

Levee Districts' Authorizations and Responsibilities

What you can do, what you must
do

Louisiana Constitution

- Article VI Part III ■■ 38-42
 - Legislature creates and reorganizes LDs
 - Boards of commissioners must be district residents
 - Allows LD taxes with voter approval
 - Tax rates are limited

Louisiana Constitution

- Article VI Part III ■■ 38-42
 - Allows cooperation with federal government
 - Limits compensation for private property used or destroyed
 - Allows quick take
 - Allows levy of tax to pay for private property taken

Louisiana Revised Statutes

- RS 9■2792.4
 - Limits individual liability of BOC
 - Applies to discretionary duties
 - Willful or wanton misconduct is not immune
- RS 38■■90.2-92-Statewide Flood Control Program
 - Purpose is to acquire state funds towards projects
 - Establishes a methodology for flood control project evaluation

Louisiana Revised Statutes

- RS 38 ■■ 90.2-92-Statewide Flood Control Program
 - La Legislature may delete projects not selected in accordance with the methodology
 - Legislature may not add projects
 - DOTD OPW may not alter list but may fund other projects from emergency funds

Louisiana Revised Statutes

- RS 38■■90.2-92-Statewide Flood Control Program
 - Statement of sponsorship is required
 - Furnish lands, easements, disposal areas
 - Acquire necessary permits
 - Assume maintenance
 - Assume costs of moving utilities
 - Provide 10% of local match

Louisiana Revised Statutes

- RS 38■■90.2-92-Statewide Flood Control Program
 - OPW inspection
 - Operation and maintenance as per O&M manual for 3 years
 - Accounting system and open bidding is required
 - Biennial audits by legislative auditor

Louisiana Revised Statutes

- RS 38■■90.2-92-Statewide Flood Control Program
 - Report of any misuse of funds
 - Can result in suspension of funding
 - Notification of DA, possible criminal penalties

Louisiana Revised Statutes

- RS 38 ■ ■ 111-226 Levees and Drainage in General
 - May contract with OPW for payment of the costs of projects.
 - Control all public drainage channels within their jurisdiction.
 - Must place a berme at the rear base of a levee that crosses a bayou or slough

Louisiana Revised Statutes

- RS 38 ■ ■ 111-226 Levees and Drainage in General
 - May remove unauthorized structures in front of Mississippi River levees
 - Parishes may expropriate land outside levee districts necessary for drainage projects
 - Parishes may erect back and side levees in tidal overflow areas with voter approval

Louisiana Revised Statutes

- RS 38 ■ ■ 111-226 Levees and Drainage in General
 - Parishes may build temporary levees
 - Cities and towns may build levees and expropriate land
 - Prohibited obstructions and offenses
 - Cutting or destroying levees, interference or obstruction of drainage
 - Willful acts can incur significant civil and criminal penalties

Louisiana Revised Statutes

- RS 38■■111-226 Levees and Drainage in General
 - Prohibited obstructions and offenses
 - May compel removal of obstructions
 - Irrigating or flooding land near base of levee
 - Rice-flumes, dahls, or pipes in public levees

Louisiana Revised Statutes

- RS 38 ■ ■ 111-226 Levees and Drainage in General
 - Regulations for operation of siphons through levees-designed to protect integrity of levee
 - May compel removal of siphons

Louisiana Revised Statutes

- RS 38 ■ ■ 111-226 Levees and Drainage in General
 - Must issue permits for levee crossings if USACOE and LADOTD have no objections

Louisiana Revised Statutes

- RS 38■■241-249 HURRICANE FLOOD PROTECTION, CONSTRUCTION, AND DEVELOPMENT
 - State is ultimately responsible.
 - Disjointed efforts are ineffective.
 - Statewide coordination is necessary-coastal land loss
 - State assumes direct responsibility

Louisiana Revised Statutes

- RS 38■■241-249 HURRICANE FLOOD PROTECTION, CONSTRUCTION, AND DEVELOPMENT
 - Establishes a methodology for hurricane flood protection project evaluation
 - Application for funding requirements-selected.
 - Documentation of the problem

Louisiana Revised Statutes

- RS 38■■241-249 HURRICANE FLOOD PROTECTION, CONSTRUCTION, AND DEVELOPMENT
 - Application for funding requirements-selected
 - Regulatory permit requirements
 - Costs versus public and private benefits
 - Consideration of nonstructural solutions
 - Statement of sponsorship

Louisiana Revised Statutes

- RS 38■■241-249 HURRICANE FLOOD PROTECTION, CONSTRUCTION, AND DEVELOPMENT
 - Methodology for hurricane flood protection project evaluation
 - OPW holds public hearings in CZ
 - OPW submits a priority ranked list of recommended projects to the Coastal Protection & Restoration Authority (CPRA)

Louisiana Revised Statutes

- RS 38■■241-249 HURRICANE FLOOD PROTECTION, CONSTRUCTION, AND DEVELOPMENT
 - Methodology for hurricane flood protection project evaluation
 - Criteria for OPW priority ranking of projects submitted to CPRA
 - 1.Reduction of threat to human lives.
 - 2.Benefit-to-cost

Louisiana Revised Statutes

- RS 38■■241-249 HURRICANE FLOOD PROTECTION, CONSTRUCTION, AND DEVELOPMENT
 - Methodology for hurricane flood protection project evaluation
 - Projects are included in the Comprehensive Master Plan (CMP)
 - The CMP is submitted to the Transportation, Highways and Public Works Legislative Committees for approval

Louisiana Revised Statutes

- RS 38■■241-249 HURRICANE FLOOD PROTECTION, CONSTRUCTION, AND DEVELOPMENT
 - Methodology for hurricane flood protection project evaluation
 - No projects except those in the annual CMP may be built regardless of the source of funding
 - Exceptions for projects from DOTD emergency fund or involving federal matching funds

Louisiana Revised Statutes

- RS 38■■241-249 HURRICANE FLOOD PROTECTION, CONSTRUCTION, AND DEVELOPMENT
 - OWP has oversight over all phases of projects.
 - OPW has oversight over all flood protection authorities in the CZ.
 - Compensation for property taken or damaged is at the federal level.

Louisiana Revised Statutes

- RS 38 ■■ 281-330 LEVEE DISTRICTS
 - Definitions-fair market value, full extent of the loss
 - Names the various levee districts
 - General authorizations & responsibilities
 - Construct and maintain levees and drainage & work incidental thereto.

Louisiana Revised Statutes

- RS 38 ■■ 281-330 LEVEE DISTRICTS
 - General authorizations & responsibilities
 - Construct bicycle and walking paths along some mainline Mississippi River sections.
 - Care and inspection of levees.
 - Expropriation-detailed procedures.
 - Execute 3 year commercial leases.

Louisiana Revised Statutes

- RS 38 ■■ 281-330 LEVEE DISTRICTS
 - General Requirements
 - Coastal Zone LDs must submit a tidal levee elevation report to OPW every three years.
 - LD members residency requirements
 - State-2 years.
 - District-1 years.

Louisiana Revised Statutes

- RS 38 ■■ 281-330 LEVEE DISTRICTS
 - General Requirements
 - General powers and duties of board
 - Develop a comprehensive levee system to protect the entire district from overflow
 - Buy, hold, sell, transfer property
 - Execute contracts

Louisiana Revised Statutes

- RS 38 ■■ 281-330 LEVEE DISTRICTS
 - General Requirements
 - General powers and duties of board
 - Acts incidental to flood protection
 - Adopt bylaws, rules and regulations
 - Keep records of proceedings
 - Public bidding is required except in emergencies
 - Detailed accounting is required

Louisiana Revised Statutes

- RS 38 ■ ■ 281-330 LEVEE DISTRICTS
 - General Requirements
 - General powers and duties of board
 - Provides for per diem for members and salary for board president
 - Levee boards are political corporations
 - May sue and be sued

Louisiana Revised Statutes

- RS 38 ■■ 281-330 LEVEE DISTRICTS
 - General Requirements
 - General powers and duties of board
 - Dissolution
 - Issue bonds
 - Dedication of canals to public use
 - Acquisitive prescription does not run against LDs

Louisiana Revised Statutes

- RS 38 ■■ 281-330 LEVEE DISTRICTS
 - General Requirements
 - General powers and duties of board
 - Uniform accounting is required
 - Annual budget
 - Emergency procedures manual
 - Public bidding is required to sell or lease land
 - Contracts in accordance with state law

Louisiana Revised Statutes

- RS 38 ■■ 281-330 LEVEE DISTRICTS
 - General Requirements
 - General powers and duties of board
 - Biennial audits by the legislative auditor
 - Records of holdings must be kept

Louisiana Revised Statutes

- RS 38 ■■ 281-330 LEVEE DISTRICTS
 - General Requirements
 - Scope of activities
 - Flood protection.
 - Construction and maintenance of recreational facilities
 - Cooperative activities with other public bodies for public purposes.

Louisiana Revised Statutes

- RS 38 ■■ 281-330 LEVEE DISTRICTS
 - General Requirements
 - May employ levee district police officers
 - Training qualifications are specified
 - Special grants of authority to specific LDs are throughout the statutes
 - LDs may act together to further their missions

Louisiana Constitution Article VI, PART III. LEVEE DISTRICTS AND REGIONAL FLOOD PROTECTION AUTHORITIES

- ■■38.1 Regional Flood Protection Authorities
 - For parishes and levee districts entirely or partially in the CZ
 - Purpose-levees, drainage, flood protection and *hurricane flood protection*.

Louisiana Constitution Article VI, PART III. LEVEE DISTRICTS AND REGIONAL FLOOD PROTECTION AUTHORITIES

- ■■38.1 Regional Flood Protection Authorities
 - The Regional Authority BOC is the governing authority for all LDs within it.
 - Does not affect individual LD authority to levee taxes, employ staff or construct & maintain its property

Louisiana Constitution Article VI, PART III. LEVEE DISTRICTS AND REGIONAL FLOOD PROTECTION AUTHORITIES

- ■■38.1 Regional Flood Protection Authorities
 - Regional authority may levee an “authority-wide” tax in addition to the LD taxes.
 - Voter approval, authority-wide and in each affected parish, is required.
 - Existing contracts & obligations are not affected by the RA

Louisiana Revised Statutes

- **PART III-A. SOUTHEAST LOUISIANA FLOOD PROTECTION AUTHORITIES LA RS 330.1-.12**
 - Lists Authorities and LDs
 - Authorities have complete control of LDs within their territories
 - Establishes detailed board composition requirements & operating procedures

Louisiana Revised Statutes

- **PART III-A. SOUTHEAST LOUISIANA
FLOOD PROTECTION AUTHORITIES LA
RS 330.1-.12**
 - Regional Authority BOC powers & duties
 - Traditional flood control and drainage
 - Prevent tidewater flooding (hurricane protection)
 - Diversion canals

Louisiana Revised Statutes

- **PART III-A. SOUTHEAST LOUISIANA
FLOOD PROTECTION AUTHORITIES LA
RS 330.1-.12**
 - Authority BOC powers & duties
 - Erosion control
 - Marsh management
 - Coastal restoration
 - Prevent saltwater intrusion

Louisiana Revised Statutes

- **PART III-A. SOUTHEAST LOUISIANA
FLOOD PROTECTION AUTHORITIES LA
RS 330.1-.12**
 - Authority BOC powers & duties
 - Acts incidental to the mission and that would traditionally be granted to levee and drainage boards
 - The authority or its levee districts may not own, operate or control facilities not related to the mission

Louisiana Revised Statutes

- **PART III-A. SOUTHEAST LOUISIANA
FLOOD PROTECTION AUTHORITIES LA
RS 330.1-.12**
 - Authority BOC powers & duties
 - A LD's taxes cannot be used by another LD
 - RA boards may employ a regional director
 - Employees are allowed

Louisiana Revised Statutes

- **PART III-A. SOUTHEAST LOUISIANA FLOOD PROTECTION AUTHORITIES LA RS 330.1-.12**
 - Authority BOC powers & duties
 - RA counsel is La. Attorney General
 - No RA police officers
 - RAs may indemnify commissioners & employees for good faith performance of duties

Louisiana Revised Statutes

- **PART III-A. SOUTHEAST LOUISIANA
FLOOD PROTECTION AUTHORITIES LA
RS 330.1-.12**
 - Authority BOC powers & duties
 - May levee tax with voter approval
 - The tax may only be used within the voting district that approved it
 - The authorities may seek, accept and expend funds from any source

Louisiana Revised Statutes

- **PART III-A. SOUTHEAST LOUISIANA
FLOOD PROTECTION AUTHORITIES LA
RS 330.1-.12**
 - Authority BOC powers & duties
 - Levee districts that have been merged into parishes are not affected by the regional authorities

Louisiana Revised Statutes

- **PART III-A. SOUTHEAST LOUISIANA
FLOOD PROTECTION AUTHORITIES LA
RS 330.1-.12**
 - Ownership and management of non-flood protection functions and activities
 - Facilities owned or operated by levee districts not related to the flood control mission of the district are to be controlled and managed by the Division of Administration as of 1-1-07

Louisiana Revised Statutes

- **PART III-A. SOUTHEAST LOUISIANA
FLOOD PROTECTION AUTHORITIES LA
RS 330.1-.12**
 - Ownership and management of non-flood protection functions and activities
 - Does not apply to the Orleans Levee District
 - Revenues from the facilities will still go to the district

Louisiana Revised Statutes

- **PART IV. SPECIAL PROVISIONS**
 - Coastal Louisiana Levee Consortium
- **PART V. EXPROPRIATION BY DECLARATION OF TAKING**
 - Quick take
 - Detailed procedures

Louisiana Open Meetings Law

- Public bodies
 - Government authorities at all levels.
 - School boards, port and levee commissions.
 - Boards of publicly owned utilities.
 - Special district boards, commissions, authorities.
 - Possessing policy making, advisory, or administrative functions.

Rules of the OML

- Notices
 - Written public notice of yearly schedule.
 - Written public notice of regular, special, or rescheduled meetings at least 24 hours prior. Must include agenda.
 - E mail notice?
 - Content of agenda? Enough to inform.
 - State that public comment will be taken.

Rules of OML

- Voting
 - Voting must be by voice, no electronic voting
 - Proxy voting, secret balloting, or other secretive measures are prohibited.
 - Recusal is required when a member has an economic interest in the matter being considered.
- Quorum
 - Simple majority of the total membership
- Meetings must be open to the public.
 - Applies even if no final action is taken.
 - Must be construed liberally.

Rules of OML

- Public comment must be allowed
- Records
 - Written minutes are required- date, time, place list of members present and absent, substance of decided matters, record of vote, any other information requested by the public body
 - Publication of minutes is not required by OML but enabling legislation or bylaws may require it.
 - Minutes are public records.

GOVERNMENT LIABILITY

- Government actions that cause or exacerbate flooding
 - Public works projects
 - Permitting private projects
- ASFM NAI STUDY



**NO ADVERSE IMPACT
FLOODPLAIN MANAGEMENT
AND
THE COURTS**

November 2005 Edition

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Prepared for the Association of State Floodplain Managers



FINDINGS OF CASE STUDIES ON GOVERNMENT ACTION

- NAI Findings

Governments have been successfully sued for public works projects and for permitting private projects with off-site effects. “Reasonableness” standard.

- Sea Grant Study Findings

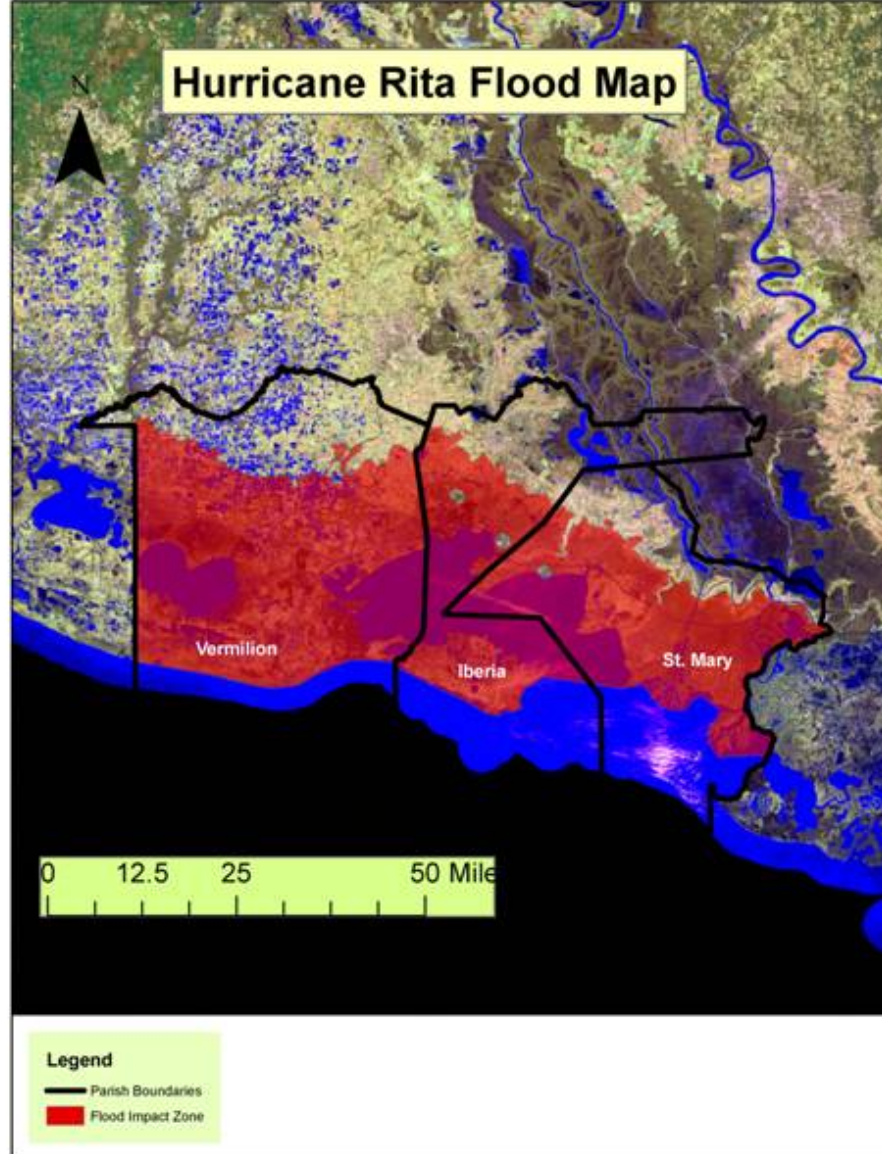
Louisiana governments can be held liable for public works and allowing development that causes flooding damage.

Is It Government's Duty to Protect Us From Our Bad Decisions?

- Totally Natural, On-site Flooding
 - NAI findings-generally, no liability but there are exceptions.
 - Sea Grant study-no cases found but.....

Is It Government's Duty to Protect Us From Our Bad Decisions?

- Paternalism?
 - Implied warranty?
 - Foreseeable?
 - Ability to reduce flood damage
- Above and Beyond the NFIP?
- Madisonville



Hurricane Rita flood information provided by Thomas Hymel (LSU AgCenter Sea Grant, thymel@agctr.lsu.edu) and Maurice Wolcott (LSU AgCenter, mwolcott@agctr.lsu.edu)
Note: Image based on preliminary data from Hurricane Rita Storm Surge Mapping Project, LSU AgCenter/Sea Grant, 12-13-2005