



Sen. John G. Mulroe

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10000SB3464sam002

LRB100 20847 AWJ 37828 a

1 AMENDMENT TO SENATE BILL 3464

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

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

6 (55 ILCS 5/5-1095.1)

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

9 (a) If pursuant to its franchise agreement with a community  
10 antenna television system (CATV) operator, a county imposes a  
11 franchise fee authorized by 47 U.S.C. 542 or if a community  
12 antenna television system (CATV) operator providing cable or  
13 video service in that county is required to pay the service  
14 provider fees imposed by the Cable and Video Competition Law of  
15 2007, then the county may conduct an audit of that CATV  
16 operator's franchise fees or service provider fees derived from

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 As a prerequisite to performing an audit of a CATV  
25 operator's franchise fees or service provider fees derived from  
26 the provision of cable and video services to subscribers within

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

9 An address list provided by a county to a CATV operator  
10 shall be maintained as confidential by the CATV operator and  
11 shall only be used by the CATV operator for the purposes of  
12 determining the situs of any franchise fee or service provider  
13 fee. Any situs issues identified by a CATV operator as a result  
14 of the provision of an address list by a county to the CATV  
15 operator shall first be confirmed in writing to the county by  
16 the CATV operator prior to the CATV operator making any situs  
17 change that may result in a change of allocation of a franchise  
18 fee or service provider fee to the county.

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

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

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



1 (65 ILCS 5/11-42-11.05)

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

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

22 (b) Not more than once every 2 years, a municipality or its  
23 agent that is authorized to perform an audit as set forth in  
24 subsection (a) of this Section may, subject to the limitations  
25 and protections stated in the Local Government Taxpayers' Bill  
26 of Rights Act, request information from the CATV operator in

1 the format maintained by the CATV operator in the ordinary  
2 course of its business that the municipality reasonably  
3 requires in order to perform an audit under subsection (a). The  
4 information that may be requested by the municipality includes  
5 without limitation the following:

6 (1) in an electronic format used by the CATV operator  
7 in the ordinary course of its business, the database used  
8 by the CATV operator to determine the amount of the  
9 franchise fee or service provider fee due to the  
10 municipality; and

11 (2) in a format used by the CATV operator in the  
12 ordinary course of its business, summary data, as needed by  
13 the municipality, to determine the CATV operator's  
14 franchise fees or service provider fees derived from the  
15 provision of cable and video services to subscribers within  
16 the CATV operator's franchise area.

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

19 (1) 60 days after the receipt of the request if the  
20 population of the requesting municipality is 500,000 or  
21 less; or

22 (2) 90 days after the receipt of the request if the  
23 population of the requesting municipality exceeds 500,000.

24 The time in which a CATV operator must provide the  
25 information requested under subsection (b) may be extended by  
26 written agreement between the municipality or its agent and the

1 CATV operator.

2 (c-5) The municipality or its agent must provide an initial  
3 report of its audit findings to the CATV operator no later than  
4 90 days after the information set forth in subsection (b) of  
5 this Section has been provided by the CATV operator. This  
6 90-day timeline may be extended one time by written agreement  
7 between the municipality or its agents and the CATV operator.  
8 However, in no event shall an extension of time exceed 90 days.  
9 This initial report of audit findings shall detail the basis of  
10 its findings and provide, but not be limited to, the following  
11 information: (i) any overpayments of franchise fees or service  
12 provider fees, (ii) any underpayments of franchise fees or  
13 service provider fees, (iii) the complete list of all addresses  
14 within the corporate limits of the municipality for which the  
15 audit is being conducted, (iv) all municipal addresses that  
16 should be included in the CATV operator's database and  
17 attributable to that municipality for determination of  
18 franchise fees or service provider fees, and (v) ~~(iv)~~ addresses  
19 that should not be included in the CATV operator's database and  
20 addresses that are not attributable to that municipality for  
21 determination of franchise fees or service provider fees.  
22 Generally accepted auditing standards shall be utilized by the  
23 municipality and its agents in its review of information  
24 provided by the CATV operator.

25 (c-10) In the event that the municipality or its agent does  
26 not provide the initial report of the audit findings to the

1 CATV operator with the timeframes set forth in subsection (c-5)  
2 of this Section, then the audit shall be deemed completed and  
3 to have conclusively found that there was no overpayment or  
4 underpayment by the CATV operator for the audit period.  
5 Further, the municipality may not thereafter commence or  
6 conduct any such audit for the same audit period or for any  
7 part of that same audit period ~~during the 24 months prior to~~  
8 ~~the municipality or its agents requesting the information set~~  
9 ~~forth in subsection (b) of this Section.~~

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

1 unless within 180 days after the municipality's notification of  
2 the error to the CATV operator the parties are unable to agree  
3 on the disposition of the audit findings.

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

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

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

26 (f-5) All contracts by and between a municipality and a

1 third party for the purposes of conducting an audit as  
2 contemplated in this Article shall be disclosed to the public  
3 under the Freedom of Information Act or under similar statutes  
4 allowing for or requiring public disclosure.

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

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

19 (h-5) The audit procedures set forth in this Section shall  
20 be the exclusive audit procedures for: (i) any franchise  
21 agreement entered into, amended, or renewed on or after the  
22 effective date of this amendatory Act of the 100th General  
23 Assembly; and (ii) any franchise fee or service provider fee  
24 audit of a CATV operator commenced on or after the effective  
25 date of this amendatory Act of the 100th General Assembly.

26 (i) The provisions of this Section shall not be construed

1 as diminishing or replacing any civil remedy available to a  
2 municipality, taxpayer, or tax collector.

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

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

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

26 An address list provided by a municipality to a CATV

1 operator shall be maintained as confidential by the CATV  
2 operator and shall only be used by the CATV operator for the  
3 purposes of determining the situs of any franchise fee or  
4 service provider fee. Any situs issues identified by a CATV  
5 provider as a result of the provision of an address list by a  
6 municipality to the CATV operator shall first be confirmed in  
7 writing to the municipality by the CATV operator prior to the  
8 CATV operator making any situs change that may result in a  
9 change of allocation of a franchise fee or service provider fee  
10 to the municipality.

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

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

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

17 Section 99. Effective date. This Act takes effect upon  
18 becoming law."