

HOUSE BILL No. 1099

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-9-46.

Synopsis: Uniform food and beverage tax. Provides that a county fiscal body may impose a uniform food and beverage tax if the county is not required or authorized to impose a food and beverage tax under any other law (other than the stadium and convention funding food and beverage tax). Specifies that the tax rate may not exceed 1% and must be imposed in increments of 0.25%. Provides that revenue from the tax may be used by the county, after appropriation by the county fiscal body, only for: (1) capital improvements that promote economic development in the county, including fairgrounds, convention centers, or conference centers; (2) certain costs that are necessary or useful for such a capital improvement; and (3) paying the principal and interest of any bonds issued or lease rental payments for a lease entered into for these purposes. Specifies that the tax revenue may not be used to pay any operating expenses. Authorizes the county fiscal body to pledge the tax revenue to pay bonds issued, loans obtained, and lease payments or other obligations incurred by or on behalf of the county for purposes authorized under the uniform food and beverage tax law. Specifies that a uniform food and beverage tax imposed in a county remains in effect until the earlier of: (1) the date on which the county fiscal body rescinds the food and beverage tax; or (2) the last day of the month beginning immediately after the tenth anniversary of the date on which the food and beverage tax was first imposed in the county.

Effective: July 1, 2018.

Cherry

January 3, 2018, read first time and referred to Committee on Ways and Means.



Second Regular Session of the 120th General Assembly (2018)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2017 Regular Session of the General Assembly.

HOUSE BILL No. 1099



A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-9-46 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2018]:

4 **Chapter 46. Uniform Food and Beverage Tax**
5 **Sec. 1. (a) Except as provided in subsection (c), this chapter**
6 **applies to any county that is not required or authorized to impose**
7 **a food and beverage tax under any other law.**

8 **(b) Except as provided in subsection (c), a county that imposes**
9 **a food and beverage tax under this chapter may not also impose a**
10 **food and beverage tax under any other law.**

11 **(c) A county that imposes a food and beverage tax under**
12 **IC 6-9-35 (stadium and convention building food and beverage tax**
13 **funding) may also impose a food and beverage tax under this**
14 **chapter.**

15 **Sec. 2. The definitions in IC 6-2.5, IC 6-9-12-1, and IC 36-1-2**
16 **apply throughout this chapter.**

17 **Sec. 3. As used in this chapter, "food and beverage tax" refers**



1 to a tax imposed under this chapter.

2 **Sec. 4. (a) A county fiscal body may adopt an ordinance, in the**
 3 **form prescribed by the department, to impose an excise tax on the**
 4 **transactions described in section 5 of this chapter.**

5 **(b) A county fiscal body may adopt an ordinance under this**
 6 **section at a public hearing only after the county fiscal body has**
 7 **previously held at least two (2) other separate public hearings**
 8 **concerning the proposed food and beverage tax. The county fiscal**
 9 **body must allow public comments and testimony concerning the**
 10 **proposed food and beverage tax at each of the three (3) public**
 11 **hearings.**

12 **(c) If a county fiscal body adopts an ordinance under this**
 13 **section, the county fiscal body shall immediately send a certified**
 14 **copy of the ordinance to the department of state revenue.**

15 **(d) If a county fiscal body adopts an ordinance under this**
 16 **section, the food and beverage tax applies to transactions that**
 17 **occur after the later of the following:**

18 **(1) The day specified in the ordinance.**

19 **(2) The last day of the month that succeeds the month in**
 20 **which the ordinance is adopted.**

21 **Sec. 5. (a) Except as provided in subsection (c), a food and**
 22 **beverage tax applies to any transaction in which food or beverage**
 23 **is furnished, prepared, or served:**

24 **(1) for consumption at a location, or on equipment, provided**
 25 **by a retail merchant;**

26 **(2) in the county in which the tax is imposed; and**

27 **(3) by a retail merchant for consideration.**

28 **(b) Transactions described in subsection (a)(1) include**
 29 **transactions in which food or beverage is:**

30 **(1) served by a retail merchant off the merchant's premises;**

31 **(2) sold in a heated state or heated by a retail merchant;**

32 **(3) two (2) or more food ingredients mixed or combined by a**
 33 **retail merchant for sale as a single item (other than food that**
 34 **is only cut, repackaged, or pasteurized by the seller, and eggs,**
 35 **fish, meat, poultry, and foods containing these raw animal**
 36 **foods requiring cooking by the consumer as recommended by**
 37 **the federal Food and Drug Administration in chapter 3,**
 38 **subpart 3-401.11 of its Food Code so as to prevent food borne**
 39 **illnesses); or**

40 **(4) food sold with eating utensils provided by a retail**
 41 **merchant, including plates, knives, forks, spoons, glasses,**
 42 **cups, napkins, or straws (for purposes of this subdivision, a**



- 1 plate does not include a container or packaging used to
2 transport the food).
- 3 (c) The food and beverage tax does not apply to the furnishing,
4 preparing, or serving of any food or beverage in a transaction that
5 is exempt, or to the extent exempt, from the state gross retail tax
6 imposed by IC 6-2.5.
- 7 Sec. 6. A food and beverage tax imposed under this chapter is in
8 addition to:
- 9 (1) a food and beverage tax imposed by any other political
10 subdivision under any other law; and
- 11 (2) a food and beverage tax imposed by the county under
12 IC 6-9-35 (if applicable).
- 13 Sec. 7. A food and beverage tax under this chapter is imposed on
14 the gross retail income received by a retail merchant from a
15 transaction described in section 5 of this chapter at a rate specified
16 in the ordinance adopted under section 4 of this chapter. The tax
17 rate:
- 18 (1) must be imposed in increments of twenty-five hundredths
19 percent (0.25%); and
- 20 (2) may not exceed one percent (1%).
- 21 Sec. 8. For purposes of this chapter, the gross retail income
22 received by the retail merchant from a transaction that is subject
23 to the food and beverage tax does not include the following:
- 24 (1) The amount of tax imposed on the transaction under
25 IC 6-2.5.
- 26 (2) The amount of tax imposed on the transaction by a
27 political subdivision under any other law.
- 28 Sec. 9. A food and beverage tax shall be imposed, paid, and
29 collected in the same manner that the state gross retail tax is
30 imposed, paid, and collected under IC 6-2.5. However, the return
31 to be filed for the payment of the food and beverage tax under this
32 chapter may be made separately or may be combined with the
33 return filed for the payment of the state gross retail tax, as
34 prescribed by the department.
- 35 Sec. 10. The amounts received from the tax imposed under this
36 chapter shall be paid monthly by the treasurer of state to the
37 county auditor upon warrants issued by the auditor of state.
- 38 Sec. 11. (a) If a county fiscal body imposes a tax under this
39 chapter, the county auditor shall establish a uniform food and
40 beverage tax fund.
- 41 (b) The county auditor shall deposit in the uniform food and
42 beverage tax fund all amounts received by the county auditor



1 under this chapter.

2 (c) Any money earned from the investment of money in the fund
3 becomes a part of the fund.

4 **Sec. 12. (a) Money in the uniform food and beverage tax fund**
5 **may be used by the county, after appropriation by the county fiscal**
6 **body, only for the following purposes:**

7 (1) **Capital improvements that promote economic**
8 **development in the county, including fairgrounds, convention**
9 **centers, or conference centers.**

10 (2) **Any:**

11 (A) **acquisition of land or interests in land;**

12 (B) **site improvements, infrastructure improvements,**
13 **buildings, structures, machinery, equipment, furnishings,**
14 **facilities, substance removal or remedial action, or other**
15 **costs;**

16 (C) **architectural, engineering, consultant, financial**
17 **advisory, and attorney's fees;**

18 (D) **incidental expenses in connection with the issuance and**
19 **sale of bonds;**

20 (E) **reserves for principal and interest;**

21 (F) **interest or insurance during construction; or**

22 (G) **debt service reserves or other credit enhancement;**

23 **that are necessary or useful for a capital improvement**
24 **described in subdivision (1) or the financing of such a capital**
25 **improvement.**

26 (3) **Paying:**

27 (A) **the principal and interest of any bonds issued; and**

28 (B) **lease rental payments for a lease entered into;**

29 **for a purpose described in subdivisions (1) through (2).**

30 (b) **Money in the uniform food and beverage tax fund and**
31 **revenue from the food and beverage tax imposed under this**
32 **chapter may not be used to pay any operating expenses.**

33 **Sec. 13. A county may issue bonds or enter into leases to carry**
34 **out the purposes of this chapter. The county fiscal body may pledge**
35 **money in the county's uniform food and beverage tax fund and**
36 **food and beverage tax revenue under this chapter to pay bonds**
37 **issued, loans obtained, and lease payments or other obligations**
38 **incurred by or on behalf of the county for purposes of this chapter.**
39 **A pledge under this section is enforceable under IC 5-1-14. An**
40 **action to contest the validity of bonds issued or leases entered into**
41 **under this section must be brought within thirty (30) days after the**
42 **adoption of a bond ordinance or notice of the execution and**



1 approval of the lease, as the case may be.

2 **Sec. 14. (a)** Subject to section 16 of this chapter, if a county has
 3 outstanding obligations that are payable from the county's uniform
 4 food and beverage tax, the fiscal body of the county may not reduce
 5 the food and beverage tax rate below a rate that would produce
 6 one and twenty-five hundredths (1.25) times the total of the highest
 7 annual payment requirements from the food and beverage tax to
 8 final maturity.

9 **(b)** For purposes of subsection (a), the determination of a tax
 10 rate sufficient to produce one and twenty-five hundredths (1.25)
 11 times the total of the highest annual payment requirements is based
 12 on an average of the immediately preceding three (3) years
 13 collections for the food and beverage tax, if the tax has been
 14 imposed for the last preceding three (3) years. If the food and
 15 beverage tax has not been imposed for the last preceding three (3)
 16 years, the fiscal body of the county may not reduce the rate below
 17 a rate that would produce one and twenty-five hundredths (1.25)
 18 times the total of the highest annual payment requirements, based
 19 upon a study by a qualified accountant or financial advisor.

20 **(c)** If a county has no outstanding obligations that are payable
 21 from a food and beverage tax imposed, the fiscal body of the
 22 county may adopt an ordinance to reduce the food and beverage
 23 tax rate imposed under this chapter or to repeal the food and
 24 beverage tax imposed under this chapter.

25 **Sec. 15.** The general assembly covenants with:

26 (1) each county imposing a food and beverage tax; and

27 (2) the purchasers and owners of obligations of a county
 28 payable from a food and beverage tax;

29 that this chapter will not be repealed or amended in any manner
 30 that will adversely affect the imposition or collection of a food and
 31 beverage tax so long as the principal, interest, or lease rentals due
 32 under those obligations of a unit that are payable from a food and
 33 beverage tax remain unpaid.

34 **Sec. 16.** A food and beverage tax imposed under this chapter
 35 remains in effect until the earlier of:

36 (1) subject to section 15 of this chapter, the date on which the
 37 county fiscal body rescinds the food and beverage tax; or

38 (2) the last day of the month beginning immediately after the
 39 tenth anniversary of the date on which the food and beverage
 40 tax was first imposed under this chapter in the county.

41 **Sec. 17.** The department of local government finance may not
 42 reduce a county's property tax levy because the county receives



1 **revenue from a food and beverage tax imposed under this chapter.**

