

# HB4766



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

**HB4766**

by Rep. John M. Cabello

#### SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-1006.7

Amends the Counties Code. Modifies the format of the referendum question for counties seeking to impose a school facility occupation tax to include a brief description of the project for which the revenue from the tax will be used and a definite period of time during which the tax will be imposed.

LRB098 16778 JLK 51847 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, 7, 8,  
22 9, 10, 11, 11a, 12, and 13 of the Retailers' Occupation Tax Act  
23 and all provisions of the Uniform Penalty and Interest Act as  
24 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 the effective date of this amendatory  
15 Act of the 97th General Assembly, upon a resolution by the  
16 county board or a resolution by school district boards that  
17 represent at least 51% of the student enrollment within the  
18 county, the county board must certify the question to the  
19 proper election authority in accordance with the Election Code.

20 For all regular elections held prior to the effective date  
21 of this amendatory Act of the 97th General Assembly, the  
22 election authority must submit the question in substantially  
23 the 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 the effective  
8 date of this amendatory Act of the 97th General Assembly, the  
9 regional superintendent of schools for the county must, upon  
10 receipt of a resolution or resolutions of school district  
11 boards that represent more than 50% of the student enrollment  
12 within the county, certify the question to the proper election  
13 authority for submission to the electors of the county at the  
14 next 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 the effective  
18 date of this amendatory Act of the 97th General Assembly and  
19 until the effective date of this amendatory Act of the 98th  
20 General Assembly, the election authority must submit the  
21 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 all regular elections held on or after the effective  
5 date of this amendatory Act of the 98th General Assembly, the  
6 election authority must submit the question in substantially  
7 the following form:

8           Shall a retailers' occupation tax and a service  
9 occupation tax (commonly referred to as a "sales tax") be  
10 imposed in [name of county] at a rate of [insert rate] to  
11 be used exclusively for [description of school facility  
12 project or projects] for a period of [insert number] years?  
13 The election authority must record the votes as "Yes" or  
14 "No".

15           If a majority of the electors voting on the question vote  
16 in the affirmative, then the tax shall be imposed at the rate  
17 set forth in the question for a period not to exceed the time  
18 stated.

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

24           (d) The Department shall immediately pay over to the State  
25 Treasurer, ex officio, as trustee, all taxes and penalties  
26 collected under this Section to be deposited into the School



1 Facility Occupation Tax Fund, which shall be an unappropriated  
2 trust fund held outside the State treasury.

3 On or before the 25th day of each calendar month, the  
4 Department shall prepare and certify to the Comptroller the  
5 disbursement of stated sums of money to the regional  
6 superintendents of schools in counties from which retailers or  
7 servicemen have paid taxes or penalties to the Department  
8 during the second preceding calendar month. The amount to be  
9 paid to each regional superintendent of schools and disbursed  
10 to him or her in accordance with Section 3-14.31 of the School  
11 Code, is equal to the amount (not including credit memoranda)  
12 collected from the county under this Section during the second  
13 preceding calendar month by the Department, (i) less 2% of that  
14 amount, which shall be deposited into the Tax Compliance and  
15 Administration Fund and shall be used by the Department,  
16 subject to appropriation, to cover the costs of the Department  
17 in administering and enforcing the provisions of this Section,  
18 on behalf of the county, (ii) plus an amount that the  
19 Department determines is necessary to offset any amounts that  
20 were erroneously paid to a different taxing body; (iii) less an  
21 amount equal to the amount of refunds made during the second  
22 preceding calendar month by the Department on behalf of the  
23 county; and (iv) less any amount that the Department determines  
24 is necessary to offset any amounts that were payable to a  
25 different taxing body but were erroneously paid to the county.  
26 When certifying the amount of a monthly disbursement to a

1 regional superintendent of schools under this Section, the  
2 Department shall increase or decrease the amounts by an amount  
3 necessary to offset any miscalculation of previous  
4 disbursements within the previous 6 months from the time a  
5 miscalculation is discovered.

6 Within 10 days after receipt by the Comptroller from the  
7 Department of the disbursement certification to the regional  
8 superintendents of the schools provided for in this Section,  
9 the Comptroller shall cause the orders to be drawn for the  
10 respective amounts in accordance with directions contained in  
11 the certification.

12 If the Department determines that a refund should be made  
13 under this Section to a claimant instead of issuing a credit  
14 memorandum, then the Department shall notify the Comptroller,  
15 who shall cause the order to be drawn for the amount specified  
16 and to the person named in the notification from the  
17 Department. The refund shall be paid by the Treasurer out of  
18 the School Facility Occupation Tax Fund.

19 (e) For the purposes of determining the local governmental  
20 unit whose tax is applicable, a retail sale by a producer of  
21 coal or another mineral mined in Illinois is a sale at retail  
22 at the place where the coal or other mineral mined in Illinois  
23 is extracted from the earth. This subsection does not apply to  
24 coal or another mineral when it is delivered or shipped by the  
25 seller to the purchaser at a point outside Illinois so that the  
26 sale is exempt under the United States Constitution as a sale

1 in interstate or foreign commerce.

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

6 (g) If a county board imposes a tax under this Section  
7 pursuant to a referendum held before the effective date of this  
8 amendatory Act of the 97th General Assembly at a rate below the  
9 rate set forth in the question approved by a majority of  
10 electors of that county voting on the question as provided in  
11 subsection (c), then the county board may, by ordinance,  
12 increase the rate of the tax up to the rate set forth in the  
13 question approved by a majority of electors of that county  
14 voting on the question as provided in subsection (c). If a  
15 county board imposes a tax under this Section pursuant to a  
16 referendum held before the effective date of this amendatory  
17 Act of the 97th General Assembly, then the board may, by  
18 ordinance, discontinue or reduce the rate of the tax. If a tax  
19 is imposed under this Section pursuant to a referendum held on  
20 or after the effective date of this amendatory Act of the 97th  
21 General Assembly, then the county board may reduce or  
22 discontinue the tax, but only in accordance with subsection  
23 (h-5) of this Section. If, however, a school board issues bonds  
24 that are secured by the proceeds of the tax under this Section,  
25 then the county board may not reduce the tax rate or  
26 discontinue the tax if that rate reduction or discontinuance

1 would adversely affect the school board's ability to pay the  
2 principal and interest on those bonds as they become due or  
3 necessitate the extension of additional property taxes to pay  
4 the principal and interest on those bonds. If the county board  
5 reduces the tax rate or discontinues the tax, then a referendum  
6 must be held in accordance with subsection (c) of this Section  
7 in order to increase the rate of the tax or to reimpose the  
8 discontinued tax.

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

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

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

25 (h-5) A county board in a county where a tax has been  
26 imposed under this Section pursuant to a referendum held on or

1 after the effective date of this amendatory Act of the 97th  
2 General Assembly may, by ordinance or resolution, submit to the  
3 voters of the county the question of reducing or discontinuing  
4 the tax. In the ordinance or resolution, the county board shall  
5 certify the question to the proper election authority in  
6 accordance with the Election Code. The election authority must  
7 submit the question in substantially the following form:

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

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

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

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

20         (Source: P.A. 97-542, eff. 8-23-11; 97-813, eff. 7-13-12;  
21 98-584, eff. 8-27-13.)