

SB0561



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB0561

Introduced 2/17/2005, by Sen. James A. DeLeo

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-1095

from Ch. 34, par. 5-1095

Amends the Counties Code. Makes a technical change in a Section concerning cable television.

LRB094 04222 BDD 34246 b

A BILL FOR

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 Counties Code is amended by changing Section
5 5-1095 as follows:

6 (55 ILCS 5/5-1095) (from Ch. 34, par. 5-1095)

7 Sec. 5-1095. Community antenna television systems;
8 satellite transmitted television programming.

9 (a) The ~~The~~ County Board may license, tax or franchise the
10 business of operating a community antenna television system or
11 systems within the County and outside of a municipality, as
12 defined in Section 1-1-2 of the Illinois Municipal Code.

13 When an area is annexed to a municipality, the annexing
14 municipality shall thereby become the franchising authority
15 with respect to that portion of any community antenna
16 television system that, immediately before annexation, had
17 provided cable television services within the annexed area
18 under a franchise granted by the county, and the owner of that
19 community antenna television system shall thereby be
20 authorized to provide cable television services within the
21 annexed area under the terms and provisions of the existing
22 franchise. In that instance, the franchise shall remain in
23 effect until, by its terms, it expires, except that any
24 franchise fees payable under the franchise shall be payable
25 only to the county for a period of 5 years or until, by its
26 terms, the franchise expires, whichever occurs first. After the
27 5 year period, any franchise fees payable under the franchise
28 shall be paid to the annexing municipality. In any instance in
29 which a duly franchised community antenna television system is
30 providing cable television services within the annexing
31 municipality at the time of annexation, the annexing
32 municipality may permit that franchisee to extend its community

1 antenna television system to the annexed area under terms and
2 conditions that are no more burdensome nor less favorable to
3 that franchisee than those imposed under any community antenna
4 television franchise applicable to the annexed area at the time
5 of annexation. The authorization to extend cable television
6 service to the annexed area and any community antenna
7 television system authorized to provide cable television
8 services within the annexed area at the time of annexation
9 shall not be subject to the provisions of subsection (e) of
10 this Section.

11 (b) "Community antenna television system" as used in this
12 Section, means any facility which is constructed in whole or in
13 part in, on, under or over any highway or other public place
14 and which is operated to perform for hire the service of
15 receiving and amplifying the signals broadcast by one or more
16 television stations and redistributing such signals by wire,
17 cable or other means to members of the public who subscribe to
18 such service except that such term does not include (i) any
19 system which serves fewer than 50 subscribers or (ii) any
20 system which serves only the residents of one or more apartment
21 dwellings under common ownership, control or management, and
22 commercial establishments located on the premises of such
23 dwellings.

24 (c) The authority hereby granted does not include the
25 authority to license or franchise telephone companies subject
26 to the jurisdiction of the Illinois Commerce Commission or the
27 Federal Communications Commission in connection with
28 furnishing circuits, wires, cables or other facilities to the
29 operator of a community antenna television system.

30 The County Board may, in the course of franchising such
31 community antenna television system, grant to such franchisee
32 the authority and the right and permission to use all public
33 streets, rights of way, alleys, ways for public service
34 facilities, parks, playgrounds, school grounds, or other
35 public grounds, in which such county may have an interest, for
36 the construction, installation, operation, maintenance,

1 alteration, addition, extension or improvement of a community
2 antenna television system.

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

17 The County Board may, upon written request by the
18 franchisee of a community antenna television system, exercise
19 its right of eminent domain solely for the purpose of granting
20 an easement right no greater than 8 feet in width, extending no
21 greater than 8 feet from any lot line for the purpose of
22 extending cable across any parcel of property in the manner
23 provided for by the law of eminent domain, provided, however,
24 such franchisee deposits with the county sufficient security to
25 pay all costs incurred by the county in the exercise of its
26 right of eminent domain.

27 Except as specifically provided otherwise in this Section,
28 this Section is not a limitation on any home rule county.

29 (d) The General Assembly finds and declares that
30 satellite-transmitted television programming should be
31 available to those who desire to subscribe to such programming
32 and that decoding devices should be obtainable at reasonable
33 prices by those who are unable to obtain satellite-transmitted
34 television programming through duly franchised community
35 antenna television systems.

36 In any instance in which a person is unable to obtain

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

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

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

27 (i) "Existing cable television franchise" means a
28 community antenna television franchise granted by a county
29 which is in use at the time such county receives an
30 application or request by another cable operator for a
31 franchise to provide cable antenna television services
32 within all or any portion of the territorial area which is
33 or may be served under the existing cable television
34 franchise.

35 (ii) "Additional cable television franchise" means a
36 franchise pursuant to which community antenna television

1 services may be provided within the territorial areas, or
2 any portion thereof, which may be served under an existing
3 cable television franchise.

4 (iii) "Franchising Authority" is defined as that term
5 is defined under Section 602(9) of the Cable Communications
6 Policy Act of 1984, Public Law 98-549.

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

10 Before granting an additional cable television franchise,
11 the franchising authority shall:

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

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

33 (3) Determine, based upon the foregoing factors,
34 whether it is in the best interest of the county to grant
35 such additional cable television franchise.

36 (4) If the franchising authority shall determine that

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

16 (5) Unless the existing cable television franchise
17 provides that any additional cable television franchise
18 shall be subject to the same terms or substantially
19 equivalent terms and conditions as those of the existing
20 cable television franchise, the franchising authority may
21 grant an additional cable television franchise under
22 different terms and conditions than those of the existing
23 franchise, in which event the franchising authority shall
24 enter into good faith negotiations with the existing
25 franchisee and shall, within 120 days after the effective
26 date of the additional cable television franchise, modify
27 the existing cable television franchise in a manner and to
28 the extent necessary to ensure that neither the existing
29 cable television franchise nor the additional cable
30 television franchise, each considered in its entirety,
31 provides a competitive advantage over the other, provided
32 that prior to modifying the existing cable television
33 franchise, the franchising authority shall have conducted
34 a public hearing to consider the proposed modification. No
35 modification in the terms and conditions of the existing
36 cable television franchise shall oblige the existing cable

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

17 If within the 120 day period the franchising authority
18 and the existing cable television franchisee are unable to
19 reach agreement on modifications to the existing cable
20 television franchise, then the franchising authority shall
21 modify the existing cable television franchise, effective
22 45 days thereafter, in a manner, and only to the extent,
23 that the terms and conditions of the existing cable
24 television franchise shall no longer impose any duty or
25 obligation on the existing franchisee which is not also
26 imposed under the additional cable television franchise;
27 however, if by the modification the existing cable
28 television franchisee is relieved of duties or obligations
29 not imposed under the additional cable television
30 franchise, then within the same 45 days and following a
31 public hearing concerning modification of the additional
32 cable television franchise within that 45 day period, the
33 franchising authority shall modify the additional cable
34 television franchise to the extent necessary to insure that
35 neither the existing cable television franchise nor the
36 additional cable television franchise, each considered in

1 its entirety, shall have a competitive advantage over the
2 other.

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

10 It is declared to be the law of this State, pursuant to
11 paragraphs (h) and (i) of Section 6 of Article VII of the
12 Illinois Constitution, that the establishment of minimum
13 standards and procedures for the granting of additional cable
14 television franchises as provided in this subsection (e) is an
15 exclusive State power and function that may not be exercised
16 concurrently by a home rule unit.

17 (Source: P.A. 90-14, eff. 7-1-97; 90-285, eff. 7-31-97.)