



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB2459

Introduced 2/17/2015, by Rep. Ron Sandack

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-1062.3

Amends the Counties Code. Provides that DuPage County shall not adopt any fee schedule regarding management and mitigation of the effects of urbanization on stormwater drainage unless (i) a referendum has been passed approving a stormwater tax; or (ii) the question of the adoption of a fee schedule with the same limit as the authorized stormwater tax has been approved in a referendum by a majority of those voting on the question. Further provides that an annual stormwater tax in DuPage County shall not be levied until the question of its adoption has been submitted to the electors and approved by a majority of the electors. Effective immediately.

LRB099 07203 AWJ 27297 b

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 Counties Code is amended by changing Section
5 5-1062.3 as follows:

6 (55 ILCS 5/5-1062.3)

7 Sec. 5-1062.3. Stormwater management; DuPage and Peoria
8 Counties.

9 (a) The purpose of this Section is to allow management and
10 mitigation of the effects of urbanization on stormwater
11 drainage in the metropolitan counties of DuPage and Peoria, and
12 references to "county" in this Section apply only to those
13 counties. This Section does not apply to a municipality that
14 only partially lies within one of these counties and, on the
15 effective date of this amendatory Act of the 98th General
16 Assembly, is served by an existing Section in the Counties Code
17 regarding stormwater management. The purpose of this Section
18 shall be achieved by:

19 (1) consolidating the existing stormwater management
20 framework into a united, countywide structure;

21 (2) setting minimum standards for floodplain and
22 stormwater management; and

23 (3) preparing a countywide plan for the management of

1 stormwater runoff, including the management of natural and
2 man-made drainageways. The countywide plan may incorporate
3 watershed plans.

4 (b) A stormwater management planning committee may be
5 established by county board resolution, with its membership
6 consisting of equal numbers of county board and municipal
7 representatives from each county board district, and such other
8 members as may be determined by the county and municipal
9 members. If the county has more than 6 county board districts,
10 however, the county board may by ordinance divide the county
11 into not less than 6 areas of approximately equal population,
12 to be used instead of county board districts for the purpose of
13 determining representation on the stormwater management
14 planning committee.

15 The county board members shall be appointed by the chairman
16 of the county board. Municipal members from each county board
17 district or other represented area shall be appointed by a
18 majority vote of the mayors of those municipalities that have
19 the greatest percentage of their respective populations
20 residing in that county board district or other represented
21 area. All municipal and county board representatives shall be
22 entitled to a vote; the other members shall be nonvoting
23 members, unless authorized to vote by the unanimous consent of
24 the municipal and county board representatives. A municipality
25 that is located in more than one county may choose, at the time
26 of formation of the stormwater management planning committee

1 and based on watershed boundaries, to participate in the
2 stormwater management planning program of either county.
3 Subcommittees of the stormwater management planning committee
4 may be established to serve a portion of the county or a
5 particular drainage basin that has similar stormwater
6 management needs. The stormwater management planning committee
7 shall adopt bylaws, by a majority vote of the county and
8 municipal members, to govern the functions of the committee and
9 its subcommittees. Officers of the committee shall include a
10 chair and vice chair, one of whom shall be a county
11 representative and one a municipal representative.

12 The principal duties of the committee shall be to develop a
13 stormwater management plan for presentation to and approval by
14 the county board, and to direct the plan's implementation and
15 revision. The committee may retain engineering, legal, and
16 financial advisors and inspection personnel. The committee
17 shall meet at least quarterly and shall hold at least one
18 public meeting during the preparation of the plan and prior to
19 its submittal to the county board. The committee may make
20 grants to units of local government that have adopted an
21 ordinance requiring actions consistent with the stormwater
22 management plan and to landowners for the purposes of
23 stormwater management, including special projects; use of the
24 grant money must be consistent with the stormwater management
25 plan.

26 The committee shall not have or exercise any power of

1 eminent domain.

2 (c) In the preparation of a stormwater management plan, a
3 county stormwater management planning committee shall
4 coordinate the planning process with each adjoining county to
5 ensure that recommended stormwater projects will have no
6 significant impact on the levels or flows of stormwaters in
7 inter-county watersheds or on the capacity of existing and
8 planned stormwater retention facilities. An adopted stormwater
9 management plan shall identify steps taken by the county to
10 coordinate the development of plan recommendations with
11 adjoining counties.

12 (d) The stormwater management committee may not enforce any
13 rules or regulations that would interfere with (i) any power
14 granted by the Illinois Drainage Code (70 ILCS 605/) to
15 operate, construct, maintain, or improve drainage systems or
16 (ii) the ability to operate, maintain, or improve the drainage
17 systems used on or by land or a facility used for production
18 agriculture purposes, as defined in the Use Tax Act (35 ILCS
19 105/), except newly constructed buildings and newly installed
20 impervious paved surfaces. Disputes regarding an exception
21 shall be determined by a mutually agreed upon arbitrator paid
22 by the disputing party or parties.

23 (e) Before the stormwater management planning committee
24 recommends to the county board a stormwater management plan for
25 the county or a portion thereof, it shall submit the plan to
26 the Office of Water Resources of the Department of Natural

1 Resources for review and recommendations. The Office, in
2 reviewing the plan, shall consider such factors as impacts on
3 the levels or flows in rivers and streams and the cumulative
4 effects of stormwater discharges on flood levels. The Office of
5 Water Resources shall determine whether the plan or ordinances
6 enacted to implement the plan complies with the requirements of
7 subsection (f). Within a period not to exceed 60 days, the
8 review comments and recommendations shall be submitted to the
9 stormwater management planning committee for consideration.
10 Any amendments to the plan shall be submitted to the Office for
11 review.

12 (f) Prior to recommending the plan to the county board, the
13 stormwater management planning committee shall hold at least
14 one public hearing thereon and shall afford interested persons
15 an opportunity to be heard. The hearing shall be held in the
16 county seat. Notice of the hearing shall be published at least
17 once and no less than 15 days in advance of the hearing in a
18 newspaper of general circulation published in the county. The
19 notice shall state the time and place of the hearing and the
20 place where copies of the proposed plan will be accessible for
21 examination by interested parties. If an affected municipality
22 having a stormwater management plan adopted by ordinance wishes
23 to protest the proposed county plan provisions, it shall appear
24 at the hearing and submit in writing specific proposals to the
25 stormwater management planning committee. After consideration
26 of the matters raised at the hearing, the committee may amend

1 or approve the plan and recommend it to the county board for
2 adoption.

3 The county board may enact the proposed plan by ordinance.
4 If the proposals for modification of the plan made by an
5 affected municipality having a stormwater management plan are
6 not included in the proposed county plan, and the municipality
7 affected by the plan opposes adoption of the county plan by
8 resolution of its corporate authorities, approval of the county
9 plan shall require an affirmative vote of at least two-thirds
10 of the county board members present and voting. If the county
11 board wishes to amend the county plan, it shall submit in
12 writing specific proposals to the stormwater management
13 planning committee. If the proposals are not approved by the
14 committee, or are opposed by resolution of the corporate
15 authorities of an affected municipality having a municipal
16 stormwater management plan, amendment of the plan shall require
17 an affirmative vote of at least two-thirds of the county board
18 members present and voting.

19 (g) The county board may prescribe by ordinance reasonable
20 rules and regulations for floodplain management and for
21 governing the location, width, course, and release rate of all
22 stormwater runoff channels, streams, and basins in the county,
23 in accordance with the adopted stormwater management plan.
24 Land, facilities, and drainage district facilities used for
25 production agriculture as defined in subsection (d) shall not
26 be subjected to regulation by the county board or stormwater

1 management committee under this Section for floodplain
2 management and for governing location, width, course,
3 maintenance, and release rate of stormwater runoff channels,
4 streams and basins, or water discharged from a drainage
5 district. These rules and regulations shall, at a minimum, meet
6 the standards for floodplain management established by the
7 Office of Water Resources and the requirements of the Federal
8 Emergency Management Agency for participation in the National
9 Flood Insurance Program. With respect to DuPage County only,
10 the Chicago Metropolitan Agency for Planning may not impose
11 more stringent regulations regarding water quality on entities
12 discharging in accordance with a valid National Pollution
13 Discharge Elimination System permit issued under the
14 Environmental Protection Act.

15 (h) For the purpose of implementing this Section and for
16 the development, design, planning, construction, operation,
17 and maintenance of stormwater facilities provided for in the
18 adopted stormwater management plan, a county board that has
19 established a stormwater management planning committee
20 pursuant to this Section or has participated in a stormwater
21 management planning process may adopt a schedule of fees
22 applicable to all real property within the county which
23 benefits from the county's stormwater management facilities
24 and activities, and as may be necessary to mitigate the effects
25 of increased stormwater runoff resulting from development. The
26 total amount of the fees assessed must be specifically and

1 uniquely attributable to the actual costs of the county in the
2 preparation, administration, and implementation of the adopted
3 stormwater management plan, construction and maintenance of
4 stormwater facilities, and other activities related to the
5 management of the runoff from the property. The individual fees
6 must be specifically and uniquely attributable to the portion
7 of the actual cost to the county of managing the runoff from
8 the property. The fees shall be used to finance activities
9 undertaken by the county or its included municipalities to
10 mitigate the effects of urban stormwater runoff by providing
11 and maintaining stormwater collection, retention, detention,
12 and particulate treatment facilities, and improving water
13 bodies impacted by stormwater runoff, as identified in the
14 county plan. In establishing, maintaining, or replacing such
15 facilities, the county shall not duplicate facilities operated
16 by other governmental bodies within its corporate boundaries.
17 The schedule of fees established by the county board shall
18 include a procedure for a full or partial fee waiver for
19 property owners who have taken actions or put in place
20 facilities that reduce or eliminate the cost to the county of
21 providing stormwater management services to their property.
22 The county board may also offer tax or fee rebates or incentive
23 payments to property owners who construct, maintain, and use
24 approved green infrastructure stormwater management devices or
25 any other methods that reduce or eliminate the cost to the
26 county of providing stormwater management services to the

1 property, including but not limited to facilities that reduce
2 the volume, temperature, velocity, and pollutant load of the
3 stormwater managed by the county, such as systems that
4 infiltrate, evapotranspire, or harvest stormwater for reuse,
5 known as "green infrastructure". In exercising this authority,
6 the county shall provide notice to the municipalities within
7 its jurisdiction of any fees proposed under this Section and
8 seek the input of each municipality with respect to the
9 calculation of the fees. The county shall also give property
10 owners at least 2 years' notice of the fee, during which time
11 the county shall provide education on green infrastructure
12 practices and an opportunity to take action to reduce or
13 eliminate the fee. All these fees collected by the county shall
14 be held in a separate fund, and shall be expended only in the
15 watershed within which they were collected. The county may
16 enter into intergovernmental agreements with other government
17 bodies for the joint administration of stormwater management
18 and the collection of the fees authorized in this Section.

19 A fee schedule authorized by this subsection must have the
20 same limit as the authorized stormwater tax. The ~~In Peoria~~
21 ~~County only,~~ the fee schedule shall not be adopted unless (i) a
22 referendum has been passed approving a stormwater tax as
23 provided in subsection (i) of this Section; or (ii) the
24 question of the adoption of a fee schedule with the same limit
25 as the authorized stormwater tax has been approved in a
26 referendum by a majority of those voting on the question.

1 (i) In the alternative to a fee imposed under subsection
2 (h), the county board may cause an annual tax of not to exceed
3 0.20% of the value, as equalized or assessed by the Department
4 of Revenue, of all taxable property in the county to be levied
5 upon all the taxable property in the county. The property tax
6 shall be in addition to all other taxes authorized by law to be
7 levied and collected in the county and shall be in addition to
8 the maximum tax rate authorized by law for general county
9 purposes. The 0.20% limitation provided in this Section may be
10 increased or decreased by referendum in accordance with the
11 provisions of Sections 18-120, 18-125, and 18-130 of the
12 Property Tax Code (35 ILCS 200/).

13 Any revenues generated as a result of ownership or
14 operation of facilities or land acquired with the tax funds
15 collected pursuant to this subsection shall be held in a
16 separate fund and be used either to abate such property tax or
17 for implementing this Section.

18 If at least part of the county has been declared by a
19 presidential proclamation after July 1, 1986 and before
20 December 31, 1987, to be a disaster area as a result of
21 flooding, the tax authorized by this subsection does not
22 require approval by referendum. However, ~~in Peoria County,~~ the
23 tax authorized by this subsection shall not be levied until the
24 question of its adoption, either for a specified period or
25 indefinitely, has been submitted to the electors thereof and
26 approved by a majority of those voting on the question. This

1 question may be submitted at any election held in the county
2 after the adoption of a resolution by the county board
3 providing for the submission of the question to the electors of
4 the county. The county board shall certify the resolution and
5 proposition to the proper election officials, who shall submit
6 the proposition at an election in accordance with the general
7 election law. If a majority of the votes cast on the question
8 is in favor of the levy of the tax, it may thereafter be levied
9 in the county for the specified period or indefinitely, as
10 provided in the proposition. The question shall be put in
11 substantially the following form:

12 Shall an annual tax be levied for stormwater management
13 purposes (for a period of not more than years) at a
14 rate not exceeding% of the equalized assessed value
15 of the taxable property of County?

16 Votes shall be recorded as Yes or No.

17 The following question may be submitted at any election
18 held in the county after the adoption of a resolution by the
19 county board providing for the submission of the question to
20 the electors of the county to authorize adoption of a schedule
21 of fees applicable to all real property within the county:

22 Shall the county board be authorized to adopt a
23 schedule of fees, at a rate not exceeding that of the
24 stormwater management tax, applicable to all real property
25 for preparation, administration, and implementation of an
26 adopted stormwater management plan, construction and

1 maintenance of related facilities, and management of the
2 runoff from the property?

3 Votes shall be recorded as Yes or No.

4 If these questions have been approved by a majority of
5 those voting prior to the effective date of this amendatory Act
6 of the 98th General Assembly, this subsection does not apply.

7 (j) For those counties that adopt a property tax in
8 accordance with the provisions in this Section, the stormwater
9 management committee shall offer property tax abatements or
10 incentive payments to property owners who construct, maintain,
11 and use approved stormwater management devices. The stormwater
12 management committee is authorized to offer credits to the
13 property tax, if applicable, based on authorized practices
14 consistent with the stormwater management plan and approved by
15 the committee. Expenses of staff of a stormwater management
16 committee that are expended on regulatory project review may be
17 no more than 20% of the annual budget of the committee,
18 including funds raised under subsections (h) and (i).

19 (k) Upon the creation and implementation of a county
20 stormwater management plan, the county may petition the circuit
21 court to dissolve any or all drainage districts created
22 pursuant to the Illinois Drainage Code or predecessor Acts
23 which are located entirely within the area of the county
24 covered by the plan.

25 However, any active drainage district implementing a plan
26 that is consistent with and at least as stringent as the county

1 stormwater management plan may petition the stormwater
2 management planning committee for exception from dissolution.
3 Upon filing of the petition, the committee shall set a date for
4 hearing not less than 2 weeks, nor more than 4 weeks, from the
5 filing thereof, and the committee shall give at least one
6 week's notice of the hearing in one or more newspapers of
7 general circulation within the district, and in addition shall
8 cause a copy of the notice to be personally served upon each of
9 the trustees of the district. At the hearing, the committee
10 shall hear the district's petition and allow the district
11 trustees and any interested parties an opportunity to present
12 oral and written evidence. The committee shall render its
13 decision upon the petition for exception from dissolution based
14 upon the best interests of the residents of the district. In
15 the event that the exception is not allowed, the district may
16 file a petition within 30 days of the decision with the circuit
17 court. In that case, the notice and hearing requirements for
18 the court shall be the same as herein provided for the
19 committee. The court shall likewise render its decision of
20 whether to dissolve the district based upon the best interests
21 of residents of the district.

22 The dissolution of any drainage district shall not affect
23 the obligation of any bonds issued or contracts entered into by
24 the district nor invalidate the levy, extension or collection
25 of any taxes or special assessments upon the property in the
26 former drainage district. All property and obligations of the

1 former drainage district shall be assumed and managed by the
2 county, and the debts of the former drainage district shall be
3 discharged as soon as practicable.

4 If a drainage district lies only partly within a county
5 that adopts a county stormwater management plan, the county may
6 petition the circuit court to disconnect from the drainage
7 district that portion of the district that lies within that
8 county. The property of the drainage district within the
9 disconnected area shall be assumed and managed by the county.
10 The county shall also assume a portion of the drainage
11 district's debt at the time of disconnection, based on the
12 portion of the value of the taxable property of the drainage
13 district which is located within the area being disconnected.

14 The operations of any drainage district that continues to
15 exist in a county that has adopted a stormwater management plan
16 in accordance with this Section shall be in accordance with the
17 adopted plan.

18 (1) Any county that has adopted a county stormwater
19 management plan under this Section may, after 10 days ~~days~~
20 written notice receiving consent of the owner or occupant,
21 enter upon any lands or waters within the county for the
22 purpose of inspecting stormwater facilities or causing the
23 removal of any obstruction to an affected watercourse. If
24 consent is denied or cannot be reasonably obtained, the county
25 ordinance shall provide a process or procedure for an
26 administrative warrant to be obtained. The county shall be

1 responsible for any damages occasioned thereby.

2 (m) Except as otherwise provided in subsection (a) of this
3 Section, upon petition of the municipality, and based on a
4 finding of the stormwater management planning committee, the
5 county shall not enforce rules and regulations adopted by the
6 county in any municipality located wholly or partly within the
7 county that has a municipal stormwater management ordinance
8 that is consistent with and at least as stringent as the county
9 plan and ordinance, and is being enforced by the municipal
10 authorities. On issues that the county ordinance is more
11 stringent as deemed by the committee, the county shall only
12 enforce rules and regulations adopted by the county on the more
13 stringent issues and accept municipal permits. The county shall
14 have no more than 60 days to review permits or the permits
15 shall be deemed approved.

16 (n) A county may issue general obligation bonds for
17 implementing any stormwater plan adopted under this Section in
18 the manner prescribed in Section 5-1012; except that the
19 referendum requirement of Section 5-1012 does not apply to
20 bonds issued pursuant to this Section on which the principal
21 and interest are to be paid entirely out of funds generated by
22 the taxes and fees authorized by this Section.

23 (o) A county that has adopted a fee schedule pursuant to
24 this Section may not thereafter issue any bond extensions
25 related to implementing a stormwater management plan.

26 (p) The powers authorized by this Section may be

1 implemented by the county board for a portion of the county
2 subject to similar stormwater management needs.

3 (q) The powers and taxes authorized by this Section are in
4 addition to the powers and taxes authorized by Division 5-15;
5 in exercising its powers under this Section, a county shall not
6 be subject to the restrictions and requirements of that
7 Division.

8 (r) Stormwater management projects and actions related to
9 stormwater management in a county that has adopted a fee
10 schedule or tax pursuant to this Section prior to the effective
11 date of this amendatory Act of the 98th General Assembly are
12 not altered by this amendatory Act of the 98th General
13 Assembly.

14 (Source: P.A. 98-335, eff. 8-13-13; 98-756, eff. 7-16-14.)

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