

HOUSE BILL No. 1311

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-9-18.5.

Synopsis: Adoption of food and beverage taxes. Provides that a local unit fiscal body may impose a uniform food and beverage tax if the local unit 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). Provides that a local unit must receive legislative approval to impose a food and beverage tax. Provides that the local business community or a group of local businesses that would be required to collect the tax must show support for the tax. Provides that a local unit fiscal body must pass a resolution of support and intent to approve a food and beverage tax under this chapter. Provides that after a local unit passes a resolution of support to approve a food and beverage tax, the local unit may adopt an ordinance to impose an excise tax. Specifies that the tax rate may not exceed 1% and must be imposed in increments of 0.25%. Provides that a group of three or more local units working toward a common project may impose a tax rate of up to 3%. Provides that revenue from the tax may be used by the local unit, after appropriation by the local unit fiscal body, only for: (1) capital improvements that promote economic development and complement and enhance the level of visitation in the local unit, 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: (1) pay for any operating expenses of an operating capital project; or (2) pay any local unit operating expenses. Authorizes the local unit fiscal body to pledge the tax
(Continued next page)

Effective: July 1, 2023; January 1, 2024.

Slager

January 11, 2023, read first time and referred to Committee on Ways and Means.



Digest Continued

revenue to pay bonds issued, loans obtained, and lease payments or other obligations incurred by or on behalf of the local unit for purposes authorized under the uniform food and beverage tax law. Specifies that a uniform food and beverage tax imposed in a local unit remains in effect until the expiration of the capital improvement bond or lease being used to carry out the capital improvements.



Introduced

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

HOUSE BILL No. 1311



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 6-9-18.5 IS ADDED TO THE INDIANA CODE
 2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2023]:
 4 **Chapter 18.5. Uniform Food and Beverage Tax**
 5 **Sec. 1. (a) Except as provided in subsection (c), this chapter**
 6 **applies to any local unit that is not required or authorized to**
 7 **impose a food and beverage tax under any other law. This chapter**
 8 **does not apply to a food and beverage tax established under this**
 9 **article prior to the enactment of this act.**
 10 **(b) Except as provided in subsection (c), a local unit that**
 11 **imposes a food and beverage tax under this chapter may not also**
 12 **impose a food and beverage tax under any other law.**
 13 **(c) A local unit that imposes a food and beverage tax under**
 14 **IC 6-9-35 (stadium and convention building food and beverage tax**
 15 **funding) but has not imposed a food and beverage tax under**



1 another law may also impose a food and beverage tax under this
2 chapter.

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

5 Sec. 3. As used in this chapter, "food and beverage tax" refers
6 to a tax imposed under this chapter.

7 Sec. 4. A local unit must receive legislative approval to impose
8 a tax under this chapter.

9 Sec. 5. (a) The local business community or a group of local
10 businesses that would be required to collect a food and beverage
11 tax under this chapter must show support for the imposition of the
12 tax.

13 (b) A local unit fiscal body must pass a resolution of support and
14 intent to approve a food and beverage tax under this chapter. After
15 a local unit fiscal body passes a resolution of support to approve a
16 food and beverage tax, the local unit fiscal body may adopt an
17 ordinance, in the form prescribed by the department, to impose an
18 excise tax on the transactions described in section 6 of this chapter.

19 (c) A local unit fiscal body may adopt an ordinance under this
20 section at a public hearing only after the local unit fiscal body has
21 previously held at least two (2) other separate public hearings
22 concerning the proposed food and beverage tax. The local unit
23 fiscal body must allow public comments and testimony concerning
24 the proposed food and beverage tax at each of the three (3) public
25 hearings.

26 (d) If a local unit fiscal body adopts an ordinance under this
27 section, the local unit fiscal body shall immediately send a certified
28 copy of the ordinance to the department of state revenue.

29 (e) If a local unit fiscal body adopts an ordinance under this
30 section, the food and beverage tax applies to transactions that
31 occur after the later of the following:

- 32 (1) The day specified in the ordinance.
- 33 (2) The last day of the month that succeeds the month in
34 which the ordinance is adopted.

35 Sec. 6. (a) Except as provided in subsection (c), a food and
36 beverage tax applies to any transaction in which food or beverage
37 is furnished, prepared, or served:

- 38 (1) for consumption at a location, or on equipment, provided
39 by a retail merchant;
- 40 (2) in the local unit in which the tax is imposed; and
- 41 (3) by a retail merchant for consideration.

42 (b) Transactions described in subsection (a)(1) include



1 transactions in which food or beverage is:

- 2 (1) served by a retail merchant off the merchant's premises;
 3 (2) sold in a heated state or heated by a retail merchant;
 4 (3) two (2) or more food ingredients mixed or combined by a
 5 retail merchant for sale as a single item (other than food that
 6 is only cut, repackaged, or pasteurized by the seller, and eggs,
 7 fish, meat, poultry, and foods containing these raw animal
 8 foods requiring cooking by the consumer as recommended by
 9 the federal Food and Drug Administration in chapter 3,
 10 subpart 3-401.11 of its Food Code so as to prevent food borne
 11 illnesses); or
 12 (4) food sold with eating utensils provided by a retail
 13 merchant, including plates, knives, forks, spoons, glasses,
 14 cups, napkins, or straws (for purposes of this subdivision, a
 15 plate does not include a container or packaging used to
 16 transport the food).

17 (c) The food and beverage tax does not apply to the furnishing,
 18 preparing, or serving of any food or beverage in a transaction that
 19 is exempt, or to the extent exempt, from the state gross retail tax
 20 imposed by IC 6-2.5.

21 Sec. 7. A food and beverage tax imposed under this chapter is in
 22 addition to:

- 23 (1) a food and beverage tax imposed by any other political
 24 subdivision under any other law; and
 25 (2) a food and beverage tax imposed by the local unit under
 26 IC 6-9-35 (if applicable).

27 Sec. 8. (a) A food and beverage tax under this chapter is
 28 imposed on the gross retail income received by a retail merchant
 29 from a transaction described in section 6 of this chapter at a rate
 30 specified in the ordinance adopted under section 5 of this chapter.
 31 The tax rate:

- 32 (1) must be imposed in increments of twenty-five hundredths
 33 percent (0.25%); and
 34 (2) may not exceed one percent (1%).

35 (b) A group of three (3) or more local units working together
 36 toward a common project may impose a tax rate of up to three
 37 percent (3%).

38 Sec. 9. For purposes of this chapter, the gross retail income
 39 received by the retail merchant from a transaction that is subject
 40 to the food and beverage tax does not include the following:

- 41 (1) The amount of tax imposed on the transaction under
 42 IC 6-2.5.



1 (2) The amount of tax imposed on the transaction by a
2 political subdivision under any other law.

3 **Sec. 10.** A food and beverage tax is imposed, paid, and collected
4 in the same manner that the state gross retail tax is imposed, paid,
5 and collected under IC 6-2.5. However, the return that must be
6 filed for the payment of the food and beverage tax under this
7 chapter may be made separately or may be combined with the
8 return filed for the payment of the state gross retail tax, as
9 prescribed by the department.

10 **Sec. 11.** The treasurer of state shall pay monthly the amounts
11 received from the tax imposed under this chapter to the local unit
12 fiscal officer upon warrants issued by the auditor of state.

13 **Sec. 12. (a)** If a local unit fiscal body imposes a tax under this
14 chapter, the local unit fiscal body shall establish a uniform food
15 and beverage tax fund.

16 **(b)** The local unit fiscal body shall deposit in the uniform food
17 and beverage tax fund all amounts received by the local unit under
18 this chapter.

19 **(c)** Any money earned from the investment of money in the
20 uniform food and beverage tax fund becomes a part of the uniform
21 food and beverage tax fund.

22 **Sec. 13. (a)** Money in the uniform food and beverage tax fund
23 may be used by the local unit, after appropriation by the local unit
24 fiscal body, only for the following purposes:

25 (1) Capital improvements that promote economic
26 development and complement and enhance the level of
27 visitation in the local unit, including fairgrounds, convention
28 centers, or conference centers.

29 (2) Any:

30 (A) acquisition of land or interests in land;

31 (B) site improvements, infrastructure improvements,
32 buildings, structures, machinery, equipment, furnishings,
33 facilities, substance removal or remedial action, or other
34 costs;

35 (C) architectural, engineering, consultant, financial
36 advisory, and attorney's fees;

37 (D) incidental expenses in connection with the issuance and
38 sale of bonds;

39 (E) reserves for principal and interest;

40 (F) interest or insurance during construction; or

41 (G) debt service reserves or other credit enhancement;

42 that are necessary or useful for a capital improvement



1 described in subdivision (1) or the financing of the capital
2 improvement.

3 **(3) Paying:**

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

5 (B) lease rental payments for a lease entered into;

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

7 (b) Money in the uniform food and beverage tax fund and
8 revenue from the food and beverage tax imposed under this
9 chapter may not be used to:

10 (1) pay for any operating expenses of an operating capital
11 project; or

12 (2) pay any local unit operating expenses.

13 **Sec. 14.** A local unit may issue bonds or enter into leases to
14 carry out the purposes of this chapter. The local unit fiscal body
15 may pledge money in the local unit's uniform food and beverage
16 tax fund and food and beverage tax revenue under this chapter to
17 pay bonds issued, loans obtained, and lease payments or other
18 obligations incurred by or on behalf of the local unit for purposes
19 of this chapter. A pledge under this section is enforceable under
20 IC 5-1-14. An action to contest the validity of bonds issued or leases
21 entered into under this section must be brought within thirty (30)
22 days after the adoption of a bond ordinance or notice of the
23 execution and approval of the lease, as the case may be.

24 **Sec. 15. (a)** Subject to section 17 of this chapter, if a local unit
25 has outstanding obligations that are payable from the local unit's
26 uniform food and beverage tax, the fiscal body of the local unit
27 may not reduce the food and beverage tax rate below a rate that
28 would produce one and twenty-five hundredths (1.25) times the
29 total of the highest annual payment requirements from the food
30 and beverage tax to final maturity.

31 (b) For purposes of subsection (a), the determination of a tax
32 rate sufficient to produce one and twenty-five hundredths (1.25)
33 times the total of the highest annual payment requirements is based
34 on an average of the immediately preceding three (3) years
35 collections for the food and beverage tax, if the tax has been
36 imposed for the preceding three (3) years. If the food and beverage
37 tax has not been imposed for the preceding three (3) years, the
38 fiscal body of the local unit may not reduce the rate below a rate
39 that would produce one and twenty-five hundredths (1.25) times
40 the total of the highest annual payment requirements, based upon
41 a study by a qualified accountant or financial adviser.

42 (c) If a local unit has no outstanding obligations that are payable



1 from a food and beverage tax imposed under this chapter, the fiscal
2 body of the local unit may adopt an ordinance to reduce the food
3 and beverage tax rate imposed under this chapter or to repeal the
4 food and beverage tax imposed under this chapter.

5 Sec. 16. The general assembly covenants with:

- 6 (1) each local unit imposing a food and beverage tax; and
- 7 (2) the purchasers and owners of obligations of a local unit
- 8 payable from a food and beverage tax;

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

14 Sec. 17. A food and beverage tax imposed under this chapter
15 remains in effect until the expiration of the capital improvement
16 bond or lease being used to carry out the capital improvements.

17 Sec. 18. The department of local government finance may not
18 reduce a local unit's property tax levy because the local unit
19 receives revenue from a food and beverage tax imposed under this
20 chapter.

21 SECTION 2. [EFFECTIVE JANUARY 1, 2024] (a) IC 6-9-18.5, as
22 added by this act, applies only to a local unit authorized by law to
23 enact a tax under that chapter.

24 (b) Notwithstanding IC 6-9-18.5-4, as added by this act, a tax
25 imposed under IC 6-9-18.5, as added by this act, may not apply
26 before January 1, 2024.

27 (c) This SECTION expires July 1, 2026.

