to include either charges added to customers' bills pursuant to the provision of paragraph (a) of Section 36 of the Public Utilities Act or charges added to customers' bills by taxpayers who are not subject to rate regulation by the Illinois Commerce Commission for the purpose of recovering any of the tax liabilities or other amounts specified in such paragraph (a) of Section 36 of that Act, and (ii) on or after October 19, 1979, a judicial tribunal has construed gross receipts to exclude all or part of those charges, then neither those municipality nor any taxpayer who paid the tax shall be required to rebate, refund, or issue credits for any tax imposed or charge collected from customers pursuant to the municipality's interpretation prior to October 19, 1979. This paragraph reflects a legislative finding that it would be contrary to the public interest to require a municipality or its taxpayers to refund taxes or charges attributable to the municipality's more inclusive interpretation of gross receipts prior to October 19, 1979, and is not intended to prescribe or limit

judicial construction of this Section. The legislative finding set forth in this subsection does not apply to taxes imposed after the effective date of this amendatory Act of 1995.

(c) The tax authorized by subparagraph 3 shall be collected from the purchaser by the person maintaining a place of business in this State who delivers the electricity to the purchaser. This tax shall constitute a debt of the purchaser to the person who delivers the electricity to the purchaser and if unpaid, is recoverable in the same manner as the original charge for delivering the electricity. Any tax required to be collected pursuant to an ordinance authorized by subparagraph 3 and any such tax collected by a person delivering electricity shall constitute a debt owed to the municipality by such person delivering the electricity, provided, that the person delivering electricity shall be allowed credit for such tax related to deliveries of electricity the charges for which are written off as uncollectible, and provided further, that if such charges are thereafter collected, the delivering supplier shall be obligated to remit such tax. For purposes of this subsection (c), any partial payment not specifically identified by the purchaser shall be deemed to be for the delivery of electricity. Persons delivering electricity shall collect the tax from the purchaser by adding such tax to the gross charge for delivering the electricity, in the manner prescribed by the municipality. Persons delivering electricity shall also be authorized to add to such gross charge an amount equal to 3% of the tax to reimburse the person delivering electricity for the expenses incurred in keeping records, billing customers, preparing and filing returns, remitting the tax and supplying data to the municipality upon request. If the person delivering electricity fails to collect the tax from the purchaser, then the purchaser shall be required to pay the tax directly to the municipality in the manner prescribed by the municipality. Persons delivering electricity who file returns pursuant to this paragraph (c) shall, at the time of filing such return, pay the municipality the amount of the tax collected pursuant to subparagraph 3.

(d) For the purpose of the taxes enumerated in this Section:

"Gross receipts" means the consideration received for ~~the transmission of messages, the consideration received for~~ distributing, supplying, furnishing or selling gas for use or consumption and not for resale, and the consideration received for distributing, supplying, furnishing or selling water for use or consumption and not for resale, and for all services rendered in connection therewith valued in money, whether received in money or otherwise, including cash, credit, services and property of every kind and material and for all services rendered therewith, and shall be determined ~~without any deduction on account of the cost of transmitting such messages,~~ without any deduction on account of the cost of the service, product or commodity supplied, the cost of materials used, labor or service cost, or any other expenses whatsoever. "Gross receipts" shall not include that portion of the consideration received for distributing, supplying, furnishing, or selling gas or water to~~, or for the transmission of messages for,~~ business enterprises described in paragraph (e) of this Section to the extent and during the period in which the exemption authorized by paragraph (e) is in effect or for school districts or units of local government described in paragraph (f) during the period in which the exemption authorized in paragraph (f) is in effect. ~~"Gross receipts" shall not include amounts paid by telecommunications retailers under the Telecommunications Municipal Infrastructure Maintenance Fee Act.~~

For utility bills issued on or after May 1, 1996, but before May 1, 1997, and for receipts from those utility bills, "gross receipts"

does not include one-third of (i) amounts added to customers' bills under Section 9-222 of the Public Utilities Act, or (ii) amounts added to customers' bills by taxpayers who are not subject to rate regulation by the Illinois Commerce Commission for the purpose of recovering any of the tax liabilities described in Section 9-222 of the Public Utilities Act. For utility bills issued on or after May 1, 1997, but before May 1, 1998, and for receipts from those utility bills, "gross receipts" does not include two-thirds of (i) amounts added to customers' bills under Section 9-222 of the Public Utilities Act, or (ii) amount added to customers' bills by taxpayers who are not subject to rate regulation by the Illinois Commerce Commission for the purpose of recovering any of the tax liabilities described in Section 9-222 of the Public Utilities Act. For utility bills issued on or after May 1, 1998, and for receipts from those utility bills, "gross receipts" does not include (i) amounts added to customers' bills under Section 9-222 of the Public Utilities Act, or (ii) amounts added to customers' bills by taxpayers who are not subject to rate regulation by the Illinois Commerce Commission for the purpose of recovering any of the tax liabilities described in Section 9-222 of the Public Utilities Act.

For purposes of this Section "gross receipts" shall not include ~~(i)~~ amounts added to customers' bills under Section 9-221 of the Public Utilities Act~~, or (ii) charges added to customers' bills to recover the surcharge imposed under the Emergency Telephone System Act~~. This paragraph is not intended to nor does it make any change in the meaning of "gross receipts" for the purposes of this Section, but is intended to remove possible ambiguities, thereby confirming the existing meaning of "gross receipts" prior to the effective date of this amendatory Act of 1995.

~~The words "transmitting messages", in addition to the usual and popular meaning of person to person communication, shall include the furnishing, for a consideration, of services or facilities (whether owned or leased), or both, to persons in connection with the transmission of messages where those persons do not, in turn, receive any consideration in connection therewith, but shall not include such furnishing of services or facilities to persons for the transmission of messages to the extent that any such services or facilities for the transmission of messages are furnished for a consideration, by those persons to other persons, for the transmission of messages.~~

"Person" as used in this Section means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint adventure, corporation, limited liability company, municipal corporation, the State or any of its political subdivisions, any State university created by statute, or a receiver, trustee, guardian or other representative appointed by order of any court.

"Person maintaining a place of business in this State" shall mean any person having or maintaining within this State, directly or by a subsidiary or other affiliate, an office, generation facility, distribution facility, transmission facility, sales office or other place of business, or any employee, agent, or other representative operating within this State under the authority of the person or its subsidiary or other affiliate, irrespective of whether such place of business or agent or other representative is located in this State permanently or temporarily, or whether such person, subsidiary or other affiliate is licensed or qualified to do business in this State.

"Public utility" shall have the meaning ascribed to it in Section 3-105 of the Public Utilities Act and shall include ~~telecommunications carriers as defined in Section 13-202 of that Act and~~ alternative retail electric suppliers as defined in Section

16-102 of that Act.

"Purchase at retail" shall mean any acquisition of electricity by a purchaser for purposes of use or consumption, and not for resale, but shall not include the use of electricity by a public utility directly in the generation, production, transmission, delivery or sale of electricity.

"Purchaser" shall mean any person who uses or consumes, within the corporate limits of the municipality, electricity acquired in a purchase at retail.

~~In the case of persons engaged in the business of transmitting messages through the use of mobile equipment, such as cellular phones and paging systems, the gross receipts from the business shall be deemed to originate within the corporate limits of a municipality only if the address to which the bills for the service are sent is within those corporate limits. If, however, that address is not located within a municipality that imposes a tax under this Section, then (i) if the party responsible for the bill is not an individual, the gross receipts from the business shall be deemed to originate within the corporate limits of the municipality where that party's principal place of business in Illinois is located, and (ii) if the party responsible for the bill is an individual, the gross receipts from the business shall be deemed to originate within the corporate limits of the municipality where that party's principal residence in Illinois is located.~~

(e) Any municipality that imposes taxes upon public utilities or upon the privilege of using or consuming electricity pursuant to this Section whose territory includes any part of an enterprise zone or federally designated Foreign Trade Zone or Sub-Zone may, by a majority vote of its corporate authorities, exempt from those taxes for a period not exceeding 20 years any specified percentage of gross receipts of public utilities received from, or electricity used or consumed by, business enterprises that:

(1) either (i) make investments that cause the creation of a minimum of 200 full-time equivalent jobs in Illinois, (ii) make investments of at least $175,000,000 that cause the creation of a minimum of 150 full-time equivalent jobs in Illinois, or (iii) make investments that cause the retention of a minimum of 1,000 full-time jobs in Illinois; and

(2) are either (i) located in an Enterprise Zone established pursuant to the Illinois Enterprise Zone Act or (ii) Department of Commerce and Community Affairs designated High Impact Businesses located in a federally designated Foreign Trade Zone or Sub-Zone; and

(3) are certified by the Department of Commerce and Community Affairs as complying with the requirements specified in clauses (1) and (2) of this paragraph (e).

Upon adoption of the ordinance authorizing the exemption, the municipal clerk shall transmit a copy of that ordinance to the Department of Commerce and Community Affairs. The Department of Commerce and Community Affairs shall determine whether the business enterprises located in the municipality meet the criteria prescribed in this paragraph. If the Department of Commerce and Community Affairs determines that the business enterprises meet the criteria, it shall grant certification. The Department of Commerce and Community Affairs shall act upon certification requests within 30 days after receipt of the ordinance.

Upon certification of the business enterprise by the Department of Commerce and Community Affairs, the Department of Commerce and Community Affairs shall notify the Department of Revenue of the certification. The Department of Revenue shall notify the public

utilities of the exemption status of the gross receipts received from, and the electricity used or consumed by, the certified business enterprises. Such exemption status shall be effective within 3 months after certification.

(f) A municipality that imposes taxes upon public utilities or upon the privilege of using or consuming electricity under this Section and whose territory includes part of another unit of local government or a school district may by ordinance exempt the other unit of local government or school district from those taxes.

(g) The amendment of this Section by Public Act 84-127 shall take precedence over any other amendment of this Section by any other amendatory Act passed by the 84th General Assembly before the effective date of Public Act 84-127.

(h) In any case in which, before July 1, 1992, a person engaged in the business of transmitting messages through the use of mobile equipment, such as cellular phones and paging systems, has determined the municipality within which the gross receipts from the business originated by reference to the location of its transmitting or switching equipment, then (i) neither the municipality to which tax was paid on that basis nor the taxpayer that paid tax on that basis shall be required to rebate, refund, or issue credits for any such tax or charge collected from customers to reimburse the taxpayer for the tax and (ii) no municipality to which tax would have been paid with respect to those gross receipts if the provisions of this amendatory Act of 1991 had been in effect before July 1, 1992, shall have any claim against the taxpayer for any amount of the tax.

(Source: P.A. 90-16, eff. 6-16-97; 90-561, eff. 8-1-98; 90-562, eff. 12-16-97; 90-655, eff. 7-30-98; 91-870, eff. 6-22-00.)

(Text of Section after amendment by P.A. 92-474)

Sec. 8-11-2. The corporate authorities of any municipality may tax any or all of the following occupations or privileges:

1. (Blank). ~~Persons engaged in the business of transmitting messages by means of electricity or radio magnetic waves, or fiber optics, at a rate not to exceed 5% of the gross receipts from that business originating within the corporate limits of the municipality. Beginning January 1, 2001, prepaid telephone calling arrangements shall not be subject to the tax imposed under this Section. For purposes of this Section, "prepaid telephone calling arrangements" means that term as defined in Section 2-27 of the Retailers' Occupation Tax Act.~~

2. Persons engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption within the corporate limits of a municipality of 500,000 or fewer population, and not for resale, at a rate not to exceed 5% of the gross receipts therefrom.

2a. Persons engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption within the corporate limits of a municipality of over 500,000 population, and not for resale, at a rate not to exceed 8% of the gross receipts therefrom. If imposed, this tax shall be paid in monthly payments.

3. The privilege of using or consuming electricity acquired in a purchase at retail and used or consumed within the corporate limits of the municipality at rates not to exceed the following maximum rates, calculated on a monthly basis for each purchaser:

(i) For the first 2,000 kilowatt-hours used or consumed in a month; 0.61 cents per kilowatt-hour;

(ii) For the next 48,000 kilowatt-hours used or consumed in a month; 0.40 cents per kilowatt-hour;

(iii) For the next 50,000 kilowatt-hours used or consumed

in a month; 0.36 cents per kilowatt-hour;

(iv) For the next 400,000 kilowatt-hours used or consumed in a month; 0.35 cents per kilowatt-hour;

(v) For the next 500,000 kilowatt-hours used or consumed in a month; 0.34 cents per kilowatt-hour;

(vi) For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.32 cents per kilowatt-hour;

(vii) For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.315 cents per kilowatt-hour;

(viii) For the next 5,000,000 kilowatt-hours used or consumed in a month; 0.31 cents per kilowatt-hour;

(ix) For the next 10,000,000 kilowatt-hours used or consumed in a month; 0.305 cents per kilowatt-hour; and

(x) For all electricity used or consumed in excess of 20,000,000 kilowatt-hours in a month, 0.30 cents per kilowatt-hour.

If a municipality imposes a tax at rates lower than either the maximum rates specified in this Section or the alternative maximum rates promulgated by the Illinois Commerce Commission, as provided below, the tax rates shall be imposed upon the kilowatt hour categories set forth above with the same proportional relationship as that which exists among such maximum rates. Notwithstanding the foregoing, until December 31, 2008, no municipality shall establish rates that are in excess of rates reasonably calculated to produce revenues that equal the maximum total revenues such municipality could have received under the tax authorized by this subparagraph in the last full calendar year prior to the effective date of Section 65 of this amendatory Act of 1997; provided that this shall not be a limitation on the amount of tax revenues actually collected by such municipality.

Upon the request of the corporate authorities of a municipality, the Illinois Commerce Commission shall, within 90 days after receipt of such request, promulgate alternative rates for each of these kilowatt-hour categories that will reflect, as closely as reasonably practical for that municipality, the distribution of the tax among classes of purchasers as if the tax were based on a uniform percentage of the purchase price of electricity. A municipality that has adopted an ordinance imposing a tax pursuant to subparagraph 3 as it existed prior to the effective date of Section 65 of this amendatory Act of 1997 may, rather than imposing the tax permitted by this amendatory Act of 1997, continue to impose the tax pursuant to that ordinance with respect to gross receipts received from residential customers through July 31, 1999, and with respect to gross receipts from any non-residential customer until the first bill issued to such customer for delivery services in accordance with Section 16-104 of the Public Utilities Act but in no case later than the last bill issued to such customer before December 31, 2000. No ordinance imposing the tax permitted by this amendatory Act of 1997 shall be applicable to any non-residential customer until the first bill issued to such customer for delivery services in accordance with Section 16-104 of the Public Utilities Act but in no case later than the last bill issued to such non-residential customer before December 31, 2000.

4. Persons engaged in the business of distributing, supplying, furnishing, or selling water for use or consumption within the corporate limits of the municipality, and not for resale, at a rate not to exceed 5% of the gross receipts therefrom.

None of the taxes authorized by this Section may be imposed with

respect to any transaction in interstate commerce or otherwise to the extent to which the business or privilege may not, under the constitution and statutes of the United States, be made the subject of taxation by this State or any political sub-division thereof; nor shall any persons engaged in the business of distributing, supplying, furnishing, selling or transmitting gas, water, or electricity, ~~or engaged in the business of transmitting messages,~~ or using or consuming electricity acquired in a purchase at retail, be subject to taxation under the provisions of this Section for those transactions that are or may become subject to taxation under the provisions of the "Municipal Retailers' Occupation Tax Act" authorized by Section 8-11-1; nor shall any tax authorized by this Section be imposed upon any person engaged in a business or on any privilege unless the tax is imposed in like manner and at the same rate upon all persons engaged in businesses of the same class in the municipality, whether privately or municipally owned or operated, or exercising the same privilege within the municipality.

Any of the taxes enumerated in this Section may be in addition to the payment of money, or value of products or services furnished to the municipality by the taxpayer as compensation for the use of its streets, alleys, or other public places, or installation and maintenance therein, thereon or thereunder of poles, wires, pipes or other equipment used in the operation of the taxpayer's business.

(a) If the corporate authorities of any home rule municipality have adopted an ordinance that imposed a tax on public utility customers, between July 1, 1971, and October 1, 1981, on the good faith belief that they were exercising authority pursuant to Section 6 of Article VII of the 1970 Illinois Constitution, that action of the corporate authorities shall be declared legal and valid, notwithstanding a later decision of a judicial tribunal declaring the ordinance invalid. No municipality shall be required to rebate, refund, or issue credits for any taxes described in this paragraph, and those taxes shall be deemed to have been levied and collected in accordance with the Constitution and laws of this State.

(b) In any case in which (i) prior to October 19, 1979, the corporate authorities of any municipality have adopted an ordinance imposing a tax authorized by this Section (or by the predecessor provision of the "Revised Cities and Villages Act") and have explicitly or in practice interpreted gross receipts to include either charges added to customers' bills pursuant to the provision of paragraph (a) of Section 36 of the Public Utilities Act or charges added to customers' bills by taxpayers who are not subject to rate regulation by the Illinois Commerce Commission for the purpose of recovering any of the tax liabilities or other amounts specified in such paragraph (a) of Section 36 of that Act, and (ii) on or after October 19, 1979, a judicial tribunal has construed gross receipts to exclude all or part of those charges, then neither those municipality nor any taxpayer who paid the tax shall be required to rebate, refund, or issue credits for any tax imposed or charge collected from customers pursuant to the municipality's interpretation prior to October 19, 1979. This paragraph reflects a legislative finding that it would be contrary to the public interest to require a municipality or its taxpayers to refund taxes or charges attributable to the municipality's more inclusive interpretation of gross receipts prior to October 19, 1979, and is not intended to prescribe or limit judicial construction of this Section. The legislative finding set forth in this subsection does not apply to taxes imposed after the effective date of this amendatory Act of 1995.

(c) The tax authorized by subparagraph 3 shall be collected from the purchaser by the person maintaining a place of business in this

State who delivers the electricity to the purchaser. This tax shall constitute a debt of the purchaser to the person who delivers the electricity to the purchaser and if unpaid, is recoverable in the same manner as the original charge for delivering the electricity. Any tax required to be collected pursuant to an ordinance authorized by subparagraph 3 and any such tax collected by a person delivering electricity shall constitute a debt owed to the municipality by such person delivering the electricity, provided, that the person delivering electricity shall be allowed credit for such tax related to deliveries of electricity the charges for which are written off as uncollectible, and provided further, that if such charges are thereafter collected, the delivering supplier shall be obligated to remit such tax. For purposes of this subsection (c), any partial payment not specifically identified by the purchaser shall be deemed to be for the delivery of electricity. Persons delivering electricity shall collect the tax from the purchaser by adding such tax to the gross charge for delivering the electricity, in the manner prescribed by the municipality. Persons delivering electricity shall also be authorized to add to such gross charge an amount equal to 3% of the tax to reimburse the person delivering electricity for the expenses incurred in keeping records, billing customers, preparing and filing returns, remitting the tax and supplying data to the municipality upon request. If the person delivering electricity fails to collect the tax from the purchaser, then the purchaser shall be required to pay the tax directly to the municipality in the manner prescribed by the municipality. Persons delivering electricity who file returns pursuant to this paragraph (c) shall, at the time of filing such return, pay the municipality the amount of the tax collected pursuant to subparagraph 3.

(d) For the purpose of the taxes enumerated in this Section:

"Gross receipts" means the consideration received for ~~the transmission of messages, the consideration received for~~ distributing, supplying, furnishing or selling gas for use or consumption and not for resale, and the consideration received for distributing, supplying, furnishing or selling water for use or consumption and not for resale, and for all services rendered in connection therewith valued in money, whether received in money or otherwise, including cash, credit, services and property of every kind and material and for all services rendered therewith, and shall be determined ~~without any deduction on account of the cost of transmitting such messages,~~ without any deduction on account of the cost of the service, product or commodity supplied, the cost of materials used, labor or service cost, or any other expenses whatsoever. "Gross receipts" shall not include that portion of the consideration received for distributing, supplying, furnishing, or selling gas or water to~~, or for the transmission of messages for,~~ business enterprises described in paragraph (e) of this Section to the extent and during the period in which the exemption authorized by paragraph (e) is in effect or for school districts or units of local government described in paragraph (f) during the period in which the exemption authorized in paragraph (f) is in effect. ~~"Gross receipts" shall not include amounts paid by telecommunications retailers under the Telecommunications Municipal Infrastructure Maintenance Fee Act.~~

For utility bills issued on or after May 1, 1996, but before May 1, 1997, and for receipts from those utility bills, "gross receipts" does not include one-third of (i) amounts added to customers' bills under Section 9-222 of the Public Utilities Act, or (ii) amounts added to customers' bills by taxpayers who are not subject to rate regulation by the Illinois Commerce Commission for the purpose of recovering any of the tax liabilities described in Section 9-222 of

the Public Utilities Act. For utility bills issued on or after May 1, 1997, but before May 1, 1998, and for receipts from those utility bills, "gross receipts" does not include two-thirds of (i) amounts added to customers' bills under Section 9-222 of the Public Utilities Act, or (ii) amount added to customers' bills by taxpayers who are not subject to rate regulation by the Illinois Commerce Commission for the purpose of recovering any of the tax liabilities described in Section 9-222 of the Public Utilities Act. For utility bills issued on or after May 1, 1998, and for receipts from those utility bills, "gross receipts" does not include (i) amounts added to customers' bills under Section 9-222 of the Public Utilities Act, or (ii) amounts added to customers' bills by taxpayers who are not subject to rate regulation by the Illinois Commerce Commission for the purpose of recovering any of the tax liabilities described in Section 9-222 of the Public Utilities Act.

For purposes of this Section "gross receipts" shall not include ~~(i)~~ amounts added to customers' bills under Section 9-221 of the Public Utilities Act~~, or (ii) charges added to customers' bills to recover the surcharge imposed under the Emergency Telephone System Act~~. This paragraph is not intended to nor does it make any change in the meaning of "gross receipts" for the purposes of this Section, but is intended to remove possible ambiguities, thereby confirming the existing meaning of "gross receipts" prior to the effective date of this amendatory Act of 1995.

~~The words "transmitting messages", in addition to the usual and popular meaning of person to person communication, shall include the furnishing, for a consideration, of services or facilities (whether owned or leased), or both, to persons in connection with the transmission of messages where those persons do not, in turn, receive any consideration in connection therewith, but shall not include such furnishing of services or facilities to persons for the transmission of messages to the extent that any such services or facilities for the transmission of messages are furnished for a consideration, by those persons to other persons, for the transmission of messages.~~

"Person" as used in this Section means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint adventure, corporation, limited liability company, municipal corporation, the State or any of its political subdivisions, any State university created by statute, or a receiver, trustee, guardian or other representative appointed by order of any court.

"Person maintaining a place of business in this State" shall mean any person having or maintaining within this State, directly or by a subsidiary or other affiliate, an office, generation facility, distribution facility, transmission facility, sales office or other place of business, or any employee, agent, or other representative operating within this State under the authority of the person or its subsidiary or other affiliate, irrespective of whether such place of business or agent or other representative is located in this State permanently or temporarily, or whether such person, subsidiary or other affiliate is licensed or qualified to do business in this State.

"Public utility" shall have the meaning ascribed to it in Section 3-105 of the Public Utilities Act and shall include ~~telecommunications carriers as defined in Section 13-202 of that Act and~~ alternative retail electric suppliers as defined in Section 16-102 of that Act.

"Purchase at retail" shall mean any acquisition of electricity by a purchaser for purposes of use or consumption, and not for resale, but shall not include the use of electricity by a public utility directly in the generation, production, transmission, delivery or

sale of electricity.

"Purchaser" shall mean any person who uses or consumes, within the corporate limits of the municipality, electricity acquired in a purchase at retail.

~~In the case of persons engaged in the business of transmitting messages through the use of mobile equipment, such as cellular phones and paging systems, the gross receipts from the business shall be deemed to originate within the corporate limits of a municipality only if the customer's place of primary use as defined in the Mobile Telecommunications Sourcing Conformity Act is within those corporate limits.~~

(e) Any municipality that imposes taxes upon public utilities or upon the privilege of using or consuming electricity pursuant to this Section whose territory includes any part of an enterprise zone or federally designated Foreign Trade Zone or Sub-Zone may, by a majority vote of its corporate authorities, exempt from those taxes for a period not exceeding 20 years any specified percentage of gross receipts of public utilities received from, or electricity used or consumed by, business enterprises that:

(1) either (i) make investments that cause the creation of a minimum of 200 full-time equivalent jobs in Illinois, (ii) make investments of at least $175,000,000 that cause the creation of a minimum of 150 full-time equivalent jobs in Illinois, or (iii) make investments that cause the retention of a minimum of 1,000 full-time jobs in Illinois; and

(2) are either (i) located in an Enterprise Zone established pursuant to the Illinois Enterprise Zone Act or (ii) Department of Commerce and Community Affairs designated High Impact Businesses located in a federally designated Foreign Trade Zone or Sub-Zone; and

(3) are certified by the Department of Commerce and Community Affairs as complying with the requirements specified in clauses (1) and (2) of this paragraph (e).

Upon adoption of the ordinance authorizing the exemption, the municipal clerk shall transmit a copy of that ordinance to the Department of Commerce and Community Affairs. The Department of Commerce and Community Affairs shall determine whether the business enterprises located in the municipality meet the criteria prescribed in this paragraph. If the Department of Commerce and Community Affairs determines that the business enterprises meet the criteria, it shall grant certification. The Department of Commerce and Community Affairs shall act upon certification requests within 30 days after receipt of the ordinance.

Upon certification of the business enterprise by the Department of Commerce and Community Affairs, the Department of Commerce and Community Affairs shall notify the Department of Revenue of the certification. The Department of Revenue shall notify the public utilities of the exemption status of the gross receipts received from, and the electricity used or consumed by, the certified business enterprises. Such exemption status shall be effective within 3 months after certification.

(f) A municipality that imposes taxes upon public utilities or upon the privilege of using or consuming electricity under this Section and whose territory includes part of another unit of local government or a school district may by ordinance exempt the other unit of local government or school district from those taxes.

(g) The amendment of this Section by Public Act 84-127 shall take precedence over any other amendment of this Section by any other amendatory Act passed by the 84th General Assembly before the effective date of Public Act 84-127.

(h) In any case in which, before July 1, 1992, a person engaged in the business of transmitting messages through the use of mobile equipment, such as cellular phones and paging systems, has determined the municipality within which the gross receipts from the business originated by reference to the location of its transmitting or switching equipment, then (i) neither the municipality to which tax was paid on that basis nor the taxpayer that paid tax on that basis shall be required to rebate, refund, or issue credits for any such tax or charge collected from customers to reimburse the taxpayer for the tax and (ii) no municipality to which tax would have been paid with respect to those gross receipts if the provisions of this amendatory Act of 1991 had been in effect before July 1, 1992, shall have any claim against the taxpayer for any amount of the tax.
(Source: P.A. 91-870, eff. 6-22-00; 92-474, eff. 8-1-02.)

Section 90-30. The Illinois Municipal Code is amended by changing Section 8-11-17 as follows:

(65 ILCS 5/8-11-17) (from Ch. 24, par. 8-11-17)

Sec. 8-11-17. Municipal telecommunications tax.

(a) Beginning on the effective date of this amendatory Act of 1991, the corporate authorities of any municipality in this State may tax any or all of the following acts or privileges:

(1) The act or privilege of originating in such municipality or receiving in such municipality intrastate telecommunications by a person at a rate not to exceed 5% of the gross charge for such telecommunications purchased at retail from a retailer by such person. However, such tax is not imposed on such act or privilege to the extent such act or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by municipalities in this State.

(2) The act or privilege of originating in such municipality or receiving in such municipality interstate telecommunications by a person at a rate not to exceed 5% of the gross charge for such telecommunications purchased at retail from a retailer by such person. To prevent actual multi-state taxation of the act or privilege that is subject to taxation under this paragraph, any taxpayer, upon proof that the taxpayer has paid a tax in another state on such event, shall be allowed a credit against any tax enacted pursuant to an ordinance authorized by this paragraph to the extent of the amount of such tax properly due and paid in such other state which was not previously allowed as a credit against any other state or local tax in this State. However, such tax is not imposed on the act or privilege to the extent such act or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by municipalities in this State.

(3) The taxes authorized by paragraphs (1) and (2) of subsection (a) of this Section may only be levied if such municipality does not then have in effect an occupation tax imposed on persons engaged in the business of transmitting messages by means of electricity as authorized by Section 8-11-2 of the Illinois Municipal Code.

(b) The tax authorized by this Section shall be collected from the taxpayer by a retailer maintaining a place of business in this State and making or effectuating the sale at retail and shall be remitted by such retailer to the municipality. Any tax required to be collected pursuant to an ordinance authorized by this Section and any such tax collected by such retailer shall constitute a debt owed by the retailer to such municipality. Retailers shall collect the tax from the taxpayer by adding the tax to the gross charge for the act or privilege of originating or receiving telecommunications when sold

for use, in the manner prescribed by the municipality. The tax authorized by this Section shall constitute a debt of the purchaser to the retailer who provides such taxable services until paid and, if unpaid, is recoverable at law in the same manner as the original charge for such taxable services. If the retailer fails to collect the tax from the taxpayer, then the taxpayer shall be required to pay the tax directly to the municipality in the manner provided by the municipality. The municipality imposing the tax shall provide for its administration and enforcement.

Beginning January 1, 1994, retailers filing tax returns pursuant to this Section shall, at the time of filing such return, pay to the municipality the amount of the tax imposed by this Section, less a commission of 1.75% which is allowed to reimburse the retailer for the expenses incurred in keeping records, billing the customer, preparing and filing returns, remitting the tax and supplying data to the municipality upon request. No commission may be claimed by a retailer for tax not timely remitted to the municipality.

Whenever possible, the tax authorized by this Section shall, when collected, be stated as a distinct item separate and apart from the gross charge for telecommunications.

(c) For the purpose of the taxes authorized by this Section:

(1) "Amount paid" means the amount charged to the taxpayer's service address in such municipality regardless of where such amount is billed or paid.

(2) "Gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in such municipality and for all services rendered in connection therewith, valued in money whether paid in money or otherwise, including cash, credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of the materials used, labor or service costs or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. However, "gross charge" shall not include:

(A) any amounts added to a purchaser's bill because of a charge made pursuant to: (i) the tax imposed by this Section, (ii) additional charges added to a purchaser's bill pursuant to Section 9-222 of the Public Utilities Act, (iii) the tax imposed by the Telecommunications Excise Tax Act, or (iv) the tax imposed by Section 4251 of the Internal Revenue Code;

(B) charges for a sent collect telecommunication received outside of such municipality;

(C) charges for leased time on equipment or charges for the storage of data or information or subsequent retrieval or the processing of data or information intended to change its form or content. Such equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment or accounting equipment and also includes the usage of computers under a time-sharing agreement;

(D) charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges;

(E) charges to business enterprises certified under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the Department of Commerce and Community Affairs;

(F) charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries when the tax imposed under this Section has already been paid to a retailer and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit for the corporation rendering such service;

(G) bad debts ("bad debt" means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectable, as determined under applicable federal income tax standards; if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made);

(H) charges paid by inserting coins in coin-operated telecommunication devices; or

(I) amounts paid by telecommunications retailers under the Telecommunications Municipal Infrastructure Maintenance Fee Act.

(3) "Interstate telecommunications" means all telecommunications that either originate or terminate outside this State.

(4) "Intrastate telecommunications" means all telecommunications that originate and terminate within this State.

(5) "Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, or a receiver, trustee, guardian or other representative appointed by order of any court, the Federal and State governments, including State universities created by statute, or any city, town, county, or other political subdivision of this State.

(6) "Purchase at retail" means the acquisition, consumption or use of telecommunications through a sale at retail.

(7) "Retailer" means and includes every person engaged in the business of making sales at retail as defined in this Section. A municipality may, in its discretion, upon application, authorize the collection of the tax hereby imposed by any retailer not maintaining a place of business within this State, who to the satisfaction of the municipality, furnishes adequate security to insure collection and payment of the tax. Such retailer shall be issued, without charge, a permit to collect such tax. When so authorized, it shall be the duty of such retailer to collect the tax upon all of the gross charges for telecommunications in such municipality in the same manner and subject to the same requirements as a retailer maintaining a place of business within such municipality.

(8) "Retailer maintaining a place of business in this State", or any like term, means and includes any retailer having or maintaining within this State, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such

retailer or subsidiary is licensed to do business in this State.

(9) "Sale at retail" means the transmitting, supplying or furnishing of telecommunications and all services rendered in connection therewith for a consideration, to persons other than the Federal and State governments, and State universities created by statute and other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, when the tax has already been paid to a retailer and the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for resale.

(10) "Service address" means the location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received by a taxpayer. For periods prior to August 1, 2002, if this is not a defined location, as in the case of mobile phones, paging systems, maritime systems, air-to-ground systems and the like, "service address" shall mean the location of a taxpayer's primary use of the telecommunication equipment as defined by telephone number, authorization code, or location in Illinois where bills are sent. For periods on and after August 1, 2002, if this is not a defined location, as in the case of mobile phones, paging systems, and maritime systems, service address means the customer's place of primary use as defined in the Mobile Telecommunications Sourcing Conformity Act, and for air-to-ground systems and the like, "service address" shall mean the location of a taxpayer's primary use of the telecommunications equipment as defined by telephone number, authorization code, or location in Illinois where bills are sent.

(11) "Taxpayer" means a person who individually or through his agents, employees, or permittees engages in the act or privilege of originating in such municipality or receiving in such municipality telecommunications and who incurs a tax liability under any ordinance authorized by this Section.

(12) "Telecommunications", in addition to the usual and popular meaning, includes, but is not limited to, messages or information transmitted through use of local, toll and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange services; cellular mobile telecommunications service, specialized mobile radio services, paging service, or any other form of mobile and portable one-way or two-way communications, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities. The definition of "telecommunications" shall not include value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission. "Telecommunications" shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by him to the ultimate retail consumer who originates or terminates the taxable end-to-end communications. Carrier access charges, right of access charges, charges for use of inter-company facilities, and all telecommunications resold in the subsequent provision used as a component of, or integrated into, end-to-end telecommunications service shall be non-taxable as sales for resale. Beginning January 1, 2001, prepaid telephone calling arrangements shall not be considered "telecommunications" subject to the tax imposed

under this Act. For purposes of this Section, "prepaid telephone calling arrangements" means that term as defined in Section 2-27 of the Retailers' Occupation Tax Act.

(d) If a person, who originates or receives telecommunications in such municipality claims to be a reseller of such telecommunications, such person shall apply to the municipality for a resale number. Such applicant shall state facts which will show the municipality why such applicant is not liable for tax under any ordinance authorized by this Section on any of such purchases and shall furnish such additional information as the municipality may reasonably require.

Upon approval of the application, the municipality shall assign a resale number to the applicant and shall certify such number to the applicant. The municipality may cancel any number which is obtained through misrepresentation, or which is used to send or receive such telecommunication tax-free when such actions in fact are not for resale, or which no longer applies because of the person's having discontinued the making of resales.

Except as provided hereinabove in this Section, the act or privilege of sending or receiving telecommunications in this State shall not be made tax-free on the ground of being a sale for resale unless the person has an active resale number from the municipality and furnishes that number to the retailer in connection with certifying to the retailer that any sale to such person is non-taxable because of being a sale for resale.

(e) A municipality that imposes taxes upon telecommunications under this Section and whose territory includes part of another unit of local government or a school district may, by ordinance, exempt the other unit of local government or school district from those taxes.

(f) A municipality that imposes taxes upon telecommunications under this Section may, by ordinance, (i) reduce the rate of the tax for persons 65 years of age or older or (ii) exempt persons 65 years of age or older from those taxes. Taxes related to such rate reductions or exemptions shall be rebated from the municipality directly to persons qualified for the rate reduction or exemption as determined by the municipality's ordinance.

(g) A municipality with a population of more than 500,000 that imposes a tax under this Section may, by ordinance, exempt from the tax all charges for the inbound toll-free telecommunications service commonly known as "800", "877", or "888" or for a similar service.

(h) This Section is repealed on January 1, 2003.

(Source: P.A. 90-357, eff. 1-1-98; 90-562, eff. 12-16-97; 91-870, eff. 6-22-00.)

Section 90-35. The Public Utilities Act is amended by changing Sections 2-202 and 13-511 as follows:

(220 ILCS 5/2-202) (from Ch. 111 2/3, par. 2-202)

Sec. 2-202. Policy; Public Utility Fund; tax.

(a) It is declared to be the public policy of this State that in order to maintain and foster the effective regulation of public utilities under this Act in the interests of the People of the State of Illinois and the public utilities as well, the public utilities subject to regulation under this Act and which enjoy the privilege of operating as public utilities in this State, shall bear the expense of administering this Act by means of a tax on such privilege measured by the annual gross revenue of such public utilities in the manner provided in this Section. For purposes of this Section, "expense of administering this Act" includes any costs incident to studies, whether made by the Commission or under contract entered into by the Commission, concerning environmental pollution problems

caused or contributed to by public utilities and the means for eliminating or abating those problems. Such proceeds shall be deposited in the Public Utility Fund in the State treasury.

(b) All of the ordinary and contingent expenses of the Commission incident to the administration of this Act shall be paid out of the Public Utility Fund except the compensation of the members of the Commission which shall be paid from the General Revenue Fund. Notwithstanding other provisions of this Act to the contrary, the ordinary and contingent expenses of the Commission incident to the administration of the Illinois Commercial Transportation Law may be paid from appropriations from the Public Utility Fund through the end of fiscal year 1986.

(c) A tax is imposed upon each public utility subject to the provisions of this Act equal to .08% of its gross revenue for each calendar year commencing with the calendar year beginning January 1, 1982, except that the Commission may, by rule, establish a different rate no greater than 0.1%. For purposes of this Section, "gross revenue" shall not include revenue from the production, transmission, distribution, sale, delivery, or furnishing of electricity. "Gross revenue" shall not include amounts paid by telecommunications retailers under the Telecommunications ~~Municipal~~ Infrastructure Maintenance Fee Act.

(d) Annual gross revenue returns shall be filed in accordance with paragraph (1) or (2) of this subsection (d).

(1) Except as provided in paragraph (2) of this subsection (d), on or before January 10 of each year each public utility subject to the provisions of this Act shall file with the Commission an estimated annual gross revenue return containing an estimate of the amount of its gross revenue for the calendar year commencing January 1 of said year and a statement of the amount of tax due for said calendar year on the basis of that estimate. Public utilities may also file revised returns containing updated estimates and updated amounts of tax due during the calendar year. These revised returns, if filed, shall form the basis for quarterly payments due during the remainder of the calendar year. In addition, on or before March 31 of each year, each public utility shall file an amended return showing the actual amount of gross revenues shown by the company's books and records as of December 31 of the previous year. Forms and instructions for such estimated, revised, and amended returns shall be devised and supplied by the Commission.

(2) Beginning with returns due after January 1, 2002, the requirements of paragraph (1) of this subsection (d) shall not apply to any public utility in any calendar year for which the total tax the public utility owes under this Section is less than $10,000. For such public utilities with respect to such years, the public utility shall file with the Commission, on or before March 31 of the following year, an annual gross revenue return for the year and a statement of the amount of tax due for that year on the basis of such a return. Forms and instructions for such returns and corrected returns shall be devised and supplied by the Commission.

(e) All returns submitted to the Commission by a public utility as provided in this subsection (e) or subsection (d) of this Section shall contain or be verified by a written declaration by an appropriate officer of the public utility that the return is made under the penalties of perjury. The Commission may audit each such return submitted and may, under the provisions of Section 5-101 of this Act, take such measures as are necessary to ascertain the correctness of the returns submitted. The Commission has the power to

direct the filing of a corrected return by any utility which has filed an incorrect return and to direct the filing of a return by any utility which has failed to submit a return. A taxpayer's signing a fraudulent return under this Section is perjury, as defined in Section 32-2 of the Criminal Code of 1961.

(f) (1) For all public utilities subject to paragraph (1) of subsection (d), at least one quarter of the annual amount of tax due under subsection (c) shall be paid to the Commission on or before the tenth day of January, April, July, and October of the calendar year subject to tax. In the event that an adjustment in the amount of tax due should be necessary as a result of the filing of an amended or corrected return under subsection (d) or subsection (e) of this Section, the amount of any deficiency shall be paid by the public utility together with the amended or corrected return and the amount of any excess shall, after the filing of a claim for credit by the public utility, be returned to the public utility in the form of a credit memorandum in the amount of such excess or be refunded to the public utility in accordance with the provisions of subsection (k) of this Section. However, if such deficiency or excess is less than $1, then the public utility need not pay the deficiency and may not claim a credit.

(2) Any public utility subject to paragraph (2) of subsection (d) shall pay the amount of tax due under subsection (c) on or before March 31 next following the end of the calendar year subject to tax. In the event that an adjustment in the amount of tax due should be necessary as a result of the filing of a corrected return under subsection (e), the amount of any deficiency shall be paid by the public utility at the time the corrected return is filed. Any excess tax payment by the public utility shall be returned to it after the filing of a claim for credit, in the form of a credit memorandum in the amount of the excess. However, if such deficiency or excess is less than $1, the public utility need not pay the deficiency and may not claim a credit.

(g) Each installment or required payment of the tax imposed by subsection (c) becomes delinquent at midnight of the date that it is due. Failure to make a payment as required by this Section shall result in the imposition of a late payment penalty, an underestimation penalty, or both, as provided by this subsection. The late payment penalty shall be the greater of:

(1) $25 for each month or portion of a month that the installment or required payment is unpaid or

(2) an amount equal to the difference between what should have been paid on the due date, based upon the most recently filed estimated, annual, or amended return, and what was actually paid, times 1%, for each month or portion of a month that the installment or required payment goes unpaid. This penalty may be assessed as soon as the installment or required payment becomes delinquent.

The underestimation penalty shall apply to those public utilities subject to paragraph (1) of subsection (d) and shall be calculated after the filing of the amended return. It shall be imposed if the amount actually paid on any of the dates specified in subsection (f) is not equal to at least one-fourth of the amount actually due for the year, and shall equal the greater of:

(1) $25 for each month or portion of a month that the amount due is unpaid or

(2) an amount equal to the difference between what should have been paid, based on the amended return, and what was actually paid as of the date specified in subsection (f), times a percentage equal to 1/12 of the sum of 10% and the percentage

most recently established by the Commission for interest to be paid on customer deposits under 83 Ill. Adm. Code 280.70(e)(1), for each month or portion of a month that the amount due goes unpaid, except that no underestimation penalty shall be assessed if the amount actually paid on or before each of the dates specified in subsection (f) was based on an estimate of gross revenues at least equal to the actual gross revenues for the previous year. The Commission may enforce the collection of any delinquent installment or payment, or portion thereof by legal action or in any other manner by which the collection of debts due the State of Illinois may be enforced under the laws of this State. The executive director or his designee may excuse the payment of an assessed penalty or a portion of an assessed penalty if he determines that enforced collection of the penalty as assessed would be unjust.

(h) All sums collected by the Commission under the provisions of this Section shall be paid promptly after the receipt of the same, accompanied by a detailed statement thereof, into the Public Utility Fund in the State treasury.

(i) During the month of October of each odd-numbered year the Commission shall:

(1) determine the amount of all moneys deposited in the Public Utility Fund during the preceding fiscal biennium plus the balance, if any, in that fund at the beginning of that biennium;

(2) determine the sum total of the following items: (A) all moneys expended or obligated against appropriations made from the Public Utility Fund during the preceding fiscal biennium, plus (B) the sum of the credit memoranda then outstanding against the Public Utility Fund, if any; and

(3) determine the amount, if any, by which the sum determined as provided in item (1) exceeds the amount determined as provided in item (2).

If the amount determined as provided in item (3) of this subsection exceeds $5,000,000, the Commission shall then compute the proportionate amount, if any, which (x) the tax paid hereunder by each utility during the preceding biennium, and (y) the amount paid into the Public Utility Fund during the preceding biennium by the Department of Revenue pursuant to Sections 2-9 and 2-11 of the Electricity Excise Tax Law, bears to the difference between the amount determined as provided in item (3) of this subsection (i) and $5,000,000. The Commission shall cause the proportionate amount determined with respect to payments made under the Electricity Excise Tax Law to be transferred into the General Revenue Fund in the State Treasury, and notify each public utility that it may file during the 3 month period after the date of notification a claim for credit for the proportionate amount determined with respect to payments made hereunder by the public utility. If the proportionate amount is less than $10, no notification will be sent by the Commission, and no right to a claim exists as to that amount. Upon the filing of a claim for credit within the period provided, the Commission shall issue a credit memorandum in such amount to such public utility. Any claim for credit filed after the period provided for in this Section is void.

(j) Credit memoranda issued pursuant to subsection (f) and credit memoranda issued after notification and filing pursuant to subsection (i) may be applied for the 2 year period from the date of issuance, against the payment of any amount due during that period under the tax imposed by subsection (c), or, subject to reasonable rule of the Commission including requirement of notification, may be assigned to any other public utility subject to regulation under this

Act. Any application of credit memoranda after the period provided for in this Section is void.

(k) The chairman or executive director may make refund of fees, taxes or other charges whenever he shall determine that the person or public utility will not be liable for payment of such fees, taxes or charges during the next 24 months and he determines that the issuance of a credit memorandum would be unjust.

(Source: P.A. 92-11, eff. 6-11-01; 92-22, eff. 6-30-01.)

(220 ILCS 5/13-511)

(Section scheduled to be repealed on July 1, 2005)

Sec. 13-511. Telecommunications ~~Municipal~~ Infrastructure Maintenance Fee Act; rate adjustments. With respect to any telecommunications retailer that is regulated by the Illinois Commerce Commission, the Commission shall order such rate adjustments as shall be necessary to assure that the implementation of the Telecommunications ~~Municipal~~ Infrastructure Maintenance Fee Act, ~~including the payment of the State infrastructure maintenance fee, optional infrastructure maintenance fee, and municipal infrastructure maintenance fee, if any,~~ net of (1) the termination of any fee, license fee, rent, or lease payment subject to the Telecommunications ~~Municipal~~ Infrastructure Maintenance Fee Act, and (2) the repeal of any invested capital tax subject to the Telecommunications ~~Municipal~~ Infrastructure Maintenance Fee Act, shall have no significant impact on the net income of each such telecommunications retailer. Beginning with the effective date of the Telecommunications ~~Municipal~~ Infrastructure Maintenance Fee Act, each such telecommunications retailer shall maintain such records and accounts as will enable the Commission to make such findings and determinations as are necessary to such order.

(Source: P.A. 90-154, eff. 1-1-98.)

Section 90-40. The Telephone Company Act is amended by changing Section 4 as follows:

(220 ILCS 65/4) (from Ch. 134, par. 20)

Sec. 4. Right of condemnation. Every telecommunications ~~telecommunications~~ carrier as defined in the Telecommunications ~~Municipal~~ Infrastructure Maintenance Fee Act may, when it shall be necessary for the construction, maintenance, alteration or extension of its telecommunications system, or any part thereof, enter upon, take or damage private property in the manner provided for in, and the compensation therefor shall be ascertained and made in conformity to the provisions of the Telegraph Act and every telecommunications carrier is authorized to construct, maintain, alter and extend its poles, wires, and other appliances as a proper use of highways, along, upon, under and across any highway, street, alley, public right-of-way dedicated or commonly used for utility purposes, or water in this State, but so as not to incommode the public in the use thereof: Provided, that nothing in this act shall interfere with the control now vested in cities, incorporated towns and villages in relation to the regulation of the poles, wires, cables and other appliances, and provided, that before any such lines shall be constructed along any such highway, street, alley, public right-of-way dedicated or commonly used for utility purposes, or water it shall be the duty of the telecommunications carrier proposing to construct any such line, to give (in the case of cities, villages, and incorporated towns) to the corporate authorities of the municipality or their designees (hereinafter, municipal corporate authorities) or (in other cases) to the highway commissioners having jurisdiction and control over the road or part thereof along and over which such line is proposed to be constructed, notice in writing in the form of plans, specifications, and documentation of the purpose

and intention of the company to construct such line over and along the highway, street, alley, public right-of-way dedicated or commonly used for utility purposes, or water, which notice shall be served at least 10 days before the line shall be placed or constructed over and along the highway, street, alley, public right-of-way dedicated or commonly used for utility purposes, or water (30 days in the case of any notice providing for excavation relating to new construction in a public highway, street, alley, public right-of-way dedicated or commonly used for utility purposes, or water); and upon the giving of the notice it shall be the duty of the municipal corporate authorities or the highway commissioners to specify the portion of such highway, street, alley, public right-of-way dedicated or commonly used for utility purposes, or water upon which the line may be placed, used, and constructed, and it shall thereupon be the duty of the telecommunications retailer to provide the municipal authorities or highway commissioners with any and all plans, specifications, and documentation available and to construct its line in accordance with such specifications; but in the event that the municipal corporate authorities or the highway commissioners fail to provide such specification within 10 days after the service of such notice, (25 days in the case of excavation relating to new construction) then the telecommunications retailer, without such specification having been made, may proceed to place and erect its line along the highway, street, alley, public right-of-way dedicated or commonly used for utility purposes, or water by placing its posts, poles and abutments so as not to interfere with other proper uses of the highway, street, alley, public right-of-way dedicated or commonly used for utility purposes, or water. The telecommunications carrier proposing to construct any such line shall comply with the provisions of Section 9-113 of the Illinois Highway Code. Provided, that the telecommunications carrier shall not have the right to condemn any portion of the right-of-way of any railroad company except as much thereof as is necessary to cross the same.

The Illinois Commerce Commission may adopt reasonable rules governing the negotiation procedures that are used by a telecommunications carrier during precondemnation negotiations for the purchase of land rights-of-way and easements, including procedures for providing information to the public and affected landowners concerning the project and the right-of-way easements sought in connection therewith.

Such rules may be made applicable to interstate, competitive intrastate and noncompetitive intrastate facilities, without regard to whether such facilities or the telecommunications carrier proposing to construct and operate them would otherwise be subject to the Illinois Commerce Commission's jurisdiction under The Public Utilities Act, as now or hereafter amended. However, as to facilities used to provide exclusively interstate services or competitive intrastate services or both, nothing in this Section confers any power upon the Commission (i) to require the disclosure of proprietary, competitively sensitive, or cost information or information not known to the telecommunications carrier, (ii) to determine whether, or conduct hearings regarding whether, any proposed fiber optic or other facilities should or should not be constructed and operated, or (iii) to determine or specify, or conduct hearings concerning, the price or other terms or conditions of the purchase of the right-of-way easements sought. With respect to facilities used to provide any intrastate services classified in the condemnor's tariff as noncompetitive under Section 13-502 of The Public Utilities Act, the rulemaking powers conferred upon the Commission under this Section are in addition to any rulemaking

powers arising under The Public Utilities Act.

No telecommunications carrier shall exercise the power to condemn private property until it has first substantially complied with such rules with respect to the property sought to be condemned. If such rules call for providing notice or information before or during negotiations, a failure to provide such notice or information shall not constitute a waiver of the rights granted in this Section, but the telecommunications carrier shall be liable for all reasonable attorney's fees of that landowner resulting from such failure.
(Source: P.A. 90-154, eff. 1-1-98.)

ARTICLE 95

Section 95-95. No acceleration or delay. Where this Act makes changes in a statute that is represented in this Act by text that is not yet or no longer in effect (for example, a Section represented by multiple versions), the use of that text does not accelerate or delay the taking effect of (i) the changes made by this Act or (ii) provisions derived from any other Public Act.

ARTICLE 99

Section 99-99. Effective date. Article 99 of this Act, Article 95 of this Act, and the changes made in this Act to Sections 5 and 20 of the Telecommunications Municipal Infrastructure Maintenance Fee Act take effect upon becoming law. Article 5 and Sections 90-22 and 90-30 of this Act take effect on July 1, 2002. Sections 90-5, 90-10, 90-20, 90-25, 90-35, and 90-40 of this Act and the changes made in this Act to Sections 1, 10, 15, 25, 27, 27.35, 30 and 35 of the Telecommunications Municipal Infrastructure Maintenance Fee Act take effect on January 1, 2003.".

The motion prevailed.

And the amendment was adopted and ordered printed.

There being no further amendments, the foregoing Amendment No. 2 was ordered engrossed; and the bill, as amended, was ordered to a third reading.

READING BILLS OF THE SENATE A THIRD TIME

On motion of Senator Rauschenberger, **Senate Bill No. 88**, having been transcribed and typed and all amendments adopted thereto having been printed, was taken up and read by title a third time.

And the question being, "Shall this bill pass?" it was decided in the affirmative by the following vote: Yeas 51; Nays 7.

The following voted in the affirmative:

Bowles
Burzynski
Clayborne
Cronin
Cullerton
DeLeo
del Valle
Demuzio
Dillard
Donahue
Dudycz
Geo-Karis
Halvorson
Hendon
Jacobs

Jones, E.
Jones, W.
Karpiel
Klemm
Lightford
Link
Luechtefeld
Madigan
Mahar
Maitland
Molaro
Munoz
Noland
Obama
O'Daniel
Parker
Peterson
Petka
Radogno
Rauschenberger
Ronen
Roskam
Shadid
Shaw
Sieben
Silverstein
Smith
Stone
Sullivan
Trotter
Viverito
Walsh, L.
Walsh, T.
Watson
Weaver
Mr. President

The following voted in the negative:

Bomke
Hawkinson
Lauzen
Myers
O'Malley
Syverson
Woolard

This bill, having received the vote of three-fifths of the members elected, was declared passed, and all amendments not adopted were tabled pursuant to Senate Rule No. 5-4(a).

Ordered that the Secretary inform the House of Representatives thereof and ask their concurrence therein.

On motion of Senator Luechtefeld, **Senate Bill No. 1269**, having been transcribed and typed and all amendments adopted thereto having been printed, was taken up and read by title a third time.

And the question being, "Shall this bill pass?" it was decided in the affirmative by the following vote: Yeas 58; Nays None.

The following voted in the affirmative:

Bomke
Bowles
Burzynski
Clayborne
Cronin
DeLeo
del Valle
Demuzio
Dillard
Donahue
Dudycz
Geo-Karis
Halvorson
Hawkinson
Hendon
Jacobs
Jones, E.
Jones, W.
Karpiel
Klemm
Lauzen
Lightford
Link
Luechtefeld
Madigan
Mahar
Maitland
Molaro
Munoz
Myers
Noland
Obama
O'Daniel
O'Malley
Parker
Peterson
Petka
Radogno
Rauschenberger
Ronen
Roskam
Shadid
Shaw
Sieben
Silverstein
Smith
Stone
Sullivan
Syverson
Trotter
Viverito
Walsh, L.
Walsh, T.
Watson
Weaver
Welch
Woolard
Mr. President

This bill, having received the vote of three-fifths of the

members elected, was declared passed, and all amendments not adopted were tabled pursuant to Senate Rule No. 5-4(a).

Ordered that the Secretary inform the House of Representatives thereof and ask their concurrence therein.

READING A BILL FROM THE HOUSE OF REPRESENTATIVES A THIRD TIME

On motion of Senator Shadid, **House Bill No. 934** having been printed as received from the House of Representatives, together with all Senate Amendments adopted thereto, was taken up and read by title a third time.

And the question being, "Shall this bill pass?" it was decided in the affirmative by the following vote: Yeas 59; Nays None.

The following voted in the affirmative:

Bomke
Bowles
Burzynski
Clayborne
Cronin
Cullerton
DeLeo
del Valle
Demuzio
Dillard
Donahue
Dudycz
Geo-Karis
Halvorson
Hawkinson
Hendon
Jacobs
Jones, E.
Jones, W.
Karpiel
Klemm
Lauzen
Lightford
Link
Luechtefeld
Madigan
Mahar
Maitland
Molaro
Munoz
Myers
Noland
Obama
O'Daniel
O'Malley
Parker
Peterson
Petka
Radogno
Rauschenberger
Ronen
Roskam
Shadid

Shaw
Sieben
Silverstein
Smith
Stone
Sullivan
Syverson
Trotter
Viverito
Walsh, L.
Walsh, T.
Watson
Weaver
Welch
Woolard
Mr. President

This bill, having received the vote of three-fifths of the members elected, was declared passed, and all amendments not adopted were tabled pursuant to Senate Rule No. 5-4(a).

Ordered that the Secretary inform the House of Representatives thereof.

REPORTS FROM RULES COMMITTEE

Senator Weaver, Chairperson of the Committee on Rules, during its November 15, 2001 meeting, reported the following House Bills have been assigned to the indicated Standing Committees of the Senate:

Executive: **House Bills numbered 3017 and 3098.**
Licensed Activities: **House Bill No. 2565.**
Transportation: **House Bill No. 61.**

Senator Weaver, Chairperson of the Committee on Rules, during its November 15, 2001 meeting, reported the following Legislative Measure has been assigned to the indicated Standing Committee of the Senate:

Executive: **Senate Amendment No. 1 to Senate Bill 1261.**

Senator Weaver, Chairperson of the Committee on Rules, reported that the following Legislative Measure has been approved for consideration:

Senate Amendment 2 to House Bill 2299

The foregoing floor amendment was placed on the Secretary's Desk.

READING BILL FROM THE HOUSE OF REPRESENTATIVES A THIRD TIME

On motion of Senator Dillard, **House Bill No. 1829**, having been printed as received from the House of Representatives, together with all Senate amendments adopted thereto, was taken up and read by title a third time.

Pending roll call on motion of Senator Dillard, further consideration of **House Bill No. 1829** was postponed.

HOUSE BILL RECALLED

[Nov. 15, 2001]

On motion of Senator Hawkinson, **House Bill No. 2299** was recalled from the order of third reading to the order of second reading.

Senator Hawkinson offered the following amendment and moved its adoption:

AMENDMENT NO. 2

AMENDMENT NO. 2. Amend House Bill 2299, AS AMENDED, with page and line number references to Senate Amendment No. 1, on page 16, by inserting between lines 21 and 22 the following:

"This subsection (g-5) is inoperative on and after January 1, 2005."; and

on page 23, by inserting between lines 10 and 11 the following:

""Substantial damage" means monetary damage greater than $100,000."; and

on page 23, by replacing line 12 with the following:

"that is intended to cause or create a risk and does cause or create a risk of death or great bodily harm"; and

on page 26, line 16, by inserting "and intends" after "knows"; and

on page 26, line 17, by inserting "in the commission of a terrorist act as defined in Section 29D-10 of this Code" after "used"; and

on page 27, line 9, by inserting "as defined in Section 29D-10" after "act"; and

on page 27, line 24, by inserting "as defined in Section 29D-10" after "act"; and

on page 28, line 6, by replacing "an act of terrorism" with the following:

"a terrorist act as defined in Section 29D-10 of this Code"; and

on page 28, line 9, by replacing "an act of terrorism" with the following:

"a terrorist act as defined in Section 29D-10 of this Code"; and

on page 28, line 17, by inserting after "sentence" the following:

"in the event the death penalty is not imposed"; and

on page 29, by deleting lines 12 through 31; and

on page 30, by deleting lines 1 through 11; and

on page 30, line 20, by replacing "Seizure" with "Asset freeze, seizure,"; and

on page 30, line 21, by replacing "Seizure" with "Asset freeze, seizure,"; and

on page 30, line 21, by deleting "of property used"; and

on page 30, by replacing lines 23 through 32 with the following:

"(1) Whenever it appears that there is probable cause to believe that any person used, is using, is about to use, or is intending to use property in any way that constitutes or would constitute a violation of this Article, the Attorney General or any State's Attorney may make an ex parte application to the circuit court to freeze or seize all the assets of that person and, upon a showing of probable cause in the ex parte hearing, the circuit court shall issue an order to freeze or seize all assets of that person. A copy of the freeze or seize order shall be served upon the person whose assets have been frozen or seized and that person may, at any time within 30 days of service, file a motion to release his or her assets. In any proceeding to release assets, the burden of proof shall be by a preponderance of evidence and shall be on the State to show that the person used, was using, is about to use, or is intending to use any property in any way that constitutes or would constitute a violation of this Article. If the court finds that any property was being used, is about to be used, or is intended to be used in violation of or in any way that would constitute a violation of this Article, the court shall order the property frozen or held

until further order of the court. Any property so ordered held or frozen shall be subject to forfeiture under the following procedure."; and

on page 31, line 1, by inserting "or asset freeze" after "seizure"; and

on page 31, line 3, by inserting "or frozen" after "seized"; and

on page 31, line 14, by inserting "or frozen" after "seized"; and

on page 31, line 22, by inserting "or frozen" after "seized"; and

on page 31, line 27, by inserting "or frozen" after "seized"; and

on page 32, line 5, by inserting "or asset freeze" after "seizure"; and

on page 39, by inserting between lines 9 and 10 the following:

"(8) This subsection (b) is inoperative on and after January 1, 2005."; and

on page 46, lines 5 and 6, by replacing "shall cease to have effect on December 31" with "is inoperative on and after January 1".

The motion prevailed and the amendment was adopted and ordered printed.

And **House Bill No. 2299**, as amended, was returned to the order of third reading.

READING BILLS FROM THE HOUSE OF REPRESENTATIVES A THIRD TIME

On motion of Senator Dillard, **House Bill No. 2619** having been printed as received from the House of Representatives, together with all Senate Amendments adopted thereto, was taken up and read by title a third time.

And the question being, "Shall this bill pass?" it was decided in the affirmative by the following vote: Yeas 49; Nays 7.

The following voted in the affirmative:

Bowles
Clayborne
Cronin
Cullerton
DeLeo
del Valle
Demuzio
Dillard
Dudycz
Geo-Karis
Halvorson
Hendon
Jacobs
Jones, E.
Karpiel
Klemm
Lightford
Link
Luechtefeld
Madigan
Mahar
Maitland
Molaro
Munoz
Myers
Noland

Obama
O'Daniel
Parker
Peterson
Petka
Rauschenberger
Ronen
Shadid
Shaw
Sieben
Silverstein
Smith
Stone
Sullivan
Trotter
Viverito
Walsh, L.
Walsh, T.
Watson
Weaver
Welch
Woolard
Mr. President

The following voted in the negative:

Bomke
Burzynski
Donahue
Hawkinson
Lauzen
O'Malley
Radogno

This bill, having received the vote of a constitutional majority of the members elected, was declared passed, and all amendments not adopted were tabled pursuant to Senate Rule No. 5-4(a).

Ordered that the Secretary inform the House of Representatives thereof and ask their concurrence in the Senate Amendment adopted thereto.

On motion of Senator Dillard, **House Bill No. 2729** having been printed as received from the House of Representatives, together with all Senate Amendments adopted thereto, was taken up and read by title a third time.

And the question being, "Shall this bill pass?" it was decided in the affirmative by the following vote: Yeas 58; Nays None.

The following voted in the affirmative:

Bomke
Bowles
Burzynski
Clayborne
Cronin
Cullerton
del Valle
Demuzio
Dillard
Donahue

Dudycz
Geo-Karis
Halvorson
Hawkinson
Hendon
Jacobs
Jones, E.
Jones, W.
Karpiel
Klemm
Lauzen
Lightford
Link
Luechtefeld
Madigan
Mahar
Maitland
Molaro
Munoz
Myers
Noland
Obama
O'Daniel
O'Malley
Parker
Peterson
Petka
Radogno
Rauschenberger
Ronen
Roskam
Shadid
Shaw
Sieben
Silverstein
Smith
Stone
Sullivan
Syverson
Trotter
Viverito
Walsh, L.
Walsh, T.
Watson
Weaver
Welch
Woolard
Mr. President

This bill, having received the vote of a constitutional majority of the members elected, was declared passed, and all amendments not adopted were tabled pursuant to Senate Rule No. 5-4(a).

Ordered that the Secretary inform the House of Representatives thereof and ask their concurrence in the Senate Amendments adopted thereto.

CONSIDERATION OF GOVERNOR'S VETO MESSAGES

Pursuant to Motion in Writing filed on November 13, 2001 and

journalized today, Senator Lauzen moved that **Senate Bill No. 603** do pass, the veto of the Governor to the contrary notwithstanding.

And on that motion, a call of the roll was had resulting as follows:

Yeas 31; Nays 23; Present 1.

The following voted in the affirmative:

Bomke
Burzynski
Cronin
Dillard
Donahue
Dudycz
Geo-Karis
Hawkinson
Jones, W.
Karpiel
Lauzen
Luechtefeld
Mahar
Maitland
Myers
Noland
O'Malley
Parker
Peterson
Petka
Radogno
Rauschenberger
Roskam
Sieben
Stone
Syverson
Walsh, T.
Watson
Weaver
Welch
Mr. President

The following voted in the negative:

Clayborne
Cullerton
del Valle
Halvorson
Hendon
Jacobs
Jones, E.
Lightford
Link
Madigan
Molaro
Munoz
Obama
O'Daniel
Ronen
Shadid
Shaw

Silverstein
Sullivan
Trotter
Viverito
Walsh, L.
Woolard

The following voted present:

Smith

The motion having failed to receive the vote of three-fifths of the members elected was lost.

Pursuant to Motion in Writing filed on November 13, 2001 and journalized today, Senator Lauzen moved to accept the Governor's specific recommendations for change to **Senate Bill No. 653**.

And on that motion, a call of the roll was had resulting as follows:
Yeas 58; Nays None.

The following voted in the affirmative:

Bomke
Bowles
Burzynski
Clayborne
Cronin
Cullerton
DeLeo
del Valle
Demuzio
Dillard
Donahue
Dudycz
Geo-Karis
Halvorson
Hawkinson
Hendon
Jacobs
Jones, E.
Jones, W.
Karpiel
Klemm
Lauzen
Lightford
Link
Luechtefeld
Madigan
Mahar
Maitland
Molaro
Munoz
Myers
Noland
Obama
O'Daniel
O'Malley
Parker

Peterson
Petka
Radogno
Rauschenberger
Ronen
Roskam
Shadid
Shaw
Sieben
Silverstein
Stone
Sullivan
Syverson
Trotter
Viverito
Walsh, L.
Walsh, T.
Watson
Weaver
Welch
Woolard
Mr. President

The motion prevailed.

Ordered that the Secretary inform the House of Representatives thereof, and ask their concurrence therein.

Senator Smith asked and obtained unanimous consent for the Journal to reflect her affirmative vote on **Senate Bill No. 653**.

CONSIDERATION OF HOUSE AMENDMENT TO SENATE BILL ON SECRETARY'S DESK

On motion of Senator Dillard, **Senate Bill No. 385**, with House Amendment No. 4 on the Secretary's Desk, was taken up for immediate consideration.

Senator Dillard moved that the Senate non-concur with the House in the adoption of their amendment to said bill.

The motion prevailed.

And the Senate non-concurred with the House in the adoption of their Amendment No. 4 to **Senate Bill No. 385**.

Ordered that the Secretary inform the House of Representatives thereof.

READING BILLS FROM THE HOUSE OF REPRESENTATIVES A FIRST TIME

House Bill No. 396, sponsored by Senators Hendon - Cullerton was taken up, read by title a first time and referred to the Committee on Rules.

House Bill No. 862, sponsored by Senators Hendon - Cullerton was taken up, read by title a first time and referred to the Committee on Rules.

House Bill No. 3103, sponsored by Senators Lightford - Hendon was taken up, read by title a first time and referred to the Committee on Rules.

RESOLUTIONS CONSENT CALENDAR

SENATE RESOLUTION NO. 222
Offered by Senator Sullivan and all Senators:
Mourns the death of Gary J. Maher of Oak Park.

SENATE RESOLUTION NO. 223
Offered by Senator Sullivan and all Senators:
Mourns the death of Earl W. Lewis of Mount Prospect.

SENATE RESOLUTION NO. 224
Offered by Senator Sullivan and all Senators:
Mourns the death of Kenneth J. Fredricks of Des Plaines.

SENATE RESOLUTION NO. 225
Offered by Senator Sullivan and all Senators:
Mourns the death of Daniel "Danny" Trant of Long Island, New York.

SENATE RESOLUTION NO. 226
Offered by Senator Sullivan and all Senators:
Mourns the death of Robert W. Beart, Sr. of Arlington Heights.

SENATE RESOLUTION NO. 227
Offered by Senator Sullivan and all Senators:
Mourns the death of Frank Albachiaro of Park Ridge.

SENATE RESOLUTION NO. 228
Offered by Senator Sullivan and all Senators:
Mourns the death of Eugene and Betty Bravieri formerly of Niles.

SENATE RESOLUTION NO. 229
Offered by Senator Demuzio and all Senators:
Mourns the death of Thomas B. Ryder of Roodhouse.

SENATE RESOLUTION NO. 230
Offered by Senator Demuzio and all Senators:
Mourns the death of Ellsworth Landers of Bunker Hill.

SENATE RESOLUTION NO. 231
Offered by Senator Demuzio and all Senators:
Mourns the death of T. Paul Marrin, Sr. of Springfield.

SENATE RESOLUTION NO. 232
Offered by Senator Demuzio and all Senators:
Mourns the death of Paul G. "Pete" Dixon, Jr. of Springfield.

SENATE RESOLUTION NO. 233
Offered by Senator Demuzio and all Senators:
Mourns the death of Deborah Bouillon of Carlinville.

SENATE RESOLUTION NO. 234
Offered by Senator Demuzio and all Senators:
Mourns the death of Joseph H. Kufa of Carlinville.

SENATE RESOLUTION NO. 235
Offered by Senator Demuzio and all Senators:
Mourns the death of Thomas Paul Burns of Carlinville.

SENATE RESOLUTION NO. 236

Offered by Senator Lightford and all Senators:
Mourns the death of Amy Henderson Dillon Hunter, formerly of Chicago.

SENATE RESOLUTION NO. 237
Offered by Senator Lauzen and all Senators:
Mourns the death of Mary Elizabeth "Bette" Koehler of St. Charles.

SENATE RESOLUTION NO. 238
Offered by Senator Lauzen and all Senators:
Mourns the death of Louis "Lou" Fancsali of Montgomery.

SENATE RESOLUTION NO. 239
Offered by Senator Lauzen and all Senators:
Mourns the death of Joan Marie Popp of Aurora.

SENATE RESOLUTION NO. 240
Offered by Senator Lauzen and all Senators:
Mourns the death of Jane M. Reinke of Aurora.

SENATE RESOLUTION NO. 241
Offered by Senator Lauzen and all Senators:
Mourns the death of Joan A. Sibenaller of Aurora.

SENATE RESOLUTION NO. 242
Offered by Senator Lauzen and all Senators:
Mourns the death of Lauren N. Klespitz of Aurora.

SENATE RESOLUTION NO. 243
Offered by Senator Lauzen and all Senators:
Mourns the death of Florence L. Traversino of Aurora.

SENATE RESOLUTION NO. 244
Offered by Senator Lauzen and all Senators:
Mourns the death of Marian Dorothea Tomell of Aurora.

SENATE RESOLUTION NO. 245
Offered by Senator Lauzen and all Senators:
Mourns the death of Virginia B. Reuland of Aurora.

SENATE RESOLUTION NO. 246
Offered by Senator Lauzen and all Senators:
Mourns the death of Richard H. Pierceall of Apache Junction, Arizona.

SENATE RESOLUTION NO. 247
Offered by Senator Lauzen and all Senators:
Mourns the death of Florence E. Dodds of Marion, Ohio.

SENATE RESOLUTION NO. 248
Offered by Senator Lauzen and all Senators:
Mourns the death of William B. Hamilton of Batavia.

SENATE RESOLUTION NO. 250
Offered by Senator Demuzio and all Senators:
Mourns the death of Paul Brangenberg of Kampsville.

SENATE RESOLUTION NO. 251
Offered by Senator Demuzio and all Senators:

Mourns the death of Wayne O. Fuchs of Farmersville.

SENATE RESOLUTION NO. 252

Offered by Senator Demuzio and all Senators:
Mourns the death of Donald E. Lakin of Murrayville.

SENATE RESOLUTION NO. 253

Offered by Senator Demuzio and all Senators:
Mourns the death of Maynard C. Becker of Mount Olive.

SENATE RESOLUTION NO. 254

Offered by Senator Sullivan and all Senators:
Mourns the death of former State Senator Walter Duda of Chicago.

SENATE RESOLUTION NO. 255

Offered by Senator Noland and all Senators:
Mourns the deaths of F. Merrill and Margery M. "Sis" Lindsay, Jr. of Decatur.

Senator Dudycz moved the adoption of the foregoing resolutions.
The motion prevailed.
And the resolutions were adopted.

PRESENTATION OF RESOLUTION

Senator Weaver offered the following Senate Joint Resolution:

SENATE JOINT RESOLUTION NO. 44

RESOLVED, BY THE SENATE OF THE NINETY-SECOND GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE HOUSE OF REPRESENTATIVES CONCURRING HEREIN, that when the two Houses adjourn on Thursday, November 15, 2001, the Senate stands adjourned until Tuesday, November 27, 2001, at 12:00 o'clock noon; and the House of Representatives stands adjourned until Tuesday, November 27, 2001, at 1:00 o'clock p.m.

Senator Weaver, having asked and obtained unanimous consent to suspend the rules for the immediate consideration of the foregoing resolution, moved its adoption.
The motion prevailed.
And the resolution was adopted.
Ordered that the Secretary inform the House of Representatives thereof, and ask their concurrence therein.

At the hour of 10:40 o'clock a.m., on motion of Senator Geo-Karis, and pursuant to **Senate Joint Resolution No. 44,** the Senate stood adjourned until Tuesday, November 27, 2001 at 12:00 o'clock noon.