

HB5935



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB5935

by Rep. John E. Bradley

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.

LRB099 19097 AWJ 43486 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) ~~this amendatory Act of the 97th General~~
16 ~~Assembly~~, upon a resolution by the county board or a resolution
17 by school district boards that represent at least 51% of the
18 student enrollment within the county, the county board must
19 certify the question to the proper election authority in
20 accordance with the Election Code.

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

25 Shall (name of county) be authorized to impose a
26 retailers' occupation tax and a service occupation tax

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

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

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

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

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

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

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

1 If a majority of the electors voting on the question vote
2 in the affirmative, then the tax shall be imposed at the rate
3 set forth in the question.

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

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

14 On or before the 25th day of each calendar month, the
15 Department shall prepare and certify to the Comptroller the
16 disbursement of stated sums of money to the regional
17 superintendents of schools in counties from which retailers or
18 servicemen have paid taxes or penalties to the Department
19 during the second preceding calendar month. The amount to be
20 paid to each regional superintendent of schools and disbursed
21 to him or her in accordance with Section 3-14.31 of the School
22 Code, is equal to the amount (not including credit memoranda)
23 collected from the county under this Section during the second
24 preceding calendar month by the Department, (i) less 2% of that
25 amount, 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 necessary
7 to offset any amounts that were erroneously paid to a different
8 taxing body; (iii) less an amount equal to the amount of
9 refunds made during the second preceding calendar month by the
10 Department on behalf of the county; and (iv) less any amount
11 that the Department determines is necessary to offset any
12 amounts that were payable to a different taxing body but were
13 erroneously paid to the county. When certifying the amount of a
14 monthly disbursement to a regional superintendent of schools
15 under this Section, the Department shall increase or decrease
16 the amounts by an amount necessary to offset any miscalculation
17 of previous disbursements within the previous 6 months from the
18 time a 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 tax to be imposed upon the privilege of engaging in any
17 business that under the Constitution of the United States may
18 not be made the subject of taxation by this State.

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

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

23 Until January 1, 2014, the results of any election that
24 imposes, reduces, or discontinues a tax under this Section must
25 be certified by the election authority, and any ordinance that
26 increases or lowers the rate or discontinues the tax must be

1 certified by the county clerk and, in each case, filed with the
2 Illinois Department of Revenue either (i) on or before the
3 first day of April, whereupon the Department shall proceed to
4 administer and enforce the tax or change in the rate as of the
5 first day of July next following the filing; or (ii) on or
6 before the first day of October, whereupon the Department shall
7 proceed to administer and enforce the tax or change in the rate
8 as of the first day of January next following the filing.

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

21 (h) For purposes of this Section, "school facility
22 purposes" means (i) the acquisition, development,
23 construction, reconstruction, rehabilitation, improvement,
24 financing, architectural planning, and installation of capital
25 facilities consisting of buildings, structures, and durable
26 equipment and for the acquisition and improvement of real

1 property and interest in real property required, or expected to
2 be required, in connection with the capital facilities and (ii)
3 the payment of bonds or other obligations heretofore or
4 hereafter issued, including bonds or other obligations
5 heretofore or hereafter issued to refund or to continue to
6 refund bonds or other obligations issued, for school facility
7 purposes, provided that the taxes levied to pay those bonds are
8 abated by the amount of the taxes imposed under this Section
9 that are used to pay those bonds. "School-facility purposes"
10 also includes fire prevention, safety, energy conservation,
11 accessibility, school security, and specified repair purposes
12 set forth under Section 17-2.11 of the School Code.

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

23 Shall the school facility retailers' occupation tax
24 and service occupation tax (commonly referred to as the
25 "school facility sales tax") currently imposed in (name of
26 county) at a rate of (insert rate) be (reduced to (insert

1 rate)) (discontinued)?

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

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

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

9 (Source: P.A. 98-584, eff. 8-27-13; 99-143, eff. 7-27-15;
10 99-217, eff. 7-31-15; revised 11-6-15.)