

HOUSE BILL No. 1326

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-9-40; IC 6-9-45.

Synopsis: Food and beverage taxes. Authorizes Angola, Danville, Elkhart, Goshen, Greenwood, Rockville, and Rushville to adopt municipal food and beverage taxes. Provides that the tax rates may not exceed 1%. Specifies the uses to which receipts from the food and beverage taxes may be applied.

Effective: Upon passage.

Price, Morrison

January 15, 2014, read first time and referred to Committee on Ways and Means.



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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

HOUSE BILL No. 1326



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 6-9-40-1, AS ADDED BY P.L.96-2008, SECTION
2 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
3 PASSAGE]: Sec. 1. This chapter applies to Steuben County **and the**
4 **City of Angola.**

5 SECTION 2. IC 6-9-40-3.5 IS ADDED TO THE INDIANA CODE
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
7 UPON PASSAGE]: **Sec. 3.5. (a) This section applies only to the city**
8 **of Angola.**

9 **(b) If the fiscal body of the county has not adopted an ordinance**
10 **under section 3 of this chapter to impose a county food and**
11 **beverage tax, the fiscal body of the city may adopt an ordinance to**
12 **impose an excise tax, known as the city food and beverage tax, on**
13 **transactions described in section 4.5 of this chapter.**

14 **(c) If the fiscal body of the city adopts an ordinance under**
15 **subsection (b), the fiscal body shall immediately send a certified**
16 **copy of the ordinance to the department of state revenue.**



1 **(d) If the fiscal body of the city adopts an ordinance under**
 2 **subsection (b), the county food and beverage tax applies to**
 3 **transactions that occur after the last day of the month that**
 4 **succeeds the month in which the ordinance was adopted.**

5 SECTION 3. IC 6-9-40-4, AS ADDED BY P.L.96-2008, SECTION
 6 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
 7 PASSAGE]: Sec. 4. (a) Except as provided in subsection (c), a tax
 8 imposed under section 3 of this chapter applies to a transaction in
 9 which food or beverage is furnished, prepared, or served:

- 10 (1) for consumption at a location or on equipment provided by a
 11 retail merchant;
 12 (2) in the county in which the tax is imposed; and
 13 (3) by a retail merchant for consideration.

14 (b) Transactions described in subsection (a)(1) include transactions
 15 in which food or beverage is:

- 16 (1) served by a retail merchant off the merchant's premises;
 17 (2) food sold in a heated state or heated by a retail merchant;
 18 (3) made of two (2) or more food ingredients, mixed or combined
 19 by a retail merchant for sale as a single item (other than food that
 20 is only cut, repackaged, or pasteurized by the seller, and eggs,
 21 fish, meat, poultry, and foods containing these raw animal foods
 22 requiring cooking by the consumer as recommended by the
 23 federal Food and Drug Administration in chapter 3, subpart
 24 3-401.11 of its Food Code so as to prevent food borne illnesses);
 25 or
 26 (4) food sold with eating utensils provided by a retail merchant,
 27 including plates, knives, forks, spoons, glasses, cups, napkins, or
 28 straws (for purposes of this subdivision, a plate does not include
 29 a container or package used to transport the food).

30 (c) The county food and beverage tax does not apply to the
 31 furnishing, preparing, or serving of a food or beverage in a transaction
 32 that:

- 33 **(1) is exempt, or to the extent the transaction is exempt, from the**
 34 **state gross retail tax imposed by IC 6-2.5; or**
 35 **(2) is subject to a city food and beverage tax imposed under**
 36 **section 3.5 of this chapter.**

37 SECTION 4. IC 6-9-40-4.5 IS ADDED TO THE INDIANA CODE
 38 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE
 39 UPON PASSAGE]: **Sec. 4.5. (a) This section applies only to the city**
 40 **of Angola.**

41 **(b) Except as provided in subsection (d), a tax imposed under**
 42 **section 3.5 of this chapter applies to a transaction in which food or**



1 beverage is furnished, prepared, or served:

2 (1) for consumption at a location or on equipment provided by
3 a retail merchant;

4 (2) in the city in which the tax is imposed; and

5 (3) by a retail merchant for consideration.

6 (c) Transactions described in subsection (b)(1) include
7 transactions in which food or beverage is:

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

9 (2) food sold in a heated state or heated by a retail merchant;

10 (3) made of two (2) or more food ingredients, mixed or
11 combined by a retail merchant for sale as a single item (other
12 than food that is only cut, repackaged, or pasteurized by the
13 seller, and eggs, fish, meat, poultry, and foods containing these
14 raw animal foods requiring cooking by the consumer as
15 recommended by the federal Food and Drug Administration
16 in chapter 3, subpart 3-401.11 of its Food Code so as to
17 prevent food borne illnesses); or

18 (4) food sold with eating utensils provided by a retail
19 merchant, including plates, knives, forks, spoons, glasses,
20 cups, napkins, or straws (for purposes of this subdivision, a
21 plate does not include a container or package used to
22 transport the food).

23 (d) The city food and beverage tax does not apply to the
24 furnishing, preparing, or serving of a food or beverage in a
25 transaction that is exempt, or to the extent the transaction is
26 exempt, from the state gross retail tax imposed by IC 6-2.5.

27 SECTION 5. IC 6-9-40-5, AS ADDED BY P.L.96-2008, SECTION
28 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
29 PASSAGE]: Sec. 5. ~~The county~~ A food and beverage tax imposed on
30 a food or beverage transaction described in section 4 ~~or 4.5~~ of this
31 chapter equals one percent (1%) of the gross retail income received by
32 the merchant from the transaction. For purposes of this chapter, the
33 gross retail income received by the retail merchant from a transaction
34 does not include the amount of tax imposed on the transaction under
35 IC 6-2.5.

36 SECTION 6. IC 6-9-40-7, AS ADDED BY P.L.96-2008, SECTION
37 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
38 PASSAGE]: Sec. 7. (a) The amounts received from ~~the~~ a tax imposed
39 under this chapter shall be paid monthly by the treasurer of state to the
40 county fiscal officer upon warrants issued by the auditor of state.

41 (b) This subsection applies if:

42 (1) a county food and beverage tax is imposed under section



- 1 **3 of this chapter; and**
 2 **(2) a city food and beverage tax is not imposed under section**
 3 **3.5 of this chapter.**
 4 The county auditor shall, at least monthly, make a distribution of fifty
 5 percent (50%) of the amount received from the treasurer of state in the
 6 immediately preceding thirty (30) days to the city of Angola. The
 7 remainder of the distribution shall be retained for use by the county.
 8 **(c) This subsection applies if:**
 9 **(1) a city food and beverage tax is imposed under section 3.5**
 10 **of this chapter; and**
 11 **(2) a county food and beverage tax is not imposed under**
 12 **section 3 of this chapter.**
 13 **The county auditor shall, at least monthly, make a distribution of**
 14 **the entire amount received from the treasurer of state in the**
 15 **immediately preceding thirty (30) days to the city of Angola.**
 16 **(d) This subsection applies if both of the following are imposed:**
 17 **(1) A county food and beverage tax under section 3 of this**
 18 **chapter.**
 19 **(2) A city food and beverage tax under section 3.5 of this**
 20 **chapter.**
 21 **The county auditor shall, at least monthly, make a distribution to**
 22 **the city of Angola of the entire amount received from the treasurer**
 23 **of state in the immediately preceding thirty (30) days with respect**
 24 **to taxable transactions described in section 4.5 of this chapter. The**
 25 **remainder of the distribution shall be retained for use by the**
 26 **county.**
 27 SECTION 7. IC 6-9-40-8, AS ADDED BY P.L.96-2008, SECTION
 28 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
 29 PASSAGE]: Sec. 8. (a) If a tax is imposed under section 3 **or 3.5** of this
 30 chapter, ~~by a county described in section 1 of this chapter,~~ the fiscal
 31 officer of a political subdivision receiving a distribution under this
 32 chapter shall establish a food and beverage tax receipts fund.
 33 (b) The fiscal officer of a political subdivision receiving a
 34 distribution under this chapter shall deposit in this fund all amounts
 35 received under this chapter.
 36 (c) Money earned from the investment of money in the fund
 37 becomes a part of the fund.
 38 SECTION 8. IC 6-9-45 IS ADDED TO THE INDIANA CODE AS
 39 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
 40 PASSAGE]:
 41 **Chapter 45. Municipal Food and Beverage Taxes**
 42 **Sec. 1. This chapter applies to the following municipalities:**



- 1 (1) Danville.
 2 (2) Elkhart.
 3 (3) Goshen.
 4 (4) Greenwood.
 5 (5) Rockville.
 6 (6) Rushville.
- 7 Sec. 2. The definitions in IC 6-9-12-1 apply throughout this
 8 chapter.
- 9 Sec. 3. (a) The fiscal body of the municipality may adopt an
 10 ordinance to impose an excise tax, known as the municipal food
 11 and beverage tax, on transactions described in section 4 of this
 12 chapter. The fiscal body of the municipality may adopt an
 13 ordinance under this subsection only after the fiscal body has
 14 previously held at least one (1) separate public hearing in which a
 15 discussion of the proposed ordinance to impose the municipal food
 16 and beverage tax is the only substantive issue on the agenda for
 17 that public hearing.
- 18 (b) If the municipal fiscal body adopts an ordinance under
 19 subsection (a), the municipal fiscal body shall immediately send a
 20 certified copy of the ordinance to the department of state revenue.
- 21 (c) If the municipal fiscal body adopts an ordinance under
 22 subsection (a), the municipal food and beverage tax applies to
 23 transactions that occur after the last day of the month that
 24 succeeds the month in which the ordinance is adopted.
- 25 Sec. 4. (a) Except as provided in subsection (c), a tax imposed
 26 under section 3 of this chapter applies to a transaction in which
 27 food or beverage is furnished, prepared, or served:
- 28 (1) for consumption at a location or on equipment provided by
 29 a retail merchant;
 30 (2) in the municipality; and
 31 (3) by a retail merchant for consideration.
- 32 (b) Transactions described in subsection (a)(1) include
 33 transactions in which food or beverage is:
- 34 (1) served by a retail merchant off the merchant's premises;
 35 (2) food sold in a heated state or heated by a retail merchant;
 36 (3) made of two (2) or more food ingredients, mixed or
 37 combined by a retail merchant for sale as a single item (other
 38 than food that is only cut, repackaged, or pasteurized by the
 39 seller, and eggs, fish, meat, poultry, and foods containing these
 40 raw animal foods requiring cooking by the consumer as
 41 recommended by the federal Food and Drug Administration
 42 in chapter 3, subpart 3-401.11 of its Food Code so as to



1 prevent food borne illnesses); or

2 (4) food sold with eating utensils provided by a retail
3 merchant, including plates, knives, forks, spoons, glasses,
4 cups, napkins, or straws (for purposes of this subdivision, a
5 plate does not include a container or package used to
6 transport the food).

7 (c) The municipal food and beverage tax does not apply to the
8 furnishing, preparing, or serving of a food or beverage in a
9 transaction that is exempt, or to the extent the transaction is
10 exempt, from the state gross retail tax imposed by IC 6-2.5.

11 **Sec. 5.** The municipal food and beverage tax rate may not
12 exceed one percent (1%) of the gross retail income received by the
13 merchant from the food or beverage transaction described in
14 section 4 of this chapter. For purposes of this chapter, the gross
15 retail income received by the retail merchant from a transaction
16 does not include the amount of tax imposed on the transaction
17 under IC 6-2.5 or IC 6-9-35.

18 **Sec. 6.** A tax imposed under this chapter shall be imposed, paid,
19 and collected in the same manner that the state gross retail tax is
20 imposed, paid, and collected under IC 6-2.5. However, the return
21 to be filed with the payment of the tax imposed under this chapter
22 may be made on a separate return or may be combined with the
23 return filed for the payment of the state gross retail tax, as
24 prescribed by the department of state revenue.

25 **Sec. 7.** The amounts received from the tax imposed under this
26 chapter shall be paid monthly by the treasurer of state to the
27 municipal fiscal officer upon warrants issued by the auditor of
28 state.

29 **Sec. 8. (a)** If a tax is imposed under section 3 of this chapter by
30 a municipality, the municipal fiscal officer shall establish a food
31 and beverage tax receipts fund.

32 (b) The municipal fiscal officer shall deposit in this fund all
33 amounts received under this chapter.

34 (c) Money earned from the investment of money in the fund
35 becomes a part of the fund.

36 **Sec. 9.** Money in the food and beverage tax receipts fund must
37 be used by the municipality for the following purposes:

38 (1) To reduce the municipality's property tax levy for a
39 particular year at the discretion of the municipality, but this
40 use does not reduce the maximum permissible ad valorem
41 property tax levy under IC 6-1.1-18.5 for the municipality.

42 (2) For economic development purposes, including the pledge



1 of money under IC 5-1-14-4 for bonds, leases, or other
2 obligations for economic development purposes.

3 (3) For a purpose authorized under section 11 of this chapter
4 for a particular municipality.

5 Revenue derived from the imposition of a tax under this chapter
6 may be treated by the municipality as additional revenue for the
7 purpose of fixing its budget for the budget year during which the
8 revenues are to be distributed to the municipality.

9 Sec. 10. With respect to obligations for which a pledge has been
10 made under section 9 or 11 of this chapter, the general assembly
11 covenants with the holders of the obligations that this chapter will
12 not be repealed or amended in a manner that will adversely affect
13 the imposition or collection of the tax imposed under this chapter
14 if the payment of any of the obligations is outstanding.

15 Sec. 11. (a) In addition to the purposes described in section 9 of
16 this chapter, the town of Danville may use municipal food and
17 beverage tax receipts for the following purposes:

18 (1) Public safety.

19 (2) Sidewalk, trail, and transportation infrastructure
20 improvements.

21 (3) The pledge of money under IC 5-1-14-4 for bonds, leases,
22 or other obligations incurred for a purpose described in
23 subdivisions (1) through (2).

24 (b) In addition to the purposes described in section 9 of this
25 chapter, the city of Elkhart may use municipal food and beverage
26 tax receipts for the following purposes:

27 (1) Improvements to buildings and sidewalks, including
28 improvements required to comply with federal mandates.

29 (2) Transportation infrastructure improvements, including
30 street construction and resurfacing.

31 (3) Solid waste management collection and recycling
32 programs.

33 (4) Information technology upgrades, including emergency
34 communications infrastructure improvements.

35 (5) The pledge of money under IC 5-1-14-4 for bonds, leases,
36 or other obligations incurred for a purpose described in
37 subdivisions (1) through (4).

38 (c) In addition to the purposes described in section 9 of this
39 chapter, the city of Goshen may use municipal food and beverage
40 tax receipts for economic development purposes, including any of
41 the following:

42 (1) Street and highway construction and resurfacing projects.



- 1 **(2) Intersection improvement projects.**
- 2 **(3) Water, sewer, and storm water infrastructure projects.**
- 3 **(4) The pledge of money under IC 5-1-14-4 for bonds, leases,**
- 4 **or other obligations incurred for a purpose described in**
- 5 **subdivisions (1) through (3).**
- 6 **(d) In addition to the purposes described in section 9 of this**
- 7 **chapter, the city of Greenwood may use municipal food and**
- 8 **beverage tax receipts for the following purposes:**
- 9 **(1) Public safety.**
- 10 **(2) Parks and recreation.**
- 11 **(3) The pledge of money under IC 5-1-14-4 for bonds, leases,**
- 12 **or other obligations incurred for a purpose described in**
- 13 **subdivisions (1) through (2).**
- 14 **(e) In addition to the purposes described in section 9 of this**
- 15 **chapter, the town of Rockville may use municipal food and**
- 16 **beverage tax receipts for the following purposes:**
- 17 **(1) Storm water, sidewalk, street, park, and parking**
- 18 **improvements necessary to support tourism in the town.**
- 19 **(2) Public safety.**
- 20 **(3) The pledge of money under IC 5-1-14-4 for bonds, leases,**
- 21 **or other obligations incurred for a purpose described in**
- 22 **subdivisions (1) through (2).**
- 23 **(f) In addition to the purposes described in section 9 of this**
- 24 **chapter, the city of Rushville may use municipal food and beverage**
- 25 **tax receipts for the construction, maintenance, and operation of**
- 26 **higher education facilities in the city, including the pledge of money**
- 27 **under IC 5-1-14-4 for bonds, leases, or other obligations incurred**
- 28 **for the construction, maintenance, or operation of the higher**
- 29 **education facilities.**
- 30 **SECTION 9. An emergency is declared for this act.**

