



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-0654/P2
KP:emw

DOA:.....Mott, BB0021 - POWTS eligibility

FOR 2023-2025 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

SAFETY AND PROFESSIONAL SERVICES

BUILDINGS AND SAFETY

Private on-site wastewater treatment system grants

This bill extends the grant program aiding certain persons and businesses served by failing private on-site wastewater treatment systems (POWTS), which are commonly known as septic tanks. Under current law, the program is repealed effective June 30, 2023. In addition, under the bill, a failing POWTS installed at least 33 years before the submission of a grant application is eligible to receive a grant. Current law authorizes grants only for failing POWTS that were installed before July 1, 1978.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.165 (2) (j) of the statutes, as affected by [2017 Wisconsin Act 331](#), section [2](#), is amended to read:

20.165 (2) (j) *Safety and building operations*. The amounts in the schedule for the purposes of chs. 101 and 145 and ss. 167.35, 236.12 (2) (ap), 236.13 (1) (d) and (2m), and 236.335 and for the purpose of transferring the amounts in the schedule under par. (kf) to the appropriation account under par. (kf). All moneys received under ch. 145 and ss. 101.178, 101.19, 101.63 (9), 101.654 (3), 101.73 (12), 101.82 (4), 101.955 (2), 167.35 (2) (f), and 236.12 (7) shall be credited to this appropriation account.

SECTION 2. 20.165 (2) (kf) of the statutes is created to read:

20.165 (2) (kf) *Private on-site wastewater treatment system replacement and rehabilitation*. As a continuing appropriation, the amounts in the schedule for financial assistance under the private on-site wastewater treatment system replacement and rehabilitation program under s. 145.246. All moneys transferred from par. (j) shall be credited to this appropriation account.

***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 3. 145.20 (5) (a) of the statutes, as affected by [2017 Wisconsin Act 59](#), is amended to read:

145.20 (5) (a) The department shall establish a maintenance program to be administered by governmental units responsible for the regulation of private on-site wastewater treatment systems. The department shall determine the private on-site wastewater treatment systems to which the maintenance program applies. At a minimum the maintenance program is applicable to all new or replacement private on-site wastewater treatment systems constructed in a governmental unit after the date on which the governmental unit adopts this program. The department may apply the maintenance program by rule to private on-site wastewater treatment

systems constructed in a governmental unit responsible for the regulation of private on-site wastewater treatment systems on or before the date on which the governmental unit adopts the program. The department shall determine the private on-site wastewater treatment systems to which the maintenance program applies in governmental units that do not meet the conditions for eligibility under s. 145.246 (8).

SECTION 4. 145.20 (5) (am) of the statutes, as affected by [2017 Wisconsin Act 59](#), is amended to read:

145.20 (5) (am) Each governmental unit responsible for the regulation of private on-site wastewater treatment systems shall adopt and begin the administration of the program established under par. (a) before October 1, 2019. As part of adopting and administering the program, the governmental unit shall conduct and maintain an inventory of all the private on-site wastewater treatment systems located in the governmental unit and shall complete the initial inventory before October 1, 2017. In order to be eligible for grant funding under s. 145.246, a governmental unit must comply with these deadlines.

SECTION 5. 145.246 of the statutes is created to read:

145.246 Private on-site wastewater treatment system replacement or rehabilitation. (1) DEFINITIONS. In this section:

(a) “Determination of failure” means any of the following:

1. A determination that a private on-site wastewater treatment system is failing, according to the criteria under s. 145.01 (4m), based on an inspection of the private on-site wastewater treatment system by an employee of the state or a governmental unit who is certified to inspect private on-site wastewater treatment systems by the department.

2. A written enforcement order issued under s. 145.02 (3) (f), 145.20 (2) (f), or 281.19 (2).

3. A written enforcement order issued under s. 254.59 (1) by a governmental unit.

(b) “Governmental unit” means a governmental unit responsible for the regulation of private on-site wastewater treatment systems. “Governmental unit” also includes a federally recognized American Indian tribe or band.

(c) “Indian lands” means lands owned by the United States and held for the use or benefit of Indian tribes or bands or individual Indians and lands within the boundaries of a federally recognized reservation that are owned by Indian tribes or bands or individual Indians.

(d) “Participating governmental unit” means a governmental unit which applies to the department for financial assistance under sub. (7) and which meets the conditions specified under sub. (8).

(e) “Principal residence” means a residence which is occupied at least 51 percent of the year by the owner.

(f) “Sewage” means the water-carried wastes created in and to be conducted away from residences, industrial establishments, and public buildings, as defined in s. 101.01 (12), with such surface water or groundwater as may be present.

(g) “Small commercial establishment” means a commercial establishment or business place with a maximum daily waste water flow rate of less than 5,000 gallons per day.

(2) CATEGORIES OF FAILING PRIVATE ON-SITE WASTEWATER TREATMENT SYSTEMS. For the purposes of this section, the department shall establish the category of each

failing private on-site wastewater treatment system for which a grant application is submitted, as follows:

(a) Category 1: failing private on-site wastewater treatment systems described in s. 145.01 (4m) (a) to (c).

(b) Category 2: failing private on-site wastewater treatment systems described in s. 145.01 (4m) (d).

(c) Category 3: failing private on-site wastewater treatment systems described in s. 145.01 (4m) (e).

(3) ELIGIBILITY. (a) 1. A person is eligible for grant funds under this section if he or she owns a principal residence which is served by a category 1 or 2 failing private on-site wastewater treatment system, if the private on-site wastewater treatment system was installed at least 33 years before the person submits a grant application, if the family income of the person does not exceed the income limitations under par. (c), if the amount of the grant determined under sub. (6) is at least \$100, if the residence is not located in an area served by a sewer, and if determination of failure is made prior to the rehabilitation or replacement of the failing private on-site wastewater treatment system.

2. A business is eligible for grant funds under this section if it owns a small commercial establishment which is served by a category 1 or 2 failing private on-site wastewater treatment system, if the private on-site wastewater treatment system was installed at least 33 years before the business submits a grant application, if the gross revenue of the business does not exceed the limitation under par. (d), if the small commercial establishment is not located in an area served by a sewer, and if a determination of failure is made prior to the rehabilitation or replacement of the private on-site wastewater treatment system.

3. A person who owns a principal residence or small commercial establishment which is served by a category 1 or 2 failing private on-site wastewater treatment system may submit an application for grant funds during the 3-year period after the determination of failure is made. Grant funds may be awarded after work is completed if rehabilitation or replacement of the system meets all requirements of this section and rules promulgated under this section.

(b) Each principal residence or small commercial establishment may receive only one grant under this section.

(c) 1. In order to be eligible for grant funds under this section, the annual family income of the person who owns the principal residence may not exceed \$45,000. Beginning July 1, 2024, and annually on July 1 thereafter, the department shall adjust the dollar amount specified in this subdivision by an amount equal to that dollar amount multiplied by the percentage change in the U.S. consumer price index for urban wage earners and clerical workers, U.S. city average, for the prior year, rounded to the nearest dollar. The department shall publish the dollar amounts on its website. Notwithstanding s. 227.10, the adjusted dollar amounts need not be promulgated as rules under ch. 227.

2. Except as provided under subd. 4., annual family income shall be based upon the federal adjusted gross income of the owner and the owner's spouse, if any, as computed for the taxable year prior to the year in which the determination of failure is made.

3. In order to be eligible for grant funds under this section, a person shall submit a copy of the federal income tax returns upon which the determination of federal adjusted gross income under subd. 2. was made together with any application required by the governmental unit.

4. A governmental unit may disregard the federal income tax return that is submitted under subd. 3. and may determine annual family income based upon satisfactory evidence of federal adjusted gross income or projected federal adjusted gross income of the owner and the owner's spouse in the current year. The department shall promulgate rules establishing criteria for determining what constitutes satisfactory evidence of federal adjusted gross income or projected federal adjusted gross income in a current year.

(d) 1. In order to be eligible for grant funds under this section, the annual gross revenue of the business that owns the small commercial establishment may not exceed \$362,500.

2. Except as provided in subd. 4., annual gross revenue shall be based upon the gross revenue of the business for the taxable year prior to the year in which the determination of failure is made. The department shall promulgate rules establishing criteria for determining what constitutes satisfactory evidence of gross revenue in a prior taxable year.

3. In order to be eligible for grant funds under this section, a business shall submit documentation required by the department under subd. 2. together with any application required by the governmental unit.

4. A governmental unit may disregard the documentation of gross revenue for the taxable year prior to the year in which the determination of failure is made and may determine annual gross revenue based upon satisfactory evidence of gross revenue of the business in the current year. The department shall promulgate rules establishing criteria for determining what constitutes satisfactory evidence of gross revenue in a current year.

(e) The department of revenue shall, upon request by the department, verify the income information submitted by an applicant or grant recipient.

(4) DENIAL OF APPLICATION. (a) The department or a governmental unit shall deny a grant application under this section if the applicant or a person who would be directly benefited by the grant intentionally caused the conditions which resulted in a category 1 or 2 failing private on-site wastewater treatment system. The department or governmental unit shall notify the applicant in writing of a denial, including the reason for the denial.

(b) The department shall notify a governmental unit if an individual's name appears on the statewide support lien docket under s. 49.854 (2) (b). The department or a governmental unit shall deny an application under this section if the name of the applicant or an individual who would be directly benefited by the grant appears on the statewide support lien docket under s. 49.854 (2) (b), unless the applicant or individual who would be benefited by the grant provides to the department or governmental unit a payment agreement that has been approved by the county child support agency under s. 59.53 (5) and that is consistent with rules promulgated under s. 49.858 (2) (a).

(5) USE OF FUNDS. (a) Except for grants under par. (b), funds available under a grant under this section shall be applied to the rehabilitation or replacement of the private on-site wastewater treatment system. An existing private on-site wastewater treatment system may be replaced by an alternative private on-site wastewater treatment system or by a system serving more than one principal residence.

(b) Funds available under a grant under this section for experimental private on-site wastewater treatment systems shall be applied to the installation and monitoring of the experimental private on-site wastewater treatment systems.

(6) ALLOWABLE COSTS; STATE SHARE. (a) Except as provided in par. (e), costs allowable in determining grant funding under this section may not exceed the costs of rehabilitating or replacing a private on-site wastewater treatment system that would be necessary to allow the rehabilitated system or new system to meet the minimum requirements of the state plumbing code promulgated under s. 145.02.

(b) Except as provided in par. (e), costs allowable in determining grant funding under this section may not exceed the costs of rehabilitating or replacing a private on-site wastewater treatment system by the least costly methods, except that a holding tank may not be used as the measure of the least costly method for rehabilitating or replacing a private on-site wastewater treatment system other than a holding tank.

(c) Except as provided in pars. (d) and (e), the state grant share under this section is limited to \$7,000 for each principal residence or small commercial establishment to be served by the private on-site wastewater treatment system or to the amount determined by the department based upon private on-site wastewater treatment system grant funding tables, whichever is less. The department shall prepare and publish private on-site wastewater treatment system grant funding tables which specify the maximum state share limitation for various components and costs involved in the rehabilitation or replacement of a private on-site wastewater treatment system based upon minimum size and other requirements specified in the state plumbing code promulgated under s. 145.02. The maximum state share limitations shall be designed to pay approximately 60 percent of the average

allowable cost of private on-site wastewater treatment system rehabilitation or replacement based upon estimated or actual costs of that rehabilitation or replacement. The department shall revise the grant funding tables when it determines that 60 percent of current costs of private on-site wastewater treatment system rehabilitation or replacement exceed the amounts in the grant funding tables by more than 10 percent, except that the department may not revise the grant funding tables more often than once every 2 years.

(d) Except as provided in par. (e), if the income of a person who owns a principal residence that is served by a category 1 or 2 failing private on-site wastewater treatment system is greater than \$32,000, the amount of the grant under this section is limited to the amount determined under par. (c) less 30 percent of the amount by which the person's income exceeds \$32,000.

(e) Costs allowable for experimental private on-site wastewater treatment systems shall include the costs of installing and monitoring experimental private on-site wastewater treatment systems installed under s. 145.02 (3) (b) and this section. The department shall promulgate rules that specify how the department will select, monitor, and allocate the state share for experimental private on-site wastewater treatment systems that the department funds under this section.

(7) APPLICATION. (a) In order to be eligible for a grant under this section, a governmental unit shall make an application for replacement or rehabilitation of private on-site wastewater treatment systems of principal residences or small commercial establishments and shall submit an application for participation to the department. The application shall be in the form and include the information the department prescribes. In order to be eligible for funds available in a fiscal year, an

application is required to be received by the department prior to February 1 of the previous fiscal year.

(b) An American Indian tribe or band may submit an application for participation for any Indian lands under its jurisdiction.

(8) CONDITIONS; GOVERNMENTAL UNITS. As a condition for obtaining grant funding under this section, a governmental unit shall do all of the following:

(a) Adopt and administer the maintenance program established under s. 145.20 (5).

(b) Certify that grants will be used for private on-site wastewater treatment system replacement or rehabilitation for a principal residence or small commercial establishment owned by a person who meets the eligibility requirements under sub. (3), that the funds will be used as provided under sub. (5) and that allowable costs will not exceed the amount permitted under sub. (6).

(c) Certify that grants will be used for private on-site wastewater treatment systems which will be properly installed and maintained.

(d) Certify that grants provided to the governmental unit will be disbursed to eligible owners.

(e) Establish a process for regulation and inspection of private on-site wastewater treatment systems.

(f) Establish a system of user charges and cost recovery if the governmental unit considers this system to be appropriate. User charges and cost recovery may include the cost of the grant application fee and the cost of supervising installation and maintenance.

(g) Establish a system which provides for the distribution of grant funds received among eligible applicants based on the amount requested in the application

as approved by the department. If the amount received by a county is insufficient to fully fund all grants, the county shall prorate grant funds on the same basis as sub. (12).

(9) ASSISTANCE. The department shall make its staff available to provide technical assistance to each governmental unit. The department shall prepare and distribute to each participating governmental unit a manual of procedures for the grant program under this section.

(10) DISTRIBUTION OF LITERATURE. The department shall prepare literature that describes the eligibility for receiving a grant under this section for a principal residence. The department shall supply the literature to counties, and counties shall distribute the literature to recipients of public benefits.

(11) ALLOCATION OF FUNDS. (a) *Determination of eligible applications.* At the beginning of each fiscal year the department shall determine the state grant share for applications from eligible owners received by participating governmental units. The department may revise this determination if a governmental unit does not meet the conditions specified under sub. (8) or if it determines that individuals do not meet eligibility requirements under sub. (3).

(b) *Allocation.* The department shall allocate available funds for grants to each participating governmental unit according to the total amount of the state grant share for all eligible applications received by that governmental unit.

(c) *Limitation; commercial establishments.* The department may not allocate more than 10 percent of the funds available under this subsection each fiscal year for grants for small commercial establishments.

(d) *Limitation; experimental private on-site wastewater treatment systems.* The department may not allocate more than 10 percent of the funds available under

this subsection each fiscal year for grants for the installation and monitoring of experimental private on-site wastewater treatment systems.

(12) PRORATING. (a) Except as provided in par. (d), the department shall prorate available funds under this subsection if funds are not sufficient to fully fund all applications. A prorated payment shall be deemed full payment of the grant.

(b) Except as provided in par. (d), if funds are sufficient to fully fund all category 1 but not all category 2 failing private on-site wastewater treatment systems, the department shall fully fund all category 1 systems and prorate the funds for category 2 systems on a proportional basis.

(c) Except as provided in par. (d), if funds are not sufficient to fully fund all category 1 failing private on-site wastewater treatment systems, the department shall fund the category 1 systems on a proportional basis and deny the grant applications for all category 2 systems.

(d) The department is not required to prorate available funds for grants for the installation and monitoring of experimental private on-site wastewater treatment systems.

(13) DETERMINATION OF ELIGIBILITY; DISBURSEMENT OF GRANTS. (a) The department shall review applications for participation in the state program submitted under sub. (7). The department shall determine if a governmental unit submitting an application meets the conditions specified under sub. (8).

(b) The department shall promulgate rules which shall define payment mechanisms to be used to disburse grants to a governmental unit.

(14) INSPECTION. Agents of the department or the governmental unit may enter premises where private on-site wastewater treatment systems are located pursuant to a special inspection warrant as required under s. 66.0119 to collect samples,

records, and information and to ascertain compliance with the rules and orders of the department or the governmental unit.

(15) ENFORCEMENT. (a) If the department has reason to believe that a violation of this section or any rule promulgated under this section has occurred, it may do any of the following:

1. Cause written notice to be served upon the alleged violator. The notice shall specify the alleged violation and contain the findings of fact on which the charge of violation is based and may include an order that necessary corrective action be taken within a reasonable time. This order shall become effective unless, no later than 30 days after the date the notice and order are served, the person named in the notice and order requests in writing a hearing before the department. Upon this request and after due notice, the department shall hold a hearing. Instead of an order, the department may require that the alleged violator appear before the department for a hearing at a time and place specified in the notice and answer the charges complained of.

2. Initiate action under sub. (16).

(b) If after the hearing the department finds that a violation has occurred, it shall affirm or modify its order previously issued or issue an appropriate order for the prevention, abatement, or control of the violation or for other corrective action. If the department finds that no violation has occurred, it shall rescind its order. Any order issued as part of a notice or after hearing may prescribe one or more dates by which necessary action shall be taken in preventing, abating, or controlling the violation.

(c) Additional grants under this section to a governmental unit previously awarded a grant under this section may be suspended or terminated if the

department finds that a private on-site wastewater treatment system previously funded in the governmental unit is not being or has not been properly rehabilitated, constructed, installed, or maintained.

(16) PENALTIES. Any person who violates this section or a rule or order promulgated under this section shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of continued violation is a separate offense. While an order is suspended, stayed, or enjoined, this penalty does not accrue.

SECTION 6. 281.57 (7) (c) 1. of the statutes, as affected by [2017 Wisconsin Act 59](#), is amended to read:

281.57 (7) (c) 1. Metropolitan sewerage districts that serve 1st class cities are limited in each fiscal year to receiving total grant awards not to exceed 33 percent of the sum of the amounts in the schedule for that fiscal year for the appropriation under s. 20.165 (2) (kf) and the amount authorized under sub. (10) for that fiscal year plus the unencumbered balance at the end of the preceding fiscal year for the amount authorized under sub. (10). This subdivision is not applicable to grant awards provided during fiscal years 1985-86, 1986-87, 1988-89 and 1989-90.

(END)