



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
HB2601

Introduced 2/18/2005, by Rep. Michael Tryon

SYNOPSIS AS INTRODUCED:

65 ILCS 5/11-42-11

from Ch. 24, par. 11-42-11

Amends the Illinois Municipal Code. Makes a technical change in a provision concerning cable television.

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1 AN ACT concerning local government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Municipal Code is amended by
5 changing Section 11-42-11 as follows:

6 (65 ILCS 5/11-42-11) (from Ch. 24, par. 11-42-11)

7 Sec. 11-42-11. Community antenna television systems;
8 satellite transmitted television programming.

9 (a) The ~~The~~ corporate authorities of each municipality may
10 license, franchise and tax the business of operating a
11 community antenna television system as hereinafter defined. In
12 municipalities with less than 2,000,000 inhabitants, the
13 corporate authorities may, under the limited circumstances set
14 forth in this Section, own (or lease as lessee) and operate a
15 community antenna television system; provided that a
16 municipality may not acquire, construct, own, or operate a
17 community antenna television system for the use or benefit of
18 private consumers or users, and may not charge a fee for that
19 consumption or use, unless the proposition to acquire,
20 construct, own, or operate a cable antenna television system
21 has been submitted to and approved by the electors of the
22 municipality in accordance with subsection (f). Before
23 acquiring, constructing, or commencing operation of a
24 community antenna television system, the municipality shall
25 comply with the following:

26 (1) Give written notice to the owner or operator of any
27 other community antenna television system franchised to
28 serve all or any portion of the territorial area to be
29 served by the municipality's community antenna television
30 system, specifying the date, time, and place at which the
31 municipality shall conduct public hearings to consider and
32 determine whether the municipality should acquire,

1 construct, or commence operation of a community antenna
2 television system. The public hearings shall be conducted
3 at least 14 days after this notice is given.

4 (2) Publish a notice of the hearing in 2 or more
5 newspapers published in the county, city, village,
6 incorporated town, or town, as the case may be. If there is
7 no such newspaper, then notice shall be published in any 2
8 or more newspapers published in the county and having a
9 general circulation throughout the community. The public
10 hearings shall be conducted at least 14 days after this
11 notice is given.

12 (3) Conduct a public hearing to determine the means by
13 which construction, maintenance, and operation of the
14 system will be financed, including whether the use of tax
15 revenues or other fees will be required.

16 (b) The words "community antenna television system" shall
17 mean any facility which is constructed in whole or in part in,
18 on, under or over any highway or other public place and which
19 is operated to perform for hire the service of receiving and
20 amplifying the signals broadcast by one or more television
21 stations and redistributing such signals by wire, cable or
22 other means to members of the public who subscribe to such
23 service; except that such definition shall not include (i) any
24 system which serves fewer than fifty subscribers, or (ii) any
25 system which serves only the residents of one or more apartment
26 dwellings under common ownership, control or management, and
27 commercial establishments located on the premises of such
28 dwellings.

29 (c) The authority hereby granted does not include authority
30 to license, franchise or tax telephone companies subject to
31 jurisdiction of the Illinois Commerce Commission or the Federal
32 Communications Commission in connection with the furnishing of
33 circuits, wires, cables, and other facilities to the operator
34 of a community antenna television system.

35 The corporate authorities of each municipality may, in the
36 course of franchising such community antenna television

1 system, grant to such franchisee the authority and the right
2 and permission to use all public streets, rights of way,
3 alleys, ways for public service facilities, parks,
4 playgrounds, school grounds, or other public grounds, in which
5 such municipality may have an interest, for the construction,
6 installation, operation, maintenance, alteration, addition,
7 extension or improvement of a community antenna television
8 system.

9 Any charge imposed by a community antenna television system
10 franchised pursuant to this Section for the raising or removal
11 of cables or lines to permit passage on, to or from a street
12 shall not exceed the reasonable costs of work reasonably
13 necessary to safely permit such passage. Pursuant to
14 subsections (h) and (i) of Section 6 of Article VII of the
15 Constitution of the State of Illinois, the General Assembly
16 declares the regulation of charges which may be imposed by
17 community antenna television systems for the raising or removal
18 of cables or lines to permit passage on, to or from streets is
19 a power or function to be exercised exclusively by the State
20 and not to be exercised or performed concurrently with the
21 State by any unit of local government, including any home rule
22 unit.

23 The municipality may, upon written request by the
24 franchisee of a community antenna television system, exercise
25 its right of eminent domain solely for the purpose of granting
26 an easement right no greater than 8 feet in width, extending no
27 greater than 8 feet from any lot line for the purpose of
28 extending cable across any parcel of property in the manner
29 provided by the law of eminent domain, provided, however, such
30 franchisee deposits with the municipality sufficient security
31 to pay all costs incurred by the municipality in the exercise
32 of its right of eminent domain.

33 (d) The General Assembly finds and declares that
34 satellite-transmitted television programming should be
35 available to those who desire to subscribe to such programming
36 and that decoding devices should be obtainable at reasonable

1 prices by those who are unable to obtain satellite-transmitted
2 television programming through duly franchised community
3 antenna television systems.

4 In any instance in which a person is unable to obtain
5 satellite-transmitted television programming through a duly
6 franchised community antenna television system either because
7 the municipality and county in which such person resides has
8 not granted a franchise to operate and maintain a community
9 antenna television system, or because the duly franchised
10 community antenna television system operator does not make
11 cable television services available to such person, any
12 programming company that delivers satellite-transmitted
13 television programming in scrambled or encrypted form shall
14 ensure that devices for description of such programming are
15 made available to such person, through the local community
16 antenna television operator or directly, for purchase or lease
17 at prices reasonably related to the cost of manufacture and
18 distribution of such devices.

19 (e) The General Assembly finds and declares that, in order
20 to ensure that community antenna television services are
21 provided in an orderly, competitive and economically sound
22 manner, the best interests of the public will be served by the
23 establishment of certain minimum standards and procedures for
24 the granting of additional cable television franchises.

25 Subject to the provisions of this subsection, the authority
26 granted under subsection (a) hereof shall include the authority
27 to license, franchise and tax more than one cable operator to
28 provide community antenna television services within the
29 corporate limits of a single franchising authority. For
30 purposes of this subsection (e), the term:

31 (i) "Existing cable television franchise" means a
32 community antenna television franchise granted by a
33 municipality which is in use at the time such municipality
34 receives an application or request by another cable
35 operator for a franchise to provide cable antenna
36 television services within all or any portion of the

1 territorial area which is or may be served under the
2 existing cable television franchise.

3 (ii) "Additional cable television franchise" means a
4 franchise pursuant to which community antenna television
5 services may be provided within the territorial areas, or
6 any portion thereof, which may be served under an existing
7 cable television franchise.

8 (iii) "Franchising Authority" is defined as that term
9 is defined under Section 602(9) of the Cable Communications
10 Policy Act of 1984, Public Law 98-549, but does not include
11 any municipality with a population of 1,000,000 or more.

12 (iv) "Cable operator" is defined as that term is
13 defined under Section 602(4) of the Cable Communications
14 Policy Act of 1984, Public Law 98-549.

15 Before granting an additional cable television franchise,
16 the franchising authority shall:

17 (1) Give written notice to the owner or operator of any
18 other community antenna television system franchised to
19 serve all or any portion of the territorial area to be
20 served by such additional cable television franchise,
21 identifying the applicant for such additional franchise
22 and specifying the date, time and place at which the
23 franchising authority shall conduct public hearings to
24 consider and determine whether such additional cable
25 television franchise should be granted.

26 (2) Conduct a public hearing to determine the public
27 need for such additional cable television franchise, the
28 capacity of public rights-of-way to accommodate such
29 additional community antenna television services, the
30 potential disruption to existing users of public
31 rights-of-way to be used by such additional franchise
32 applicant to complete construction and to provide cable
33 television services within the proposed franchise area,
34 the long term economic impact of such additional cable
35 television system within the community, and such other
36 factors as the franchising authority shall deem

1 appropriate.

2 (3) Determine, based upon the foregoing factors,
3 whether it is in the best interest of the municipality to
4 grant such additional cable television franchise.

5 (4) If the franchising authority shall determine that
6 it is in the best interest of the municipality to do so, it
7 may grant the additional cable television franchise.
8 Except as provided in paragraph (5) of this subsection (e),
9 no such additional cable television franchise shall be
10 granted under terms or conditions more favorable or less
11 burdensome to the applicant than those required under the
12 existing cable television franchise, including but not
13 limited to terms and conditions pertaining to the
14 territorial extent of the franchise, system design,
15 technical performance standards, construction schedules,
16 performance bonds, standards for construction and
17 installation of cable television facilities, service to
18 subscribers, public educational and governmental access
19 channels and programming, production assistance, liability
20 and indemnification, and franchise fees.

21 (5) Unless the existing cable television franchise
22 provides that any additional cable television franchise
23 shall be subject to the same terms or substantially
24 equivalent terms and conditions as those of the existing
25 cable television franchise, the franchising authority may
26 grant an additional cable television franchise under
27 different terms and conditions than those of the existing
28 franchise, in which event the franchising authority shall
29 enter into good faith negotiations with the existing
30 franchisee and shall, within 120 days after the effective
31 date of the additional cable television franchise, modify
32 the existing cable television franchise in a manner and to
33 the extent necessary to ensure that neither the existing
34 cable television franchise nor the additional cable
35 television franchise, each considered in its entirety,
36 provides a competitive advantage over the other, provided

1 that prior to modifying the existing cable television
2 franchise, the franchising authority shall have conducted
3 a public hearing to consider the proposed modification. No
4 modification in the terms and conditions of the existing
5 cable television franchise shall oblige the existing cable
6 television franchisee (1) to make any additional payment to
7 the franchising authority, including the payment of any
8 additional franchise fee, (2) to engage in any additional
9 construction of the existing cable television system or,
10 (3) to modify the specifications or design of the existing
11 cable television system; and the inclusion of the factors
12 identified in items (2) and (3) shall not be considered in
13 determining whether either franchise considered in its
14 entirety, has a competitive advantage over the other except
15 to the extent that the additional franchisee provides
16 additional video or data services or the equipment or
17 facilities necessary to generate and or carry such service.
18 No modification in the terms and conditions of the existing
19 cable television franchise shall be made if the existing
20 cable television franchisee elects to continue to operate
21 under all terms and conditions of the existing franchise.

22 If within the 120 day period the franchising authority
23 and the existing cable television franchisee are unable to
24 reach agreement on modifications to the existing cable
25 television franchise, then the franchising authority shall
26 modify the existing cable television franchise, effective
27 45 days thereafter, in a manner, and only to the extent,
28 that the terms and conditions of the existing cable
29 television franchise shall no longer impose any duty or
30 obligation on the existing franchisee which is not also
31 imposed under the additional cable television franchise;
32 however, if by the modification the existing cable
33 television franchisee is relieved of duties or obligations
34 not imposed under the additional cable television
35 franchise, then within the same 45 days and following a
36 public hearing concerning modification of the additional

1 cable television franchise within that 45 day period, the
2 franchising authority shall modify the additional cable
3 television franchise to the extent necessary to insure that
4 neither the existing cable television franchise nor the
5 additional cable television franchise, each considered in
6 its entirety, shall have a competitive advantage over the
7 other.

8 No municipality shall be subject to suit for damages based
9 upon the municipality's determination to grant or its refusal
10 to grant an additional cable television franchise, provided
11 that a public hearing as herein provided has been held and the
12 franchising authority has determined that it is in the best
13 interest of the municipality to grant or refuse to grant such
14 additional franchise, as the case may be.

15 It is declared to be the law of this State, pursuant to
16 paragraphs (h) and (i) of Section 6 of Article VII of the
17 Illinois Constitution, that the establishment of minimum
18 standards and procedures for the granting of additional cable
19 television franchises by municipalities with a population less
20 than 1,000,000 as provided in this subsection (e) is an
21 exclusive State power and function that may not be exercised
22 concurrently by a home rule unit.

23 (f) No municipality may acquire, construct, own, or operate
24 a community antenna television system unless the corporate
25 authorities adopt an ordinance. The ordinance must set forth
26 the action proposed; describe the plant, equipment, and
27 property to be acquired or constructed; and specifically
28 describe the manner in which the construction, acquisition, and
29 operation of the system will be financed.

30 The ordinance may not take effect until the question of
31 acquiring, construction, owning, or operating a community
32 antenna television system has been submitted to the electors of
33 the municipality at a regular election and approved by a
34 majority of the electors voting on the question. The corporate
35 authorities must certify the question to the proper election
36 authority, which must submit the question at an election in

1 accordance with the Election Code.

2 The question must be submitted in substantially the
3 following form:

4 Shall the ordinance authorizing the municipality to
5 (insert action authorized by ordinance) take effect?

6 The votes must be recorded as "Yes" or "No".

7 If a majority of electors voting on the question vote in
8 the affirmative, the ordinance shall take effect.

9 Not more than 30 or less than 15 days before the date of
10 the referendum, the municipal clerk must publish the ordinance
11 at least once in one or more newspapers published in the
12 municipality or, if no newspaper is published in the
13 municipality, in one or more newspapers of general circulation
14 within the municipality.

15 (Source: P.A. 90-285, eff. 7-31-97; 91-648, eff. 1-1-00.)