



**94TH GENERAL ASSEMBLY**  
**State of Illinois**  
**2005 and 2006**  
**HB2592**

Introduced 2/18/2005, by Rep. Bob Biggins

**SYNOPSIS AS INTRODUCED:**

65 ILCS 5/8-11-2

from Ch. 24, par. 8-11-2

Amends the Illinois Municipal Code. Provides that a municipality may tax a public utility on the electricity it uses for its administrative offices, technical or engineering facilities, or other locations outside the transmission and distribution system.

LRB094 09300 AJO 39539 b

FISCAL NOTE ACT  
MAY APPLY

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 8-11-2 as follows:

6 (65 ILCS 5/8-11-2) (from Ch. 24, par. 8-11-2)

7 Sec. 8-11-2. The corporate authorities of any municipality  
8 may tax any or all of the following occupations or privileges:

9 1. (Blank).

10 2. Persons engaged in the business of distributing,  
11 supplying, furnishing, or selling gas for use or  
12 consumption within the corporate limits of a municipality  
13 of 500,000 or fewer population, and not for resale, at a  
14 rate not to exceed 5% of the gross receipts therefrom.

15 2a. Persons engaged in the business of distributing,  
16 supplying, furnishing, or selling gas for use or  
17 consumption within the corporate limits of a municipality  
18 of over 500,000 population, and not for resale, at a rate  
19 not to exceed 8% of the gross receipts therefrom. If  
20 imposed, this tax shall be paid in monthly payments.

21 3. The privilege of using or consuming electricity  
22 acquired in a purchase at retail and used or consumed  
23 within the corporate limits of the municipality at rates  
24 not to exceed the following maximum rates, calculated on a  
25 monthly basis for each purchaser:

26 (i) For the first 2,000 kilowatt-hours used or consumed  
27 in a month; 0.61 cents per kilowatt-hour;

28 (ii) For the next 48,000 kilowatt-hours used or  
29 consumed in a month; 0.40 cents per kilowatt-hour;

30 (iii) For the next 50,000 kilowatt-hours used or  
31 consumed in a month; 0.36 cents per kilowatt-hour;

32 (iv) For the next 400,000 kilowatt-hours used or

1 consumed in a month; 0.35 cents per kilowatt-hour;

2 (v) For the next 500,000 kilowatt-hours used or  
3 consumed in a month; 0.34 cents per kilowatt-hour;

4 (vi) For the next 2,000,000 kilowatt-hours used or  
5 consumed in a month; 0.32 cents per kilowatt-hour;

6 (vii) For the next 2,000,000 kilowatt-hours used or  
7 consumed in a month; 0.315 cents per kilowatt-hour;

8 (viii) For the next 5,000,000 kilowatt-hours used or  
9 consumed in a month; 0.31 cents per kilowatt-hour;

10 (ix) For the next 10,000,000 kilowatt-hours used or  
11 consumed in a month; 0.305 cents per kilowatt-hour; and

12 (x) For all electricity used or consumed in excess of  
13 20,000,000 kilowatt-hours in a month, 0.30 cents per  
14 kilowatt-hour.

15 If a municipality imposes a tax at rates lower than  
16 either the maximum rates specified in this Section or the  
17 alternative maximum rates promulgated by the Illinois  
18 Commerce Commission, as provided below, the tax rates shall  
19 be imposed upon the kilowatt hour categories set forth  
20 above with the same proportional relationship as that which  
21 exists among such maximum rates. Notwithstanding the  
22 foregoing, until December 31, 2008, no municipality shall  
23 establish rates that are in excess of rates reasonably  
24 calculated to produce revenues that equal the maximum total  
25 revenues such municipality could have received under the  
26 tax authorized by this subparagraph in the last full  
27 calendar year prior to the effective date of Section 65 of  
28 this amendatory Act of 1997; provided that this shall not  
29 be a limitation on the amount of tax revenues actually  
30 collected by such municipality.

31 Upon the request of the corporate authorities of a  
32 municipality, the Illinois Commerce Commission shall,  
33 within 90 days after receipt of such request, promulgate  
34 alternative rates for each of these kilowatt-hour  
35 categories that will reflect, as closely as reasonably  
36 practical for that municipality, the distribution of the

1 tax among classes of purchasers as if the tax were based on  
2 a uniform percentage of the purchase price of electricity.  
3 A municipality that has adopted an ordinance imposing a tax  
4 pursuant to subparagraph 3 as it existed prior to the  
5 effective date of Section 65 of this amendatory Act of 1997  
6 may, rather than imposing the tax permitted by this  
7 amendatory Act of 1997, continue to impose the tax pursuant  
8 to that ordinance with respect to gross receipts received  
9 from residential customers through July 31, 1999, and with  
10 respect to gross receipts from any non-residential  
11 customer until the first bill issued to such customer for  
12 delivery services in accordance with Section 16-104 of the  
13 Public Utilities Act but in no case later than the last  
14 bill issued to such customer before December 31, 2000. No  
15 ordinance imposing the tax permitted by this amendatory Act  
16 of 1997 shall be applicable to any non-residential customer  
17 until the first bill issued to such customer for delivery  
18 services in accordance with Section 16-104 of the Public  
19 Utilities Act but in no case later than the last bill  
20 issued to such non-residential customer before December  
21 31, 2000.

22 4. Persons engaged in the business of distributing,  
23 supplying, furnishing, or selling water for use or  
24 consumption within the corporate limits of the  
25 municipality, and not for resale, at a rate not to exceed  
26 5% of the gross receipts therefrom.

27 None of the taxes authorized by this Section may be imposed  
28 with respect to any transaction in interstate commerce or  
29 otherwise to the extent to which the business or privilege may  
30 not, under the constitution and statutes of the United States,  
31 be made the subject of taxation by this State or any political  
32 sub-division thereof; nor shall any persons engaged in the  
33 business of distributing, supplying, furnishing, selling or  
34 transmitting gas, water, or electricity, or using or consuming  
35 electricity acquired in a purchase at retail, be subject to  
36 taxation under the provisions of this Section for those

1 transactions that are or may become subject to taxation under  
2 the provisions of the "Municipal Retailers' Occupation Tax Act"  
3 authorized by Section 8-11-1; nor shall any tax authorized by  
4 this Section be imposed upon any person engaged in a business  
5 or on any privilege unless the tax is imposed in like manner  
6 and at the same rate upon all persons engaged in businesses of  
7 the same class in the municipality, whether privately or  
8 municipally owned or operated, or exercising the same privilege  
9 within the municipality.

10 Any of the taxes enumerated in this Section may be in  
11 addition to the payment of money, or value of products or  
12 services furnished to the municipality by the taxpayer as  
13 compensation for the use of its streets, alleys, or other  
14 public places, or installation and maintenance therein,  
15 thereon or thereunder of poles, wires, pipes or other equipment  
16 used in the operation of the taxpayer's business.

17 (a) If the corporate authorities of any home rule  
18 municipality have adopted an ordinance that imposed a tax on  
19 public utility customers, between July 1, 1971, and October 1,  
20 1981, on the good faith belief that they were exercising  
21 authority pursuant to Section 6 of Article VII of the 1970  
22 Illinois Constitution, that action of the corporate  
23 authorities shall be declared legal and valid, notwithstanding  
24 a later decision of a judicial tribunal declaring the ordinance  
25 invalid. No municipality shall be required to rebate, refund,  
26 or issue credits for any taxes described in this paragraph, and  
27 those taxes shall be deemed to have been levied and collected  
28 in accordance with the Constitution and laws of this State.

29 (b) In any case in which (i) prior to October 19, 1979, the  
30 corporate authorities of any municipality have adopted an  
31 ordinance imposing a tax authorized by this Section (or by the  
32 predecessor provision of the "Revised Cities and Villages Act")  
33 and have explicitly or in practice interpreted gross receipts  
34 to include either charges added to customers' bills pursuant to  
35 the provision of paragraph (a) of Section 36 of the Public  
36 Utilities Act or charges added to customers' bills by taxpayers

1 who are not subject to rate regulation by the Illinois Commerce  
2 Commission for the purpose of recovering any of the tax  
3 liabilities or other amounts specified in such paragraph (a) of  
4 Section 36 of that Act, and (ii) on or after October 19, 1979,  
5 a judicial tribunal has construed gross receipts to exclude all  
6 or part of those charges, then neither those municipality nor  
7 any taxpayer who paid the tax shall be required to rebate,  
8 refund, or issue credits for any tax imposed or charge  
9 collected from customers pursuant to the municipality's  
10 interpretation prior to October 19, 1979. This paragraph  
11 reflects a legislative finding that it would be contrary to the  
12 public interest to require a municipality or its taxpayers to  
13 refund taxes or charges attributable to the municipality's more  
14 inclusive interpretation of gross receipts prior to October 19,  
15 1979, and is not intended to prescribe or limit judicial  
16 construction of this Section. The legislative finding set forth  
17 in this subsection does not apply to taxes imposed after the  
18 effective date of this amendatory Act of 1995.

19 (c) The tax authorized by subparagraph 3 shall be collected  
20 from the purchaser by the person maintaining a place of  
21 business in this State who delivers the electricity to the  
22 purchaser. This tax shall constitute a debt of the purchaser to  
23 the person who delivers the electricity to the purchaser and if  
24 unpaid, is recoverable in the same manner as the original  
25 charge for delivering the electricity. Any tax required to be  
26 collected pursuant to an ordinance authorized by subparagraph 3  
27 and any such tax collected by a person delivering electricity  
28 shall constitute a debt owed to the municipality by such person  
29 delivering the electricity, provided, that the person  
30 delivering electricity shall be allowed credit for such tax  
31 related to deliveries of electricity the charges for which are  
32 written off as uncollectible, and provided further, that if  
33 such charges are thereafter collected, the delivering supplier  
34 shall be obligated to remit such tax. For purposes of this  
35 subsection (c), any partial payment not specifically  
36 identified by the purchaser shall be deemed to be for the

1 delivery of electricity. Persons delivering electricity shall  
2 collect the tax from the purchaser by adding such tax to the  
3 gross charge for delivering the electricity, in the manner  
4 prescribed by the municipality. Persons delivering electricity  
5 shall also be authorized to add to such gross charge an amount  
6 equal to 3% of the tax to reimburse the person delivering  
7 electricity for the expenses incurred in keeping records,  
8 billing customers, preparing and filing returns, remitting the  
9 tax and supplying data to the municipality upon request. If the  
10 person delivering electricity fails to collect the tax from the  
11 purchaser, then the purchaser shall be required to pay the tax  
12 directly to the municipality in the manner prescribed by the  
13 municipality. Persons delivering electricity who file returns  
14 pursuant to this paragraph (c) shall, at the time of filing  
15 such return, pay the municipality the amount of the tax  
16 collected pursuant to subparagraph 3.

17 (d) For the purpose of the taxes enumerated in this  
18 Section:

19 "Gross receipts" means the consideration received for  
20 distributing, supplying, furnishing or selling gas for use or  
21 consumption and not for resale, and the consideration received  
22 for distributing, supplying, furnishing or selling water for  
23 use or consumption and not for resale, and for all services  
24 rendered in connection therewith valued in money, whether  
25 received in money or otherwise, including cash, credit,  
26 services and property of every kind and material and for all  
27 services rendered therewith, and shall be determined without  
28 any deduction on account of the cost of the service, product or  
29 commodity supplied, the cost of materials used, labor or  
30 service cost, or any other expenses whatsoever. "Gross  
31 receipts" shall not include that portion of the consideration  
32 received for distributing, supplying, furnishing, or selling  
33 gas or water to business enterprises described in paragraph (e)  
34 of this Section to the extent and during the period in which  
35 the exemption authorized by paragraph (e) is in effect or for  
36 school districts or units of local government described in

1 paragraph (f) during the period in which the exemption  
2 authorized in paragraph (f) is in effect.

3 For utility bills issued on or after May 1, 1996, but  
4 before May 1, 1997, and for receipts from those utility bills,  
5 "gross receipts" does not include one-third of (i) amounts  
6 added to customers' bills under Section 9-222 of the Public  
7 Utilities Act, or (ii) amounts added to customers' bills by  
8 taxpayers who are not subject to rate regulation by the  
9 Illinois Commerce Commission for the purpose of recovering any  
10 of the tax liabilities described in Section 9-222 of the Public  
11 Utilities Act. For utility bills issued on or after May 1,  
12 1997, but before May 1, 1998, and for receipts from those  
13 utility bills, "gross receipts" does not include two-thirds of  
14 (i) amounts added to customers' bills under Section 9-222 of  
15 the Public Utilities Act, or (ii) amount added to customers'  
16 bills by taxpayers who are not subject to rate regulation by  
17 the Illinois Commerce Commission for the purpose of recovering  
18 any of the tax liabilities described in Section 9-222 of the  
19 Public Utilities Act. For utility bills issued on or after May  
20 1, 1998, and for receipts from those utility bills, "gross  
21 receipts" does not include (i) amounts added to customers'  
22 bills under Section 9-222 of the Public Utilities Act, or (ii)  
23 amounts added to customers' bills by taxpayers who are not  
24 subject to rate regulation by the Illinois Commerce Commission  
25 for the purpose of recovering any of the tax liabilities  
26 described in Section 9-222 of the Public Utilities Act.

27 For purposes of this Section "gross receipts" shall not  
28 include amounts added to customers' bills under Section 9-221  
29 of the Public Utilities Act. This paragraph is not intended to  
30 nor does it make any change in the meaning of "gross receipts"  
31 for the purposes of this Section, but is intended to remove  
32 possible ambiguities, thereby confirming the existing meaning  
33 of "gross receipts" prior to the effective date of this  
34 amendatory Act of 1995.

35 "Person" as used in this Section means any natural  
36 individual, firm, trust, estate, partnership, association,



1 joint stock company, joint adventure, corporation, limited  
2 liability company, municipal corporation, the State or any of  
3 its political subdivisions, any State university created by  
4 statute, or a receiver, trustee, guardian or other  
5 representative appointed by order of any court.

6 "Person maintaining a place of business in this State"  
7 shall mean any person having or maintaining within this State,  
8 directly or by a subsidiary or other affiliate, an office,  
9 generation facility, distribution facility, transmission  
10 facility, sales office or other place of business, or any  
11 employee, agent, or other representative operating within this  
12 State under the authority of the person or its subsidiary or  
13 other affiliate, irrespective of whether such place of business  
14 or agent or other representative is located in this State  
15 permanently or temporarily, or whether such person, subsidiary  
16 or other affiliate is licensed or qualified to do business in  
17 this State.

18 "Public utility" shall have the meaning ascribed to it in  
19 Section 3-105 of the Public Utilities Act and shall include  
20 alternative retail electric suppliers as defined in Section  
21 16-102 of that Act.

22 "Purchase at retail" shall mean any acquisition of  
23 electricity by a purchaser for purposes of use or consumption,  
24 and not for resale, but shall not include the use of  
25 electricity by a public utility directly in the generation,  
26 production, transmission, delivery or sale of electricity;  
27 except that the use or consumption of electricity by a public  
28 utility for its administrative offices, technical or  
29 engineering facilities, or other locations outside the  
30 transmission and distribution system of an electricity  
31 delivery supplier shall be considered a "purchase at retail" .

32 "Purchaser" shall mean any person who uses or consumes,  
33 within the corporate limits of the municipality, electricity  
34 acquired in a purchase at retail.

35 (e) Any municipality that imposes taxes upon public  
36 utilities or upon the privilege of using or consuming

1 electricity pursuant to this Section whose territory includes  
2 any part of an enterprise zone or federally designated Foreign  
3 Trade Zone or Sub-Zone may, by a majority vote of its corporate  
4 authorities, exempt from those taxes for a period not exceeding  
5 20 years any specified percentage of gross receipts of public  
6 utilities received from, or electricity used or consumed by,  
7 business enterprises that:

8 (1) either (i) make investments that cause the creation  
9 of a minimum of 200 full-time equivalent jobs in Illinois,  
10 (ii) make investments of at least \$175,000,000 that cause  
11 the creation of a minimum of 150 full-time equivalent jobs  
12 in Illinois, or (iii) make investments that cause the  
13 retention of a minimum of 1,000 full-time jobs in Illinois;  
14 and

15 (2) are either (i) located in an Enterprise Zone  
16 established pursuant to the Illinois Enterprise Zone Act or  
17 (ii) Department of Commerce and Economic Opportunity  
18 ~~Community Affairs~~ designated High Impact Businesses  
19 located in a federally designated Foreign Trade Zone or  
20 Sub-Zone; and

21 (3) are certified by the Department of Commerce and  
22 Economic Opportunity ~~Community Affairs~~ as complying with  
23 the requirements specified in clauses (1) and (2) of this  
24 paragraph (e).

25 Upon adoption of the ordinance authorizing the exemption,  
26 the municipal clerk shall transmit a copy of that ordinance to  
27 the Department of Commerce and Economic Opportunity ~~Community~~  
28 ~~Affairs~~. The Department of Commerce and Economic Opportunity  
29 ~~Community Affairs~~ shall determine whether the business  
30 enterprises located in the municipality meet the criteria  
31 prescribed in this paragraph. If the Department of Commerce and  
32 Economic Opportunity ~~Community Affairs~~ determines that the  
33 business enterprises meet the criteria, it shall grant  
34 certification. The Department of Commerce and Economic  
35 Opportunity ~~Community Affairs~~ shall act upon certification  
36 requests within 30 days after receipt of the ordinance.

1           Upon certification of the business enterprise by the  
2 Department of Commerce and Economic Opportunity Community  
3 ~~Affairs~~, the Department of Commerce and Economic Opportunity  
4 ~~Community Affairs~~ shall notify the Department of Revenue of the  
5 certification. The Department of Revenue shall notify the  
6 public utilities of the exemption status of the gross receipts  
7 received from, and the electricity used or consumed by, the  
8 certified business enterprises. Such exemption status shall be  
9 effective within 3 months after certification.

10           (f) A municipality that imposes taxes upon public utilities  
11 or upon the privilege of using or consuming electricity under  
12 this Section and whose territory includes part of another unit  
13 of local government or a school district may by ordinance  
14 exempt the other unit of local government or school district  
15 from those taxes.

16           (g) The amendment of this Section by Public Act 84-127  
17 shall take precedence over any other amendment of this Section  
18 by any other amendatory Act passed by the 84th General Assembly  
19 before the effective date of Public Act 84-127.

20           (h) In any case in which, before July 1, 1992, a person  
21 engaged in the business of transmitting messages through the  
22 use of mobile equipment, such as cellular phones and paging  
23 systems, has determined the municipality within which the gross  
24 receipts from the business originated by reference to the  
25 location of its transmitting or switching equipment, then (i)  
26 neither the municipality to which tax was paid on that basis  
27 nor the taxpayer that paid tax on that basis shall be required  
28 to rebate, refund, or issue credits for any such tax or charge  
29 collected from customers to reimburse the taxpayer for the tax  
30 and (ii) no municipality to which tax would have been paid with  
31 respect to those gross receipts if the provisions of this  
32 amendatory Act of 1991 had been in effect before July 1, 1992,  
33 shall have any claim against the taxpayer for any amount of the  
34 tax.

35           (Source: P.A. 91-870, eff. 6-22-00; 92-474, eff. 8-1-02;  
36 92-526, eff. 1-1-03; revised 12-6-03.)