

HB4326



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB4326

Introduced 1/5/2022, by Rep. Thomas M. Bennett

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. Effective July 1, 2022.

LRB102 21969 AWJ 31096 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
5 Section 5-1006.7 as follows:

6 (55 ILCS 5/5-1006.7)

7 Sec. 5-1006.7. School facility and resources occupation
8 taxes.

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

1 This additional tax may not be imposed on tangible
2 personal property taxed at the 1% rate under the Retailers'
3 Occupation Tax Act. Beginning December 1, 2019 and through
4 December 31, 2020, this tax is not imposed on sales of aviation
5 fuel unless the tax revenue is expended for airport-related
6 purposes. If the county does not have an airport-related
7 purpose to which it dedicates aviation fuel tax revenue, then
8 aviation fuel is excluded from the tax. The county must comply
9 with the certification requirements for airport-related
10 purposes under Section 2-22 of the Retailers' Occupation Tax
11 Act. For purposes of this Section, "airport-related purposes"
12 has the meaning ascribed in Section 6z-20.2 of the State
13 Finance Act. Beginning January 1, 2021, this tax is not
14 imposed on sales of aviation fuel for so long as the revenue
15 use requirements of 49 U.S.C. 47107(b) and 49 U.S.C. 47133 are
16 binding on the county. The Department of Revenue has full
17 power to administer and enforce this subsection, to collect
18 all taxes and penalties due under this subsection, to dispose
19 of taxes and penalties so collected in the manner provided in
20 this subsection, and to determine all rights to credit
21 memoranda arising on account of the erroneous payment of a tax
22 or penalty under this subsection. The Department shall deposit
23 all taxes and penalties collected under this subsection into a
24 special fund created for that purpose.

25 In the administration of and compliance with this
26 subsection, the Department and persons who are subject to this

1 subsection (i) have the same rights, remedies, privileges,
2 immunities, powers, and duties, (ii) are subject to the same
3 conditions, restrictions, limitations, penalties, and
4 definitions of terms, and (iii) shall employ the same modes of
5 procedure as are set forth in Sections 1 through 1o, 2 through
6 2-70 (in respect to all provisions contained in those Sections
7 other than the State rate of tax), 2a through 2h, 3 (except as
8 to the disposition of taxes and penalties collected, and
9 except that the retailer's discount is not allowed for taxes
10 paid on aviation fuel that are subject to the revenue use
11 requirements of 49 U.S.C. 47107(b) and 49 U.S.C. 47133), 4, 5,
12 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k, 5l, 6, 6a, 6b, 6c,
13 6d, 7, 8, 9, 10, 11, 11a, 12, and 13 of the Retailers'
14 Occupation Tax Act and all provisions of the Uniform Penalty
15 and Interest Act as if those provisions were set forth in this
16 subsection.

17 The certificate of registration that is issued by the
18 Department to a retailer under the Retailers' Occupation Tax
19 Act permits the retailer to engage in a business that is
20 taxable without registering separately with the Department
21 under an ordinance or resolution under this subsection.

22 Persons subject to any tax imposed under the authority
23 granted in this subsection may reimburse themselves for their
24 seller's tax liability by separately stating that tax as an
25 additional charge, which may be stated in combination, in a
26 single amount, with State tax that sellers are required to

1 collect under the Use Tax Act, pursuant to any bracketed
2 schedules set forth by the Department.

3 (b) If a tax has been imposed under subsection (a), then a
4 service occupation tax must also be imposed at the same rate
5 upon all persons engaged, in the county, in the business of
6 making sales of service, who, as an incident to making those
7 sales of service, transfer tangible personal property within
8 the county as an incident to a sale of service.

9 This tax may not be imposed on tangible personal property
10 taxed at the 1% rate under the Service Occupation Tax Act.
11 Beginning December 1, 2019 and through December 31, 2020, this
12 tax is not imposed on sales of aviation fuel unless the tax
13 revenue is expended for airport-related purposes. If the
14 county does not have an airport-related purpose to which it
15 dedicates aviation fuel tax revenue, then aviation fuel is
16 excluded from the tax. The county must comply with the
17 certification requirements for airport-related purposes under
18 Section 2-22 of the Retailers' Occupation Tax Act. For
19 purposes of this Section, "airport-related purposes" has the
20 meaning ascribed in Section 6z-20.2 of the State Finance Act.
21 Beginning January 1, 2021, this tax is not imposed on sales of
22 aviation fuel for so long as the revenue use requirements of 49
23 U.S.C. 47107(b) and 49 U.S.C. 47133 are binding on the county.

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
3 all taxes and penalties due under this subsection, to dispose
4 of taxes and penalties so collected in the manner provided in
5 this subsection, and to determine all rights to credit
6 memoranda arising on account of the erroneous payment of a tax
7 or penalty 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, and except that the retailer's discount is not
24 allowed for taxes paid on aviation fuel that are subject to the
25 revenue use requirements of 49 U.S.C. 47107(b) and 49 U.S.C.
26 47133), 10, 11, 12 (except the reference therein to Section 2b

1 of the Retailers' Occupation Tax Act), 13 (except that any
2 reference to the State means the county), Section 15, 16, 17,
3 18, 19, and 20 of the Service Occupation Tax Act and all
4 provisions of the Uniform Penalty and Interest Act, as fully
5 as if those provisions were set forth herein.

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

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

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

1 Shall (name of county) be authorized to impose a
2 retailers' occupation tax and a service occupation tax
3 (commonly referred to as a "sales tax") at a rate of
4 (insert rate) to be used exclusively for school facility
5 purposes?

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

8 If a majority of the electors voting on the question vote
9 in the affirmative, then the county may, thereafter, impose
10 the tax.

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

21 For all regular elections held on or after August 23, 2011
22 (the effective date of Public Act 97-542) and before August
23 23, 2019 (the effective date of Public Act 101-455), the
24 election authority must submit the question in substantially
25 the following form:

26 Shall a retailers' occupation tax and a service

1 occupation tax (commonly referred to as a "sales tax") be
2 imposed in (name of county) at a rate of (insert rate) to
3 be used exclusively for school facility purposes?

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

6 If a majority of the electors voting on the question vote
7 in the affirmative, then the tax shall be imposed at the rate
8 set forth in the question.

9 For all regular elections held on or after August 23, 2019
10 (the effective date of Public Act 101-455), the election
11 authority must submit the question as follows:

12 (1) If the referendum is to expand the use of revenues
13 from a currently imposed tax exclusively for school
14 facility purposes to include school resource officers and
15 mental health professionals, the question shall be in
16 substantially the following form:

17 In addition to school facility purposes, shall
18 (name of county) school districts be authorized to use
19 revenues from the tax commonly referred to as the
20 school facility sales tax that is currently imposed in
21 (name of county) at a rate of (insert rate) for school
22 resource officers and mental health professionals?

23 (2) If the referendum is to increase the rate of a tax
24 currently imposed exclusively for school facility purposes
25 at less than 1% and dedicate the additional revenues for
26 school resource officers and mental health professionals,

1 the question shall be in substantially the following form:

2 Shall the tax commonly referred to as the school
3 facility sales tax that is currently imposed in (name
4 of county) at the rate of (insert rate) be increased to
5 a rate of (insert rate) with the additional revenues
6 used exclusively for school resource officers and
7 mental health professionals?

8 (3) If the referendum is to impose a tax in a county
9 that has not previously imposed a tax under this Section
10 exclusively for school facility purposes, the question
11 shall be in substantially the following form:

12 Shall a retailers' occupation tax and a service
13 occupation tax (commonly referred to as a sales tax)
14 be imposed in (name of county) at a rate of (insert
15 rate) to be used exclusively for school facility
16 purposes?

17 (4) If the referendum is to impose a tax in a county
18 that has not previously imposed a tax under this Section
19 exclusively for school resource officers and mental health
20 professionals, the question shall be in substantially the
21 following form:

22 Shall a retailers' occupation tax and a service
23 occupation tax (commonly referred to as a sales tax)
24 be imposed in (name of county) at a rate of (insert
25 rate) to be used exclusively for school resource
26 officers and mental health professionals?

1 (5) If the referendum is to impose a tax in a county
2 that has not previously imposed a tax under this Section
3 exclusively for school facility purposes, school resource
4 officers, and mental health professionals, the question
5 shall be in substantially the following form:

6 Shall a retailers' occupation tax and a service
7 occupation tax (commonly referred to as a sales tax)
8 be imposed in (name of county) at a rate of (insert
9 rate) to be used exclusively for school facility
10 purposes, school resource officers, and mental health
11 professionals?

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

14 If a majority of the electors voting on the question vote
15 in the affirmative, then the tax shall be imposed at the rate
16 set forth in the question.

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

22 (d) Except as otherwise provided, the Department shall
23 immediately pay over to the State Treasurer, ex officio, as
24 trustee, all taxes and penalties collected under this Section
25 to be deposited into the School Facility Occupation Tax Fund,
26 which shall be an unappropriated trust fund held outside the

1 State treasury. Taxes and penalties collected on aviation fuel
2 sold on or after December 1, 2019 and through December 31,
3 2020, shall be immediately paid over by the Department to the
4 State Treasurer, ex officio, as trustee, for deposit into the
5 Local Government Aviation Trust Fund. The Department shall
6 only pay moneys into the Local Government Aviation Trust Fund
7 under this Section for so long as the revenue use requirements
8 of 49 U.S.C. 47107(b) and 49 U.S.C. 47133 are binding on the
9 county.

10 On or before the 25th day of each calendar month, the
11 Department shall prepare and certify to the Comptroller the
12 disbursement of stated sums of money to the regional
13 superintendents of schools in counties from which retailers or
14 servicemen have paid taxes or penalties to the Department
15 during the second preceding calendar month. The amount to be
16 paid to each regional superintendent of schools and disbursed
17 to him or her in accordance with Section 3-14.31 of the School
18 Code, is equal to the amount (not including credit memoranda
19 and not including taxes and penalties collected on aviation
20 fuel sold on or after December 1, 2019 and through December 31,
21 2020) collected from the county under this Section during the
22 second preceding calendar month by the Department, (i) less 2%
23 of that amount (except the amount collected on aviation fuel
24 sold on or after December 1, 2019 and through December 31,
25 2020), of which 1% shall be deposited into the Tax Compliance
26 and Administration Fund and shall be used by the Department,

1 subject to appropriation, to cover the costs of the Department
2 in administering and enforcing the provisions of this Section,
3 on behalf of the county, and 1% shall be distributed to the
4 regional superintendent of schools to cover the costs in
5 administering and enforcing the provisions of this Section,
6 (ii) plus an amount that the Department determines is
7 necessary to offset any amounts that were erroneously paid to
8 a different taxing body; (iii) less an amount equal to the
9 amount of refunds made during the second preceding calendar
10 month by the Department on behalf of the county; and (iv) less
11 any amount that the Department determines is necessary to
12 offset any amounts that were payable to a different taxing
13 body but were erroneously paid to the county. When certifying
14 the amount of a monthly disbursement to a regional
15 superintendent of schools under this Section, the Department
16 shall increase or decrease the amounts by an amount necessary
17 to offset any miscalculation of previous disbursements within
18 the previous 6 months from the time a miscalculation is
19 discovered.

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

26 If the Department determines that a refund should be made

1 under this Section to a claimant instead of issuing a credit
2 memorandum, then the Department shall notify the Comptroller,
3 who shall cause the order to be drawn for the amount specified
4 and to the person named in the notification from the
5 Department. The refund shall be paid by the Treasurer out of
6 the School Facility Occupation Tax Fund or the Local
7 Government Aviation Trust Fund, as appropriate.

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

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

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

1 rate of the tax up to the rate set forth in the question
2 approved by a majority of electors of that county voting on the
3 question as provided in subsection (c). If a county board
4 imposes a tax under this Section pursuant to a referendum held
5 before August 23, 2011 (the effective date of Public Act
6 97-542), then the board may, by ordinance, discontinue or
7 reduce the rate of the tax. If a tax is imposed under this
8 Section pursuant to a referendum held on or after August 23,
9 2011 (the effective date of Public Act 97-542) and before
10 August 23, 2019 (the effective date of Public Act 101-455),
11 then the county board may reduce or discontinue the tax, but
12 only in accordance with subsection (h-5) of this Section. If a
13 tax is imposed under this Section pursuant to a referendum
14 held on or after August 23, 2019 (the effective date of Public
15 Act 101-455), then the county board may reduce or discontinue
16 the tax, but only in accordance with subsection (h-10). If,
17 however, a school board issues bonds that are secured by the
18 proceeds of the tax under this Section, then the county board
19 may not reduce the tax rate or discontinue the tax if that rate
20 reduction or discontinuance would adversely affect the school
21 board's ability to pay the principal and interest on those
22 bonds as they become due or necessitate the extension of
23 additional property taxes to pay the principal and interest on
24 those bonds. If the county board reduces the tax rate or
25 discontinues the tax, then a referendum must be held in
26 accordance with subsection (c) of this Section in order to

1 increase the rate of the tax or to reimpose the discontinued
2 tax.

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

16 Beginning January 1, 2014, the results of any election
17 that imposes, reduces, or discontinues a tax under this
18 Section must be certified by the election authority, and any
19 ordinance that increases or lowers the rate or discontinues
20 the tax must be certified by the county clerk and, in each
21 case, filed with the Illinois Department of Revenue either (i)
22 on or before the first day of May, whereupon the Department
23 shall proceed to administer and enforce the tax or change in
24 the rate as of the first day of July next following the filing;
25 or (ii) on or before the first day of October, whereupon the
26 Department shall proceed to administer and enforce the tax or

1 change in the rate as of the first day of January next
2 following the filing.

3 (h) For purposes of this Section, "school facility
4 purposes" means (i) the acquisition, development,
5 construction, reconstruction, rehabilitation, improvement,
6 financing, architectural planning, and installation of capital
7 facilities consisting of buildings, structures, and durable
8 equipment and for the acquisition and improvement of real
9 property and interest in real property required, or expected
10 to be required, in connection with the capital facilities and
11 (ii) the payment of bonds or other obligations heretofore or
12 hereafter issued, including bonds or other obligations
13 heretofore or hereafter issued to refund or to continue to
14 refund bonds or other obligations issued, for school facility
15 purposes, provided that the taxes levied to pay those bonds
16 are abated by the amount of the taxes imposed under this
17 Section that are used to pay those bonds. "School facility
18 purposes" also includes fire prevention, safety, energy
19 conservation, accessibility, school security, and specified
20 repair purposes set forth under Section 17-2.11 of the School
21 Code.

22 (h-5) A county board in a county where a tax has been
23 imposed under this Section pursuant to a referendum held on or
24 after August 23, 2011 (the effective date of Public Act
25 97-542) and before August 23, 2019 (the effective date of
26 Public Act 101-455) may, by ordinance or resolution, submit to

1 the voters of the county the question of reducing or
2 discontinuing the tax. In the ordinance or resolution, the
3 county board shall certify the question to the proper election
4 authority in accordance with the Election Code. The election
5 authority must submit the question in substantially the
6 following form:

7 Shall the school facility retailers' occupation tax
8 and service occupation tax (commonly referred to as the
9 "school facility sales tax") currently imposed in (name of
10 county) at a rate of (insert rate) be (reduced to (insert
11 rate)) (discontinued)?

12 If a majority of the electors voting on the question vote in
13 the affirmative, then, subject to the provisions of subsection
14 (g) of this Section, the tax shall be reduced or discontinued
15 as set forth in the question.

16 (h-10) A county board in a county where a tax has been
17 imposed under this Section pursuant to a referendum held on or
18 after August 23, 2019 (the effective date of Public Act
19 101-455) may, by ordinance or resolution, submit to the voters
20 of the county the question of reducing or discontinuing the
21 tax. In the ordinance or resolution, the county board shall
22 certify the question to the proper election authority in
23 accordance with the Election Code. The election authority must
24 submit the question in substantially the following form:

25 Shall the school facility and resources retailers'
26 occupation tax and service occupation tax (commonly

1 referred to as the school facility and resources sales
2 tax) currently imposed in (name of county) at a rate of
3 (insert rate) be (reduced to (insert rate))
4 (discontinued)?

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

7 If a majority of the electors voting on the question vote
8 in the affirmative, then, subject to the provisions of
9 subsection (g) of this Section, the tax shall be reduced or
10 discontinued as set forth in the question.

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

12 (j) This Section may be cited as the County School
13 Facility and Resources Occupation Tax Law.

14 (Source: P.A. 100-1171, eff. 1-4-19; 101-10, eff. 6-5-19;
15 101-455, eff. 8-23-19; 101-604, eff. 12-13-19.)

16 Section 99. Effective date. This Act takes effect July 1,
17 2022.