

# HB0328



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB0328

by Rep. Jay Hoffman

#### SYNOPSIS AS INTRODUCED:

70 ILCS 750/25

Amends the Flood Prevention District Act. Provides that 1% (currently 2%) of the proceeds collected from flood prevention retailers' and service occupation taxes shall be deposited into the Tax Compliance and Administration Fund. Effective July 1, 2015.

LRB099 05848 SXM 25892 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 Flood Prevention District Act is amended by  
5 changing Section 25 as follows:

6 (70 ILCS 750/25)

7 Sec. 25. Flood prevention retailers' and service  
8 occupation taxes.

9 (a) If the Board of Commissioners of a flood prevention  
10 district determines that an emergency situation exists  
11 regarding levee repair or flood prevention, and upon an  
12 ordinance confirming the determination adopted by the  
13 affirmative vote of a majority of the members of the county  
14 board of the county in which the district is situated, the  
15 county may impose a flood prevention retailers' occupation tax  
16 upon all persons engaged in the business of selling tangible  
17 personal property at retail within the territory of the  
18 district to provide revenue to pay the costs of providing  
19 emergency levee repair and flood prevention and to secure the  
20 payment of bonds, notes, and other evidences of indebtedness  
21 issued under this Act for a period not to exceed 25 years or as  
22 required to repay the bonds, notes, and other evidences of  
23 indebtedness issued under this Act. The tax rate shall be 0.25%

1 of the gross receipts from all taxable sales made in the course  
2 of that business. The tax imposed under this Section and all  
3 civil penalties that may be assessed as an incident thereof  
4 shall be collected and enforced by the State Department of  
5 Revenue. The Department shall have full power to administer and  
6 enforce this Section; to collect all taxes and penalties so  
7 collected in the manner hereinafter provided; and to determine  
8 all rights to credit memoranda arising on account of the  
9 erroneous payment of tax or penalty hereunder.

10 In the administration of and compliance with this  
11 subsection, the Department and persons who are subject to this  
12 subsection (i) have the same rights, remedies, privileges,  
13 immunities, powers, and duties, (ii) are subject to the same  
14 conditions, restrictions, limitations, penalties, and  
15 definitions of terms, and (iii) shall employ the same modes of  
16 procedure as are set forth in Sections 1 through 10, 2 through  
17 2-70 (in respect to all provisions contained in those Sections  
18 other than the State rate of tax), 2a through 2h, 3 (except as  
19 to the disposition of taxes and penalties collected), 4, 5, 5a,  
20 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5l, 6, 6a, 6b, 6c, 7, 8, 9, 10,  
21 11, 11a, 12, and 13 of the Retailers' Occupation Tax Act and  
22 all provisions of the Uniform Penalty and Interest Act as if  
23 those provisions were set forth in this subsection.

24 Persons subject to any tax imposed under this Section may  
25 reimburse themselves for their seller's tax liability  
26 hereunder by separately stating the tax as an additional

1 charge, which charge may be stated in combination in a single  
2 amount with State taxes that sellers are required to collect  
3 under the Use Tax Act, under any bracket schedules the  
4 Department may prescribe.

5 If a tax is imposed under this subsection (a), a tax shall  
6 also be imposed under subsection (b) of this Section.

7 (b) If a tax has been imposed under subsection (a), a flood  
8 prevention service occupation tax shall also be imposed upon  
9 all persons engaged within the territory of the district in the  
10 business of making sales of service, who, as an incident to  
11 making the sales of service, transfer tangible personal  
12 property, either in the form of tangible personal property or  
13 in the form of real estate as an incident to a sale of service  
14 to provide revenue to pay the costs of providing emergency  
15 levee repair and flood prevention and to secure the payment of  
16 bonds, notes, and other evidences of indebtedness issued under  
17 this Act for a period not to exceed 25 years or as required to  
18 repay the bonds, notes, and other evidences of indebtedness.  
19 The tax rate shall be 0.25% of the selling price of all  
20 tangible personal property transferred.

21 The tax imposed under this subsection and all civil  
22 penalties that may be assessed as an incident thereof shall be  
23 collected and enforced by the State Department of Revenue. The  
24 Department shall have full power to administer and enforce this  
25 subsection; to collect all taxes and penalties due hereunder;  
26 to dispose of taxes and penalties collected in the manner

1 hereinafter provided; and to determine all rights to credit  
2 memoranda arising on account of the erroneous payment of tax or  
3 penalty hereunder.

4 In the administration of and compliance with this  
5 subsection, the Department and persons who are subject to this  
6 subsection shall (i) have the same rights, remedies,  
7 privileges, immunities, powers, and duties, (ii) be subject to  
8 the same conditions, restrictions, limitations, penalties, and  
9 definitions of terms, and (iii) employ the same modes of  
10 procedure as are set forth in Sections 2 (except that the  
11 reference to State in the definition of supplier maintaining a  
12 place of business in this State means the district), 2a through  
13 2d, 3 through 3-50 (in respect to all provisions contained in  
14 those Sections other than the State rate of tax), 4 (except  
15 that the reference to the State shall be to the district), 5,  
16 7, 8 (except that the jurisdiction to which the tax is a debt  
17 to the extent indicated in that Section 8 is the district), 9  
18 (except as to the disposition of taxes and penalties  
19 collected), 10, 11, 12 (except the reference therein to Section  
20 2b of the Retailers' Occupation Tax Act), 13 (except that any  
21 reference to the State means the district), Section 15, 16, 17,  
22 18, 19, and 20 of the Service Occupation Tax Act and all  
23 provisions of the Uniform Penalty and Interest Act, as fully as  
24 if those provisions were set forth herein.

25 Persons subject to any tax imposed under the authority  
26 granted in this subsection may reimburse themselves for their

1 serviceman's tax liability hereunder by separately stating the  
2 tax as an additional charge, that charge may be stated in  
3 combination in a single amount with State tax that servicemen  
4 are authorized to collect under the Service Use Tax Act, under  
5 any bracket schedules the Department may prescribe.

6 (c) The taxes imposed in subsections (a) and (b) may not be  
7 imposed on personal property titled or registered with an  
8 agency of the State; food for human consumption that is to be  
9 consumed off the premises where it is sold (other than  
10 alcoholic beverages, soft drinks, and food that has been  
11 prepared for immediate consumption); prescription and  
12 non-prescription medicines, drugs, and medical appliances;  
13 modifications to a motor vehicle for the purpose of rendering  
14 it usable by a disabled person; or insulin, urine testing  
15 materials, and syringes and needles used by diabetics.

16 (d) Nothing in this Section shall be construed to authorize  
17 the district to impose a tax upon the privilege of engaging in  
18 any business that under the Constitution of the United States  
19 may not be made the subject of taxation by the State.

20 (e) The certificate of registration that is issued by the  
21 Department to a retailer under the Retailers' Occupation Tax  
22 Act or a serviceman under the Service Occupation Tax Act  
23 permits the retailer or serviceman to engage in a business that  
24 is taxable without registering separately with the Department  
25 under an ordinance or resolution under this Section.

26 (f) The Department shall immediately pay over to the State

1 Treasurer, ex officio, as trustee, all taxes and penalties  
2 collected under this Section to be deposited into the Flood  
3 Prevention Occupation Tax Fund, which shall be an  
4 unappropriated trust fund held outside the State treasury.

5 On or before the 25th day of each calendar month, the  
6 Department shall prepare and certify to the Comptroller the  
7 disbursement of stated sums of money to the counties from which  
8 retailers or servicemen have paid taxes or penalties to the  
9 Department during the second preceding calendar month. The  
10 amount to be paid to each county is equal to the amount (not  
11 including credit memoranda) collected from the county under  
12 this Section during the second preceding calendar month by the  
13 Department, (i) less 1% ~~2%~~ of that amount, which shall be  
14 deposited into the Tax Compliance and Administration Fund and  
15 shall be used by the Department in administering and enforcing  
16 the provisions of this Section on behalf of the county, (ii)  
17 plus an amount that the Department determines is necessary to  
18 offset any amounts that were erroneously paid to a different  
19 taxing body; (iii) less an amount equal to the amount of  
20 refunds made during the second preceding calendar month by the  
21 Department on behalf of the county; and (iv) less any amount  
22 that the Department determines is necessary to offset any  
23 amounts that were payable to a different taxing body but were  
24 erroneously paid to the county. When certifying the amount of a  
25 monthly disbursement to a county under this Section, the  
26 Department shall increase or decrease the amounts by an amount

1 necessary to offset any miscalculation of previous  
2 disbursements within the previous 6 months from the time a  
3 miscalculation is discovered.

4 Within 10 days after receipt by the Comptroller from the  
5 Department of the disbursement certification to the counties  
6 provided for in this Section, the Comptroller shall cause the  
7 orders to be drawn for the respective amounts in accordance  
8 with directions contained in the certification.

9 If the Department determines that a refund should be made  
10 under this Section to a claimant instead of issuing a credit  
11 memorandum, then the Department shall notify the Comptroller,  
12 who shall cause the order to be drawn for the amount specified  
13 and to the person named in the notification from the  
14 Department. The refund shall be paid by the Treasurer out of  
15 the Flood Prevention Occupation Tax Fund.

16 (g) If a county imposes a tax under this Section, then the  
17 county board shall, by ordinance, discontinue the tax upon the  
18 payment of all indebtedness of the flood prevention district.  
19 The tax shall not be discontinued until all indebtedness of the  
20 District has been paid.

21 (h) Any ordinance imposing the tax under this Section, or  
22 any ordinance that discontinues the tax, must be certified by  
23 the county clerk and filed with the Illinois Department of  
24 Revenue either (i) on or before the first day of April,  
25 whereupon the Department shall proceed to administer and  
26 enforce the tax or change in the rate as of the first day of



1 July next following the filing; or (ii) on or before the first  
2 day of October, whereupon the Department shall proceed to  
3 administer and enforce the tax or change in the rate as of the  
4 first day of January next following the filing.

5 (j) County Flood Prevention Occupation Tax Fund. All  
6 proceeds received by a county from a tax distribution under  
7 this Section must be maintained in a special fund known as the  
8 [name of county] flood prevention occupation tax fund. The  
9 county shall, at the direction of the flood prevention  
10 district, use moneys in the fund to pay the costs of providing  
11 emergency levee repair and flood prevention and to pay bonds,  
12 notes, and other evidences of indebtedness issued under this  
13 Act.

14 (k) This Section may be cited as the Flood Prevention  
15 Occupation Tax Law.

16 (Source: P.A. 96-939, eff. 6-24-10; 97-188, eff. 7-22-11.)

17 Section 99. Effective date. This Act takes effect July 1,  
18 2015.