

CHAPTER 110B

COMPREHENSIVE LOCAL WATER MANAGEMENT ACT

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110B.01 TITLE.

Sections 110B.01 to 110B.30 may be cited as the "comprehensive local water management act."

History: *1Sp1985 c 2 s 1*

110B.02 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to sections 110B.01 to 110B.30.

Subd. 2. **Board.** "Board" means the board of water and soil resources.

Subd. 3. **Comprehensive water plan.** "Comprehensive water plan" means the plan adopted by a county under sections 110B.04 and 110B.08.

Subd. 4. **Groundwater systems.** "Groundwater systems" means the 14 principal aquifers of the state as defined by the United States Geological Survey in the Water-Resources Investigations 81-51, entitled "Designation of Principal Water Supply Aquifers in Minnesota" (August 1981), and its revisions.

Subd. 5. **Local units of government.** "Local units of government" means municipalities, towns, counties, soil and water conservation districts, watershed districts, organizations formed for the joint exercise of powers under section 471.59, and other special purpose districts or authorities exercising authority in water and related land resources management at the local level.

Subd. 6. **Municipality.** "Municipality" means a statutory or home rule charter city.

Subd. 7. **Official controls.** "Official controls" means ordinances and regulations that control the physical development of the whole or part of a local government unit or that implement the general objectives of the local government unit.

Subd. 8. **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.

Subd. 9. **Watershed management organization.** "Watershed management organization" has the meaning given in section 473.876, subdivision 9.

Subd. 10. **Watershed units.** "Watershed units" means each of the 81 major watershed units identified in the state watershed boundaries map prepared pursuant to the requirements of Laws 1977, chapter 455, section 33, subdivision 7, paragraph (a) and the accompanying data base, and the revisions of that data base.

History: *1Sp1985 c 2 s 2; 1987 c 358 s 102*

110B.04 COUNTY WATER PLANNING AND MANAGEMENT.

Subdivision 1. **County duties.** Each county is encouraged to develop and implement a comprehensive water plan. Each county that develops and implements a plan has the duty and authority to:

(1) prepare and adopt a comprehensive water plan that meets the requirements of this section and section 110B.08;

(2) review water and related land resources plans and official controls submitted by local units of government to assure consistency with the comprehensive water plan; and

(3) exercise any and all powers necessary to assure implementation of comprehensive water plans.

Subd. 2. Delegation. The county is responsible for preparing, adopting, and assuring implementation of the comprehensive water plan, but may delegate all or part of the preparation of the plan to a local unit of government, a regional development commission, or a resource conservation and development committee. The county may not delegate authority for the exercise of eminent domain, taxation, or assessment to a local unit of government that does not possess those powers.

Subd. 3. Coordination. (a) To assure the coordination of efforts of all local units of government within a county during the preparation and implementation of a comprehensive water plan, each county intending to adopt a plan shall conduct meetings with other local units of government and may execute agreements with other local units of government establishing the responsibilities of each unit during the preparation and implementation of the comprehensive water plan.

(b) Each county intending to adopt a plan shall coordinate its planning program with contiguous counties. Before meeting with local units of government, a county board shall notify the county boards of each county contiguous to it that the county is about to begin preparing its comprehensive water plan and is encouraged to request and hold a joint meeting with the contiguous county boards to consider the planning process.

Subd. 4. Water plan requirements. (a) A comprehensive water plan must:

(1) cover the entire area within a county;

(2) address water problems in the context of watershed units and groundwater systems;

(3) be based upon principles of sound hydrologic management of water, effective environmental protection, and efficient management;

(4) be consistent with comprehensive water plans prepared by counties and watershed management organizations wholly or partially within a single watershed unit or groundwater system; and

(5) apply to every year through the year 1995 or any later year that is evenly divisible by five, and be updated before the period covered expires.

(b) Existing water and related land resources plans, including plans related to agricultural land preservation programs developed pursuant to chapter 40A, must be fully utilized in preparing the comprehensive water plan. Duplication of the existing plans is not required.

Subd. 5. Watershed district and intercounty joint powers board plans and rules. A county must incorporate into its comprehensive water plan any existing plans and rules adopted by a watershed district or intercounty joint powers board having jurisdiction wholly or partly within the county. A county may change the plans and rules it incorporates if the county demonstrates in its comprehensive water plan why the changes are necessary and if the changes are agreed to by each county that is: (1) responsible for the appointment of a manager serving on the watershed board, or (2) represented on the joint powers board.

Subd. 6. Scope of plans. Comprehensive water plans must include:

(1) a description of the existing and expected changes to physical environment, land use, and development in the county;

(2) available information about the surface water, groundwater, and related land resources in the county, including existing and potential distribution, availability, quality, and use;

(3) objectives for future development, use, and conservation of water and related land resources, including objectives that concern water quality and quantity and related land use conditions, and a description of actions that will be taken in affected watersheds or groundwater systems to achieve the objectives;

(4) a description of potential changes in state programs, policies, and requirements considered important by the county to management of water resources in the county;

(5) a description of conflicts between the comprehensive water plan and existing plans of other local units of government;

(6) a description of possible conflicts between the comprehensive water plan and existing or proposed comprehensive water plans of other counties in the affected watershed units or groundwater systems;

(7) a program for implementation of the plan that is consistent with the plan's management objectives and includes schedules for amending official controls and water and related land resources plans of local units of government to conform with the comprehensive water plan, and the schedule, components, and expected state and local costs of any projects to implement the comprehensive water plan that may be proposed, although this does not mean that projects are required by this section; and

(8) a procedure for amending the comprehensive water plan.

Subd. 7. Data acquisition. The data collected under this section that has common value as determined by the state planning agency for natural resources planning must be provided and integrated into the Minnesota land management information systems geographic and summary data bases according to published data compatibility guidelines.

History: *1Sp1985 c 2 s 3*

110B.08 COMPREHENSIVE WATER PLAN REVIEW AND ADOPTION.

Subdivision 1. Local review. When the comprehensive water plan is completed, but before its final adoption by the county board, the county board shall submit the comprehensive water plan for review and comment to:

- (1) all local units of government wholly or partly within the county;
- (2) the applicable regional development commission, if any;
- (3) each contiguous county and watershed management organization; and
- (4) other counties or watershed management organizations within the same watershed unit and groundwater system that may be affected by proposals in the comprehensive water plan.

Subd. 2. Comments to county board. (a) A local unit of government must review the comprehensive water plan and existing water and related land resources plans or official controls and in its comments describe in a general way possible amendments to its existing plans or official controls, and an estimate of the fiscal or policy effects that would be associated with those amendments, to bring them into conformance with the comprehensive water plan.

(b) A county or watershed management organization within the same watershed unit or groundwater system must review comprehensive water plans received and describe in its comments possible conflicts with its existing or proposed comprehensive water plan and suggest measures to resolve the conflicts.

(c) The regional development commission shall review the plan under section 462.391, subdivision 1.

Subd. 3. Local review period. Comments under subdivision 2 must be submitted to the county board within 60 days after receiving a comprehensive water plan for comment, unless the county board of the county that prepared the plan determines that good cause exists for an extension of this period and grants an extension.

Subd. 4. Public hearing. The county board shall conduct a public hearing on the comprehensive water plan pursuant to section 375.51 after the 60-day period for local review and comment is completed, but before submitting it to the state for review.

Subd. 5. State review. (a) After conducting the public hearing but before final adoption, the county board must submit its comprehensive water plan, all written comments received on the plan, a record of the public hearing under subdivision 4, and a summary of changes incorporated as a result of the review process to the board for review. The board shall complete the review within 90 days after receiving a comprehensive water plan and supporting documents. The board shall consult with the departments of agriculture, health, and natural resources; the pollution control agency; the state planning agency; the environmental quality board; and other appropriate state agencies during the review.

(b) The board may disapprove a comprehensive water plan if the board determines the plan is not consistent with state law. If a plan is disapproved, the board shall provide a written statement of its reasons for disapproval. A disapproved comprehensive water plan must be revised by the county board and resubmitted for approval by the board within 120 days after receiving notice of disapproval of the comprehensive water plan, unless the board extends the period for good cause. The decision of the board to disapprove the plan may be appealed by the county to district court.

Subd. 6. Adoption and implementation. A county board shall adopt and begin implementation of its comprehensive water plan within 120 days after receiving notice of approval of the plan from the board.

Subd. 7. Amendments. Amendments to a comprehensive water plan must be submitted to local units of government and to the board in the same manner as a comprehensive water plan.

History: *1Sp1985 c 2 s 4*

110B.10 DUTIES OF THE BOARD.

Subdivision 1. General. The board shall:

(1) develop guidelines for the contents of comprehensive water plans that provide for a flexible approach to meeting the different water and related land resources needs of counties and watersheds across the state;

(2) coordinate assistance of state agencies to counties and other local units of government involved in preparation of comprehensive water plans, including identification of pertinent data and studies available from the state and federal government;

(3) conduct an active program of information and education concerning the requirements and purposes of sections 110B.01 to 110B.30 in conjunction with the association of Minnesota counties;

(4) determine contested cases under section 110B.25;

(5) establish a process for review of comprehensive water plans that assures the plans are consistent with state law; and

(6) report to the legislative commission on Minnesota resources as required by section 110B.28.

Subd. 2. Rulemaking. The board shall adopt rules to implement sections 110B.01 to 110B.30.

Subd. 3. Local advisory committee. The board shall use a committee, consisting of persons representing counties, soil and water conservation districts, municipalities, and townships and persons interested in water planning, to assist the board in the water planning process. Members must be appointed, serve, and be paid their expenses but may not receive other compensation, pursuant to section 15.014.

History: *1Sp1985 c 2 s 5*

NOTE: The term "legislative commission on Minnesota resources" will be changed to "Minnesota future resources commission" upon the approval of the constitutional amendment proposed in Laws 1988, chapter 690, article 1, section 1.

110B.12 CONSISTENCY OF LOCAL PLANS AND CONTROLS WITH THE COMPREHENSIVE WATER PLAN.

Subdivision 1. Requirement. Local units of government shall amend existing

water and related land resources plans and official controls as necessary to conform them to the applicable, approved comprehensive water plan following the procedures in this section.

Subd. 2. Procedure. Within 90 days after local units of government are notified by the county board of the adoption of a comprehensive water plan or of adoption of an amendment to a comprehensive water plan, the local units of government exercising water and related land resources planning and regulatory responsibility for areas within the county must submit existing water and related land resources plans and official controls to the county board for review. The county board shall identify any inconsistency between the plans and controls and the comprehensive water plan and shall recommend the amendments necessary to bring local plans and official controls into conformance with the comprehensive water plan.

Subd. 3. Revision and implementation. Local units of government shall revise existing plans and official controls to conform them to the recommendations of the county board and shall initiate implementation of the revised plans and controls within 180 days after receiving the recommendations of the county board, or 180 days after resolution of an appeal, whichever is later.

Subd. 4. Appeals. A local unit of government may, within 60 days after receiving the recommendations of the county board, appeal any recommendation to the board of water and soil resources for a hearing as provided in section 110B.25.

Subd. 5. New plans and controls. New or amended water and related land resources plans and official controls proposed by local units of government for their adoption following adoption of the comprehensive water plan shall be submitted to the county board for review and recommendation as provided under this section.

History: *1Sp1985 c 2 s 6; 1987 c 358 s 34; 1987 c 384 art 3 s 42*

110B.15 AUTHORITY UNDER APPROVED COMPREHENSIVE WATER PLANS.

Subdivision 1. Authority. When an approved comprehensive water plan is adopted the county has the authority specified in this section.

Subd. 2. Regulation of water and land resources. The county may regulate the use and development of water and related land resources within incorporated areas when one or more of the following conditions exists:

- (1) the municipality does not have a local water and related land resources plan or official controls consistent with the comprehensive water plan;
- (2) a municipal action granting a variance or conditional use would result in an action inconsistent with the comprehensive water plan;
- (3) the municipality has authorized the county to require permits for the use and development of water and related land resources; or
- (4) a state agency has delegated the administration of a state permit program to the county.

Subd. 3. Acquisition of property; assessment of costs. A county may:

- (1) acquire in the name of the county, by condemnation under chapter 117, real and personal property found by the county board to be necessary for the implementation of an approved comprehensive water plan;
- (2) assess the costs of projects necessary to implement the comprehensive water plan undertaken under sections 110B.01 to 110B.30 upon the property benefited within the county in the manner provided for municipalities by chapter 429.
- (3) charge users for services provided by the county necessary to implement the comprehensive water plan; and
- (4) establish one or more special taxing districts within the county and issue bonds for the purpose of financing capital improvements under sections 110B.01 to 110B.30.

Subd. 4. Special taxing district. (a) A tax district authorized under subdivision 3, clause (4), must be established by resolution adopted by the county board after a hearing. Notice of the time, place, and purpose of the hearing must be published for

two successive weeks in the official newspaper of the county, ending at least seven days before the day of the hearing. The resolution must describe with particularity the territory or area to be included in the tax district. After adoption, the resolution must be filed with the county auditor and county recorder. The district may be dissolved by following the procedures prescribed for the establishment of the district.

(b) After adoption of the resolution under paragraph (a), a county may annually levy a tax on all taxable property in the district for the purposes for which the tax district was established. The proceeds of the tax must be paid into a fund reserved for these purposes. Any proceeds remaining in the reserve fund at the time the tax is terminated or the district is dissolved must be transferred and irrevocably pledged to the debt service fund of the county to be used only to reduce tax levies for bonded indebtedness of taxable property in the district. A tax levied in accordance with this subdivision for paying capital costs is a levy for the payment of principal and interest on bonded indebtedness within the meaning of section 275.50, subdivision 5, clause (e).

(c) After adoption of the resolution under paragraph (a), and after a contract for the construction of all or part of an improvement has been entered into or the work has been ordered to be done by hired labor, the county may issue obligations in the amount determined by the county board to be necessary to pay in whole or in part the capital cost incurred and estimated to be incurred in making the improvement. The obligations are payable out of the proceeds of the tax levied under this subdivision. The county board may, by resolution adopted prior to the sale of obligations, pledge the full faith, credit, and taxing power of the county to assure payment of the principal and interest in the event the proceeds of the tax levy in the district are insufficient to pay principal and interest. The amount of any taxes that are required to be levied outside of the territory of the tax district or taken from the general funds of the county to pay principal and interest on the obligations must be reimbursed to the county from taxes levied within the territory of the tax district. Obligations must be issued in accordance with chapter 475, except that an election is not required and the amount of any obligations must not be included in determining the net indebtedness of the county under the provisions of any law or charter limiting indebtedness.

History: *1Sp1985 c 2 s 7*

110B.20 EXEMPTION FROM LEVY LIMIT.

The governing body of any county, municipality, or township may levy a tax in an amount required to implement sections 110B.01 to 110B.30. A levy to pay the cost of implementing sections 110B.01 to 110B.30 or to pay the cost of projects or programs identified in an adopted comprehensive water plan is in addition to other taxes authorized by law. The amount of the levy up to .75 mill times the adjusted gross tax capacity of the county, municipality, or town is exempt from any limitation on taxes imposed by chapter 275.

History: *1Sp1985 c 2 s 8; 1988 c 719 art 5 s 84*

110B.22 PUBLIC DRAINAGE.

Projects necessary to implement the comprehensive water plan that are intended for the purpose of improving drainage must be established, repaired, and improved under sections 106A.005 to 106A.811 and not sections 110B.01 to 110B.30.

History: *1Sp1985 c 2 s 9*

110B.25 RESOLUTION OF DISPUTES.

Subdivision 1. **Informal resolution.** The county or other local unit of government may request a meeting with the chair of the board of water and soil resources to informally resolve a dispute before initiating a contested case procedure under this section.

Subd. 2. **Petition for hearing.** A county or other local unit of government may petition for a contested case hearing by the board under this section if:

(1) the interpretation and implementation of a comprehensive water plan is challenged by a local unit of government aggrieved by the plan;

(2) two or more counties disagree about the apportionment of the costs of a project implementing a comprehensive water plan; or

(3) a county and another local unit of government disagree about a change in a local water and related land resources plan or official control recommended by the county under section 110B.12.

Subd. 3. Time for petition. The county or other local unit of government must file the petition by 60 days after:

(1) the date of the adoption or approval of the disputed ordinance or other decision required to be made to implement the comprehensive water plan; or

(2) the date a local unit of government receives a recommendation of the county board under section 110B.12.

Subd. 4. Hearing. If the aggrieved county or other local unit of government files a petition for a hearing, a hearing must be conducted by the state office of administrative hearings under the contested case procedure of chapter 14 within 60 days of the request. The subject of the hearing may not extend to questions concerning the need for a comprehensive water plan. In the report of the administrative law judge, the fees of the office of administrative hearings and transcript fees must be equally apportioned among the parties to the proceeding. Within 60 days after receiving the report of the administrative law judge, the board shall, by resolution containing findings of fact and conclusions of law, make a final decision with respect to the issue before it.

Subd. 5. Appeal. Any local unit of government or state agency aggrieved by the final decision of the board may appeal the decision to the court of appeals in the manner provided by sections 14.63 to 14.69.

History: *1Sp1985 c 2 s 10; 1987 c 358 s 34; 1987 c 384 art 3 s 42*

110B.28 COMMISSION OVERSIGHT; REPORT REQUIRED.

The board shall, on or before January 15 of each year, submit to the legislative commission on Minnesota resources a written report on the board's functions and the implementation of the comprehensive local water management act since the previous report under this section was submitted. The report to the commission must include the board's recommendations for changes to the comprehensive local water management act and any recommendations for funding. The board shall also report to the commission at other times requested by the commission. The commission may make recommendations to the legislature concerning the funding, implementation, and amendment of the act.

History: *1Sp1985 c 2 s 11*

NOTE: The term "legislative commission on Minnesota resources" will be changed to "Minnesota future resources commission" upon the approval of the constitutional amendment proposed in Laws 1988, chapter 690, article 1, section 1.

110B.30 APPLICATION.

Sections 110B.01 to 110B.28 do not apply in areas subject to the requirements of section 473.878, subdivision 1, and in areas covered by an agreement entered into by December 31, 1985, under section 473.878, subdivision 1a, except as otherwise provided in sections 110B.04, subdivision 4, clause (4); and 110B.08, subdivisions 1, clauses (3) and (4) and 2, clause (b).

History: *1Sp1985 c 2 s 12*

110B.35 BOARD OF WATER AND SOIL RESOURCES.

Subdivision 1. Membership. The board of water and soil resources is composed of 12 voting members knowledgeable of water and soil problems and conditions within the state and four ex officio nonvoting members.

Subd. 2. Voting members. (a) The voting members are:

- (1) three county commissioners;
- (2) three soil and water conservation district supervisors;
- (3) three watershed district or watershed management organization representatives; and

- (4) three citizens who are not employed by, or the appointed or elected official of, any governmental office, board, or agency.

(b) Voting members must be distributed across the state with at least three members but not more than five members from the metropolitan area, as defined by section 473.121, subdivision 2; and one from each of the current soil and water conservation administrative regions.

(c) Voting members are appointed by the governor. In making the appointments, the governor may consider persons recommended by the association of Minnesota counties, the Minnesota association of soil and water conservation districts, and the Minnesota association of watershed districts. The list submitted by an association must contain at least three nominees for each position to be filled.

(d) The membership terms, compensation, removal of members and filling of vacancies on the board for voting members are as provided in section 15.0575.

Subd. 3. **Ex officio nonvoting members.** The following agencies shall each provide one nonvoting member to the board:

- (1) department of agriculture;
- (2) department of health;
- (3) department of natural resources; and
- (4) pollution control agency.

Subd. 4. **Employees.** The board may employ an executive director in the unclassified service and other permanent and temporary employees in accordance with chapter 43A. The board may prescribe the powers and duties of its officers and employees and may authorize its employees and members of the board to act on behalf of the board.

Subd. 5. **Officers; quorum; records; audit.** The governor shall appoint a chair from among the voting members of the board with the advice and consent of the senate. The board shall elect a vice-chair and any other officers that it considers necessary from its membership. A majority of the board is a quorum. The board may hold public hearings and adopt rules necessary to execute its duties.

Subd. 6. **Administrative services.** The commissioner of administration shall provide and make available within the department of agriculture suitable and adequate office facilities and space for the board. The commissioner of agriculture shall provide and make available administrative services required by the board in the administration of its functions.

Subd. 7. **Powers and duties.** In addition to the powers and duties prescribed elsewhere, the board has the following powers and duties:

- (a) It shall coordinate the water and soil resources planning activities of counties, soil and water conservation districts, watershed districts, watershed management organizations, and any other local units of government through its various authorities for approval of local plans, administration of state grants, and by other means as may be appropriate.

- (b) It shall facilitate communication and coordination among state agencies in cooperation with the environmental quality board, and between state and local units of government, in order to make the expertise and resources of state agencies involved in water and soil resources management available to the local units of government to the greatest extent possible.

- (c) It shall coordinate state and local interests with respect to the study in southwestern Minnesota under United States Code, title 16, section 1009.

- (d) It shall develop information and education programs designed to increase

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awareness of local water and soil resources problems and awareness of opportunities for local government involvement in preventing or solving them.

(e) It shall provide a forum for the discussion of local issues and opportunities relating to water and soil resources management.

(f) It shall adopt an annual budget and work program that integrate the various functions and responsibilities assigned to it by law.

(g) It shall report to the governor and the legislature by October 15 of each even-numbered year with an assessment of board programs and recommendations for any program changes and board membership changes necessary to improve state and local efforts in water and soil resources management.

Subd. 8. Committee for dispute resolution. A committee of the board is established to hear and resolve disputes, appeals, and interventions under sections 105.72 to 105.79, 110B.25, 112.801, and 473.878, subdivision 7. The committee consists of the three citizen members specified in subdivision 1, paragraph (a), clause (4), and two additional members appointed by the board chair.

History: 1987 c 358 s 103