



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB0473

Introduced 2/4/2009, by Rep. Jerry L. Mitchell

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-1006.7
105 ILCS 5/3-14.31

Amends the County School Facility Occupation Tax Law in the Counties Code. Provides that a school district that receives proceeds from a county school facility occupation tax may enter into an intergovernmental agreement with a municipality to share those proceeds. Provides that the municipality may use its share of the proceeds only for municipal infrastructure purposes. Provides that the agreement is subject to referendum approval. Amends the School Code to make conforming changes. Effective immediately.

LRB096 04333 RLJ 14379 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) The county board of any county may impose a tax upon
9 all persons engaged in the business of selling tangible
10 personal property, other than personal property titled or
11 registered with an agency of this State's government, at retail
12 in the county on the gross receipts from the sales made in the
13 course of business to provide revenue to be used exclusively
14 for school facility purposes, or municipal infrastructure
15 purposes as provided in subsection (h-5) of this Section, if a
16 proposition for the tax has been submitted to the electors of
17 that county and approved by a majority of those voting on the
18 question as provided in subsection (c). The tax under this
19 Section may be imposed only in one-quarter percent increments
20 and may not exceed 1%.

21 This additional tax may not be imposed on the sale of food
22 for human consumption that is to be consumed off the premises
23 where it is sold (other than alcoholic beverages, soft drinks,

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

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

1 The certificate of registration that is issued by the
2 Department to a retailer under the Retailers' Occupation Tax
3 Act permits the retailer to engage in a business that is
4 taxable without registering separately with the Department
5 under an ordinance or resolution under this subsection.

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

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

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

26 The tax imposed under this subsection and all civil

1 penalties that may be assessed as an incident thereof shall be
2 collected and enforced by the Department and deposited into a
3 special fund created for that purpose. The Department has full
4 power to administer and enforce this subsection, to collect all
5 taxes and penalties due under this subsection, to dispose of
6 taxes and penalties so collected in the manner provided in this
7 subsection, and to determine all rights to credit memoranda
8 arising on account of the erroneous payment of a tax or penalty
9 under this subsection.

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

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

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

12 (c) The tax under this Section may not be imposed until, by
13 ordinance or resolution of the county board, the question of
14 imposing the tax has been submitted to the electors of the
15 county at a regular election and approved by a majority of the
16 electors voting on the question. Upon a resolution by the
17 county board or a resolution by school district boards that
18 represent at least 51% of the student enrollment within the
19 county, the county board must certify the question to the
20 proper election authority in accordance with the Election Code.

21 The election authority must submit the question in
22 substantially the following form:

23 Shall (name of county) be authorized to impose a
24 retailers' occupation tax and a service occupation tax
25 (commonly referred to as a "sales tax") at a rate of
26 (insert rate) to be used exclusively for school facility

1 purposes?

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

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

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

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

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

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

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

25 If the Department determines that a refund should be made
26 under this Section to a claimant instead of issuing a credit

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

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

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

19 (g) If a county board imposes a tax under this Section,
20 then the board may, by ordinance, discontinue or reduce the
21 rate of the tax. If, however, a school board issues bonds that
22 are backed by the proceeds of the tax under this Section, then
23 the county board may not reduce the tax rate or discontinue the
24 tax if that rate reduction or discontinuance would inhibit the
25 school board's ability to pay the principal and interest on
26 those bonds as they become due. If the county board reduces the

1 tax rate or discontinues the tax, then a referendum must be
2 held in accordance with subsection (c) of this Section in order
3 to increase the rate of the tax or to reimpose the discontinued
4 tax.

5 The results of any election that authorizes a proposition
6 to impose a tax under this Section or to change the rate of the
7 tax along with an ordinance imposing the tax, or any ordinance
8 that lowers the rate or discontinues the tax, must be certified
9 by the county clerk and filed with the Illinois Department of
10 Revenue either (i) on or before the first day of April,
11 whereupon the Department shall proceed to administer and
12 enforce the tax or change in the rate as of the first day of
13 July next following the filing; or (ii) on or before the first
14 day of October, whereupon the Department shall proceed to
15 administer and enforce the tax or change in the rate as of the
16 first day of January next following the filing.

17 (h) For purposes of this Section, "school facility
18 purposes" means the acquisition, development, construction,
19 reconstruction, rehabilitation, improvement, financing,
20 architectural planning, and installation of capital facilities
21 consisting of buildings, structures, and durable equipment and
22 for the acquisition and improvement of real property and
23 interest in real property required, or expected to be required,
24 in connection with the capital facilities. "School-facility
25 purposes" also includes fire prevention, safety, energy
26 conservation, disabled accessibility, school security, and

1 specified repair purposes set forth under Section 17-2.11 of
2 the School Code.

3 (h-5) Any school district that receives proceeds from a tax
4 imposed under this Section may enter into an intergovernmental
5 agreement with a municipality that is located, in whole or in
6 part, within the boundaries of the district to share all or a
7 part of the proceeds distributed to the school district under
8 Section 3-14.31 of the School Code. The municipality may use
9 its share of the proceeds only for municipal infrastructure
10 purposes. Before entering into an agreement under this Section
11 the school board shall, by resolution, cause the question to be
12 submitted to the voters residing in the district at an election
13 held in accordance with the general election law. The question
14 shall be in substantially the following form:

15 "Shall (school district) be authorized to enter into an
16 intergovernmental agreement with (municipality) to share
17 the district's school facility occupation tax proceeds?"

18 If a majority of the electors voting on the question vote
19 in the affirmative, then the district may enter into the
20 agreement.

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

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

24 (Source: P.A. 95-675, eff. 10-11-07.)

25 Section 10. The School Code is amended by changing Section

1 3-14.31 as follows:

2 (105 ILCS 5/3-14.31)

3 Sec. 3-14.31. School facility occupation tax proceeds.

4 (a) Within 30 days after receiving any proceeds of a school
5 facility occupation tax under Section 5-1006.7 of the Counties
6 Code, each regional superintendent must disburse those
7 proceeds to each school district that is located in the county
8 in which the tax was collected.

9 (b) The proceeds must be disbursed on an enrollment basis
10 and allocated based upon the number of each school district's
11 resident pupils that reside within the county collecting the
12 tax divided by the total number of resident students within the
13 county.

14 (c) A school district that receives a distribution under
15 this Section may enter into an intergovernmental agreement as
16 authorized in subsection (h-5) of Section 5-1006.7 of the
17 Counties Code.

18 (Source: P.A. 95-675, eff. 10-11-07; 95-850, eff. 1-1-09.)

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