



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB5543

by Rep. Allen Skillicorn

SYNOPSIS AS INTRODUCED:

65 ILCS 5/1-1-10
65 ILCS 5/8-11-1

from Ch. 24, par. 1-1-10
from Ch. 24, par. 8-11-1

Amends the Illinois Municipal Code. Gives non-home rule municipalities with a population of more than 2,000 the power to exercise all power provided to home rule units under Section 6 of Article VII of the Illinois Constitution, except for the powers to tax, to impose fees, and to incur debt. Provides that a home rule municipal retailer's occupation tax may be imposed up to a 1% increment if the corporate authorities of a home rule municipality by ordinance or resolution call for the submission to the electors of the municipality the question of whether the municipality shall impose such a tax or increase the rate of such a tax (rather than only shall be imposed in 1/4% increments). Effective immediately.

LRB100 20533 AWJ 35921 b

FISCAL NOTE ACT
MAY APPLY

HOME RULE NOTE
ACT MAY APPLY

HOUSING
AFFORDABILITY
IMPACT 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 Sections 1-1-10 and 8-11-1 as follows:

6 (65 ILCS 5/1-1-10) (from Ch. 24, par. 1-1-10)

7 Sec. 1-1-10. It is the policy of this State that all powers
8 granted, either expressly or by necessary implication, by this
9 Code, by Illinois statute, or the Illinois Constitution to
10 municipalities may be exercised by those municipalities, and
11 the officers, employees and agents of each notwithstanding
12 effects on competition.

13 Notwithstanding any provision of law to the contrary,
14 except for the powers to tax, to impose fees, and to incur
15 debt, non-home rule municipalities with a population of more
16 than 2,000 shall exercise all of the powers provided to home
17 rule units under Section 6 of Article VII of the Illinois
18 Constitution, subject to the limitations set forth in that
19 Section.

20 It is further the policy of this State that ~~home-rule~~
21 municipalities, the officers, employees and agents of each may
22 (1) exercise any power and perform any function pertaining to
23 their government and affairs or (2) exercise those powers

1 within traditional areas of municipal activity, except as
2 limited by the Illinois Constitution or a proper limiting
3 statute, notwithstanding effects on competition.

4 It is the intention of the General Assembly that the "State
5 action exemption" to the application of federal antitrust
6 statutes be fully available to all municipalities, and the
7 agents, officers and employees of each to the extent they are
8 exercising authority as aforesaid, including, but not limited
9 to, the provisions of Sections 6, 7 and 10 of Article VII of
10 the Illinois Constitution or the provisions of the following
11 Illinois statutes, as each is now in existence or may
12 hereinafter be amended:

13 (a) The Illinois Local Library Act; "An Act to provide the
14 manner of levying or imposing taxes for the provision of
15 special services to areas within the boundaries of home rule
16 units and non-home rule municipalities and counties", approved
17 September 21, 1973, as amended; "An Act to facilitate the
18 development and construction of housing, to provide
19 governmental assistance therefor, and to repeal an Act herein
20 named", approved July 2, 1947, as amended; or the Housing
21 Authorities Act, the Housing Cooperation Law, the Blighted
22 Areas Redevelopment Act of 1947, the Blighted Vacant Areas
23 Development Act of 1949, the Urban Community Conservation Act,
24 the Illinois Enterprise Zone Act or any other power exercised
25 pursuant to the Intergovernmental Cooperation Act; or

26 (b) Divisions 1, 2, 3, 4, 5 and 6 of Article 7 of the

1 Illinois Municipal Code; Divisions 9, 10 and 11 of Article 8 of
2 the Illinois Municipal Code; Divisions 1, 2, 3, 4 and 5 of
3 Article 9 of the Illinois Municipal Code; and all of Divisions
4 of Articles 10 and 11 of the Illinois Municipal Code; or

5 (c) Any other Illinois statute or constitutional provision
6 now existing or which may be enacted in the future, by which
7 any municipality may exercise authority.

8 The "State action exemption" for which provision is made by
9 this Section shall be liberally construed in favor of such
10 municipalities and the agents, employees and officers thereof,
11 and such exemption shall be available notwithstanding that the
12 action of the municipality or its agents, officers or employees
13 constitutes an irregular exercise of constitutional or
14 statutory powers. However, this exemption shall not apply where
15 the action alleged to be in violation of antitrust law exceeds
16 either (1) powers granted, either expressly or by necessary
17 implication, by Illinois statute or the Illinois Constitution
18 or (2) powers granted to a home rule municipality to perform
19 any function pertaining to its government and affairs or to act
20 within traditional areas of municipal activity, except as
21 limited by the Illinois Constitution or a proper limiting
22 statute.

23 Notwithstanding the foregoing, where it is alleged that a
24 violation of the antitrust laws has occurred, the relief
25 available to the plaintiffs shall be limited to an injunction
26 which enjoins the alleged activity.

1 Nothing in this Section is intended to prohibit or limit
2 any cause of action other than under an antitrust theory.

3 (Source: P.A. 84-1050.)

4 (65 ILCS 5/8-11-1) (from Ch. 24, par. 8-11-1)

5 Sec. 8-11-1. Home Rule Municipal Retailers' Occupation Tax
6 Act. The corporate authorities of a home rule municipality may
7 impose a tax upon all persons engaged in the business of
8 selling tangible personal property, other than an item of
9 tangible personal property titled or registered with an agency
10 of this State's government, at retail in the municipality on
11 the gross receipts from these sales made in the course of such
12 business. If imposed, the tax shall only be imposed in 1/4%
13 increments or up to a 1% increment if the corporate authorities
14 of a home rule municipality by ordinance or resolution call for
15 the submission to the electors, through referendum, of the
16 municipality the question of whether the municipality shall
17 impose such a tax or increase the rate of such a tax. On and
18 after September 1, 1991, this additional tax may not be imposed
19 on the sales of food for human consumption that is to be
20 consumed off the premises where it is sold (other than
21 alcoholic beverages, soft drinks and food that has been
22 prepared for immediate consumption) and prescription and
23 nonprescription medicines, drugs, medical appliances and
24 insulin, urine testing materials, syringes and needles used by
25 diabetics. The tax imposed by a home rule municipality under

1 this Section and all civil penalties that may be assessed as an
2 incident of the tax shall be collected and enforced by the
3 State Department of Revenue. The certificate of registration
4 that is issued by the Department to a retailer under the
5 Retailers' Occupation Tax Act shall permit the retailer to
6 engage in a business that is taxable under any ordinance or
7 resolution enacted pursuant to this Section without
8 registering separately with the Department under such
9 ordinance or resolution or under this Section. The Department
10 shall have full power to administer and enforce this Section;
11 to collect all taxes and penalties due hereunder; to dispose of
12 taxes and penalties so collected in the manner hereinafter
13 provided; and to determine all rights to credit memoranda
14 arising on account of the erroneous payment of tax or penalty
15 hereunder. In the administration of, and compliance with, this
16 Section the Department and persons who are subject to this
17 Section shall have the same rights, remedies, privileges,
18 immunities, powers and duties, and be subject to the same
19 conditions, restrictions, limitations, penalties and
20 definitions of terms, and employ the same modes of procedure,
21 as are prescribed in Sections 1, 1a, 1d, 1e, 1f, 1i, 1j, 1k,
22 1m, 1n, 2 through 2-65 (in respect to all provisions therein
23 other than the State rate of tax), 2c, 3 (except as to the
24 disposition of taxes and penalties collected), 4, 5, 5a, 5b,
25 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k, 5l, 6, 6a, 6b, 6c, 6d, 7, 8,
26 9, 10, 11, 12 and 13 of the Retailers' Occupation Tax Act and

1 Section 3-7 of the Uniform Penalty and Interest Act, as fully
2 as if those provisions were set forth herein.

3 No tax may be imposed by a home rule municipality under
4 this Section unless the municipality also imposes a tax at the
5 same rate under Section 8-11-5 of this Act.

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

13 Whenever the Department determines that a refund should be
14 made under this Section to a claimant instead of issuing a
15 credit memorandum, the Department shall notify the State
16 Comptroller, who shall cause the order to be drawn for the
17 amount specified and to the person named in the notification
18 from the Department. The refund shall be paid by the State
19 Treasurer out of the home rule municipal retailers' occupation
20 tax fund.

21 The Department shall immediately pay over to the State
22 Treasurer, ex officio, as trustee, all taxes and penalties
23 collected hereunder.

24 As soon as possible after the first day of each month,
25 beginning January 1, 2011, upon certification of the Department
26 of Revenue, the Comptroller shall order transferred, and the

1 Treasurer shall transfer, to the STAR Bonds Revenue Fund the
2 local sales tax increment, as defined in the Innovation
3 Development and Economy Act, collected under this Section
4 during the second preceding calendar month for sales within a
5 STAR bond district.

6 After the monthly transfer to the STAR Bonds Revenue Fund,
7 on or before the 25th day of each calendar month, the
8 Department shall prepare and certify to the Comptroller the
9 disbursement of stated sums of money to named municipalities,
10 the municipalities to be those from which retailers have paid
11 taxes or penalties hereunder to the Department during the
12 second preceding calendar month. The amount to be paid to each
13 municipality shall be the amount (not including credit
14 memoranda) collected hereunder during the second preceding
15 calendar month by the Department plus an amount the Department
16 determines is necessary to offset any amounts that were
17 erroneously paid to a different taxing body, and not including
18 an amount equal to the amount of refunds made during the second
19 preceding calendar month by the Department on behalf of such
20 municipality, and not including any amount that the Department
21 determines is necessary to offset any amounts that were payable
22 to a different taxing body but were erroneously paid to the
23 municipality, and not including any amounts that are
24 transferred to the STAR Bonds Revenue Fund, less 2% of the
25 remainder, which the Department shall transfer into the Tax
26 Compliance and Administration Fund. The Department, at the time

1 of each monthly disbursement to the municipalities, shall
2 prepare and certify to the State Comptroller the amount to be
3 transferred into the Tax Compliance and Administration Fund
4 under this Section. Within 10 days after receipt by the
5 Comptroller of the disbursement certification to the
6 municipalities and the Tax Compliance and Administration Fund
7 provided for in this Section to be given to the Comptroller by
8 the Department, the Comptroller shall cause the orders to be
9 drawn for the respective amounts in accordance with the
10 directions contained in the certification.

11 In addition to the disbursement required by the preceding
12 paragraph and in order to mitigate delays caused by
13 distribution procedures, an allocation shall, if requested, be
14 made within 10 days after January 14, 1991, and in November of
15 1991 and each year thereafter, to each municipality that
16 received more than \$500,000 during the preceding fiscal year,
17 (July 1 through June 30) whether collected by the municipality
18 or disbursed by the Department as required by this Section.
19 Within 10 days after January 14, 1991, participating
20 municipalities shall notify the Department in writing of their
21 intent to participate. In addition, for the initial
22 distribution, participating municipalities shall certify to
23 the Department the amounts collected by the municipality for
24 each month under its home rule occupation and service
25 occupation tax during the period July 1, 1989 through June 30,
26 1990. The allocation within 10 days after January 14, 1991,

1 shall be in an amount equal to the monthly average of these
2 amounts, excluding the 2 months of highest receipts. The
3 monthly average for the period of July 1, 1990 through June 30,
4 1991 will be determined as follows: the amounts collected by
5 the municipality under its home rule occupation and service
6 occupation tax during the period of July 1, 1990 through
7 September 30, 1990, plus amounts collected by the Department
8 and paid to such municipality through June 30, 1991, excluding
9 the 2 months of highest receipts. The monthly average for each
10 subsequent period of July 1 through June 30 shall be an amount
11 equal to the monthly distribution made to each such
12 municipality under the preceding paragraph during this period,
13 excluding the 2 months of highest receipts. The distribution
14 made in November 1991 and each year thereafter under this
15 paragraph and the preceding paragraph shall be reduced by the
16 amount allocated and disbursed under this paragraph in the
17 preceding period of July 1 through June 30. The Department
18 shall prepare and certify to the Comptroller for disbursement
19 the allocations made in accordance with this paragraph.

20 For the purpose of determining the local governmental unit
21 whose tax is applicable, a retail sale by a producer of coal or
22 other mineral mined in Illinois is a sale at retail at the
23 place where the coal or other mineral mined in Illinois is
24 extracted from the earth. This paragraph does not apply to coal
25 or other mineral when it is delivered or shipped by the seller
26 to the purchaser at a point outside Illinois so that the sale

1 is exempt under the United States Constitution as a sale in
2 interstate or foreign commerce.

3 Nothing in this Section shall be construed to authorize a
4 municipality to impose a tax upon the privilege of engaging in
5 any business which under the Constitution of the United States
6 may not be made the subject of taxation by this State.

7 An ordinance or resolution imposing or discontinuing a tax
8 hereunder or effecting a change in the rate thereof shall be
9 adopted and a certified copy thereof filed with the Department
10 on or before the first day of June, whereupon the Department
11 shall proceed to administer and enforce this Section as of the
12 first day of September next following the adoption and filing.
13 Beginning January 1, 1992, an ordinance or resolution imposing
14 or discontinuing the tax hereunder or effecting a change in the
15 rate thereof shall be adopted and a certified copy thereof
16 filed with the Department on or before the first day of July,
17 whereupon the Department shall proceed to administer and
18 enforce this Section as of the first day of October next
19 following such adoption and filing. Beginning January 1, 1993,
20 an ordinance or resolution imposing or discontinuing the tax
21 hereunder or effecting a change in the rate thereof shall be
22 adopted and a certified copy thereof filed with the Department
23 on or before the first day of October, whereupon the Department
24 shall proceed to administer and enforce this Section as of the
25 first day of January next following the adoption and filing.
26 However, a municipality located in a county with a population

1 in excess of 3,000,000 that elected to become a home rule unit
2 at the general primary election in 1994 may adopt an ordinance
3 or resolution imposing the tax under this Section and file a
4 certified copy of the ordinance or resolution with the
5 Department on or before July 1, 1994. The Department shall then
6 proceed to administer and enforce this Section as of October 1,
7 1994. Beginning April 1, 1998, an ordinance or resolution
8 imposing or discontinuing the tax hereunder or effecting a
9 change in the rate thereof shall either (i) be adopted and a
10 certified copy thereof filed with the Department on or before
11 the first day of April, whereupon the Department shall proceed
12 to administer and enforce this Section as of the first day of
13 July next following the adoption and filing; or (ii) be adopted
14 and a certified copy thereof filed with the Department on or
15 before the first day of October, whereupon the Department shall
16 proceed to administer and enforce this Section as of the first
17 day of January next following the adoption and filing.

18 When certifying the amount of a monthly disbursement to a
19 municipality under this Section, the Department shall increase
20 or decrease the amount by an amount necessary to offset any
21 misallocation of previous disbursements. The offset amount
22 shall be the amount erroneously disbursed within the previous 6
23 months from the time a misallocation is discovered.

24 Any unobligated balance remaining in the Municipal
25 Retailers' Occupation Tax Fund on December 31, 1989, which fund
26 was abolished by Public Act 85-1135, and all receipts of

1 municipal tax as a result of audits of liability periods prior
2 to January 1, 1990, shall be paid into the Local Government Tax
3 Fund for distribution as provided by this Section prior to the
4 enactment of Public Act 85-1135. All receipts of municipal tax
5 as a result of an assessment not arising from an audit, for
6 liability periods prior to January 1, 1990, shall be paid into
7 the Local Government Tax Fund for distribution before July 1,
8 1990, as provided by this Section prior to the enactment of
9 Public Act 85-1135; and on and after July 1, 1990, all such
10 receipts shall be distributed as provided in Section 6z-18 of
11 the State Finance Act.

12 As used in this Section, "municipal" and "municipality"
13 means a city, village or incorporated town, including an
14 incorporated town that has superseded a civil township.

15 This Section shall be known and may be cited as the Home
16 Rule Municipal Retailers' Occupation Tax Act.

17 (Source: P.A. 99-217, eff. 7-31-15; 100-23, eff. 7-6-17.)

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