

8420.0200 DETERMINING LOCAL GOVERNMENT UNIT; DUTIES.

Subpart 1. **Determining local government unit.** The local government unit responsible for making decisions must be determined according to items A to J.

A. Outside the seven-county metropolitan area, the local government unit is the county or city in which the activity is located, or its delegate.

B. In the seven-county metropolitan area, the local government unit is the city, town, or water management organization regulating surface-water-related matters in the area in which the activity is located, or its delegate. The watershed management plan adopted under Minnesota Statutes, section 103B.231, and related board rules will normally indicate the appropriate local government unit. Lacking an indication, the local government unit must be the city, town, or its delegate.

C. For activities on state land, the local government unit is the state agency, or the agency's designee, with administrative responsibility for that land. However, state agencies must coordinate with local government units that would otherwise have jurisdiction, according to items A and B, when conducting or making decisions on activities in wetlands.

D. Notwithstanding items A to G, the Department of Natural Resources is the approving authority for activities associated with projects requiring permits to mine under Minnesota Statutes, section 93.481, and for projects affecting calcareous fens.

E. Implementation of this chapter and the act may be delegated from a county, city, or town, as applicable according to item A or B, to a soil and water conservation district or other governmental entity by the passage of resolutions by both parties. The delegation becomes effective when resolutions have been passed by both parties, or on the date specified in the resolutions, whichever is later. Both parties must provide notice to the board, the commissioner, and the soil and water conservation district within 15 business days of adoption of the resolution. The notice must include a copy of the resolution and a description of the applicable geographic area.

F. If the activity is located in two jurisdictions, the local government unit is the one exercising zoning authority over the project or, if both have zoning authority, the one in which most of the wetland impacts will occur. If no zoning permits are required, the local government unit is the one in which most of the wetland impacts will occur. If an activity will affect wetlands in more than one local government unit, the board may coordinate the project review to ensure consistency and consensus among the local government units involved. Local government units may maintain separate jurisdiction if mutually agreed upon.

G. For a replacement site located in more than one jurisdiction, the local government unit is the one in which most of the replacement wetland area occurs.

H. For replacement plans where the project-specific replacement will occur in a different local government unit than the impact, approval of all local government units involved or as specified in items A to G constitutes final approval of the replacement plan and is required before the project may proceed. The local government unit with jurisdiction for the impact site must approve all components of the replacement plan, following the procedures required by this chapter. The local government unit with jurisdiction for the replacement site must limit the review to evaluation of the replacement site and make a decision accordingly. As part of the approval of the replacement plan, the local government unit with jurisdiction for the replacement site assumes responsibility for ensuring compliance with monitoring provisions according to parts 8420.0800 to 8420.0820. The local government unit with jurisdiction for the replacement site may enter into joint powers agreements with a local government unit with jurisdiction for the impact site, assess fees, or develop other procedures considered necessary to facilitate the process.

I. For instances where the activity or replacement occurs in multiple jurisdictions, the local government unit with decision-making authority must coordinate with the other local government units.

J. The board shall resolve all questions as to which government entity is the responsible authority, applying the guidelines in items A to I.

Subp. 2. Local government unit duties.

A. Local government units are responsible for making decisions on applications made under this chapter. Each local government unit of the state, except tribal lands and state agencies, must send a written acknowledgment, including a copy of the adopting resolution, to the board that it is assuming its responsibilities under this chapter and the act.

B. A local government unit must provide knowledgeable and trained staff with expertise in water resource management to manage the program or secure a qualified delegate. Otherwise, the board may declare a moratorium as prescribed in subpart 3 or take other appropriate legal action to ensure proper implementation and compliance with this chapter. The board may establish standards and requirements for training, experience, and certification.

C. The local government unit may, through resolution, rule, or ordinance, place decision-making authority with staff according to procedures it establishes. For final decisions made by staff, the local government unit must establish a local appeal process that includes an evidentiary public hearing before appointed or elected officials.

D. As provided for in part 8420.0240, technical questions concerning the public value, location, size, and type of wetland must be submitted to the technical evaluation panel. The local government unit may use a technical evaluation panel to predetermine

public value, location, size, or type of wetlands under its jurisdiction and use this determination in administering this chapter and the act.

E. An application must not be approved unless entitlement thereto is established by a fair preponderance of the evidence. For each finding of fact and recommendation included in a written technical evaluation panel report that is not adopted by the local government unit, the local government unit must provide detailed reasons for rejecting the finding of fact or recommendation in its record of decision; otherwise, the local government unit has not sufficiently considered the technical evaluation panel report.

F. In the absence of an application, the local government unit may evaluate information related to a potential activity upon the request of a landowner. The evaluation provided does not constitute a decision for the purposes of parts 8420.0100 to 8420.0935.

G. The local government unit must retain a record of all decisions for a minimum of ten years after all applicable requirements and conditions pertaining to the project are fulfilled.

H. The local government unit and soil and water conservation district may charge processing fees in amounts not greater than are necessary to cover the reasonable costs of implementing this chapter and for technical and administrative assistance to landowners in processing other applications for projects affecting wetlands.

I. The local government unit must annually report information to the board regarding implementation of this chapter in a format and time period prescribed by the board. Failure to comply with the board's reporting requirements may subject the local government to a penalty under subpart 3.

Subp. 3. Failure to apply law.

A. If a local government unit fails to acknowledge in writing its responsibilities under this chapter and the act, as required in subpart 2, the board must impose, in the local government unit's jurisdiction, a 60-day moratorium on making decisions and implementing this chapter and the act. The board must notify the local government unit in writing of the start and end dates of the moratorium. The board must end the moratorium within the 60 days upon written agreement by the local government unit that it will assume, and is currently capable of implementing, its duties under this chapter and the act. If at the end of the initial 60-day moratorium a written agreement has not been made for the local government unit to apply the law, the board may extend the moratorium until the local government unit agrees to apply the law.

B. If the board has information that a local government unit is not following this chapter or the act in making decisions; if the local government unit does not have knowledgeable and trained staff with experience in water resource management; or if the local government unit fails to comply with the board's reporting requirements, the board

must notify the local government unit in writing of its concerns. The local government unit must respond in writing within 60 days of being notified by the board. If not satisfied with the local government unit's written response, or none is received, the board must ask the local government unit to appear at a hearing before the board to discuss the matter. The board may invite comments from other local governments or state and federal agencies. If the board determines at the hearing that corrective action is necessary, the board must write the local government unit directing specific corrective action to occur within 60 days of receiving the board's decision. The notice must explain the reason for the action. If, after the 60-day period, the local government unit has not corrected the problem to the satisfaction of the board, the board must declare a moratorium as prescribed in item A or take other appropriate legal action to ensure compliance.

C. When a moratorium is declared as prescribed in item A or B, a decision cannot be made on an application because a local government unit authorized to implement this chapter does not exist while the moratorium is in effect. An application pending a local government unit decision when a moratorium is declared must be returned by the local government unit to the applicant within 15 business days of the moratorium being placed in effect. An application submitted while a moratorium is in effect must be returned by the local government unit to the applicant with an explanation and within 15 business days of the local government unit's receipt of the application.

Statutory Authority: *MS s 14.06; 14.386; 103B.101; 103B.3355; 103G.2242*

History: *18 SR 274; 22 SR 1877; 25 SR 152; 27 SR 135; 32 SR 281; 34 SR 145*

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