

**ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND
CONSUMER PROTECTION
ADOPTING RULES**

- 1 The state of Wisconsin department of agriculture, trade and consumer protection adopts the
- 2 following order to create ATCP 48.49 and ATCP 48 subch. IX; and to amend ATCP 48 subch.
- 3 VII (title); relating to drainage district finances and grants to county drainage boards.

**Analysis Prepared by the Department of
Agriculture, Trade and Consumer Protection**

Statutory Authority: ss. 93.07(1), 88.11 and 88.15(2), Stats.
Statute Interpreted: ss. 88.15 and 88.18, Stats.

In the 1999-2001 biennial budget act (1999 Wis. Act 9), the Legislature created a state grant program to help county drainage boards comply with new legal requirements related to drainage districts. This rule implements that grant program. This rule also clarifies how county drainage boards must keep their drainage district accounts.

Background

Drainage districts are special purpose districts formed to drain land, primarily for agricultural purposes. Drainage districts control the flow of water in large areas of the state, and have a major impact on agriculture, land use and the environment. Some districts have been in existence since the 1880s. There are approximately 199 drainage districts located in 30 counties.

A county drainage board oversees all the drainage districts within each county. The Wisconsin department of agriculture, trade and consumer protection (DATCP) helps county drainage boards comply with state drainage laws, including ch. 88, Stats., and ch. ATCP 48, Wis. Adm. Code.

When a drainage district is created, the circuit court approves drainage district specifications that determine the rights and responsibilities of affected landowners. But many old drainage specifications are unclear, and some have been lost or destroyed. A lack of clear specifications can lead to costly problems and legal disputes.

New Legal Requirements

Recent law changes require county drainage boards to update the specifications for all drainage districts. For each drainage district, a county drainage board must create a professional quality map set showing drainage district boundaries, drain alignments, drain cross-sections and drain grade profiles. Drainage boards must also develop plans to maintain drainage districts according to the updated specifications.

County drainage boards must assess drainage district landowners in order to pay for drainage district specifications, maintenance plans and other costs. Drainage boards must assess costs according to the benefits that landowners derive from the drainage district. In order to assess costs fairly, some county drainage boards may need to modernize their outdated assessments of landowner benefits.

Grant Program

In the 1999-2001 biennial budget act, the Legislature provided grant funds to help county drainage boards meet their new legal responsibilities. The Legislature provided \$500,000 for the state fiscal year ending June 30, 2001, with a possibility of continued annual appropriations until June 30, 2006. From these appropriations, DATCP may award grants for 60% of eligible drainage board costs.

Initial Grants

On September 15, 2000, DATCP awarded drainage board grants for the state fiscal year ending June 30, 2001. DATCP offered a total of just over \$450,000 to 12 county drainage boards. DATCP awarded grants for the following types of projects, in descending priority order:

- Drainage specifications (map sets).
- Drainage benefit reassessments.
- Drainage district maintenance plans.

If the Legislature continues to appropriate funds, DATCP will continue to award drainage board grants in future fiscal years. This rule establishes standards and procedures for the grant program.

County Drainage Board Accounts

According to s. 88.18, Stats., the county treasurer must serve as treasurer of all drainage districts under the jurisdiction of the county drainage board. The county treasurer may deduct a portion of the interest earned on county drainage board accounts, to cover relevant costs incurred by the county treasurer and county zoning administrator. The county drainage board may appoint its own treasurer, who serves as deputy county treasurer. This rule clarifies the handling of county drainage board funds, to ensure proper documentation and accountability.

Rule Contents

Grants to County Drainage Boards; General

Under this rule, DATCP may award grants to county drainage boards to help them comply with ch. 88, Stats., and ch. ATCP 48, Wis. Adm. Code. A grant may pay a county drainage board for up to 60 percent of the drainage board's costs to do any of the following:

- Develop and adopt drainage district specifications (map sets).
- Reassess benefits in a drainage district.
- Develop and adopt drainage district maintenance plans. (Grants do not pay for actual maintenance costs.)
- Carry out other eligible projects identified in DATCP's annual request for grant proposals.

Annual Request for Grant Proposals

Under this rule, DATCP must annually request grant proposals from county drainage boards. DATCP must issue its annual request, in writing, to each county drainage board. The request must include all the following:

- The amount of grant funds available for distribution in the grant year. Each grant year ends on June 30.
- The types of projects for which county drainage boards may request funding.
- DATCP's grant priorities, if any.
- General grant terms and conditions that may affect grant applications.
- Grant application procedures.
- A grant application deadline.
- A grant application form.

Grant Applications

To apply for a grant, a county drainage board must submit a completed grant application form that includes all the following:

- A description of the project for which the county drainage board seeks a grant.
- The estimated cost of the project.
- The county drainage board's plan for financing the project.

- Competitive bidding or other procedures that the county drainage board will use to control project costs.
- Other information required by DATCP.

Grant Awards

Under this rule, DATCP must act on all grant applications within 90 days after the annual grant application deadline. DATCP must notify all grant applicants of its grant awards.

Grant Contracts

Under this rule, DATCP must enter into a grant contract with each grant recipient. The contract must specify grant terms and conditions. DATCP must distribute grant funds according to the grant contract.

Grant Payments

DATCP will make grant payments after the county drainage board documents that it has completed the funded project and paid its share of the project costs. DATCP will not pay any project costs incurred after the end of the grant term specified in the grant contract.

A county drainage board must submit a payment request on a form provided by DATCP. The county drainage board must document that it has completed the project and paid its share of the project costs.

DATCP will make grant payments to the county drainage board treasurer, for the benefit of the county drainage board. If the county drainage board hires an agent to complete a project on its behalf, DATCP may, at the request of the county drainage board, make a check jointly payable to the county treasurer and that agent.

County Drainage Board Treasurer

Under s. 88.18, Stats., the county treasurer serves as the county drainage board treasurer unless the drainage board appoints its own treasurer. The county treasurer may keep a portion of the interest received on drainage district funds to cover county costs, as provided in s. 88.18(1), Stats.

A county drainage board may appoint its own treasurer, pursuant to s. 88.18(3), Stats. The appointed county drainage board treasurer acts as the deputy of the county treasurer. The county drainage board may assign any or all of the county treasurer's duties to the appointed treasurer.

Under this rule, if the county drainage board appoints its own treasurer, the drainage board must establish the treasurer's compensation in writing. The treasurer must be bonded as provided in s. 88.18(3), Stats.

This rule spells out the duties of a county drainage board treasurer (see below). Under this rule, if a county drainage board appoints its own treasurer, the county drainage board must enter into a written agreement with the appointed treasurer and the county treasurer. The agreement must do all the following:

- Identify the duties that the county drainage board has assigned to the appointed treasurer.
- Identify the duties, if any, that remain with the county treasurer.

Treasurer Duties

Under this rule, the county drainage board treasurer must keep county drainage board accounts. The treasurer must keep a separate account for each drainage district, as required by s. 88.18(2), Stats.

The county drainage board treasurer must deposit, to the appropriate account, all funds received on behalf of the county drainage board or any drainage district. A person who receives funds on behalf of the county drainage board or any drainage district must promptly deposit those funds with the treasurer.

No person may make any expenditure from a county drainage board account unless the county drainage board treasurer signs the draft or specifically approves the expenditure in writing. The county drainage board must also approve the expenditure in writing.

A county drainage board treasurer must keep complete and accurate accounting records, including all the following:

- Records of all receipts and deposits. Records must identify the nature, source and amount of each receipt and deposit.
- Records of all expenditure authorizations and expenditures. Records must identify the purpose, recipient and amount of each expenditure.
- Current account balances.
- Monthly and annual reports summarizing revenues and expenditures during the reporting period, and account balances at the beginning and end of the reporting period.
- A copy of every grant contract that the department awards to the county drainage board under this rule.

The county drainage board treasurer must keep the above records as county public records. The treasurer must:

- Treat the records as the county treasurer would treat comparable county accounting records for retention and disposal purposes.

- Keep the records in the office of the county treasurer, or in another place that the county treasurer approves in writing.
- Make the records available for public inspection and copying, as provided in subch. II of chapter 19, Stats.

The county drainage board treasurer must do all the following:

- Exercise sound fiscal control over funds received, to prevent misappropriation or misdirection of funds.
- Account for all funds received and expended.
- File periodic accountings with the county drainage board, as requested by the board.
- Make records and accounts available, upon request, for audit by the state of Wisconsin, the county drainage board or the county.

1 **SECTION 1.** Ch. ATCP 48, subch. VII(title) is amended to read:

2 **SUBCHAPTER VII**

3 **DRAINAGE DISTRICT RECORDS AND FINANCIAL MANAGEMENT**

4 **SECTION 2.** ATCP 48.49 is created to read:

5 **ATCP 48.49 Financial management.** (1) COUNTY TREASURER. (a) Except as
6 provided in sub. (2), the county treasurer shall serve as the county drainage board treasurer
7 pursuant to s. 88.18, Stats. The county treasurer shall comply with applicable requirements
8 under ch. 88, Stats., and this chapter.

9 (b) If the county treasurer serves as the county drainage board treasurer, the county
10 treasurer may retain for the benefit of the county a portion of the interest received on drainage
11 district funds held by the county treasurer, to cover county costs identified under s. 88.18(1),
12 Stats. The county treasurer may not retain an amount that exceeds the amount authorized under
13 s. 88.18(1), Stats.

1 **NOTE:** Section 88.18(1), Stats., authorizes the county treasurer to deduct the following
2 county costs from the interest received on drainage district funds:
3

- 4 • The county treasurer's cost to provide services to the county drainage
5 board.
- 6 • The county zoning administrator's cost to maintain and provide copies of
7 drainage board records under s. 88.19, Stats.
8

9 (2) APPOINTED TREASURER. (a) A county drainage board may appoint its own treasurer,
10 pursuant to s. 88.18(3), Stats. The appointed county drainage board treasurer shall act as the
11 deputy of the county treasurer. The county drainage board may assign any or all of the county
12 treasurer's duties under this section to the appointed county drainage board treasurer. The
13 appointed treasurer shall comply with applicable requirements under ch. 88, Stats., and this
14 chapter.

15 (b) If the county drainage board appoints its own treasurer under par. (a), the county
16 drainage board shall:

17 1. Specify the treasurer's compensation in writing. Compensation shall include
18 reimbursement of the treasurer's actual and reasonable expenses, as provided in s. 88.18(3),
19 Stats.

20 2. Require the treasurer to file a bond as provided in s. 88.18(3), Stats.

21 (c) If the county drainage board appoints its own treasurer under par. (a), the county
22 drainage board shall enter into a written agreement with the appointed treasurer and the county
23 treasurer. The agreement shall do all the following:

24 1. Identify the duties under this section that the county drainage board has assigned to
25 the appointed treasurer.

26 2. Identify the duties under this section, if any, that remain with the county treasurer.

1 (3) COUNTY DRAINAGE BOARD ACCOUNTS. The county drainage board treasurer shall
2 keep county drainage board accounts. The treasurer shall keep a separate account for each
3 drainage district as required by s. 88.18(2), Stats.

4 (4) DEPOSITS. The county drainage board treasurer shall deposit, to the appropriate
5 account under sub. (3), all funds received on behalf of the county drainage board or any drainage
6 district. A person who receives funds on behalf of the county drainage board or any drainage
7 district shall promptly deposit those funds with the county drainage board treasurer.

8 (5) EXPENDITURES. (a) No person may make any expenditure from a county drainage
9 board account under sub. (3) unless the county drainage board treasurer signs the draft or
10 specifically approves the expenditure in writing.

11 (b) Except as provided in sub. (1)(b), the county drainage board treasurer may not
12 approve any expenditure under par. (a) unless the county drainage board also approves that
13 expenditure in writing.

14 (6) ACCOUNTING RECORDS. A county drainage board treasurer shall keep complete and
15 accurate accounting records, and supporting documentation, for county drainage board accounts
16 under sub. (3). Records shall include all the following:

17 (a) Records of all receipts and deposits. Records shall identify the nature, source and
18 amount of each receipt and deposit.

19 (b) Records of all expenditure authorizations and expenditures. Records shall identify
20 the purpose, recipient and amount of each expenditure.

21 (c) Current account balances.

22 (d) Monthly and annual reports summarizing revenues and expenditures during the
23 reporting period, and account balances at the beginning and end of the reporting period.

1 (e) A copy of every grant contract under s. ATCP 48.60(5).

2 (7) RECORDS KEPT AS PUBLIC RECORDS. The county drainage board treasurer shall do all
3 the following:

4 (a) Keep the records under sub. (6) as county public records. Except as provided in ch.
5 88, Stats., or this chapter, the county drainage board treasurer shall treat the records as the county
6 treasurer would treat comparable county accounting records for retention and disposal purposes.

7 (b) Keep the records under sub. (6) in the office of the county treasurer, or in another
8 place that the county treasurer approves in writing.

9 (c) Make the records under sub. (6) available for public inspection and copying, as
10 provided in subch. II of chapter 19, Stats.

11 (8) CONTROL AND AUDIT. The county drainage board treasurer shall do all the following:

12 (a) Exercise sound fiscal control over funds received, to prevent misappropriation or
13 misdirection of funds.

14 (b) Account for all funds received and expended.

15 (c) File periodic accountings with the county drainage board, as requested by the board.

16 (d) Make records and accounts available, upon request, for audit by the state of
17 Wisconsin, the county drainage board or the county.

18 **SECTION 3.** Subchapter IX of chapter ATCP 48 is created to read:

19 **SUBCHAPTER IX**

20 **GRANTS TO COUNTY DRAINAGE BOARDS**

21 **ATCP 48.60 Grants to county drainage boards.** (1) GENERAL. From the
22 appropriation under s. 20.115(7)(d), Stats., the department may award grants to county drainage
23 boards to help those boards comply with ch. 88, Stats., and this chapter. The department shall

1 award grants in each state fiscal year, subject to available funding. A grant may reimburse a
2 county drainage board for up to 60 percent of the drainage board’s costs to do any of the
3 following:

4 (a) Develop and adopt drainage district specifications required under s. ATCP 48.20.

5 (b) Reassess benefits in a drainage district. The reassessment shall comply with ss.
6 ATCP 48.02 to 48.10.

7 (c) Develop and adopt drainage district maintenance plans under s. ATCP 48.22.

8 **NOTE:** A grant under par. (c) may be used only for maintenance plans, not actual
9 maintenance costs.

10 (d) Other eligible projects that the department identifies in its annual request for grant
11 proposals under sub. (2).

12 (2) ANNUAL REQUEST FOR GRANT PROPOSALS. Before the department awards any grant
13 under sub. (1) in any state fiscal year, the department shall publish an annual request for grant
14 proposals and shall provide a copy to every county drainage board. The annual request for grant
15 proposals shall include all the following:

16 (a) The amount of grant funds available for distribution in that state fiscal year ending
17 June 30.

18 (b) Eligible project categories under sub. (1).

19 (c) The department’s grant priorities, if any.

20 (d) The method that the department will use to allocate funds between competing grant
21 proposals of equal priority, if it cannot fully fund all of those proposals.

22 **NOTE:** For example, the department may fund equally rated grant proposals on a “first
23 come, first served” basis.

24 (e) General grant terms and conditions that may affect grant applications.
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1 (f) Grant application procedures.

2 (g) A grant application deadline.

3 (h) A grant application form.

4 **NOTE:** Copies of a grant application form may be obtained from the department at its
5 offices at 2811 Agriculture Drive, Post Office Box 8911, Madison, WI 53708-
6 8911.

7
8 (3) GRANT APPLICATIONS. A county drainage board may apply for a grant under sub. (1).

9 The county drainage board shall make the grant application on a form that the department
10 provides under sub. (2)(h). The grant application shall be broken down by drainage district, and
11 shall include all the following:

12 (a) A description of each drainage district project for which the county drainage board
13 seeks a grant.

14 (b) The estimated cost of the project.

15 (c) The county drainage board's plan for financing the project.

16 (d) Competitive bidding or other procedures that the county drainage board will use to
17 control project costs.

18 **NOTE:** A county drainage board is not required to select the low bidder for a funded
19 project. But the department may make its grant award and payments based on the
20 low bid cost.

21
22 (e) Other information required by the department.

23 (4) GRANT AWARDS. Within 90 days after the grant application deadline under sub.

24 (2)(g), the department shall make its grant awards. The department shall give notice of its
25 awards to all county drainage boards that applied for grants.

26 (5) GRANT CONTRACTS. Before the department pays any grant funds to a county
27 drainage board, the department shall enter into a grant contract with that county drainage board.

1 The contract shall specify the time period and other terms and conditions of the grant. The
2 department shall make grant payments according to sub. (6) and the grant contract.

3 (6) GRANT PAYMENTS. (a) The department shall make grant payments after the county
4 drainage board completes the funded project and pays its share of the project costs. The
5 department may not pay for any project cost incurred after the end of the grant period specified
6 in the grant contract.

7 (b) The county drainage board shall submit a payment request on a form provided by the
8 department. In its request, the county drainage board shall document that it has completed the
9 project and paid its share of the project costs.

10 **NOTE:** Copies of a payment request form may be obtained from the department at its
11 offices at 2811 Agriculture Drive, Post Office Box 8911, Madison, WI 53708-
12 8911.
13

14 (c) The department shall make grant payments to the county treasurer, for the benefit of
15 the county drainage board. If the county drainage board hires an agent to complete a project on
16 its behalf, the department may, at the request of the county drainage board, make a check jointly
17 payable to the county treasurer and that agent.

18 **EFFECTIVE DATE.** The rules contained in this order shall take effect on the first day
19 of the month following publication in the Wisconsin administrative register, as provided under s.
20 227.22(2)(intro), Stats.

Dated this _____ day of November, 2001.

**STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND
CONSUMER PROTECTION**

James E. Harsdorf
Secretary