



Rep. Susana A. Mendoza

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LRB096 13422 RLJ 41250 a

1 AMENDMENT TO SENATE BILL 2612

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

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

6 (35 ILCS 645/5-10 new)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (50 ILCS 45/10)

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

17 Consistent with the limitations provided by this Act, a  
18 municipality may not impose any penalty with respect to a tax  
19 authorized by Section 8-11-2 of the Illinois Municipal Code or  
20 with respect to an audit authorized by Section 8-11-2.5 of the  
21 Illinois Municipal Code, except as specified in Sections 50,  
22 55, and 60 of this Act.

23 This Act is a denial and limitation of home rule powers and  
24 functions under subsection (g) of Section 6 of Article VII of

1 the Illinois Constitution.

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

3 (50 ILCS 45/35)

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

1 with the results of the audit. An auditor who determines that  
2 there has been an overpayment of tax during the course of the  
3 audit is obligated to identify the overpayment to the taxpayer  
4 so that the taxpayer can take the necessary steps to recover  
5 the overpayment. If the overpayment is the result of the  
6 application of some or all of the taxpayer's tax payment to an  
7 incorrect local government entity, then upon request by a unit  
8 of local government, the audit information must be given to any  
9 unit of local government that may be affected by an overpayment  
10 ~~the auditor must notify the correct local government entity of~~  
11 ~~the taxpayer's application error.~~

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

13 Section 15. The Counties Code is amended by adding Section  
14 5-1095.1 as follows:

15 (55 ILCS 5/5-1095.1 new)

16 Sec. 5-1095.1. County franchise fee review; requests for  
17 information.

18 (a) If pursuant to its franchise agreement with a community  
19 antenna television system (CATV) operator, a county imposes a  
20 franchise fee authorized by 47 U.S.C. 542, then the county may  
21 conduct an audit of that CATV operator's franchise fees derived  
22 from the provision of cable and video services to subscribers  
23 within the franchise area to determine whether the amount of  
24 franchise fees paid by that CATV operator to the county was

1 accurate. Any audit conducted under this subsection (a) shall  
2 determine any overpayment or underpayment to the county by the  
3 CATV operator, and the amount due to the county or CATV  
4 operator is limited to the net difference.

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

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

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

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

25 (1) 60 days after the receipt of the request if the  
26 population of the requesting county is 500,000 or less; or



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

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

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

24           (e) No CATV operator is liable for any error in past  
25           franchise fee payments that was unknown by the CATV operator  
26           prior to the audit process unless (i) the error was due to

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

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

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

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

1 apply to any franchise agreement that was entered into before  
2 the effective date of this amendatory Act of the 96th General  
3 Assembly unless the franchise agreement contains audit  
4 provisions but no specifics regarding audit procedures.

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

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

11 (k) Within 90 days after the effective date of this  
12 amendatory Act of the 96th General Assembly, a county shall  
13 provide to any CATV operator a complete list of addresses  
14 within the corporate limits of the county and shall annually  
15 update the list.

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

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

21 (65 ILCS 5/8-11-2.5 new)

22 Sec. 8-11-2.5. Municipal tax review; requests for  
23 information.

24 (a) If a municipality has imposed a tax under Section

1 8-11-2, then the municipality may conduct an audit of tax  
2 receipts collected from the public utility that is subject to  
3 the tax or that collects the tax from purchasers on behalf of  
4 the municipality to determine whether the amount of tax that  
5 was paid by the public utility was accurate.

6 (b) Not more than once every 2 years, a municipality that  
7 has imposed a tax under this Act may, subject to the  
8 limitations and protections stated in Section 16-122 of the  
9 Public Utilities Act and in the Local Government Taxpayers'  
10 Bill of Rights Act, request any information from a utility in  
11 the format maintained by the public utility in the ordinary  
12 course of its business that the municipality reasonably  
13 requires in order to perform an audit under subsection (a). The  
14 information that may be requested by the municipality includes,  
15 without limitation:

16 (1) in an electronic format used by the public utility  
17 in the ordinary course of its business, the database used  
18 by the public utility to determine the amount of tax due to  
19 the municipality; provided, however, that, if the  
20 municipality has requested customer-specific billing,  
21 usage, and load shape data from a public utility that is an  
22 electric utility and has not provided the electric utility  
23 with the verifiable authorization required by Section  
24 16-122 of the Public Utilities Act, then the electric  
25 utility shall remove from the database all  
26 customer-specific billing, usage, and load shape data

1 before providing it to the municipality; and

2 (2) in a format used by the public utility in the  
3 ordinary course of its business, summary data, as needed by  
4 the municipality, to determine the unit consumption of  
5 utility services by providing the gross therms, kilowatts,  
6 minutes, or other units of measurement being taxed within  
7 the municipal jurisdiction and the gross revenues  
8 collected and the associated taxes assessed.

9 (c) Each public utility must provide the information  
10 requested under subsection (b) within:

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

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

16 The time in which a public utility must provide the  
17 information requested under subsection (b) may be extended by  
18 an agreement between the municipality and the public utility.  
19 If a public utility receives, during a single month,  
20 information requests from more than 2 municipalities, or the  
21 aggregate population of the requesting municipalities is  
22 100,000 customers or more, the public utility is entitled to an  
23 additional 30 days to respond to those requests.

24 (d) If an audit by the municipality or its agents finds an  
25 error by the public utility in the amount of taxes paid by the  
26 public utility, then the municipality must notify the public

1 utility of the error. Any such notice must be issued pursuant  
2 to Section 30 of the Local Government Taxpayers' Bill of Rights  
3 Act or a lesser period of time from the date the tax was due  
4 that may be specified in the municipal ordinance imposing the  
5 tax. Upon such a notice, any audit shall be conducted pursuant  
6 to Section 35 of the Local Government Taxpayers' Bill of Rights  
7 Act subject to the timelines set forth in this subsection (d).  
8 The public utility must submit a written response within 60  
9 days after the date the notice was postmarked stating that it  
10 has corrected the error or stating the reason that the error is  
11 inapplicable or inaccurate. The municipality then has 60 days  
12 after the receipt of the public utility's response to review  
13 and contest the conclusion of the public utility. If the  
14 parties are unable to agree on the disposition of the audit  
15 findings within 120 days after the notification of the error to  
16 the public utility, then either party may submit the matter for  
17 appeal as outlined in Section 40 of the Local Government  
18 Taxpayers' Bill of Rights Act. If the appeals process does not  
19 produce a satisfactory result, then either party may pursue the  
20 alleged error in a court of competent jurisdiction.

21 (e) No public utility is liable for any error in past  
22 collections and payments that was unknown by it prior to the  
23 audit process unless (i) the error was due to negligence by the  
24 public utility in the collection or processing of required data  
25 and (ii) the municipality had not failed to respond in writing  
26 on an accurate and timely basis to any written request of the

1 public utility to review and correct information used by the  
2 public utility to collect the municipality's tax if a diligent  
3 review of such information by the municipality reasonably could  
4 have been expected to discover such error. If, however, an  
5 error in past collections or payments resulted in a customer,  
6 who should not have owed a tax to any municipality, having paid  
7 a tax to a municipality, then the customer may, to the extent  
8 allowed by Section 9-252 of the Public Utilities Act, recover  
9 the tax from the public utility, and any amount so paid by the  
10 public utility may be deducted by that public utility from any  
11 taxes then or thereafter owed by the public utility to that  
12 municipality.

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

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

24 (65 ILCS 5/11-42-11.05 new)

25 Sec. 11-42-11.05. Municipal franchise fee review; requests

1 for information.

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

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

23 (1) in an electronic format used by the CATV operator  
24 in the ordinary course of its business, the database used  
25 by the CATV operator to determine the amount of the  
26 franchise fee due to the municipality; and



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

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

9           (1) 60 days after the receipt of the request if the  
10           population of the requesting municipality is 500,000 or  
11           less; or

12           (2) 90 days after the receipt of the request if the  
13           population of the requesting municipality exceeds 500,000.

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

17           (d) If an audit by the municipality or its agents finds an  
18           error by the CATV operator in the amount of the franchise fees  
19           paid by the CATV operator to the municipality, then the  
20           municipality may notify the CATV operator of the error. Any  
21           such notice must be given to the CATV operator by the  
22           municipality within 90 days after the municipality discovers  
23           the error, and no later than 4 years after the date the  
24           franchise fee was due. Upon such a notice, the CATV operator  
25           must submit a written response within 60 days after receipt of  
26           the notice stating that the CATV operator has corrected the

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

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

21 (f) All account specific information provided by a CATV  
22 operator under this Section may be used only for the purpose of  
23 an audit conducted under this Section and the enforcement of  
24 any franchise fee delinquent claim. All such information must  
25 be held in strict confidence by the municipality and its agents  
26 and may not be disclosed to the public under the Freedom of

1 Information Act or under any other similar statutes allowing  
2 for or requiring public disclosure.

3 (g) For the purposes of this Section, "CATV operator" means  
4 a person or entity that provides cable and video services under  
5 a franchise agreement with a municipality pursuant to Section  
6 11-42-11 of the Municipal Code and a holder authorized under  
7 Section 21-401 of the Cable and Video Competition Law of 2007  
8 as consistent with Section 21-901 of that Law.

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

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

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

23 (k) Within 90 days after the effective date of this  
24 amendatory Act of the 96th General Assembly, a municipality  
25 shall provide to any CATV operator a complete list of addresses  
26 within the corporate limits of the municipality and shall

1 annually update the list.

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

5 Section 99. Effective date. This Act takes effect upon  
6 becoming law.".