

CHAPTER 14
FLOOD MITIGATION PROGRAM

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

605—14.1(418) Purpose. In accordance with Iowa Code section 418.7, the flood mitigation board establishes the policies and procedures for the creation and administration of an Iowa flood mitigation program.

[ARC 1114C, IAB 10/16/13, effective 11/20/13]

605—14.2(418) Definitions.

“Board” means the flood mitigation board as created in Iowa Code section 418.5.

“Department” means the department of homeland security and emergency management.

“Director” means the director of the department of homeland security and emergency management.

“Governmental entity” means any of the following:

1. A county.
2. A city.
3. A joint board or other legal or administrative entity established or designated in an agreement pursuant to Iowa Code chapter 28E or 28F between any of the following:
 - Two or more cities located in whole or in part within the same county.
 - A county and one or more cities that are located in whole or in part within the county.
 - A county, one or more cities that are located in whole or in part within the county, and a drainage district formed by mutual agreement under Iowa Code section 468.142 located in whole or in part within the county.
 - One or more counties, one or more cities that are located in whole or in part within those counties, and one or more sanitary districts established under Iowa Code chapter 358 or a combined water and sanitary district as provided for in Iowa Code sections 357.1B and 358.1B, located in whole or in part within those counties.

“Project” means the construction and reconstruction of levees, embankments, impounding reservoirs, conduits or other means that are necessary for the protection of property from the effects of floodwaters and may include the deepening, widening, alteration, change, diversion, or other improvement of watercourses if necessary for the protection of such property from the effects of floodwaters. A project may consist of one or more phases of construction or reconstruction that are contracted for separately if the larger project, of which the project is a part, otherwise meets the requirements of Iowa Code section 418.4.

“Sales tax” means the sales and services tax imposed pursuant to Iowa Code section 423.2.

[ARC 1114C, IAB 10/16/13, effective 11/20/13; ARC 2220C, IAB 10/28/15, effective 12/2/15]

605—14.3(418) Flood mitigation board.

14.3(1) The flood mitigation board is established and housed, for administrative purposes, within the department. The director shall provide office space, staff assistance, supplies and equipment, and budget funds to pay the necessary expenses of the board.

14.3(2) The board shall be comprised of nine voting members and five ex-officio nonvoting members.

a. The voting members shall include all of the following:

(1) Four members of the general public appointed by the governor and confirmed by the senate in accordance with Iowa Code sections 69.16 and 69.16A. These members shall be appointed to three-year staggered terms, and the terms shall commence and end as provided in Iowa Code section 69.19.

1. Two members of the general public shall have demonstrable experience or expertise in the field of natural disaster recovery.

2. Two members of the general public shall have demonstrable experience or expertise in the field of flood mitigation.

(2) The director of the department of natural resources or the director’s designee.

- (3) The secretary of agriculture or the secretary's designee.
- (4) The director of the department or the director's designee.
- (5) The treasurer of state or the treasurer's designee.
- (6) The executive director of the Iowa finance authority or the executive director's designee.
- b.* The ex-officio nonvoting members shall include the following:
 - (1) A member of the general assembly appointed by the majority leader of the senate.
 - (2) A member of the general assembly appointed by the minority leader of the senate.
 - (3) A member of the general assembly appointed by the speaker of the house of representatives.
 - (4) A member of the general assembly appointed by the minority leader of the house of representatives.
- (5) The director of the department of revenue or the director's designee.

14.3(3) The governor shall designate a chairperson and vice chairperson from the voting members.

14.3(4) The board shall meet at a time and place determined by the board. Additional meetings may be called by:

- a.* The chairperson,
- b.* The vice chairperson, or
- c.* The director.

14.3(5) All meetings of the board are public meetings and shall be conducted in accordance with Iowa Code chapter 21. A majority of the voting members constitutes a quorum.

[ARC 1114C, IAB 10/16/13, effective 11/20/13; ARC 2220C, IAB 10/28/15, effective 12/2/15]

605—14.4(418) Flood mitigation project eligibility.

14.4(1) An eligible applicant is a governmental entity as defined in rule 605—14.2(418).

14.4(2) Eligible project types include construction and reconstruction of levees, embankments, impounding reservoirs, conduits, or other means that are necessary for the protection of property from the effects of floodwaters and may include the deepening, widening, alteration, change, diversion, or other improvement of watercourses if necessary for the protection of such property from the effects of floodwaters. A project may consist of one or more phases of construction or reconstruction that are contracted for separately if the larger project, of which the project is a part, otherwise meets the requirements of this subrule.

14.4(3) For the project to be eligible for flood mitigation funding from the sales tax increment fund, the project, or an earlier phase of the project, is required to have been approved to receive federal financial assistance under the Water Resources Development Act (WRDA), the Environmental Protection Agency (EPA), or other federal programs providing assistance specifically for hazard mitigation. Prior to submission of an application, a governmental entity shall request a report from the Iowa department of revenue that provides recent historical data on sales tax revenue and trends in sales tax revenue growth. If a project is eligible for state financial assistance under Iowa Code section 29C.6(17), such project is ineligible for flood mitigation funding under this chapter. The federal award must be in an amount equal to at least 20 percent of the total project cost or \$30 million, whichever is less.

14.4(4) For the project to be eligible for flood mitigation funding from the flood mitigation fund or sales tax increment fund, the governmental entity shall provide a local match of at least 50 percent of the total cost of the project less any federal financial assistance. The sales tax increment shall fund a maximum of 50 percent of the total project cost. The federal share of the total project cost shall be a minimum of 20 percent of the total project cost or \$30 million, whichever is less. The local match, when combined with the federal share, shall fund a minimum of 50 percent of the total project cost. The governmental entity shall provide funding for the local match.

14.4(5) The project must result in nonpublic investment in the governmental entity's area, as defined in Iowa Code section 418.11(3), of an amount equal to 50 percent of the total cost of the project. For purposes of this subrule, "nonpublic investment" means investment by nonpublic entities consisting of capital investment or infrastructure improvements occurring in anticipation of or as a result of the project during the period of time between July 1, 2008, and ten years after the board approves the project.

14.4(6) A governmental entity shall not seek approval from the board for a project if the governmental entity previously had a board-approved project or if the governmental entity was part of a governmental entity as defined in rule 605—14.2(418) that had a board-approved project.

[ARC 1114C, IAB 10/16/13, effective 11/20/13]

605—14.5(418) Applications.

14.5(1) The board shall prescribe the form of the application, instructions and associated documents. Applications, instructions, programmatic guidance and forms are available through the department and its website, www.homelandsecurity.iowa.gov.

14.5(2) A governmental entity shall submit an application to the board for approval of a project plan prior to January 1, 2016.

14.5(3) The application shall specify whether the governmental entity is requesting financial assistance from the flood mitigation fund or approval for the use of sales tax revenues. Applications for financial assistance from the flood mitigation fund shall describe the type and amount of assistance requested. Applications for the use of sales tax revenues shall state the amount of sales tax revenues necessary for completion of the project and shall contain a report from the Iowa department of revenue, as requested by the governmental entity, that provides recent historical data on sales tax revenue and trends in sales tax revenue growth.

14.5(4) Each application shall include or have attached to the application the governmental entity's project plan adopted under Iowa Code section 418.4(2). The application package shall include all of the following:

- a.* The project plan that includes:
 - (1) A detailed description of the project, including all phases of construction or reconstruction included in the project, maintenance plans for the completed project, the estimated cost of the project, and the maximum amount of debt to be incurred for purposes of funding the project; and
 - (2) A detailed description of all anticipated funding sources for the project, including information relating to either the proposed use of financial assistance from the flood mitigation fund or the proposed use of sales tax increment revenues.
- b.* A copy of the application for federal funds and subsequent approval letter as specified under Iowa Code section 418.4(3)“*b.*”
- c.* A detailed budget.
- d.* A statement about whether the project is designed to mitigate future flooding of existing property and infrastructure that have sustained significant flood damage and are likely to sustain significant flood damage in the future. Detailed information on the existing property and infrastructure shall be included.
- e.* A statement about whether the project plan addresses the impact of flooding both upstream and downstream from the area where the project is to be undertaken and whether the project conforms to any applicable floodplain ordinance.
- f.* A statement about whether the area that would benefit from the project's flood mitigation efforts is sufficiently valuable to the economic viability of the state or is of sufficient historic value to the state to justify the cost of the project.
- g.* A statement about the extent to which the project would utilize local matching funds. The board shall not approve a project unless at least 50 percent of the total cost of the project, less any federal financial assistance for the project, is funded using local matching funds, and unless the project will result in nonpublic investment in the governmental entity's area, as defined in Iowa Code section 418.11(3), of an amount equal to 50 percent of the total cost of the project. For purposes of this paragraph, “nonpublic investment” means investment by nonpublic entities consisting of capital investment or infrastructure improvements occurring in anticipation of or as a result of the project during the period of time between July 1, 2008, and ten years after the board approves the project.
- h.* A statement about the extent of nonfinancial support committed to the project from public and nonpublic sources.
- i.* A statement about whether the project is designed in coordination with other watershed management measures adopted by the governmental entity or adopted by the participating jurisdictions of the governmental entity, as applicable.

j. A statement about whether the project plan is consistent with the applicable comprehensive, countywide emergency operations plan in effect and other applicable local hazard mitigation plans.

k. A statement about whether financial assistance through the flood mitigation program is essential to meet the necessary expenses or serious needs of the governmental entity related to flood mitigation.

l. Any other documents requested by the board to assist the board in the consideration of the application.

m. If the governmental entity intends to issue bonds in accordance with Iowa Code section 418.14, the governmental entity shall provide information from the proposed bonding company as to the viability of the bond issuance.

[ARC 1114C, IAB 10/16/13, effective 11/20/13]

605—14.6(418) Flood mitigation fund.

14.6(1) A flood mitigation fund is created as a separate and distinct fund in the state treasury under the control of the board and consists of money appropriated by the general assembly and any other moneys available to and obtained or accepted by the board for placement in the fund. Payments of interest, repayments of moneys loaned, and recaptures of grants provided by the board shall be deposited in the fund.

14.6(2) Moneys in the fund shall be used by the board to provide financial assistance in accordance with this chapter to a governmental entity in the form of grants, loans and forgivable loans. The board shall specify the terms of any grants or loans made from the fund. The board may make a multiyear commitment to a governmental entity of up to \$4 million in any one fiscal year.

14.6(3) Moneys received by a governmental entity from the fund shall be deposited in the governmental entity's flood project fund as created in rule 605—14.8(418).

14.6(4) If any portion of the moneys appropriated to the fund have not been awarded during the fiscal year in which they were appropriated, the portion which has not been awarded may be utilized by the board to provide financial assistance in subsequent fiscal years.

14.6(5) Following completion of all projects approved to utilize financial assistance from the fund and upon determination by the board that the remaining funds are no longer needed for the program, the funds that were appropriated by the general assembly shall be credited to the general fund of the state. Other funds shall be credited to the granting agency in accordance with any grant agreements.

[ARC 1114C, IAB 10/16/13, effective 11/20/13]

605—14.7(418) Sales tax increment calculation and sales tax increment fund. The calculation of the sales tax increment and operation of the fund is addressed in Iowa department of revenue 701—Chapter 238.

[ARC 1114C, IAB 10/16/13, effective 11/20/13]

605—14.8(418) Flood project fund.

14.8(1) Each governmental entity that has a project approved by the board and is awarded funds from either the flood mitigation fund or sales tax increment fund shall create a separate flood project fund. The fund shall be used to pay the costs associated with the governmental entity's approved project, to reimburse the governmental entity for the costs of the approved project incurred after the project's approval, and to pay the principal and interest on bonds issued pursuant to Iowa Code section 418.14.

14.8(2) The governmental entity may deposit any other moneys lawfully received into the fund. Other moneys include but are not limited to local sales and services tax receipts collected under Iowa Code chapter 423B.

[ARC 1114C, IAB 10/16/13, effective 11/20/13; ARC 4410C, IAB 4/24/19, effective 5/29/19]

605—14.9(418) Board application review.

14.9(1) The board shall not approve a project for inclusion in the program if the application is received after January 1, 2016.

14.9(2) The board may request an independent engineering review of the project to determine the technical feasibility, engineering standards, and total estimated cost of the project. Such review may be

completed by the United States Army Corps of Engineers. All costs related to the review shall be the responsibility of the governmental entity.

14.9(3) The board shall not approve any project plan that includes financial assistance pursuant to this chapter that would be used to pay principal and interest on or refinance any debt or other obligation existing prior to the approval of the project.

14.9(4) The board shall not approve a project plan application for which the amount of sales tax increment revenue remitted to the governmental entity would exceed \$15 million in any one fiscal year or if approval of the project would result in total remittances in any one fiscal year for all approved projects to exceed, in the aggregate, \$30 million.

14.9(5) The board may contract with or otherwise consult with the Iowa flood center, established in Iowa Code section 466C.1, to assist in administering the flood mitigation program and review of applications.

14.9(6) The board, after consulting with the economic development authority, shall approve, defer, or deny the applications.

14.9(7) If the application is denied, the board shall state the reasons for the denial. The governmental entity may resubmit the application for consideration anytime prior to January 1, 2016.

14.9(8) If the application is approved, the board shall specify whether the governmental entity is approved for use of the sales tax revenues under Iowa Code section 418.12 or whether the governmental entity is approved to receive financial assistance from the flood mitigation fund under Iowa Code section 418.10.

14.9(9) If the board approves an application that includes the use of sales tax increment revenues, the board shall establish the annual maximum amount of such revenues that may be remitted to the governmental entity not to exceed \$15 million or 70 percent of the total yearly amount of increased sales tax revenue in the governmental entity's applicable area and deposited in the governmental entity's account, whichever is less. The board may, however, establish remittance limitations for the project lower than those specified in this subrule.

14.9(10) If the board approves an application that includes financial assistance from the flood mitigation fund, the board shall negotiate and execute on behalf of the department all necessary agreements to provide such financial assistance.

14.9(11) Upon approval of an application for financial assistance under the program, the board shall notify the treasurer of state regarding the amount of moneys needed to satisfy the award of financial assistance and the terms of the award.

14.9(12) If, following approval of an application, it is determined that the amount of federal financial assistance exceeds the amount of federal financial assistance specified in the application, the board shall reduce the award of financial assistance from the flood mitigation fund or reduce the amount of sales tax revenue to be received for the project by a corresponding amount.

14.9(13) Following the approval of an application which proposes to use sales tax increment revenues, the governmental entity shall adopt a resolution authorizing the use of sales tax increment from the governmental entity's flood project fund. Within ten days of adoption, the governmental entity shall provide a copy of the resolution to the Iowa department of revenue.

[ARC 1114C, IAB 10/16/13, effective 11/20/13]

605—14.10(418) Reports.

14.10(1) Following the approval of a project application, the governmental entity shall, on or before December 15 of each year, submit a report to the board detailing the following:

- a. The current status of the project.
- b. The total expenditures and types of expenditures that have been made related to the project.
- c. The amount of total project cost remaining as of the date the report is submitted.
- d. The amounts, types, and sources of funding being used.
- e. The amount of bonds issued or other indebtedness incurred for the project, including information related to the rate of interest, length of term, cost of issuance, and net proceeds. This report shall also include the amounts and types of moneys used for payment of such bonds or indebtedness.

14.10(2) The board shall submit a written report to the governor and the general assembly on or before January 15 of each year. The report shall contain information relating to all projects that have been approved by the board and contain summaries of the individual project reports required by this chapter. The board shall also convey in the report any recommendations for legislative action to modify this chapter.

14.10(3) The treasurer of state shall report to the department any moneys that are disbursed to a recipient of financial assistance under the program.

14.10(4) Any governmental entity that receives assistance in the form of sales tax revenues under the program shall provide to the board all reports that are required as part of receiving federal financial assistance.

[ARC 1114C, IAB 10/16/13, effective 11/20/13]

605—14.11(418) Flood project bonds. A governmental entity receiving sales tax revenues in accordance with this chapter is authorized to issue bonds that are payable from revenues deposited in the flood project fund created in rule 605—14.8(418). Issuance and administration of such bonds shall be done in accordance with Iowa Code sections 418.14 and 384.83.

[ARC 1114C, IAB 10/16/13, effective 11/20/13]

605—14.12(418) Flood recovery fund.

14.12(1) Purpose. A flood recovery fund is established in the state treasury under the control of the board. The fund shall consist of moneys appropriated to the fund by the general assembly and any other moneys available to, obtained by, or accepted by the board for deposit in the fund. Moneys in the fund are appropriated to the department and shall be used for the purposes designated in this rule. Moneys in the fund shall not supplant any federal disaster recovery moneys. Moneys in the fund that remain unencumbered or unobligated at the close of a fiscal year shall not revert to the general fund of the state but shall remain available for expenditure for the purposes designated in this rule. Interest or earnings on moneys deposited in the fund shall be credited to the fund.

14.12(2) An eligible applicant is a political subdivision of the state located in a county designated under presidential disaster declaration DR-4421-IA and also located in a county where the federal emergency management agency's individual assistance program has been activated.

14.12(3) Eligible projects must support flood response, flood recovery, or flood mitigation activities. Eligible project types could include construction and reconstruction of levees, embankments, impounding reservoirs, conduits, or other means that are necessary for the protection of property from the effects of floodwaters and may include the deepening, widening, alteration, change, diversion, or other improvement of watercourses if necessary for the protection of such property from the effects of floodwaters. A project may consist of one or more phases of construction or reconstruction that are contracted for separately if the larger project, of which the project is a part, otherwise meets the requirements of this subrule.

14.12(4) Project applications shall be submitted to the department for consideration by the board. The board shall prescribe application instructions and forms. Applications, instructions, programmatic guidance and forms are available through the department and its website, www.homelandsecurity.iowa.gov. Project applications shall contain all of the following:

a. A description of the project and how it supports flood response, flood recovery, or flood mitigation activities.

b. A description of financial assistance needed from the flood recovery fund.

c. A description of the necessary expense or serious need of the political subdivision.

d. Details on any additional funds to be applied to the project.

14.12(5) The board shall review the project applications. When reviewing a project application, the board shall consider, at a minimum, all of the following:

a. Whether the project supports flood response, flood recovery, or flood mitigation activities.

b. Whether financial assistance through the flood recovery fund is essential to meet the necessary expenses or serious needs of the political subdivision related to flood response, flood recovery, and flood mitigation.

Upon review of a project application, the board shall approve, defer, or deny the project application. If a project application is approved, the board shall specify the amount of financial assistance from the flood

recovery fund awarded to the political subdivision. If the board approves an application for financial assistance from the flood recovery fund, the board shall negotiate and execute on behalf of the department all necessary agreements to provide such financial assistance. If a project application is deferred or denied, the board shall state the reasons for such deferral or denial.

14.12(6) Reports. Following the approval of a project application, the political subdivision shall twice annually, until the project is complete, submit a report to the board detailing the following:

- a.* The current status of the project.
- b.* The total expenditures and types of expenditures that have been made related to the project.
- c.* The amount of total project cost remaining as of the date the report is submitted.

[ARC 4638C, IAB 8/28/19, effective 10/2/19]

These rules are intended to implement Iowa Code chapter 418.

[Filed ARC 1114C (Notice ARC 0956C, IAB 8/21/13), IAB 10/16/13, effective 11/20/13]

[Filed ARC 2220C (Notice ARC 2119C, IAB 9/2/15), IAB 10/28/15, effective 12/2/15]

[Filed ARC 4410C (Notice ARC 4314C, IAB 2/27/19), IAB 4/24/19, effective 5/29/19]

[Filed Emergency ARC 4499C, IAB 6/19/19, effective 5/22/19]

[Filed ARC 4638C (Notice ARC 4498C, IAB 6/19/19), IAB 8/28/19, effective 10/2/19]