



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB3154

Introduced 2/24/2011, by Rep. Dwight Kay

#### SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-1006.7

Amends the Counties Code. Provides that the question to impose a school facility occupation tax shall not be submitted to the electors unless each school district that receives a disbursement of tax proceeds under this Section has legally bound itself to abate its taxes on real property by one dollar for each and every dollar of tax proceeds that it receives under this Section.

LRB097 09246 KMW 49381 b

FISCAL 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 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 if a proposition for the tax has  
15 been 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 may be imposed only  
18 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, by  
11 ordinance or resolution of the county board, the question of  
12 imposing the tax has been submitted to the electors of the  
13 county at a regular election and approved by a majority of the  
14 electors voting on the question. Upon a resolution by the  
15 county board or a resolution by school district boards that  
16 represent at least 51% of the student enrollment within the  
17 county, the county board must certify the question to the  
18 proper election authority in accordance with the Election Code.  
19 The question shall not be submitted to the electors unless each  
20 school district that receives a disbursement of tax proceeds  
21 under this Section has legally bound itself to abate its taxes  
22 on real property by one dollar for each and every dollar of tax  
23 proceeds that it receives under this Section.

24 The election authority must submit the question in  
25 substantially the following form:

26 Shall (name of county) be authorized to impose a

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

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

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

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

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

19          On or before the 25th day of each calendar month, the  
20          Department shall prepare and certify to the Comptroller the  
21          disbursement of stated sums of money to the regional  
22          superintendents of schools in counties from which retailers or  
23          servicemen have paid taxes or penalties to the Department  
24          during the second preceding calendar month. The amount to be  
25          paid to each regional superintendent of schools and disbursed  
26          to him or her in accordance with 3-14.31 of the School Code, is

1 equal to the amount (not including credit memoranda) collected  
2 from the county under this Section during the second preceding  
3 calendar month by the Department, (i) less 2% of that amount,  
4 which shall be deposited into the Tax Compliance and  
5 Administration Fund and shall be used by the Department,  
6 subject to appropriation, to cover the costs of the Department  
7 in administering and enforcing the provisions of this Section,  
8 on behalf of the county, (ii) plus an amount that the  
9 Department determines is necessary to offset any amounts that  
10 were erroneously paid to a different taxing body; (iii) less an  
11 amount equal to the amount of refunds made during the second  
12 preceding calendar month by the Department on behalf of the  
13 county; and (iv) less any amount that the Department determines  
14 is necessary to offset any amounts that were payable to a  
15 different taxing body but were erroneously paid to the county.  
16 When certifying the amount of a monthly disbursement to a  
17 regional superintendent of schools under this Section, the  
18 Department shall increase or decrease the amounts by an amount  
19 necessary to offset any miscalculation of previous  
20 disbursements within the previous 6 months from the time a  
21 miscalculation is discovered.

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



1 the certification.

2 If the Department determines that a refund should be made  
3 under this Section to a claimant instead of issuing a credit  
4 memorandum, then the Department shall notify the Comptroller,  
5 who shall cause the order to be drawn for the amount specified  
6 and to the person named in the notification from the  
7 Department. The refund shall be paid by the Treasurer out of  
8 the School Facility Occupation Tax Fund.

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

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

22 (g) If a county board imposes a tax under this Section,  
23 then the board may, by ordinance, discontinue or reduce the  
24 rate of the tax. If, however, a school board issues bonds that  
25 are backed by the proceeds of the tax under this Section, then  
26 the county board may not reduce the tax rate or discontinue the

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

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

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

1 in connection with the capital facilities. "School-facility  
2 purposes" also includes fire prevention, safety, energy  
3 conservation, disabled accessibility, school security, and  
4 specified repair purposes set forth under Section 17-2.11 of  
5 the School Code.

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. 95-675, eff. 10-11-07.)