

# HB2766



## 100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB2766

by Rep. Brandon W. Phelps

### SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-1006.7

Amends the Counties Code. Provides that 1% of the school facility occupation taxes collected shall be distributed to the regional superintendent of schools (currently, these moneys are deposited into the Tax Compliance and Administration Fund) to cover the costs in administering and enforcing the provisions of the school facility occupation taxes Section of the Code.

LRB100 10944 AWJ 21181 b

FISCAL NOTE ACT  
MAY APPLY

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 5-1006.7 as follows:

6 (55 ILCS 5/5-1006.7)

7 Sec. 5-1006.7. School facility occupation taxes.

8 (a) In any county, a tax shall be imposed upon all persons  
9 engaged in the business of selling tangible personal property,  
10 other than personal property titled or registered with an  
11 agency of this State's government, at retail in the county on  
12 the gross receipts from the sales made in the course of  
13 business to provide revenue to be used exclusively for school  
14 facility purposes if a proposition for the tax has been  
15 submitted to the electors of that county and approved by a  
16 majority of those voting on the question as provided in  
17 subsection (c). The tax under this Section shall be imposed  
18 only in one-quarter percent increments and may not exceed 1%.

19 This additional tax may not be imposed on the sale of food  
20 for human consumption that is to be consumed off the premises  
21 where it is sold (other than alcoholic beverages, soft drinks,  
22 and food that has been prepared for immediate consumption) and  
23 prescription and non-prescription medicines, drugs, medical

1 appliances and insulin, urine testing materials, syringes and  
2 needles used by diabetics. The Department of Revenue has full  
3 power to administer and enforce this subsection, to collect all  
4 taxes and penalties due under this subsection, to dispose of  
5 taxes and penalties so collected in the manner provided in this  
6 subsection, and to determine all rights to credit memoranda  
7 arising on account of the erroneous payment of a tax or penalty  
8 under this subsection. The Department shall deposit all taxes  
9 and penalties collected under this subsection into a special  
10 fund created for that purpose.

11 In the administration of and compliance with this  
12 subsection, the Department and persons who are subject to this  
13 subsection (i) have the same rights, remedies, privileges,  
14 immunities, powers, and duties, (ii) are subject to the same  
15 conditions, restrictions, limitations, penalties, and  
16 definitions of terms, and (iii) shall employ the same modes of  
17 procedure as are set forth in Sections 1 through 10, 2 through  
18 2-70 (in respect to all provisions contained in those Sections  
19 other than the State rate of tax), 2a through 2h, 3 (except as  
20 to the disposition of taxes and penalties collected), 4, 5, 5a,  
21 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k, 5l, 6, 6a, 6b, 6c, 6d,  
22 7, 8, 9, 10, 11, 11a, 12, and 13 of the Retailers' Occupation  
23 Tax Act and all provisions of the Uniform Penalty and Interest  
24 Act as if those provisions were set forth in this subsection.

25 The certificate of registration that is issued by the  
26 Department to a retailer under the Retailers' Occupation Tax

1 Act permits the retailer to engage in a business that is  
2 taxable without registering separately with the Department  
3 under an ordinance or resolution under this subsection.

4 Persons subject to any tax imposed under the authority  
5 granted in this subsection may reimburse themselves for their  
6 seller's tax liability by separately stating that tax as an  
7 additional charge, which may be stated in combination, in a  
8 single amount, with State tax that sellers are required to  
9 collect under the Use Tax Act, pursuant to any bracketed  
10 schedules set forth by the Department.

11 (b) If a tax has been imposed under subsection (a), then a  
12 service occupation tax must also be imposed at the same rate  
13 upon all persons engaged, in the county, in the business of  
14 making sales of service, who, as an incident to making those  
15 sales of service, transfer tangible personal property within  
16 the county as an incident to a sale of service.

17 This tax may not be imposed on sales of food for human  
18 consumption that is to be consumed off the premises where it is  
19 sold (other than alcoholic beverages, soft drinks, and food  
20 prepared for immediate consumption) and prescription and  
21 non-prescription medicines, drugs, medical appliances and  
22 insulin, urine testing materials, syringes, and needles used by  
23 diabetics.

24 The tax imposed under this subsection and all civil  
25 penalties that may be assessed as an incident thereof shall be  
26 collected and enforced by the Department and deposited into a

1 special fund created for that purpose. The Department has full  
2 power to administer and enforce this subsection, to collect all  
3 taxes and penalties due under this subsection, to dispose of  
4 taxes and penalties so collected in the manner provided in this  
5 subsection, and to determine all rights to credit memoranda  
6 arising on account of the erroneous payment of a tax or penalty  
7 under this subsection.

8 In the administration of and compliance with this  
9 subsection, the Department and persons who are subject to this  
10 subsection shall (i) have the same rights, remedies,  
11 privileges, immunities, powers and duties, (ii) be subject to  
12 the same conditions, restrictions, limitations, penalties and  
13 definition of terms, and (iii) employ the same modes of  
14 procedure as are set forth in Sections 2 (except that that  
15 reference to State in the definition of supplier maintaining a  
16 place of business in this State means the county), 2a through  
17 2d, 3 through 3-50 (in respect to all provisions contained in  
18 those Sections other than the State rate of tax), 4 (except  
19 that the reference to the State shall be to the county), 5, 7,  
20 8 (except that the jurisdiction to which the tax is a debt to  
21 the extent indicated in that Section 8 is the county), 9  
22 (except as to the disposition of taxes and penalties  
23 collected), 10, 11, 12 (except the reference therein to Section  
24 2b of the Retailers' Occupation Tax Act), 13 (except that any  
25 reference to the State means the county), Section 15, 16, 17,  
26 18, 19, and 20 of the Service Occupation Tax Act and all

1 provisions of the Uniform Penalty and Interest Act, as fully as  
2 if those provisions were set forth herein.

3 Persons subject to any tax imposed under the authority  
4 granted in this subsection may reimburse themselves for their  
5 serviceman's tax liability by separately stating the tax as an  
6 additional charge, which may be stated in combination, in a  
7 single amount, with State tax that servicemen are authorized to  
8 collect under the Service Use Tax Act, pursuant to any  
9 bracketed schedules set forth by the Department.

10 (c) The tax under this Section may not be imposed until the  
11 question of imposing the tax has been submitted to the electors  
12 of the county at a regular election and approved by a majority  
13 of the electors voting on the question. For all regular  
14 elections held prior to August 23, 2011 (the effective date of  
15 Public Act 97-542), upon a resolution by the county board or a  
16 resolution by school district boards that represent at least  
17 51% of the student enrollment within the county, the county  
18 board must certify the question to the proper election  
19 authority in accordance with the Election Code.

20 For all regular elections held prior to August 23, 2011  
21 (the effective date of Public Act 97-542), the election  
22 authority must submit the question in substantially the  
23 following form:

24 Shall (name of county) be authorized to impose a  
25 retailers' occupation tax and a service occupation tax  
26 (commonly referred to as a "sales tax") at a rate of

1 (insert rate) to be used exclusively for school facility  
2 purposes?

3 The election authority must record the votes as "Yes" or "No".

4 If a majority of the electors voting on the question vote  
5 in the affirmative, then the county may, thereafter, impose the  
6 tax.

7 For all regular elections held on or after August 23, 2011  
8 (the effective date of Public Act 97-542), the regional  
9 superintendent of schools for the county must, upon receipt of  
10 a resolution or resolutions of school district boards that  
11 represent more than 50% of the student enrollment within the  
12 county, certify the question to the proper election authority  
13 for submission to the electors of the county at the next  
14 regular election at which the question lawfully may be  
15 submitted to the electors, all in accordance with the Election  
16 Code.

17 For all regular elections held on or after August 23, 2011  
18 (the effective date of Public Act 97-542), the election  
19 authority must submit the question in substantially the  
20 following form:

21 Shall a retailers' occupation tax and a service  
22 occupation tax (commonly referred to as a "sales tax") be  
23 imposed in (name of county) at a rate of (insert rate) to  
24 be used exclusively for school facility purposes?

25 The election authority must record the votes as "Yes" or "No".

26 If a majority of the electors voting on the question vote

1 in the affirmative, then the tax shall be imposed at the rate  
2 set forth in the question.

3 For the purposes of this subsection (c), "enrollment" means  
4 the head count of the students residing in the county on the  
5 last school day of September of each year, which must be  
6 reported on the Illinois State Board of Education Public School  
7 Fall Enrollment/Housing Report.

8 (d) The Department shall immediately pay over to the State  
9 Treasurer, ex officio, as trustee, all taxes and penalties  
10 collected under this Section to be deposited into the School  
11 Facility Occupation Tax Fund, which shall be an unappropriated  
12 trust fund held outside the State treasury.

13 On or before the 25th day of each calendar month, the  
14 Department shall prepare and certify to the Comptroller the  
15 disbursement of stated sums of money to the regional  
16 superintendents of schools in counties from which retailers or  
17 servicemen have paid taxes or penalties to the Department  
18 during the second preceding calendar month. The amount to be  
19 paid to each regional superintendent of schools and disbursed  
20 to him or her in accordance with Section 3-14.31 of the School  
21 Code, is equal to the amount (not including credit memoranda)  
22 collected from the county under this Section during the second  
23 preceding calendar month by the Department, (i) less 2% of that  
24 amount, of which 1% shall be deposited into the Tax Compliance  
25 and Administration Fund and shall be used by the Department,  
26 subject to appropriation, to cover the costs of the Department



1 in administering and enforcing the provisions of this Section,  
2 on behalf of the county, and 1% shall be distributed to the  
3 regional superintendent of schools to cover the costs in  
4 administering and enforcing the provisions of this Section,

5 (ii) plus an amount that the Department determines is necessary  
6 to offset any amounts that were erroneously paid to a different  
7 taxing body; (iii) less an amount equal to the amount of  
8 refunds made during the second preceding calendar month by the  
9 Department on behalf of the county; and (iv) less any amount  
10 that the Department determines is necessary to offset any  
11 amounts that were payable to a different taxing body but were  
12 erroneously paid to the county. When certifying the amount of a  
13 monthly disbursement to a regional superintendent of schools  
14 under this Section, the Department shall increase or decrease  
15 the amounts by an amount necessary to offset any miscalculation  
16 of previous disbursements within the previous 6 months from the  
17 time a miscalculation is discovered.

18 Within 10 days after receipt by the Comptroller from the  
19 Department of the disbursement certification to the regional  
20 superintendents of the schools provided for in this Section,  
21 the Comptroller shall cause the orders to be drawn for the  
22 respective amounts in accordance with directions contained in  
23 the certification.

24 If the Department determines that a refund should be made  
25 under this Section to a claimant instead of issuing a credit  
26 memorandum, then the Department shall notify the Comptroller,

1 who shall cause the order to be drawn for the amount specified  
2 and to the person named in the notification from the  
3 Department. The refund shall be paid by the Treasurer out of  
4 the School Facility Occupation Tax Fund.

5 (e) For the purposes of determining the local governmental  
6 unit whose tax is applicable, a retail sale by a producer of  
7 coal or another mineral mined in Illinois is a sale at retail  
8 at the place where the coal or other mineral mined in Illinois  
9 is extracted from the earth. This subsection does not apply to  
10 coal or another mineral when it is delivered or shipped by the  
11 seller to the purchaser at a point outside Illinois so that the  
12 sale is exempt under the United States Constitution as a sale  
13 in interstate or foreign commerce.

14 (f) Nothing in this Section may be construed to authorize a  
15 tax to be imposed upon the privilege of engaging in any  
16 business that under the Constitution of the United States may  
17 not be made the subject of taxation by this State.

18 (g) If a county board imposes a tax under this Section  
19 pursuant to a referendum held before August 23, 2011 (the  
20 effective date of Public Act 97-542) at a rate below the rate  
21 set forth in the question approved by a majority of electors of  
22 that county voting on the question as provided in subsection  
23 (c), then the county board may, by ordinance, increase the rate  
24 of the tax up to the rate set forth in the question approved by  
25 a majority of electors of that county voting on the question as  
26 provided in subsection (c). If a county board imposes a tax

1 under this Section pursuant to a referendum held before August  
2 23, 2011 (the effective date of Public Act 97-542), then the  
3 board may, by ordinance, discontinue or reduce the rate of the  
4 tax. If a tax is imposed under this Section pursuant to a  
5 referendum held on or after August 23, 2011 (the effective date  
6 of Public Act 97-542), then the county board may reduce or  
7 discontinue the tax, but only in accordance with subsection  
8 (h-5) of this Section. If, however, a school board issues bonds  
9 that are secured by the proceeds of the tax under this Section,  
10 then the county board may not reduce the tax rate or  
11 discontinue the tax if that rate reduction or discontinuance  
12 would adversely affect the school board's ability to pay the  
13 principal and interest on those bonds as they become due or  
14 necessitate the extension of additional property taxes to pay  
15 the principal and interest on those bonds. If the county board  
16 reduces the tax rate or discontinues the tax, then a referendum  
17 must be held in accordance with subsection (c) of this Section  
18 in order to increase the rate of the tax or to reimpose the  
19 discontinued tax.

20 Until January 1, 2014, the results of any election that  
21 imposes, reduces, or discontinues a tax under this Section must  
22 be certified by the election authority, and any ordinance that  
23 increases or lowers the rate or discontinues the tax must be  
24 certified by the county clerk and, in each case, filed with the  
25 Illinois Department of Revenue either (i) on or before the  
26 first day of April, whereupon the Department shall proceed to

1 administer and enforce the tax or change in the rate as of the  
2 first day of July next following the filing; or (ii) on or  
3 before the first day of October, whereupon the Department shall  
4 proceed to administer and enforce the tax or change in the rate  
5 as of the first day of January next following the filing.

6 Beginning January 1, 2014, the results of any election that  
7 imposes, reduces, or discontinues a tax under this Section must  
8 be certified by the election authority, and any ordinance that  
9 increases or lowers the rate or discontinues the tax must be  
10 certified by the county clerk and, in each case, filed with the  
11 Illinois Department of Revenue either (i) on or before the  
12 first day of May, whereupon the Department shall proceed to  
13 administer and enforce the tax or change in the rate as of the  
14 first day of July next following the filing; or (ii) on or  
15 before the first day of October, whereupon the Department shall  
16 proceed to administer and enforce the tax or change in the rate  
17 as of the first day of January next following the filing.

18 (h) For purposes of this Section, "school facility  
19 purposes" means (i) the acquisition, development,  
20 construction, reconstruction, rehabilitation, improvement,  
21 financing, architectural planning, and installation of capital  
22 facilities consisting of buildings, structures, and durable  
23 equipment and for the acquisition and improvement of real  
24 property and interest in real property required, or expected to  
25 be required, in connection with the capital facilities and (ii)  
26 the payment of bonds or other obligations heretofore or

1 hereafter issued, including bonds or other obligations  
2 heretofore or hereafter issued to refund or to continue to  
3 refund bonds or other obligations issued, for school facility  
4 purposes, provided that the taxes levied to pay those bonds are  
5 abated by the amount of the taxes imposed under this Section  
6 that are used to pay those bonds. "School-facility purposes"  
7 also includes fire prevention, safety, energy conservation,  
8 accessibility, school security, and specified repair purposes  
9 set forth under Section 17-2.11 of the School Code.

10 (h-5) A county board in a county where a tax has been  
11 imposed under this Section pursuant to a referendum held on or  
12 after August 23, 2011 (the effective date of Public Act 97-542)  
13 may, by ordinance or resolution, submit to the voters of the  
14 county the question of reducing or discontinuing the tax. In  
15 the ordinance or resolution, the county board shall certify the  
16 question to the proper election authority in accordance with  
17 the Election Code. The election authority must submit the  
18 question in substantially the following form:

19 Shall the school facility retailers' occupation tax  
20 and service occupation tax (commonly referred to as the  
21 "school facility sales tax") currently imposed in (name of  
22 county) at a rate of (insert rate) be (reduced to (insert  
23 rate)) (discontinued)?

24 If a majority of the electors voting on the question vote in  
25 the affirmative, then, subject to the provisions of subsection  
26 (g) of this Section, the tax shall be reduced or discontinued

1 as set forth in the question.

2 (i) This Section does not apply to Cook County.

3 (j) This Section may be cited as the County School Facility  
4 Occupation Tax Law.

5 (Source: P.A. 98-584, eff. 8-27-13; 99-143, eff. 7-27-15;  
6 99-217, eff. 7-31-15; 99-642, eff. 7-28-16.)