

AN ACT concerning floodplains.

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

Section 5. The Environmental Protection Act is amended by adding Sections 3.102 and 3.103 as follows:

(415 ILCS 5/3.102 new)

Sec. 3.102. 100-year flood. "100-year flood" means a flood that has a 1% or greater chance of recurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly longer period.

(415 ILCS 5/3.103 new)

Sec. 3.103. 100-year floodplain. "100-year floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by a 100-year flood. For the purposes of this Act, including for the purposes of granting permit and license applications filed or pending prior to the effective date of this amendatory Act of the 96th General Assembly, an area shall be deemed by operation of law not to be within the 100-year floodplain if the area lies within an area protected by a federal levee and is located in a flood prevention district established in accordance with the Flood

Prevention District Act; provided, however, that an area that lies within a flood prevention district established in accordance with the Flood Prevention District Act shall be deemed by operation of law to be within the 100-year floodplain if, according to the currently adopted federal flood insurance rate map, the area is subject to inundation by a 100-year flood from bodies of water other than the Mississippi River.

Section 15. The Rivers, Lakes, and Streams Act is amended by adding Sections 18h, 18i, and 18j and by changing Sections 18f and 18g as follows:

(615 ILCS 5/18f) (from Ch. 19, par. 65f)

Sec. 18f.

(a) The Department of Natural Resources shall define 100-year floodplains ~~flood plains~~ within the State of Illinois on a township by township basis and may issue permits for any construction within such 100-year floodplains ~~flood plains~~ on or after the effective date of this amendatory Act of 1971. The Department shall publish and distribute suitable reports, together with mapping and hydrologic exhibits pertaining to 100-year floodplains ~~flood plains~~ defined and established under this Act. In defining applicable 100-year floodplains ~~flood plains~~, the Department shall cooperate with, and shall consider planning and zoning requirements of, regional planning agencies created by statute, counties, municipalities

and other units of government. A period of thirty days shall be allowed for any agency to submit written comments to the Department regarding any proposed 100-year floodplain ~~flood plain~~ area. If such agency fails to return comments to the Department within the specified time period the Department may proceed with the publication and institution of the 100-year floodplain ~~flood plain~~ permit procedure. The Department is charged with the planning, development, and evaluation of the most economic combination of retention storage, channel improvement, and floodplain ~~flood plain~~ preservation in defining and establishing 100-year floodplain ~~flood plain~~ areas. All construction undertaken on a defined 100-year floodplain ~~flood plain~~ subsequent to the effective date of this amendatory Act, without benefit of a permit from the Department of Natural Resources, shall be unlawful and the Department, may in its discretion, proceed to obtain injunctive relief for abatement or removal of such unlawful construction. The Department, in its discretion, may make such investigations and conduct such hearings as may be necessary to the performance of its duties under this amendatory Act of 1971. Activity of the Department under this Section shall be limited to townships related to projects of the Department authorized by the General Assembly. The report of the Department shall be considered a final administrative decision and subject to judicial review in accordance with the provision of the Administrative Review Law.

(b) For the purposes of this Section, including for the

purposes of granting permit and license applications filed or pending prior to the effective date of this amendatory Act of the 96th General Assembly, "100-year floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by a flood that has a 1% or greater chance of recurring in any given year or a flood of a magnitude equalled or exceeded once in 100 years on the average over a significantly long period. For the purposes of this Section, an area shall be deemed by operation of law not to be within the 100-year floodplain if the area lies within an area protected by a federal levee and is located in a flood prevention district established in accordance with the Flood Prevention District Act; provided, however, that an area that lies within a flood prevention district established in accordance with the Flood Prevention District Act shall be deemed by operation of law to be within the 100-year floodplain if, according to the currently adopted federal flood insurance rate map, the area is subject to inundation by a 100-year flood from bodies of water other than the Mississippi River.

(Source: P.A. 89-445, eff. 2-7-96.)

(615 ILCS 5/18g) (from Ch. 19, par. 65g)

Sec. 18g. (a) The Department of Natural Resources shall define the 100-year floodway within metropolitan counties located in the area served by the Northeastern Illinois

Planning Commission, except for the part of that area which is within any city with a population exceeding 1,500,000. In defining the 100-year floodway, the Department may rely on published data and maps which have been prepared by the Department itself, by the Illinois State Water Survey of the University of Illinois, by federal, State or local governmental agencies, or by any other private or public source which it determines to be reliable and appropriate.

(b) The Department may issue permits for construction that is an appropriate use of the designated 100-year floodway in such metropolitan counties. If a unit of local government has adopted an ordinance that establishes minimum standards for appropriate use of the floodway that are at least as restrictive as those established by the Department and this Section, and the unit of local government has adequate staff to enforce the ordinance, the Department may delegate to such unit of local government the authority to issue permits for construction that is an appropriate use of the floodway within its jurisdiction.

(c) No person may engage in any new construction within the 100-year floodway as designated by the Department in such metropolitan counties, unless such construction relates to an appropriate use of the floodway. No unit of local government, including home rule units, in such metropolitan counties may issue any building permit or other apparent authorization for any prohibited new construction within the 100-year floodway.

(d) For the purpose of this Section, including for the purposes of granting permit and license applications filed or pending prior to the effective date of this amendatory Act of the 96th General Assembly:

(1) "100-year floodway" means the channel and that portion of the 100-year floodplain adjacent to a stream or watercourse which is needed to store and convey the 100-year frequency flood discharge without a significant increase in stage.

(1.5) "100-year floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by a flood that has a 1% or greater chance of recurring in any given year or a flood of a magnitude equalled or exceeded once in 100 years on the average over a significantly long period.

(2) "New construction" means the construction of any new building or structure or the placement of any fill or material, but does not include the repair, remodeling or maintenance of buildings or structures in existence on the effective date of this amendatory Act of 1987.

(3) "Appropriate use of the floodway" means use for (i) flood control structures, dikes, dams and other public works or private improvements relating to the control of drainage, flooding or erosion; (ii) structures or facilities relating to the use of, or requiring access to,

the water or shoreline, including pumping and treatment facilities, and facilities and improvements related to recreational boats, commercial shipping and other functionally dependent uses; and (iii) any other purposes which the Department determines, by rule, to be appropriate to the 100-year floodway, and the periodic inundation of which will not pose a danger to the general health and welfare of the user, or require the expenditure of public funds or the provision of public resources or disaster relief services. Appropriate use of the floodway does not include construction of a new building unless such building is a garage, storage shed or other structure accessory to an existing building and such building does not increase flood stages.

(4) "Person" includes natural persons, corporations, associations, governmental entities, and all other legal entities.

(e) All construction undertaken on a designated 100-year floodway in such metropolitan counties, without benefit of a permit from the Department of Natural Resources, shall be unlawful and the Department or any affected unit of local government may, in its discretion, proceed to obtain injunctive relief for abatement or removal of such unlawful construction. The Department, in its discretion, may make such investigations and conduct such hearings and adopt such rules as may be necessary to the performance of its duties under this Section.

(f) This Section does not limit any power granted to the Department by any other Act.

(g) This Section does not limit the concurrent exercise by any unit of local government of any power consistent herewith.

(h) This Section does not apply to any city with a population exceeding 1,500,000.

(Source: P.A. 95-728, eff. date - See Sec. 999.)

(615 ILCS 5/18h new)

Sec. 18h. Conflicts with Executive Order 2006-5. To the extent that Executive Order 2006-5 is inconsistent with the provisions of this amendatory Act of the 96th General Assembly, the provisions of this amendatory Act shall govern.

(615 ILCS 5/18i new)

Sec. 18i. Maintenance of eligibility to participate in the National Flood Insurance Program. Nothing in this amendatory Act of the 96th General Assembly shall be construed to diminish or conflict with the authority and the obligation of local governments to adopt and enforce local ordinances and regulations necessary to maintain eligibility to participate fully in the National Flood Insurance Program and for property owners to purchase federal flood insurance. If a local government located in an area that (i) is protected by a federal levee and (ii) located in a flood prevention district established in accordance with the Flood Prevention District

Act chooses to participate in the National Flood Insurance Program, it must adopt and maintain ordinances and floodplain management regulations that meet the requirements of 44 C.F.R. 60.3, 60.4, and 60.5, and it must submit copies of those documents to the Federal Emergency Management Agency as required by federal law.

(615 ILCS 5/18j new)

Sec. 18j. ESDA critical facility evacuation plans. Any critical facility that gives shelter to a person who would be unable to evacuate without assistance during a flooding event, and that is located in an area deemed by operation of law not to be within the 100-year floodplain because the area in which the critical facility is located lies within an area protected by a federal levee and is located in a flood prevention district established in accordance with the Flood Prevention District Act shall develop an evacuation plan and certify to the Emergency Services and Disaster Agency (ESDA), as defined by Section 4 of the Illinois Emergency Management Act, on a form provided by the ESDA, that it has developed an evacuation plan which the critical facility has or will implement prior to or concurrent with occupancy of the facility to evacuate persons who need assistance evacuating the facility and the flooded area.

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