

AN ACT concerning local government.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 1. Short title. This Act may be cited as the Flood Prevention District Act.

Section 5. Creation; purpose.

(a) Madison, Monroe, and St. Clair Counties may each be designated independently and separately as a flood prevention district for the purpose of performing emergency levee repair and flood prevention in order to prevent the loss of life or property. The county board of any such county may declare an emergency and create a flood prevention district by the affirmative vote of the majority of the members of the county board.

(b) Two or more flood prevention districts may join together through an intergovernmental agreement, pursuant to the Intergovernmental Cooperation Act.

(c) Any district created under this Act shall be dissolved upon the later of (i) 25 years after the date the district is created or (ii) the payment of all obligations of the district under Section 20 of this Act and any federal reimbursement moneys to the county treasurer under Section 30 of this Act. A district may be dissolved earlier if all federal reimbursement

moneys have been paid to the county treasurer and all obligations of the district have been paid, including its obligations related to bonds issued under Section 20 of this Act and any obligations incurred pursuant to an intergovernmental agreement.

Section 10. Commissioners.

The affairs of the district shall be managed by a board of 3 commissioners who shall be appointed by the chairman of the county board of the county in which the district is situated. All initial appointments under this Section must be made within 90 days after the district is organized. Of the initial appointments, one commissioner shall serve for a one-year term, one commissioner shall serve for a 2-year term, and one commissioner shall serve for a 3-year term, as determined by lot. Their successors shall be appointed for 3-year terms. No commissioner may serve for more than 20 years. All appointments must be made so that no more than 2 commissioners are from the same political party at the time of the appointment. With respect to appointments representing the minority party in the county, the minority party members of the county board may submit names for consideration to the chairman of the county board. Each commissioner must be a legal voter in the district, and at least one commissioner shall reside or own property that is located within a floodplain situated in the territory of the flood protection district. Commissioners shall serve without

compensation, but may be reimbursed for reasonable expenses incurred in the performance of their duties.

Section 20. Powers of the district. A district formed under this Act shall have the following powers:

(1) To sue or be sued.

(2) To apply for and accept gifts, grants, and loans from any public agency or private entity.

(3) To enter into intergovernmental agreements to further ensure levee repair, levee construction or reconstruction, and flood prevention, including agreements with the United States Army Corps of Engineers or any other agency or department of the federal government.

(4) To undertake evaluation, planning, design, construction, and related activities that are determined to be urgently needed to stabilize, repair, restore, improve, or replace existing levees and other flood control systems.

(5) To address underseepage problems and old and deteriorating pumps, gates, pipes, electrical controls, and other infrastructure.

(6) To conduct evaluations of levees and other flood control facilities that protect urban areas, including the performance of floodplain mapping studies.

(7) To provide capital moneys for levee or river-related scientific studies, including the

construction of facilities for such purposes.

(8) To borrow money or receive money from the United States Government or any agency thereof, or from any other public or private source, for the purposes of the District.

(9) To enter into agreements with private property owners.

(10) To issue revenue bonds, payable from revenue received from a retailers' occupation tax imposed under Section 25 of this Act, and from any other revenue sources available to the flood prevention district. These bonds may be issued with maturities not exceeding 25 years from the date of the bonds, and in such amounts as may be necessary to provide sufficient funds, together with interest, for the purposes of the District. These bonds shall bear interest at a rate of not more than the maximum rate authorized by the Bond Authorization Act, as amended at the time of the making of the contract of sale, payable semi-annually, may be made registerable as to principal, and may be made payable and callable as provided on any date at a price of par and accrued interest under such terms and conditions as may be fixed by the ordinance authorizing the issuance of the bonds. Bonds issued under this Section are negotiable instruments. In case any officer whose signature appears on the bonds or coupons ceases to hold that office before the bonds are delivered, such officer's signature shall nevertheless be valid and

sufficient for all purposes the same as though such officer had remained in office until the bonds were delivered. The bonds shall be sold in such manner and upon such terms as the board of commissioners shall determine, except that the selling price shall be such that the interest cost to the District of the proceeds of the bonds shall not exceed the maximum rate authorized by the Bond Authorization Act, as amended at the time of the making of the contract of sale, payable semi-annually, computed to maturity according to the standard table of bond values. A request to issue revenue bonds by the Commission must be submitted for approval to the county board of the county in which the district is situated. The county board has 30 calendar days to approve the issuance of such bonds. If the county board does not approve or disapprove the issuance of the bonds within 30 calendar days after the receipt of such request, the request shall be deemed approved.

(11) To acquire property by gift, grant, or eminent domain, in accordance with the Eminent Domain Act. Any action by the District to acquire property by eminent domain requires the express approval of the county board.

(12) To retain professional staff to carry out the functions of the District. Any flood prevention district shall employ a Chief Supervisor of Construction and the Works with appropriate professional qualifications, including a degree in engineering, construction,

hydrology, or a related field, or an equivalent combination of education and experience. The Chief Supervisor of Construction and the Works shall be vested with the authority to carry out the duties and mission of the Flood Prevention District, pursuant to the direction and supervision of the Board of Commissioners. The Chief Supervisor of Construction and the Works may hire additional staff as necessary to carry out the duties and mission of the district, including administrative support personnel. Two or more districts may, through an intergovernmental agreement, share the services of a Chief Supervisor of Construction and the Works, support staff, or both. If 2 districts are adjoining and share a common federal levee, they must retain the services of the same person as Chief Supervisor of Construction and the Works.

(13) To conduct an audit of any drainage, levee, or sanitary district within the territory of the flood prevention district.

Section 25. Retailers' occupation tax.

(a) If the Board of a flood prevention district determines that an emergency situation exists regarding levee repair or flood prevention, and upon an ordinance or resolution adopted by the affirmative vote of a majority of the members of the county board of the county in which the district is situated, it may impose a retailers' occupation tax upon all persons

engaged in the business of selling tangible personal property at retail within the territory of the district for a period not to exceed 25 years or as required to repay the bonds issued pursuant to Section 20 of this Act. The tax rate shall be 0.25% of the gross receipts from all taxable sales made in the course of that business. The tax imposed under this Section and all civil penalties that may be assessed as an incident thereof shall be collected and enforced by the State Department of Revenue. The Department shall have full power to administer and enforce this Section; to collect all taxes and penalties so collected in the manner hereinafter provided; and to determine all rights to credit memoranda arising on account of the erroneous payment of tax or penalty hereunder.

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

those provisions were set forth in this subsection.

Persons subject to any tax imposed under this Section may reimburse themselves for their seller's tax liability hereunder by separately stating the tax as an additional charge, which charge may be stated in combination in a single amount with State taxes that sellers are required to collect under the Use Tax Act, under any bracket schedules the Department may prescribe.

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

(b) If a tax has been imposed under subsection (a), a service occupation tax shall also be imposed upon all persons within the territory of the district engaged in the business of making sales of service, who, as an incident to making the sales of service, transfer tangible personal property within the territory of the district, either in the form of tangible personal property or in the form of real estate as an incident to a sale of service. The tax rate shall be 0.25% of the selling price of all tangible personal property transferred.

The tax imposed under this subsection and all civil penalties that may be assessed as an incident thereof shall be collected and enforced by the State Department of Revenue. The Department shall have full power to administer and enforce this subsection; to collect all taxes and penalties due hereunder; to dispose of taxes and penalties collected in the manner hereinafter provided; and to determine all rights to credit

memoranda arising on account of the erroneous payment of tax or penalty hereunder.

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

Persons subject to any tax imposed under the authority granted in this subsection may reimburse themselves for their serviceman's tax liability hereunder by separately stating the

tax as an additional charge, that charge may be stated in combination in a single amount with State tax that servicemen are authorized to collect under the Service Use Tax Act, under any bracket schedules the Department may prescribe.

(c) This additional tax may not be imposed on personal property titled or registered with an agency of the State; food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption); prescription and non-prescription medicines, drugs, and medical appliances; or insulin, urine testing materials, and syringes and needles used by diabetics.

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

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

(f) The Department shall immediately pay over to the State Treasurer, ex officio, as trustee, all taxes and penalties collected under this Section to be deposited into the Flood Prevention Occupation Tax Fund, which shall be an

unappropriated trust fund held outside the State treasury.

On or before the 25th day of each calendar month, the Department shall prepare and certify to the Comptroller that disbursement of stated sums of money to the counties from which retailers or servicemen have paid taxes or penalties to the Department during the second preceding calendar month. The amount to be paid to each county is equal to the amount (not including credit memoranda) collected from the county under this Section during the second preceding calendar month by the Department, (i) less 2% of that amount, which shall be deposited into the Tax Compliance and Administration Fund and shall be used by the Department in administering and enforcing the provisions of this Section on behalf of the county, (ii) plus an amount that the Department determines is necessary to offset any amounts that were erroneously paid to a different taxing body; (iii) less an amount equal to the amount of refunds made during the second preceding calendar month by the Department on behalf of the county; and (iv) less any amount that the Department determines is necessary to offset any amounts that were payable to a different taxing body but were erroneously paid to the county. When certifying the amount of a monthly disbursement to a county under this Section, the Department shall increase or decrease the amounts by an amount necessary to offset any miscalculation of previous disbursements within the previous 6 months from the time a miscalculation is discovered.

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

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

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

(h) Any ordinance imposing the tax under this Section, or any ordinance that discontinues the tax, must be certified by the county clerk and filed with the Illinois Department of Revenue either (i) on or before the first day of April, whereupon the Department shall proceed to administer and enforce the tax or change in the rate as of the first day of July next following the filing; or (ii) on or before the first day of October, whereupon the Department shall proceed to administer and enforce the tax or change in the rate as of the

first day of January next following the filing.

(j) This Section may be cited as the Flood Prevention Occupation Tax Law.

Section 30. Disbursement of federal funds.

(a) Any reimbursements for the construction of flood protection facilities shall be appropriated to each county flood prevention district in accordance with the location of the specific facility for which the federal appropriation is made.

(b) If there are federal reimbursements to a county flood prevention district for construction of flood protection facilities that were built using revenues authorized by this Act, those funds shall be used for early retirement of bonds issued in accordance with this Act.

(c) When all bond obligations of the District have been paid, any remaining federal reimbursement moneys shall be remitted to the county treasurer for deposit into a special fund for the continued long-term maintenance of federal levees and flood protection facilities, pursuant to the direction of the county board.

Section 35. Financial audit of the Commission. A financial audit of the Commission shall be conducted annually by a certified public accountant (CPA) that is licensed at the time of the audit by the Illinois Department of Financial and

Professional Regulation. The CPA shall meet all of the general standards concerning qualifications, independence, due professional care, and quality control as required by the Government Auditing Standards, 1994 Revision, Chapter 3, including the requirements for continuing professional education and external peer review. The financial audit is to be performed in accordance with generally accepted auditing standards issued by the American Institute of Certified Public Accountants (AICPA) for field work and reporting, generally accepted government auditing standards (GAGAS) and AICPA Statements on Auditing Standards (SAS) current at the time the audit is commenced. The audit shall be made publicly available and sent to the county board chairman of the county in which the district is situated and to the Illinois Secretary of State.

Section 40. Budget of the Commission. The Commission shall adopt an annual budget by August 31 of each year for the fiscal year beginning October 1. Such budget shall include expected revenues by source and expenditures by project or by function for the following year. The budget must be approved by the county board of the county in which the district is situated prior to any expenditure by the Commission for the fiscal year beginning October 1. The county board must approve or disapprove the budget of the commission within 30 calendar days after the budget is received by the county board. If the county

board does not act to approve or disapprove the budget within 30 calendar days of receipt, it shall stand as approved.

In addition, the Commission shall submit an annual report to the county board by August 31 of each year detailing the activities of the district. This report must also include any information submitted to the flood prevention district by a drainage, levee, or sanitary district in accordance with Section 4-45 of the Illinois Drainage Code or Section 2-2 of the Metro-East Sanitary District Act.

Section 45. Procurement. The Commission shall conduct all procurements in accordance with the requirements of the Local Government Professional Services Selection Act and any competitive bid requirements contained in Section 5-1022 of the Counties Code.

Section 50. Contracts for construction. A request for any construction contract of more than \$10,000 by the Commission must be submitted for approval to the county board of the county in which the district is situated. The county board has 30 calendar days to approve the construction contract. If the county board does not approve or disapprove the construction contract within 30 calendar days after the receipt of such request, the request shall be deemed approved.

Section 60. The Intergovernmental Cooperation Act is

amended by adding Section 3.9 as follows:

(5 ILCS 220/3.9 new)

Sec. 3.9. Flood prevention. Two or more county flood prevention districts may enter into an intergovernmental agreement to provide any services authorized in the Flood Prevention District Act.

Section 70. The Illinois Governmental Ethics Act is amended by changing Section 4A-101 as follows:

(5 ILCS 420/4A-101) (from Ch. 127, par. 604A-101)

Sec. 4A-101. Persons required to file. The following persons shall file verified written statements of economic interests, as provided in this Article:

(a) Members of the General Assembly and candidates for nomination or election to the General Assembly.

(b) Persons holding an elected office in the Executive Branch of this State, and candidates for nomination or election to these offices.

(c) Members of a Commission or Board created by the Illinois Constitution, and candidates for nomination or election to such Commission or Board.

(d) Persons whose appointment to office is subject to confirmation by the Senate.

(e) Holders of, and candidates for nomination or

election to, the office of judge or associate judge of the Circuit Court and the office of judge of the Appellate or Supreme Court.

(f) Persons who are employed by any branch, agency, authority or board of the government of this State, including but not limited to, the Illinois State Toll Highway Authority, the Illinois Housing Development Authority, the Illinois Community College Board, and institutions under the jurisdiction of the Board of Trustees of the University of Illinois, Board of Trustees of Southern Illinois University, Board of Trustees of Chicago State University, Board of Trustees of Eastern Illinois University, Board of Trustees of Governor's State University, Board of Trustees of Illinois State University, Board of Trustees of Northeastern Illinois University, Board of Trustees of Northern Illinois University, Board of Trustees of Western Illinois University, or Board of Trustees of the Illinois Mathematics and Science Academy, and are compensated for services as employees and not as independent contractors and who:

(1) are, or function as, the head of a department, commission, board, division, bureau, authority or other administrative unit within the government of this State, or who exercise similar authority within the government of this State;

(2) have direct supervisory authority over, or direct responsibility for the formulation, negotiation, issuance or execution of contracts entered into by the State in the amount of \$5,000 or more;

(3) have authority for the issuance or promulgation of rules and regulations within areas under the authority of the State;

(4) have authority for the approval of professional licenses;

(5) have responsibility with respect to the financial inspection of regulated nongovernmental entities;

(6) adjudicate, arbitrate, or decide any judicial or administrative proceeding, or review the adjudication, arbitration or decision of any judicial or administrative proceeding within the authority of the State;

(7) have supervisory responsibility for 20 or more employees of the State; or

(8) negotiate, assign, authorize, or grant naming rights or sponsorship rights regarding any property or asset of the State, whether real, personal, tangible, or intangible.

(g) Persons who are elected to office in a unit of local government, and candidates for nomination or

election to that office, including regional superintendents of school districts.

(h) Persons appointed to the governing board of a unit of local government, or of a special district, and persons appointed to a zoning board, or zoning board of appeals, or to a regional, county, or municipal plan commission, or to a board of review of any county, and persons appointed to the Board of the Metropolitan Pier and Exposition Authority and any Trustee appointed under Section 22 of the Metropolitan Pier and Exposition Authority Act, and persons appointed to a board or commission of a unit of local government who have authority to authorize the expenditure of public funds. This subsection does not apply to members of boards or commissions who function in an advisory capacity.

(i) Persons who are employed by a unit of local government and are compensated for services as employees and not as independent contractors and who:

(1) are, or function as, the head of a department, division, bureau, authority or other administrative unit within the unit of local government, or who exercise similar authority within the unit of local government;

(2) have direct supervisory authority over, or direct responsibility for the formulation, negotiation, issuance or execution of contracts

entered into by the unit of local government in the amount of \$1,000 or greater;

(3) have authority to approve licenses and permits by the unit of local government; this item does not include employees who function in a ministerial capacity;

(4) adjudicate, arbitrate, or decide any judicial or administrative proceeding, or review the adjudication, arbitration or decision of any judicial or administrative proceeding within the authority of the unit of local government;

(5) have authority to issue or promulgate rules and regulations within areas under the authority of the unit of local government; or

(6) have supervisory responsibility for 20 or more employees of the unit of local government.

(j) Persons on the Board of Trustees of the Illinois Mathematics and Science Academy.

(k) Persons employed by a school district in positions that require that person to hold an administrative or a chief school business official endorsement.

(l) Special government agents. A "special government agent" is a person who is directed, retained, designated, appointed, or employed, with or without compensation, by or on behalf of a statewide executive branch constitutional officer to make an ex parte communication under Section

5-50 of the State Officials and Employees Ethics Act or Section 5-165 of the Illinois Administrative Procedure Act.

(m) Members of the board of commissioners of any flood prevention district.

This Section shall not be construed to prevent any unit of local government from enacting financial disclosure requirements that mandate more information than required by this Act.

(Source: P.A. 93-617, eff. 12-9-03; 93-816, eff. 7-27-04.)

Section 75. The Illinois Drainage Code is amended by adding Section 4-45 as follows:

(70 ILCS 605/4-45 new)

Sec. 4-45. Flood prevention districts; reporting requirement; control. If a flood prevention district has been formed under the Flood Prevention District Act, the flood prevention district shall have the exclusive authority within such areas as designated by the county board to restore, improve, upgrade, construct, or reconstruct levees. If any part of the territory of a drainage district, levee district, or sanitary district overlaps with the territory of a flood prevention district, the drainage district, levee district, or sanitary district shall, at the direction of the county board, operate under the direction of the board of commissioners of

the flood prevention district with respect to the restoration, improvement, upgrade, construction, or reconstruction of levees and other flood control systems. At the direction of the county board, the flood prevention district and its assignees shall be permitted to utilize any property, easements, or rights-of-way owned or controlled by the drainage district, levee district, or sanitary district. In addition, at the direction of the county board, the board of commissioners of any such drainage, levee, or sanitary district must comply with any requests for information by the board of commissioners of the flood prevention district, including, but not limited to, requests for information concerning past, present, and future contracts; employees of the drainage, levee, or sanitary district; finances of the drainage, levee, or sanitary district; and other activities of the drainage, levee, or sanitary district. This information must be submitted to the board of commissioners of the flood prevention district within 30 days after the request is received. Nothing in this Section 4-45 or in the Flood Prevention District Act shall preclude or prohibit a drainage district, levee district, or sanitary district that overlaps the territory of a flood prevention district from conducting or performing its normal operation and maintenance of levees under their control, provided such normal operation and maintenance does not interfere with or inhibit the restoration, improvement, upgrade, construction, or reconstruction of levees and other flood control systems by the

flood prevention district.

Section 80. The Metro-East Sanitary District Act of 1974 is amended by changing Section 2-2 as follows:

(70 ILCS 2905/2-2) (from Ch. 42, par. 502-2)

Sec. 2-2.

To lay out, locate, establish and construct one or more levees or embankments of such size, material and character as may be required to protect the district against overflow from any river, or tributary stream, or water-course, and to lay out, establish and construct all such other or additional improvements or works as may be auxiliary or incidental thereto, or promotive of the sanitary purposes contemplated in this Act; and to maintain, repair, change, enlarge and add to such levees, embankments, improvements and work as may be necessary or proper to meet future requirements for the accomplishment of the purposes aforesaid.

To the extent that any part of the territory of the District overlaps with a flood prevention district that is formed under the Flood Prevention District Act, the flood prevention district shall have the exclusive authority to repair, construct, or reconstruct levees within the territory of the flood prevention district. The District shall operate under the direction of the board of commissioners of the flood prevention district with respect to the repair, construction,

or reconstruction of levees within the territory of the flood prevention district. In addition, the board of the District must comply with any requests for information by the board of commissioners of the flood prevention district, including, but not limited to, requests for information concerning past, present, and future contracts; employees of the District; finances of the District; and other activities of the District. This information must be submitted to the board of commissioners of the flood prevention district within 30 days after the request is received.

(Source: P.A. 78-1017.)

Section 99. Effective date. This Act takes effect upon becoming law.