

WCA Rule Advisory Committee - 6/26/08 Meeting Draft LGU Penalty Section

8420.0260 PENALTY FOR LOCAL GOVERNMENT UNIT FAILURE TO APPLY LAW.

A. ~~Each local government unit of the state, except tribal lands, shall acknowledge, in writing, to the board that it is assuming its responsibilities under this chapter and the act.~~ Local government units from which ~~an affirmative response acknowledgement of acceptance of its responsibilities under this chapter and the act, as required in local government unit duties, part XXXX,~~ is not received ~~will~~ ~~shall~~ be given written notice by the board that there is a 60-day moratorium in the local government unit's jurisdiction ~~in implementing this chapter and the act, including making~~ ~~an~~ exemption, wetland boundary, wetland type, no-loss, replacement plan, and banking ~~determinations~~ ~~decisions~~. The board ~~must~~ ~~shall~~ 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~~ ~~can~~ extend the moratorium until the local government unit agrees to apply the law.

***The first sentence in paragraph A will be relocated to the LGU duties section.
Remaining language is edited for clarity.***

B. If the board has information that a local government unit is not following this chapter or the act in making exemption, no-loss, replacement plan, public road project notice reviews, wetland boundary, wetland type, or banking ~~determinations~~ ~~decisions~~, or if the local government unit does not have knowledgeable and trained staff with experience in wetland management ~~as required in part XXXX,~~ the board ~~must~~ ~~shall~~ notify the local government unit in writing of its concerns. The local government unit ~~must~~ ~~shall~~ 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~~ ~~shall~~ 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~~ ~~shall~~ write the local government unit directing specific corrective action to occur within 60 days of receiving the board's decision. The notice ~~must~~ ~~shall~~ explain the reason for the action.

C. If, after the 60-day period described in this part the local government unit has not corrected the problem to the satisfaction of the board, the board ~~must~~ ~~shall~~ declare a moratorium as prescribed in item A or take other appropriate legal action to ensure compliance.

~~D. When a moratorium is declared as prescribed in items A or C, a decision cannot be made on applications because a local government unit authorized to implement this chapter does not exist while the moratorium is in effect. Applications pending a local government unit decision when a moratorium is declared must be returned by the local government unit to the applicant within 15 days of the moratorium being placed in effect. Applications submitted while a moratorium is in effect must be returned by the local government unit to the applicant within 15 days of the local government unit's receipt of the application.~~

***Item D was added to clarify the process for dealing with applications during a moratorium.
Fifteen days was chosen as the timeframe for returning applications to be consistent with the
timeframe for determining a complete application under 15.99.***