

## CHAPTER 8405

### BOARD OF WATER AND SOIL RESOURCES

### LOCAL WATER PROTECTION AND MANAGEMENT

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#### 8405.0100 PURPOSE.

Minnesota Statutes, sections 103B.3361 to 103B.3369, authorize the board to make grants to counties for local government activities that protect or manage water and related land resources and to adopt rules.

This chapter provides for the administration of a state local water resources protection and management grant program. Parts 8405.0100 to 8405.0230 implement this program by establishing the substantive criteria and procedural conditions under which the board may award state grants for the development and implementation of a comprehensive local water plan.

**Statutory Authority:** *MS s 103B.3361 to 103B.3369*

**History:** *15 SR 1312*

#### 8405.0110 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part and in Minnesota Statutes, section 103B.3363, apply to parts 8405.0100 to 8405.0230. If a definition in this part conflicts with a definition in Minnesota Statutes, chapter 110B, 112, or 473, or rules adopted under one of those chapters, the definition in this part governs.

Subp. 2. **Board.** "Board" means the Board of Water and Soil Resources.

Subp. 3. **Comprehensive local water plan; plan.** "Comprehensive local water plan" or "plan" means a county water plan authorized under Minnesota Statutes, section 110B.04, a watershed management plan required under Minnesota Statutes, section 473.878, a watershed district overall plan required under Minnesota Statutes, section 112.46, or a county groundwater plan authorized under Minnesota Statutes, section 473.8785.

Subp. 4. **Local share.** "Local share" means the contribution of a local unit of government to the eligible cost of a program including the value of cash expenditures, private contributions, and in kind contributions of labor, equipment, material, and real property used for and expended on eligible program activities. Up to 50 percent of the local share may consist of federal funds including in kind contributions. State funds, including in kind contributions, may not be used as local share.

Subp. 5. **Local unit of government.** "Local unit of government" means a statutory or home rule charter city, town, county, soil and water conservation district, watershed district, organization formed for the joint exercise of powers under Minnesota Statutes, section 471.59, local health board, or other special purpose district or authority with local jurisdiction in water and related land resources management.

Subp. 6. **Local water planning levy.** "Local water planning levy" means a property tax levy under Minnesota Statutes, section 275.50, subdivision 5, paragraph (2), and implementing Minnesota Statutes, section 103B.3369, subdivision 5, clause (2), for the purpose of implementing a comprehensive local water plan.

Subp. 7. **Official controls.** "Official controls" means ordinances and rules that control the physical development within the jurisdiction of a local unit of government, protect public health and safety, or implement the general objectives of the local unit of government.

Subp. 8. **Program.** "Program" means a water-related program.

Subp. 9. **Related land resources.** "Related land resources" means land affected by present or projected management practices that have significant effects on the quantity and quality, or use of groundwater or surface water.

**Statutory Authority:** *MS s 103B.3361 to 103B.3369*

**History:** *15 SR 1312*

#### **8405.0120 AVAILABLE ASSISTANCE.**

Subpart 1. **Grants.** The board may award grants to counties to develop plans authorized under Minnesota Statutes, section 110B.04 or 473.8785, or implement water resource protection and management programs identified as priorities in a comprehensive local water plan. Grants may be used to employ persons and to obtain and use information necessary to develop a plan under Minnesota Statutes, section 110B.04 or 473.8785, that did not receive funding under Laws of Minnesota 1987, chapter 404, section 30, subdivision 5, paragraph (a), or to implement a comprehensive local water plan. Plan development grants must not exceed a maximum of \$15,300 for a plan under Minnesota Statutes, section 110B.04, or \$15,600 for a plan under Minnesota Statutes, section 473.8785.

Plan implementation grants consist of base grants and challenge grants. Base grants are noncompetitive and are available to any county that has approved and locally adopted comprehensive local water plans covering more than 50 percent of the county land area and that implements a local water planning levy. The purpose of base grants is to encourage plan maintenance and implementation with an emphasis on new or expanded programs. Eligible activities include supporting water plan coordination and enforcement of official controls. Base grants may not exceed the amount specified in Minnesota Statutes, section 103B.3369, subdivision 5, clause (2).

Challenge grants are competitive and may be available to any county that has approved and locally adopted comprehensive local water plans covering more than 50 percent of the county land area and that implements a local water planning levy. The purpose of challenge grants is to accelerate implementation of priority actions contained in approved comprehensive local water plans. Eligible activities include establishment of monitoring programs, development of official controls, assessments of resources, and development of geographic information systems. A county may submit more than one challenge grant application.

Subp. 2. **Local share.** Plan development and challenge grants must be matched in a one-to-one ratio with a local share.

Subp. 3. **Priority.** Grants must be awarded, within the limits of available appropriations, to those applicants having the highest priority.

Subp. 4. **Technical assistance.** The board may provide technical assistance to counties that are considering application in order to ensure timely, accurate, and comprehensive applications. The board shall provide technical assistance, within the limits of available resources, to counties that receive grants, to assist in developing or implementing a comprehensive local water plan.

**Statutory Authority:** *MS s 103B.3361 to 103B.3369*

**History:** *15 SR 1312*

#### **8405.0130 ELIGIBILITY CRITERIA.**

Subpart 1. **Eligible applicants.** Only counties are eligible to apply for grants. A county shall coordinate and submit applications on behalf of other local units of government within its jurisdiction.

Subp. 2. **Eligible costs.** Plan costs are eligible for state grants if the expenditures are reasonable and necessary for developing or implementing a comprehensive local water plan as described in part 8405.0120, subpart 1.

Subp. 3. **Ineligible costs.** Ineligible costs include those not related to the activities in subpart 2. In addition, the following costs are ineligible whether or not they relate to the activities in subpart 2:

A. expenditures or in kind contributions incurred prior to the effective date of the grant agreement that have not been approved by the board as described in part 8405.0200, subpart 9; and

B. activities that violate local, state, or federal statutes, rules, or regulations.

**Statutory Authority:** *MS s 103B.3361 to 103B.3369*

**History:** *15 SR 1312*

**8405.0140 NOTICE OF GRANT AVAILABILITY.**

Subpart 1. **Notice.** If the board determines that funds are available to award grants, the board shall publish a notice in the State Register announcing that applications will be accepted. The notice must include the amount of available funding and contain deadlines for submittal of applications for each grant, which must be no less than 60 calendar days from the date of publication.

Subp. 2. **Notification.** The board shall notify all counties that grant funds are available and the deadline for applications. Any other local unit of government that wishes to be notified shall contact the board by writing to the executive director. When the board publishes notice in the State Register, the board shall mail notice of the grant application period to those local units of government who have requested to be notified.

Subp. 3. **Grant application periods.** The board may establish a grant application period at any time, but there must be at least one application period for each grant each fiscal year if funds are available.

**Statutory Authority:** *MS s 103B.3361 to 103B.3369*

**History:** *15 SR 1312*

**8405.0150 GRANT APPLICATION.**

Subpart 1. **General requirements.** A grant application must be submitted by a county. A county shall coordinate and submit applications on behalf of other local units of government within its jurisdiction. A completed grant application must be received in the board of office in Saint Paul by the published deadline, in a format provided by the board, and with the information required by this part.

Subp. 2. **Plan development grant.** A county submitting an application for a plan development grant must submit the following information:

A. a resolution committing the county to develop a local water plan according to chapter 9300 and Minnesota Statutes, chapter 110B, or Minnesota Statutes, section 473.8785;

B. a resolution by the county authorizing the matching funds and the signing of the grant agreement and other related documents;

C. a budget of expenses associated with developing a local water plan; and

D. a description and explanation of the responsibilities proposed to be contracted with other local units of government, if applicable.

Subp. 3. **Plan implementation base grant.** A county submitting an application for a plan implementation base grant shall submit the following information:

A. a resolution by the county authorizing the signing of the grant agreement and other related documents;

B. a detailed work plan and schedule for program implementation during the grant period;

C. a detailed budget for the grant period;

D. a statement describing the relationship of the grant request to priority implementation items in the comprehensive local water plan;

E. a statement describing how cooperation will be secured with adjacent counties and water management organizations, if applicable; and

F. a description and explanation of the responsibilities proposed to be contracted with other local units of government, if applicable.

Subp. 4. **Plan implementation challenge grant.** A county submitting an application for a plan implementation challenge grant shall submit the following information:

A. a resolution by the county authorizing the matching funds and the signing of the grant agreement and other related documents;

- B. an executive summary of the contents of the application;
- C. a detailed work plan and schedule for program implementation during the grant period;
- D. a detailed budget for the grant period including the identification of the amount requested in the grant;
- E. a list identifying the amount, type, and source of the local share;
- F. a statement describing the relationship of the grant request to priority implementation items in the comprehensive local water plan;
- G. a statement describing how cooperation will be secured with adjacent counties and water management organizations, if applicable;
- H. a statement describing local support and interagency coordination;
- I. a description of how the challenge grant complements the base grant;
- J. a statement indicating if partial funding of the application is acceptable. If partial funding is acceptable, project components must be listed in order of funding priority with a corresponding budget; and
- K. an explanation of the responsibilities proposed to be contracted with other local units of government, if applicable.

Subp. 5. **Sequence of implementation grants.** Before a county can submit an application for a plan implementation grant, the county must have:

- A. approved and locally adopted comprehensive local water plans covering more than 50 percent of the county land area; and
- B. implemented a local water planning levy.

Although base and challenge grants may be applied for at the same time, separate applications must be made.

**Statutory Authority:** *MS s 103B.3361 to 103B.3369*

**History:** *15 SR 1312*

#### 8405.0160 DENIAL OF GRANT APPLICATIONS.

Subpart 1. **Grounds.** An application for a plan development grant or a plan implementation grant must be denied by the board for the following reasons:

- A. ineligible applicant;
- B. proposed expenditures are ineligible;
- C. request is not consistent with priorities described in the applicant's comprehensive local water plan;
- D. late submittal; or
- E. inadequate or incomplete application.

Subp. 2. **Procedure.** The board shall review each grant application within 14 calendar days after the deadline for application submittal. The board shall notify each denied grant applicant of the denial of its application and the reasons for the denial within 14 calendar days after the determination.

Subp. 3. **Effect of denial.** A grant applicant whose application is denied may reapply in a subsequent application period in order to be reconsidered for a grant.

**Statutory Authority:** *MS s 103B.3361 to 103B.3369*

**History:** *15 SR 1312*

#### 8405.0170 ALLOCATION OF FUNDING.

Subpart 1. **Overall grant fund allocation.** After assessing the number and specific type of applications, and within 30 calendar days of the close of an application period, the board shall determine the amount of funding to be made available for each grant. In deciding how much money to make available for new grant awards, the board shall give priority to plan development and base grants and consider the necessity to have additional money available to complete previously approved grants.

If the money intended for a specific type of grant is not awarded during a grant period, the board may reallocate the funds to one of the other type of grants or carry the money forward to a subsequent grant period.

**Statutory Authority:** *MS s 103B.3361 to 103B.3369*

**History:** *15 SR 1312*

#### 8405.0180 RANKING OF APPLICATIONS.

Subpart 1. **Process of ranking.** After completion of the review by the board of the grant applications for eligibility, and determination of available funds for the types of grants, the board shall proceed to:

A. fund all eligible plan development and base grant applications as provided in part 8405.0120, subpart 1; and

B. rank in order of priority all eligible challenge grant applications.

Each eligible challenge grant application must be awarded the number of priority points it is entitled to under subparts 3 and 4. All applications must be given a ranking depending on the number of points awarded. The applications with the highest ranking must be given the highest priority.

Subp. 2. **Review team.** Prior to ranking challenge grant applications, the board shall establish an advisory review team to evaluate the applications. The review team, chaired by a member or representative appointed by the board, consists of a representative of each of the following agencies or organizations: Association of Metropolitan Municipalities; Association of Minnesota Counties; League of Minnesota Cities; Metropolitan Council; Metropolitan InterCounty Association; Metropolitan Water Management Organizations; Minnesota Association of Conservation District Employees; Minnesota Association of County Planning and Zoning Administrators; Minnesota Association of Soil and Water Conservation Districts; Minnesota Association of Townships; Minnesota Association of Watershed Districts; Minnesota Departments of Agriculture, Health, and Natural Resources; Minnesota Extension Service; Minnesota Geological Survey; Minnesota Pollution Control Agency; State Planning Agency; and such other agencies, organizations, or persons providing additional expertise or background beneficial to the review team.

Subp. 3. **Priority points for challenge grant applications.** The following criteria must be used to determine the number of priority points to be awarded in the evaluation of each challenge grant application. To expedite the review process, the board is responsible for providing background information and summaries of the applications to the review team. The review team, acting as a committee, shall award each application between zero and ten points under the following criteria, depending on how well the application satisfies each criterion. Ten points is the highest point value. The number of points under each criterion must be added together to determine the application's total point value. This total number must be used to determine the application's overall ranking and priority. The criteria are as follows:

A. the extent to which the application demonstrates participation of several local units of government, including multicounty efforts;

B. the extent to which the application expresses long-term commitment to effective water protection and management;

C. the extent to which the applicant would use local programs and methods to protect and manage water and related land resources;

D. the extent to which the application complements efforts of federal, state, and local units of government; and

E. the extent to which the application supports efforts of local units of government to adopt, administer, and enforce official controls to protect and manage water and related land resources.

Subp. 4. **Other considerations.** In assigning points, the review team must consider the regional variations that exist in program needs and priorities.

**Statutory Authority:** *MS s 103B.3361 to 103B.3369*

**History:** *15 SR 1312*

**8405.0190 SELECTION OF GRANTEES.**

Subpart 1. **Ranking.** The review team shall complete its ranking of all applications for challenge grants for which an eligible grant application has been submitted and forward the recommendation to the board within 90 calendar days of the close of the application period.

Subp. 2. **Projects funded.** The board shall select those applications that will be awarded grant funds by awarding grants to the highest priority challenge grant applications within the limits of available funds established in part 8405.0170.

Subp. 3. **Board decision.** All decisions of the board in ranking applications and awarding grants must be made at a regular or special board meeting.

Subp. 4. **Timing.** The board shall make its selection of grantees within 120 calendar days of the close of the application period. The board shall notify all applicants of the status of their application within 14 calendar days after the selection of grantees.

Subp. 5. **Reapplication.** A grant applicant whose application is not awarded grant funds may reapply in a subsequent application period to be reconsidered for a grant.

**Statutory Authority:** *MS s 103B.3361 to 103B.3369*

**History:** *15 SR 1312*

**8405.0200 GRANT CONDITIONS.**

Subpart 1. **Amount.** Except as provided in part 8405.0150, subpart 4, item J, a grant that is made must be for the amount requested by the applicant. The maximum grant must be according to part 8405.0120, subpart 1.

Subp. 2. **Agency review.** Grants provided to develop or implement programs must be reviewed by the state agency having authority for the programs to assure compliance with minimum state standards before a grant agreement is executed by the board.

Subp. 3. **Performance criteria.** In addition to items required by this part, performance criteria for grant administration must include plan information requirements contained in the approved application of the county as described in part 8405.0150, subparts 2, 3, and 4.

Subp. 4. **Grant period.** The grant period for a plan development grant must be two years. The grant period for an implementation base grant must not exceed two years. The grant period for an implementation challenge grant must be two years and may be extended an additional year with prior board approval.

Subp. 5. **Grant agreement.** The county must enter into a grant agreement with the board before a grant will be awarded. The grant agreement must include the provisions established in part 8405.0210.

Subp. 6. **Records.** The county, or delegated local unit of government, shall maintain all records relating to the receipt and expenditure of grant funds for six years from the termination of the grant agreement.

Subp. 7. **Audit.** The county, or delegated local unit of government, must agree that the books, records, documents, and accounting procedures and practices of the county relevant to this program may be examined at any time by the board or board's designee. The county or delegated local unit of government implementing a grant shall provide for an audit that meets the standards of the Office of State Auditor. The audit must cover the duration of a grant and be performed within one year after the end of a grant period or when routinely audited, whichever occurs first. Copies of the audit must be provided to the county and the board.

Subp. 8. **Annual progress report.** The county, or delegated local unit of government, shall submit an annual progress report to the board by January 31st of each year the grant is in effect. The report must include the following information:

A. a discussion of progress of the work described in the approved application, and difficulties encountered meeting the schedule during the year;

B. a discussion of the program results appropriate to the work conducted during the year; and

C. a report of expenditures in the year and those anticipated during the upcoming year.

Subp. 9. **Eligible costs.** Grant funds may not be used for costs incurred before or after the end of the grant agreement period unless approved by the board as provided by the criteria

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in part 8405.0130, subpart 3. In considering these costs, the board must review each claim on a case-by-case basis. To support a claim, the county may be requested to provide additional information.

**Statutory Authority:** *MS s 103B.3361 to 103B.3369*

**History:** *15 SR 1312*

### 8405.0210 GRANT AGREEMENT.

Subpart 1. **Contents.** The board and the county shall enter into a grant agreement. The grant agreement must:

- A. establish the term and conditions of the grant;
- B. provide that the county may contract with others, including appropriate local units of government under the terms and conditions specified by the county, to complete the work specified in the grant agreement;
- C. provide that the cost overruns are the sole responsibility of the county;
- D. require that a county is responsible for ensuring that state funds are properly expended even if the work specified in the grant agreement is performed by a local unit of government acting on behalf of the county;
- E. require that the county submit an annual progress report; and
- F. incorporate terms and conditions required by federal or state statutes, rules, or regulations.

Subp. 2. **Amendments.** A grant agreement may be amended upon agreement of the board and the county.

Subp. 3. **Agreement period.** A grant agreement must be for a duration specified in part 8405.0200, subpart 4.

**Statutory Authority:** *MS s 103B.3361 to 103B.3369*

**History:** *15 SR 1312*

### 8405.0220 GRANT PAYMENTS.

Subpart 1. **Payment.** Payment of the grant amount must be made in one installment by the board promptly after the effective date of the grant agreement.

Subp. 2. **Unencumbered funds.** Any grant funds remaining unspent or becoming unobligated after the end of the grant agreement period must be returned to the board within two months of that date.

**Statutory Authority:** *MS s 103B.3361 to 103B.3369*

**History:** *15 SR 1312*

### 8405.0230 GRANT TERMINATION.

Subpart 1. **Board action.** The board may cancel a grant agreement for just cause. "Just cause" means that the county or delegated local unit of government is not disbursing grant funds in accordance with established board and state procedures or has otherwise breached a term of the grant agreement. The county must be given 14 calendar days' prior written notice of cancellation. The county has until the date of cancellation to demonstrate why the grant agreement should not be canceled. If it is determined by the board that the county's default was beyond its control or it was not otherwise in default, the grant agreement must not be canceled. The county may cancel this grant agreement with or without cause. In the event of cancellation by the board or county, the county is entitled to payment, determined on a pro rata basis, for work satisfactorily performed and the remaining grant funds must be promptly returned to the board.

Subp. 2. **Agency action.** At the request of any state commissioner, the board shall revoke that portion of a grant used to support a program not in compliance with rules of that agency.

**Statutory Authority:** *MS s 103B.3361 to 103B.3369*

**History:** *15 SR 1312*