

SB3865



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB3865

Introduced 2/14/2020, by Sen. Scott M. Bennett

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. Effective July 1, 2020.

LRB101 18533 AWJ 67986 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 and resources occupation
8 taxes.

9 (a) In any county, a tax shall be imposed upon all persons
10 engaged in the business of selling tangible personal property,
11 other than personal property titled or registered with an
12 agency of this State's government, at retail in the county on
13 the gross receipts from the sales made in the course of
14 business to provide revenue to be used exclusively for (i)
15 school facility purposes (except as otherwise provided in this
16 Section), (ii) school resource officers and mental health
17 professionals, or (iii) school facility purposes, school
18 resource officers, and mental health professionals if a
19 proposition for the tax has been submitted to the electors of
20 that county and approved by a majority of those voting on the
21 question as provided in subsection (c). The tax under this
22 Section shall be imposed only in one-quarter percent increments
23 and may not exceed 1%.

1 This additional tax may not be imposed on tangible personal
2 property taxed at the 1% rate under the Retailers' Occupation
3 Tax Act. Beginning December 1, 2019 and through December 31,
4 2020, this tax is not imposed on sales of aviation fuel unless
5 the tax revenue is expended for airport-related purposes. If
6 the county does not have an airport-related purpose to which it
7 dedicates aviation fuel tax revenue, then aviation fuel is
8 excluded from the tax. The county must comply with the
9 certification requirements for airport-related purposes under
10 Section 2-22 of the Retailers' Occupation Tax Act. For purposes
11 of this Section, "airport-related purposes" has the meaning
12 ascribed in Section 6z-20.2 of the State Finance Act. Beginning
13 January 1, 2021, this tax is not imposed on sales of aviation
14 fuel for so long as the revenue use requirements of 49 U.S.C.
15 47107(b) and 49 U.S.C. 47133 are binding on the county. The
16 Department of Revenue has full power to administer and enforce
17 this subsection, to collect all taxes and penalties due under
18 this subsection, to dispose of taxes and penalties so collected
19 in the manner provided in this subsection, and to determine all
20 rights to credit memoranda arising on account of the erroneous
21 payment of a tax or penalty under this subsection. The
22 Department shall deposit all taxes and penalties collected
23 under this subsection into a special fund created for that
24 purpose.

25 In the administration of and compliance with this
26 subsection, the Department and persons who are subject to this

1 subsection (i) have the same rights, remedies, privileges,
2 immunities, powers, and duties, (ii) are subject to the same
3 conditions, restrictions, limitations, penalties, and
4 definitions of terms, and (iii) shall employ the same modes of
5 procedure as are set forth in Sections 1 through 1o, 2 through
6 2-70 (in respect to all provisions contained in those Sections
7 other than the State rate of tax), 2a through 2h, 3 (except as
8 to the disposition of taxes and penalties collected, and except
9 that the retailer's discount is not allowed for taxes paid on
10 aviation fuel that are subject to the revenue use requirements
11 of 49 U.S.C. 47107(b) and 49 U.S.C. 47133), 4, 5, 5a, 5b, 5c,
12 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k, 5l, 6, 6a, 6b, 6c, 6d, 7, 8, 9,
13 10, 11, 11a, 12, and 13 of the Retailers' Occupation Tax Act
14 and all provisions of the Uniform Penalty and Interest Act as
15 if those provisions were set forth in this subsection.

16 The certificate of registration that is issued by the
17 Department to a retailer under the Retailers' Occupation Tax
18 Act permits the retailer to engage in a business that is
19 taxable without registering separately with the Department
20 under an ordinance or resolution under this subsection.

21 Persons subject to any tax imposed under the authority
22 granted in this subsection may reimburse themselves for their
23 seller's tax liability by separately stating that tax as an
24 additional charge, which may be stated in combination, in a
25 single amount, with State tax that sellers are required to
26 collect under the Use Tax Act, pursuant to any bracketed

1 schedules set forth by the Department.

2 (b) If a tax has been imposed under subsection (a), then a
3 service occupation tax must also be imposed at the same rate
4 upon all persons engaged, in the county, in the business of
5 making sales of service, who, as an incident to making those
6 sales of service, transfer tangible personal property within
7 the county as an incident to a sale of service.

8 This tax may not be imposed on tangible personal property
9 taxed at the 1% rate under the Service Occupation Tax Act.
10 Beginning December 1, 2019 and through December 31, 2020, this
11 tax is not imposed on sales of aviation fuel unless the tax
12 revenue is expended for airport-related purposes. If the county
13 does not have an airport-related purpose to which it dedicates
14 aviation fuel tax revenue, then aviation fuel is excluded from
15 the tax. The county must comply with the certification
16 requirements for airport-related purposes under Section 2-22
17 of the Retailers' Occupation Tax Act. For purposes of this
18 Section, "airport-related purposes" has the meaning ascribed
19 in Section 6z-20.2 of the State Finance Act. Beginning January
20 1, 2021, this tax is not imposed on sales of aviation fuel for
21 so long as the revenue use requirements of 49 U.S.C. 47107(b)
22 and 49 U.S.C. 47133 are binding on the county.

23 The tax imposed under this subsection and all civil
24 penalties that may be assessed as an incident thereof shall be
25 collected and enforced by the Department and deposited into a
26 special fund created for that purpose. The Department has full

1 power to administer and enforce this subsection, to collect all
2 taxes and penalties due under this subsection, to dispose of
3 taxes and penalties so collected in the manner provided in this
4 subsection, and to determine all rights to credit memoranda
5 arising on account of the erroneous payment of a tax or penalty
6 under this subsection.

7 In the administration of and compliance with this
8 subsection, the Department and persons who are subject to this
9 subsection shall (i) have the same rights, remedies,
10 privileges, immunities, powers and duties, (ii) be subject to
11 the same conditions, restrictions, limitations, penalties and
12 definition of terms, and (iii) employ the same modes of
13 procedure as are set forth in Sections 2 (except that that
14 reference to State in the definition of supplier maintaining a
15 place of business in this State means the county), 2a through
16 2d, 3 through 3-50 (in respect to all provisions contained in
17 those Sections other than the State rate of tax), 4 (except
18 that the reference to the State shall be to the county), 5, 7,
19 8 (except that the jurisdiction to which the tax is a debt to
20 the extent indicated in that Section 8 is the county), 9
21 (except as to the disposition of taxes and penalties collected,
22 and except that the retailer's discount is not allowed for
23 taxes paid on aviation fuel that are subject to the revenue use
24 requirements of 49 U.S.C. 47107(b) and 49 U.S.C. 47133), 10,
25 11, 12 (except the reference therein to Section 2b of the
26 Retailers' Occupation Tax Act), 13 (except that any reference

1 to the State means the county), Section 15, 16, 17, 18, 19, and
2 20 of the Service Occupation Tax Act and all provisions of the
3 Uniform Penalty and Interest Act, as fully as if those
4 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 the
13 question of imposing the tax has been submitted to the electors
14 of the county at a regular election and approved by a majority
15 of the electors voting on the question. For all regular
16 elections held prior to August 23, 2011 (the effective date of
17 Public Act 97-542), upon a resolution by the county board or a
18 resolution by school district boards that represent at least
19 51% of the student enrollment within the county, the county
20 board must certify the question to the proper election
21 authority in accordance with the Election Code.

22 For all regular elections held prior to August 23, 2011
23 (the effective date of Public Act 97-542), the election
24 authority must submit the question in substantially the
25 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
6 "No".

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

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

20 For all regular elections held on or after August 23, 2011
21 (the effective date of Public Act 97-542) and before August 23,
22 2019 (the effective date of Public Act 101-455), the election
23 authority must submit the question in substantially the
24 following form:

25 Shall a retailers' occupation tax and a service
26 occupation tax (commonly referred to as a "sales tax") be

1 imposed in (name of county) at a rate of (insert rate) to
2 be used exclusively for school facility purposes?

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

5 If a majority of the electors voting on the question vote
6 in the affirmative, then the tax shall be imposed at the rate
7 set forth in the question.

8 For all regular elections held on or after August 23, 2019
9 (the effective date of Public Act 101-455), the election
10 authority must submit the question as follows:

11 (1) If the referendum is to expand the use of revenues
12 from a currently imposed tax exclusively for school
13 facility purposes to include school resource officers and
14 mental health professionals, the question shall be in
15 substantially the following form:

16 In addition to school facility purposes, shall
17 (name of county) school districts be authorized to use
18 revenues from the tax commonly referred to as the
19 school facility sales tax that is currently imposed in
20 (name of county) at a rate of (insert rate) for school
21 resource officers and mental health professionals?

22 (2) If the referendum is to increase the rate of a tax
23 currently imposed exclusively for school facility purposes
24 at less than 1% and dedicate the additional revenues for
25 school resource officers and mental health professionals,
26 the question shall be in substantially the following form:

1 Shall the tax commonly referred to as the school
2 facility sales tax that is currently imposed in (name
3 of county) at the rate of (insert rate) be increased to
4 a rate of (insert rate) with the additional revenues
5 used exclusively for school resource officers and
6 mental health professionals?

7 (3) If the referendum is to impose a tax in a county
8 that has not previously imposed a tax under this Section
9 exclusively for school facility purposes, the question
10 shall be in substantially the following form:

11 Shall a retailers' occupation tax and a service
12 occupation tax (commonly referred to as a sales tax) be
13 imposed in (name of county) at a rate of (insert rate)
14 to be used exclusively for school facility purposes?

15 (4) If the referendum is to impose a tax in a county
16 that has not previously imposed a tax under this Section
17 exclusively for school resource officers and mental health
18 professionals, the question shall be in substantially the
19 following form:

20 Shall a retailers' occupation tax and a service
21 occupation tax (commonly referred to as a sales tax) be
22 imposed in (name of county) at a rate of (insert rate)
23 to be used exclusively for school resource officers and
24 mental health professionals?

25 (5) If the referendum is to impose a tax in a county
26 that has not previously imposed a tax under this Section

1 exclusively for school facility purposes, school resource
2 officers, and mental health professionals, the question
3 shall be in substantially the following form:

4 Shall a retailers' occupation tax and a service
5 occupation tax (commonly referred to as a sales tax) be
6 imposed in (name of county) at a rate of (insert rate)
7 to be used exclusively for school facility purposes,
8 school resource officers, and mental health
9 professionals?

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

12 If a majority of the electors voting on the question vote
13 in the affirmative, then the tax shall be imposed at the rate
14 set forth in the question.

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

20 (d) Except as otherwise provided, the Department shall
21 immediately pay over to the State Treasurer, ex officio, as
22 trustee, all taxes and penalties collected under this Section
23 to be deposited into the School Facility Occupation Tax Fund,
24 which shall be an unappropriated trust fund held outside the
25 State treasury. Taxes and penalties collected on aviation fuel
26 sold on or after December 1, 2019 and through December 31,

1 2020, shall be immediately paid over by the Department to the
2 State Treasurer, ex officio, as trustee, for deposit into the
3 Local Government Aviation Trust Fund. The Department shall only
4 pay moneys into the Local Government Aviation Trust Fund under
5 this Section for so long as the revenue use requirements of 49
6 U.S.C. 47107(b) and 49 U.S.C. 47133 are binding on the county.

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 the regional
10 superintendents of schools in counties from which retailers or
11 servicemen have paid taxes or penalties to the Department
12 during the second preceding calendar month. The amount to be
13 paid to each regional superintendent of schools and disbursed
14 to him or her in accordance with Section 3-14.31 of the School
15 Code, is equal to the amount (not including credit memoranda
16 and not including taxes and penalties collected on aviation
17 fuel sold on or after December 1, 2019 and through December 31,
18 2020) collected from the county under this Section during the
19 second preceding calendar month by the Department, (i) less 2%
20 of that amount (except the amount collected on aviation fuel
21 sold on or after December 1, 2019 and through December 31,
22 2020), of which 1% shall be deposited into the Tax Compliance
23 and Administration Fund and shall be used by the Department,
24 subject to appropriation, to cover the costs of the Department
25 in administering and enforcing the provisions of this Section,
26 on behalf of the county, and 1% shall be distributed to the

1 regional superintendent of schools to cover the costs in
2 administering and enforcing the provisions of this Section,

3 (ii) plus an amount that the Department determines is necessary
4 to offset any amounts that were erroneously paid to a different
5 taxing body; (iii) less an amount equal to the amount of
6 refunds made during the second preceding calendar month by the
7 Department on behalf of the county; and (iv) less any amount
8 that the Department determines is necessary to offset any
9 amounts that were payable to a different taxing body but were
10 erroneously paid to the county. When certifying the amount of a
11 monthly disbursement to a regional superintendent of schools
12 under this Section, the Department shall increase or decrease
13 the amounts by an amount necessary to offset any miscalculation
14 of previous disbursements within the previous 6 months from the
15 time a miscalculation is discovered.

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

22 If the Department determines that a refund should be made
23 under this Section to a claimant instead of issuing a credit
24 memorandum, then the Department shall notify the Comptroller,
25 who shall cause the order to be drawn for the amount specified
26 and to the person named in the notification from the

1 Department. The refund shall be paid by the Treasurer out of
2 the School Facility Occupation Tax Fund or the Local Government
3 Aviation Trust Fund, as appropriate.

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

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

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

1 23, 2011 (the effective date of Public Act 97-542), then the
2 board may, by ordinance, discontinue or reduce the rate of the
3 tax. If a tax is imposed under this Section pursuant to a
4 referendum held on or after August 23, 2011 (the effective date
5 of Public Act 97-542) and before August 23, 2019 (the effective
6 date of Public Act 101-455), then the county board may reduce
7 or discontinue the tax, but only in accordance with subsection
8 (h-5) of this Section. If a tax is imposed under this Section
9 pursuant to a referendum held on or after August 23, 2019 (the
10 effective date of Public Act 101-455), then the county board
11 may reduce or discontinue the tax, but only in accordance with
12 subsection (h-10). If, however, a school board issues bonds
13 that are secured by the proceeds of the tax under this Section,
14 then the county board may not reduce the tax rate or
15 discontinue the tax if that rate reduction or discontinuance
16 would adversely affect the school board's ability to pay the
17 principal and interest on those bonds as they become due or
18 necessitate the extension of additional property taxes to pay
19 the principal and interest on those bonds. If the county board
20 reduces the tax rate or discontinues the tax, then a referendum
21 must be held in accordance with subsection (c) of this Section
22 in order to increase the rate of the tax or to reimpose the
23 discontinued tax.

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

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

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

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

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

14 (h-5) A county board in a county where a tax has been
15 imposed under this Section pursuant to a referendum held on or
16 after August 23, 2011 (the effective date of Public Act 97-542)
17 and before August 23, 2019 (the effective date of Public Act
18 101-455) may, by ordinance or resolution, submit to the voters
19 of the county the question of reducing or discontinuing the
20 tax. In the ordinance or resolution, the county board shall
21 certify the question to the proper election authority in
22 accordance with the Election Code. The election authority must
23 submit the question in substantially the following form:

24 Shall the school facility retailers' occupation tax
25 and service occupation tax (commonly referred to as the
26 "school facility sales tax") currently imposed in (name of

1 county) at a rate of (insert rate) be (reduced to (insert
2 rate)) (discontinued)?

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

7 (h-10) A county board in a county where a tax has been
8 imposed under this Section pursuant to a referendum held on or
9 after August 23, 2019 (the effective date of Public Act
10 101-455) may, by ordinance or resolution, submit to the voters
11 of the county the question of reducing or discontinuing the
12 tax. In the ordinance or resolution, the county board shall
13 certify the question to the proper election authority in
14 accordance with the Election Code. The election authority must
15 submit the question in substantially the following form:

16 Shall the school facility and resources retailers'
17 occupation tax and service occupation tax (commonly
18 referred to as the school facility and resources sales tax)
19 currently imposed in (name of county) at a rate of (insert
20 rate) be (reduced to (insert rate)) (discontinued)?

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

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

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

2 (j) This Section may be cited as the County School Facility
3 and Resources Occupation Tax Law.

4 (Source: P.A. 100-1171, eff. 1-4-19; 101-10, eff. 6-5-19;
5 101-455, eff. 8-23-19; 101-604, eff. 12-13-19.)

6 Section 99. Effective date. This Act takes effect July 1,
7 2020.