

AN ACT concerning local government.

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

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

(55 ILCS 5/5-1095.1)

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

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

operator, and the amount due to the county or CATV operator is limited to the net difference.

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

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

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

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

(1) 60 days after the receipt of the request if the

population of the requesting county is 500,000 or less; or

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

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

(c-5) The county or its agent must provide an initial report of its audit findings to the CATV operator no later than 90 days after the information set forth in subsection (b) of this Section has been provided by the CATV operator. This 90-day timeline may be extended one time by written agreement between the county or its agent and the CATV operator. However, in no event shall an extension of time exceed 90 days. This initial report of audit findings shall detail the basis of its findings and provide, but not be limited to, the following information: (i) any overpayments of franchise fees or service provider fees, (ii) any underpayments of franchise fees or service provider fees, (iii) the complete list of all addresses within the corporate limits of the county for which the audit is being conducted, (iv) all county addresses that should be included in the CATV operator's database and attributable to that county for determination of franchise fees or service provider fees, and (v) ~~(iv)~~ addresses that should not be included in the CATV operator's database and addresses that are not attributable to that county for determination of franchise

fees or service provider fees. Generally accepted auditing standards shall be utilized by the county and its agents in its review of information provided by the CATV operator.

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

(d) If an audit by the county or its agents finds an error by the CATV operator in the amount of the franchise fees or service provider fees paid by the CATV operator to the county, then the county shall notify the CATV operator of the error. Any such notice must be given to the CATV operator by the county or its agent within 90 days after the county or its agent discovers the error, and no later than 4 years after the date the franchise fee or service provider fee was due. Upon such a notice, the CATV operator must submit a written response within 60 days after receipt of the notice stating that the CATV operator has corrected the error on a prospective basis or stating the reason that the error is inapplicable or

inaccurate. The county or its agent then has 60 days after the receipt of the CATV operator's response to review and contest the conclusion of the CATV operator. No legal proceeding to collect a deficiency or overpayment based upon an alleged error shall be commenced unless within 180 days after the county's notification of the error to the CATV operator the parties are unable to agree on the disposition of the audit findings.

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

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

(f) All account specific information provided by a CATV operator under this Section may be used only for the purpose of an audit conducted under this Section and the enforcement of any franchise fee or service provider fee delinquent claim. All such information must be held in strict confidence by the

county and its agents and may not be disclosed to the public under the Freedom of Information Act or under any other similar statutes allowing for or requiring public disclosure.

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

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

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

(h-5) The audit procedures set forth in this Section shall be the exclusive audit procedures for: (i) any franchise agreement entered into, amended, or renewed on or after the effective date of this amendatory Act of the 100th General

Assembly; and (ii) any franchise fee or service provider fee audit of a CATV operator commenced on or after the effective date of this amendatory Act of the 100th General Assembly.

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

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

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

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

address or addresses to a county.

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

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

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

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

(65 ILCS 5/11-42-11.05)

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

(a) If pursuant to its franchise agreement with a community antenna television system (CATV) operator, a municipality imposes a franchise fee authorized by 47 U.S.C. 542 or if a community antenna television system (CATV) operator providing

cable or video service in that municipality is required to pay the service provider fees imposed by the Cable and Video Competition Law of 2007, then the municipality may conduct an audit of that CATV operator's franchise fees or service provider fees derived from the provision of cable and video services to subscribers within the franchise area to determine whether the amount of franchise fees or service provider fees paid by that CATV operator to the municipality was accurate. Any audit conducted under this subsection (a) shall determine, for a period of not more than 4 years after the date the franchise fees or service provider fees were due, any overpayment or underpayment to the municipality by the CATV operator, and the amount due to the municipality or CATV operator is limited to the net difference.

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

- (1) in an electronic format used by the CATV operator in the ordinary course of its business, the database used

by the CATV operator to determine the amount of the franchise fee or service provider fee due to the municipality; and

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

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

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

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

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

(c-5) The municipality or its agent must provide an initial report of its audit findings to the CATV operator no later than 90 days after the information set forth in subsection (b) of this Section has been provided by the CATV operator. This 90-day timeline may be extended one time by written agreement between the municipality or its agents and the CATV operator.

However, in no event shall an extension of time exceed 90 days. This initial report of audit findings shall detail the basis of its findings and provide, but not be limited to, the following information: (i) any overpayments of franchise fees or service provider fees, (ii) any underpayments of franchise fees or service provider fees, (iii) the complete list of all addresses within the corporate limits of the municipality for which the audit is being conducted, (iv) all municipal addresses that should be included in the CATV operator's database and attributable to that municipality for determination of franchise fees or service provider fees, and (v) ~~(iv)~~ addresses that should not be included in the CATV operator's database and addresses that are not attributable to that municipality for determination of franchise fees or service provider fees. Generally accepted auditing standards shall be utilized by the municipality and its agents in its review of information provided by the CATV operator.

(c-10) In the event that the municipality or its agent does not provide the initial report of the audit findings to the CATV operator with the timeframes set forth in subsection (c-5) of this Section, then the audit shall be deemed completed and to have conclusively found that there was no overpayment or underpayment by the CATV operator for the audit period. Further, the municipality may not thereafter commence or conduct any such audit for the same audit period or for any part of that same audit period ~~during the 24 months prior to~~

~~the municipality or its agents requesting the information set forth in subsection (b) of this Section.~~

(d) If an audit by the municipality or its agents finds an error by the CATV operator in the amount of the franchise fees or service provider fees paid by the CATV operator to the municipality, then the municipality shall notify the CATV operator of the error. Any such notice must be given to the CATV operator by the municipality or its agent within 90 days after the municipality or its agent discovers the error, and no later than 4 years after the date the franchise fee or service provider fee was due. Upon such a notice, the CATV operator must submit a written response within 60 days after receipt of the notice stating that the CATV operator has corrected the error on a prospective basis or stating the reason that the error is inapplicable or inaccurate. The municipality or its agent then has 60 days after the receipt of the CATV operator's response to review and contest the conclusion of the CATV operator. No legal proceeding to collect a deficiency or overpayment based upon an alleged error shall be commenced unless within 180 days after the municipality's notification of the error to the CATV operator the parties are unable to agree on the disposition of the audit findings.

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

(e) No CATV operator is liable for any error in past

franchise fee or service provider fee payments that was unknown by the CATV operator prior to the audit process unless (i) the error was due to negligence on the part of the CATV operator in the collection or processing of required data and (ii) the municipality had not failed to respond in writing in a timely manner to any written request of the CATV operator to review and correct information used by the CATV operator to calculate the appropriate franchise fees or service provider fees if a diligent review of such information by the municipality reasonably could have been expected to discover such error.

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

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

(g) For the purposes of this Section, "CATV operator" means a person or entity that provides cable and video services under a franchise agreement with a municipality pursuant to Section

11-42-11 of the Municipal Code and a holder authorized under Section 21-401 of the Cable and Video Competition Law of 2007 as consistent with Section 21-901 of that Law.

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

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

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

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

(k) A ~~Within 90 days after the effective date of this amendatory Act of the 96th General Assembly, a municipality~~

shall provide to each ~~any~~ CATV operator an updated ~~a~~ complete list of addresses within the corporate limits of the municipality ~~and shall annually update the list.~~ In addition, the municipality shall provide a CATV operator the updated address list within 90 days after the date of a written request by the CATV operator.

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

An address list provided by a municipality to a CATV operator shall be maintained as confidential by the CATV operator and shall only be used by the CATV operator for the purposes of determining the situs of any franchise fee or service provider fee. Any situs issues identified by a CATV provider as a result of the provision of an address list by a municipality to the CATV operator shall first be confirmed in writing to the municipality by the CATV operator prior to the

CATV operator making any situs change that may result in a change of allocation of a franchise fee or service provider fee to the municipality.

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

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

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

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