

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Tax and Fiscal Policy, to which was referred House Bill No. 1070, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 3, after line 28, begin a new paragraph and insert:
2 "SECTION 2. IC 6-9-44 IS ADDED TO THE INDIANA CODE AS
3 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
4 PASSAGE]:
5 **Chapter 44. Town of Fishers Food and Beverage Tax**
6 **Sec. 1. This chapter applies to the town of Fishers.**
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 town may adopt an ordinance**
10 **on or before December 31, 2013, to impose an excise tax, known as**
11 **the town food and beverage tax, on transactions described in**
12 **section 4 of this chapter. The fiscal body of the town 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 town food and**
16 **beverage tax is the only substantive issue on the agenda for that**
17 **public hearing.**
18 **(b) If the town fiscal body adopts an ordinance under subsection**
19 **(a), the town fiscal body shall immediately send a certified copy of**
20 **the ordinance to the department of state revenue.**

1 (c) If the town fiscal body adopts an ordinance under subsection
2 (a), the town food and beverage tax applies to transactions that
3 occur after the last day of the month that succeeds the month in
4 which the ordinance is adopted.

5 Sec. 4. (a) Except as provided in subsection (c), a tax imposed
6 under section 3 of this chapter applies to a transaction in which
7 food or beverage is furnished, prepared, or served:

- 8 (1) for consumption at a location or on equipment provided by
- 9 a retail merchant;
- 10 (2) in the town; and
- 11 (3) by a retail merchant for consideration.

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

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

29 (c) The town food and beverage tax does not apply to the
30 furnishing, preparing, or serving of a food or beverage in a
31 transaction that is exempt, or to the extent the transaction is
32 exempt, from the state gross retail tax imposed by IC 6-2.5.

33 Sec. 5. The town food and beverage tax rate may not exceed one
34 percent (1%) of the gross retail income received by the merchant
35 from the food or beverage transaction described in section 4 of this
36 chapter. For purposes of this chapter, the gross retail income
37 received by the retail merchant from a transaction does not include
38 the amount of tax imposed on the transaction under IC 6-2.5.

39 Sec. 6. A tax imposed under this chapter shall be imposed, paid,
40 and collected in the same manner that the state gross retail tax is
41 imposed, paid, and collected under IC 6-2.5. However, the return
42 to be filed with the payment of the tax imposed under this chapter

1 may be made on a separate return or may be combined with the
2 return filed for the payment of the state gross retail tax, as
3 prescribed by the department of state revenue.

4 **Sec. 7.** The amounts received from the tax imposed under this
5 chapter shall be paid monthly by the treasurer of state to the town
6 fiscal officer upon warrants issued by the auditor of state.

7 **Sec. 8. (a)** If a tax is imposed under section 3 of this chapter by
8 a town, the town fiscal officer shall establish a food and beverage
9 tax receipts fund.

10 **(b)** The town fiscal officer shall deposit in this fund all amounts
11 received under this chapter.

12 **(c)** Money earned from the investment of money in the fund
13 becomes a part of the fund.

14 **Sec. 9.** Money in the food and beverage tax receipts fund shall
15 be used by the town:

16 **(1)** to reduce the town's property tax levy for a particular
17 year at the discretion of the town, but this use does not reduce
18 the maximum permissible ad valorem property tax levy under
19 IC 6-1.1-18.5 for the town; or

20 **(2)** for economic development purposes, including the pledge
21 of money under IC 5-1-14-4 for bonds, leases, or other
22 obligations for economic development purposes.

23 Revenue derived from the imposition of a tax under this chapter
24 may be treated by the town as additional revenue for the purpose
25 of fixing its budget for the budget year during which the revenues
26 are to be distributed to the town.

27 **Sec. 10.** With respect to obligations for which a pledge has been
28 made under section 9 of this chapter, the general assembly
29 covenants with the holders of the obligations that this chapter will
30 not be repealed or amended in a manner that will adversely affect
31 the imposition or collection of the tax imposed under this chapter

- 1 **if the payment of any of the obligations is outstanding.**
- 2 SECTION 3. **An emergency is declared for this act."**
- 3 Renumber all SECTIONS consecutively.
(Reference is to HB 1070 as printed February 18, 2013.)

and when so amended that said bill do pass .

Committee Vote: Yeas 11, Nays 0.

Senator Hershman, Chairperson