



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #557

### **Convert Funding for Private Onsite Wastewater Treatment System Grant Program from Ongoing to One-Time (Safety and Professional Services -- Departmentwide)**

[LFB 2017-19 Budget Summary: Page 397, #10]

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#### **CURRENT LAW**

The Department of Safety and Professional Services (DSPS) administers the private onsite wastewater treatment system (POWTS) replacement or rehabilitation grant program, also referred to as the Wisconsin Fund. Created in Chapter 418, Laws of 1977, the program provides financial assistance to low- to moderate-income owners of a principal residence occupied at least 51% of the year by the owner, and small commercial establishments who meet certain income and wastewater flow eligibility criteria, to cover a portion of the cost of repairing or replacing a failing POWTS. A POWTS is a sewage treatment and disposal system serving a single structure with a septic tank and soil absorption field located on the same parcel as the structure. Systems are eligible if they were installed before July 1, 1978, which is 39 or more years ago.

A determination that the POWTS is failing, and thus potentially eligible for replacement under the grant program, happens when: (a) a state or local government employee who is certified to inspect POWTS by DSPS inspects the system and makes the determination; or (b) the owner has been issued a written enforcement order by the appropriate local government, DSPS, or the Department of Natural Resources (DNR), to correct a violation of the POWTS statutes and rules. Highest priority for grants is provided to category one systems, which fail by discharging sewage to surface water, groundwater, drain tiles, bedrock or zones of saturated soils. Second funding priority is provided for category two systems, which fail by discharging sewage to the surface of the ground. If there are insufficient funds to pay all category one grants, then these grants are prorated, and no funds are provided for category two grants. If funding in a fiscal year is sufficient to fund 100% of the eligible grant amount for category one systems, category two systems are funded, or partially funded if there are insufficient funds to fully fund category two

grants.

The annual family income of a residential property owner may not exceed \$45,000. The maximum grant is \$7,000, or approximately 60% of the cost of replacement or rehabilitation, as determined by DSPS grant funding tables in administrative rules, whichever is less. The annual gross revenue of the business that owns the small commercial establishment may not exceed \$362,500, and the commercial establishment must have no more than a daily wastewater flow rate of 5,000 gallons per day. Grants for small commercial establishments are prorated so they do not exceed 10% of the total funds available.

The grant program is appropriated \$1,645,000 in 2015-16 and \$840,000 in 2016-17 as a transfer from the Division of Industry Services safety and buildings operations program revenue (PR) appropriation. The Industry Services operations appropriation receives fees from sanitary permits and private onsite wastewater treatment system plan review fees, along with fees from several other building permit, plan review, inspection and credentialing activities.

In 1999 Act 9, a POWTS replacement and rehabilitation no-interest loan program was created. In a year in which DSPS has insufficient funds to fully fund the POWTS grant program, the Department prorates grant funds. In those years, counties may apply for a loan from DSPS, and use it to increase the grant to eligible persons to the amount that the persons would have been eligible to receive if DSPS had not had to prorate grants. No counties have applied for a loan under the program. The loan program was originally funded with \$1,500,000 from the clean water fund program within the environmental improvement fund in a continuing appropriation. No funds were appropriated in subsequent years, and the original \$1,500,000 remains available for loans to eligible counties. The clean water fund program primarily provides loans to municipalities to upgrade or replace wastewater treatment plants.

## **GOVERNOR**

Maintain current funding of \$840,000 PR in each of 2017-18 and 2018-19 for the POWTS grant program. Convert funding from ongoing to one-time financing. There would be no base funding for the grant program in the 2019-21 biennium. Maintain the statutory language for the appropriation, grant program, and loan program.

## **DISCUSSION POINTS**

1. The administration's rationale for converting the funding from ongoing to one-time is that it has existed since 1978 and has seen a decline in funding in the past decade. At the DSPS budget briefing before the Joint Committee on Finance, the DSPS Secretary suggested the program has run its course. The bill would provide two years of grants during 2017-18 and 2018-19. Under the bill, the only state grant funding for assisting low- to moderate-income homeowners or owners of small commercial establishments with the costs of replacing POWTS in 2019-20 would be any carryforward balance from the \$840,000 amount appropriated in each of 2017-18 and 2018-19. The Committee could approve the Governor's recommendation to convert the funding to one-time, in

order to implement this intent [Alternative A1].

2. Since the program's first year in 1978-79, through 2016-17, the state has awarded \$106.7 million in grants to assist 42,900 residences and small businesses to replace or rehabilitate private onsite wastewater treatment systems. The program has prioritized providing assistance: (a) for POWTS that discharge sewage to groundwater or surface water; (b) for systems that were installed before the 1978 creation of the program and are currently over 39 years old; (c) to owner-occupants who have household income less than \$45,000; and (d) to owners of small commercial establishments.

3. Counties that choose to participate in the grant program accept applications from local POWTS owners, certify that individual owners meet eligibility requirements, forward the applications to DSPS, receive grant funds from DSPS, disburse grants to individual recipients, and make sure the POWTS are properly installed and maintained.

4. All counties, whether or not they participate in the grant program, are responsible for adoption and enforcement of a maintenance program for POWTS located within the county. A county is required to conduct, complete, and maintain an inventory of all POWTS located within the jurisdiction, and complete the initial inventory before October 1, 2017. A county is also required to develop and begin to implement a POWTS maintenance program before October 1, 2019, that includes the inventory, and a process for recording each inspection, evaluation, maintenance and servicing report for a POWTS. A county must meet each of the two deadlines to maintain eligibility for the POWTS grant program as of October 1, 2019. DSPS indicates 49 of 72 counties had reported their initial inventories were complete as of mid-March, 2017. DSPS indicates it has determined that 20 of 72 counties do not yet meet all of the October 1, 2019, requirements. (Counties can work on the two deadlines concurrently.)

5. The administration states that the bill retains the statutory language for the grant program in order to provide a mechanism for counties to borrow from the state under the current POWTS loan program if counties choose to use county funds to provide a grant to eligible owners of POWTS after state grant funds are no longer available. If counties want to borrow from the state to provide grants to their residents in 2019-20, they would have to accept and process grant applications and submit them to DSPS by February 1, 2019. If there is no carryforward balance remaining from 2018-19, DSPS will prorate the available funding to 0% of the eligible grant. Counties could then apply to DSPS for a 0% interest rate loan, award grants to the eligible recipients, and repay the state loan over a term no longer than 20 years. DSPS and the Department of Administration (DOA) staff for the environmental improvement fund are required to jointly administer the loan program, and would need to enter into a memorandum of understanding to establish the responsibilities of each agency. DOA would collect loan repayments and deposit them in the clean water fund within the environmental improvement fund to use for future state low-interest loans to municipalities for wastewater treatment projects. The statutes do not provide for loan repayments to be used for future POWTS loans.

6. Prior to 2015-16, the grant program was funded with general purpose revenue (GPR), including \$2,338,600 in each of 2011-12 through 2014-15. During 2015-17 budget deliberations, the Governor proposed repealing the POWTS grant program, and transferring POWTS regulation

and regulatory staff from DSPS to the DNR. Under 2015 Act 55, the 2015-17 biennial budget act, the Legislature maintained POWTS regulation in DSPS, maintained the POWTS grant program, and converted funding from GPR to PR from the Division of Industry Services safety and buildings operations program revenue appropriation.

7. The \$1,645,000 PR appropriated in 2015-16 was intended to approximately equal the amount needed to fund applications received by February 1, 2015. However, after 2015 Act 55 was enacted, DSPS found additional eligible applications, and the appropriation was not sufficient to fully fund all applications. In 2015-16, \$1,853,026 (including \$208,026 in carry forward balance from 2014-15) funded 472 category one applications. Grants for principal residences were prorated to 94% of the eligible grant amount, and grants for small commercial establishments were prorated to 65% of the eligible grant amount to comply with requirements that such establishments be allocated no more than 10% of the total available funds in a fiscal year. A total of 15 category two applications received no funding.

8. Under 2015 Act 55, \$840,000 PR was appropriated in 2016-17. The amount was intended to approximately equal the difference between the anticipated amount of sanitary permit and private sewage system plan review fees (\$1,629,000) and the amount of expenditure authority for the 9.0 POWTS regulatory staff (\$772,100) that the Governor proposed to transfer to DNR. In 2016-17, the available \$840,000 funded 361 category one applications, with grants for principal residences prorated to 51% of the eligible grant amount, and small commercial establishments prorated to 68% of the eligible amount to remain within 10% of the total available funds. A total of 11 category two applications received no funding.

9. For the 2017-18 funding cycle, counties were required to submit applications to DSPS by February 1, 2017. DSPS indicates that, as of May 1, 2017, it had received 146 applications from 38 counties requesting total eligible funding of \$663,229. DSPS indicates that the number of eligible applications could increase or decrease as the Department reviews and approves applications. It is uncertain whether DSPS will determine there are additional eligible applications, as it did for 2015-16 after the 2015-17 biennial budget was enacted. If DSPS finds there are additional applications, for example, equal to up to approximately 10% of the amount received by May 1, 2017, it could need roughly \$740,000 for the 2017-18 funding cycle.

10. Under the bill, it could be expected that the applications for the 2017-18 funding cycle would be fully funded, and the unneeded portion of the \$840,000 appropriation would be carried forward to be available for the 2018-19 funding cycle. This could be estimated at \$100,000 or more. It is possible the program would experience an increase in grant applications in 2018-19 from the amount received in 2017-18, if potential applicants learn it would be the last year of state funding. It is also possible that demand would continue to decline in 2018-19.

11. Any funding not used in the 2018-19 funding cycle would be available for the 2019-20 funding cycle, and would be the only grant funding available in 2019-20. It is possible that this could total \$300,000 or more. The funding levels provided in the bill would be estimated to carry forward a small level of grant funding in 2019-20. The Committee could consider retaining the grant program after 2018-19 so counties could apply for a loan, but decrease funding in 2017-19 to more closely align the amount of funding provided during the biennium with potential demand. The

Committee could choose to decrease POWTS grant program funding by \$100,000 in 2017-18 and by \$200,000 in 2018-19 [Alternative A2b].

12. The loan program was created in 1999 and has never been used. Counties were eligible to apply for a cumulative total of over \$6.6 million during 2000-01 through 2016-17, which equals the difference between the eligible and prorated final grant amount for years in which the grant was prorated. Counties have chosen not to borrow money from the state to use for locally-funded grants to homeowners and small businesses. In years when the state prorated grants due to approved applications exceeding available funding, a prorated grant was the entire amount that grantees received, and counties did not supplement the state grant by borrowing under the loan program.

13. When the grant program was created, and throughout the life of the program, the program has required that the POWTS was installed before July 1, 1978, in order to be eligible for grant assistance. Since 1991, the household income limits provided the maximum eligible grant to households with adjusted gross income below \$32,000, and phased out the grant for households with income between \$32,000 and \$45,000. Since 1989, the maximum grant has been \$7,000, or approximately 60% of eligible POWTS replacement costs, whichever is less. The eligible date of installation has never been updated, and the income and grant limits have not been increased to reflect potential increases in household income or costs of POWTS.

14. The administration indicates that, after 2018-19, program revenues currently transferred from the Division of Industry Services operations appropriation to the POWTS grant appropriation would remain in the Industry Services operations appropriation and be used to administer the sanitary permit and private sewage system plan review programs.

15. DSPS estimates that revenues from sanitary permit and private sewage system plan review fees will total approximately \$1,625,000 in 2016-17, \$1,325,000 in 2017-18 and \$1,625,000 in 2018-19. DSPS indicates that the Department will allocate approximately \$1,047,800 PR annually with 8.0 positions in the 2017-19 biennium to POWTS regulatory activities. The Governor's 2015-17 biennial budget recommendation would have transferred 9.0 POWTS regulatory staff to DNR. When the budget act retained the POWTS regulatory program in DSPS, the Department chose to convert one of the nine positions to an attorney for the Division of Industry Services, and the POWTS regulatory activities are being performed by 8.0 instead of 9.0 staff. DSPS also indicates that the funding allocation for POWTS regulation will be \$1,047,800 with 8.0 positions in 2018-19 instead of the \$772,100 with 9.0 positions in 2016-17 that would have been transferred to DNR because the current allocation includes not only costs of supplies associated with individual positions, but also the POWTS program's share of division charges for items such as information technology, overhead costs of the division administrator, printing of forms, postage, financial services, fleet, maintenance and repairs.

16. As noted above, DSPS indicates the funding allocation for POWTS regulation is higher than the calculation of direct costs of POWTS positions that was used to establish the POWTS grant funding amount for 2016-17. However, it can still be anticipated that the 2018-19 POWTS-related revenues (\$1,625,000) will exceed the DSPS allocation for POWTS staff (\$1,047,800), a difference of \$577,200.

17. The administration and DSPS suggest that revenues deposited in the Division of Industry Services operations appropriation, which currently funds the POWTS grants, are not related to the grant program and should be discontinued as a funding source for the grants. It should be noted that, in the 2015-17 biennial budget, the Governor approved the Legislature's decision to use sanitary permit and private sewage system plan review program fees to continue funding for POWTS grants. The Legislature's conversion of the funding to program revenues from POWTS-related plan reviews and sanitary permits was viewed as a reasonable alternative to using GPR for POWTS grants.

18. The 2016-17 opening balance of the Division of Industry Services operations appropriation was almost \$8.7 million. It is estimated the appropriation will have a June 30, 2019, balance of almost \$7.0 million. Estimated revenue in 2018-19 will total \$17.0 million, and, after transferring \$840,000 in each year to the POWTS grant appropriation, authorized expenditures and reserves will total approximately \$17.3 million. Thus, the appropriation is expected to provide sufficient revenue to continue the current practice of using revenues in the Industry Services operations appropriation for the POWTS grant program.

19. The phasing out of grant funding under the bill may make it more difficult for low- to moderate-income households to pay for replacement or repair of an old and failing POWTS because there is no other state financial grant assistance for these households. There also are few federal grant assistance programs specifically targeted to these households or POWTS, and future funding available to Wisconsin is unknown. Some may suggest that continuing to provide state assistance to low- and moderate-income homeowners to replace failing private onsite wastewater treatment systems is appropriate in a similar way that the state provides assistance to municipalities for public wastewater treatment system repair and construction. The Committee could consider maintaining the current status of funding for the POWTS grant program as ongoing [Alternative B1].

20. As the date of July 1, 1978 (39 years ago), before which systems must have been installed to be eligible for a grant, recedes further into the past, there will be fewer old systems in need of replacement. It is likely that this older date has been a contributing factor to the decline in applications for the program. DSPS does not have information about how many POWTS in active use were installed before that date. Counties determine the installation date based on local records they maintain.

21. A properly designed, installed and maintained POWTS can be expected to operate for 20 to 40 years before failing. The bill does not change the requirement that owners of failing systems must repair or replace them. In addition, current law and the bill do not provide financial assistance for POWTS that fail and were installed on or after July 1, 1978. It is probable that some systems installed before or since that date have reached the end of their expected lifespan, and have failed or will fail. Those with a failing POWTS may have a qualifying income under the program, may face POWTS replacement costs in excess of \$12,000 (based on the current maximum grant of \$7,000 funding approximately 60% of costs), and may find it difficult to find funds to replace the system.

22. The program has never been amended to update the POWTS installation date to assist owners with POWTS installed in the 1980s and 1990s. If the Committee chooses to maintain the

current ongoing funding for the program, it may wish to also consider whether state grant assistance should be made available to income-eligible homeowners and owners of small commercial establishments who have a failing POWTS that is less than 39 years old. The program could be continued and could be updated by providing eligibility to failing systems that were installed prior to July 1, 1997 [Alternative B2b]. This would expand eligibility to failing POWTS that are 20 or more years old. While it is likely that many POWTS that are between 20 and 39 years old (installed in the 1980s or 1990s) have failed or will fail, it is unknown how many POWTS exist that were installed during these years, how many of them will fail, and when they will fail. Thus, while it is likely that expansion of eligibility to systems between 20 and 39 years old will increase applications under the program, it is uncertain what the extent of that increase in demand would be.

23. If the Committee chooses to maintain the grant program funding as ongoing, and to maintain the current eligibility requirements for POWTS installed before July 1, 1978, a funding reduction of \$100,000 in 2017-18 and \$200,000 in 2018-19 could be expected to more closely align the amount of funding provided during the biennium with potential demand [Alternative B2c].

24. If the grant program is maintained as ongoing and expanded to provide eligibility to POWTS installed prior to July 1, 1997, additional funding could be provided to meet a potential increase in demand. A funding increase of \$160,000 PR in 2018-19 (approximately 20%) would provide \$1,000,000 for POWTS grants in 2018-19 [Alternative B2d].

25. As mentioned earlier, counties have never borrowed money under the loan program. It is uncertain whether the proposed phasing out of state funding for grants would prompt counties to accept applications from local residents, and then borrow from the state to take on the full responsibility of providing grants to local residents. While the bill retains the grant program after 2018-19 so counties could apply for a state loan, administration and DSPS officials indicate that it is unlikely counties would want to borrow money from the state to provide locally-funded grants after the state discontinues providing POWTS grants. In addition, given that counties have not wanted to borrow money under the loan program during the past 17 years of grant funding, it is unlikely they would want to utilize the loan program if the grant program were continued. The Committee could consider repealing the loan program on the effective date of the bill [Alternative A2a or Alternative B2a]. The \$1,500,000 would revert to the clean water fund from where it came, and would be available for the clean water fund to use for low-interest loans to municipalities for wastewater treatment projects.

26. The bill only retains the grant program after 2018-19 so that counties could use the grant application process as a method of applying for a loan to provide county grants to local residents. Since it is unlikely counties would apply for loans if no new state grant funding were provided after 2018-19 for POWTS grants, the Committee could consider repealing the grant program on June 30, 2019 [Alternative A2c]. Repealing the grant program would more accurately implement the administration's intent to no longer provide state grants for low- and moderate-income households and small-commercial establishments to replace failing POWTS.

27. If the Committee chooses to end state POWTS grant funding after 2018-19, or to continue the current program with current eligibility requirements for the installation date and household income, it may wish to provide local governments an additional method to provide

financial assistance to owners of failing POWTS. For example, the Committee could choose to include the provision in 2017 Assembly Bill 226 and Senate Bill 168 that would authorize cities, villages, towns, and counties to provide loans to owners of failing POWTS at or below the market interest rate, as defined under environmental improvement fund statutes, and to establish repayment of the loan as a special charge or special assessment against the owner's real property [Alternative C1]. The definition of failing POWTS would be the same as under the current grant program, and local governments could establish their own eligibility criteria for household income and age of the POWTS.

**ALTERNATIVES**

**A. Convert Program Funding to One-Time**

1. Approve the Governor's recommendation to convert funding for the private onsite wastewater treatment grant program from ongoing to one-time, and to maintain statutory language for the grant program and loan program.

2. Approve the Governor's recommendation to convert funding from ongoing to one-time. In addition, approve one or more of the following:

a. Repeal the POWTS loan program on the effective date of the bill.

b. Decrease funding by \$100,000 PR in 2017-18 and \$200,000 PR in 2018-19 for the POWTS grant program.

ALT A2b	Change to	
	Base	Bill
PR	- \$300,000	- \$300,000

c. Repeal the POWTS grant program on June 30, 2019. (The 2018-19 grant cycle would be the last one.)

**B. Maintain Funding as Ongoing**

1. Maintain current law funding for the POWTS grant program as ongoing.

2. Maintain current law funding for the POWTS grant program as ongoing. In addition, approve one or more of the following:

a. Repeal the POWTS loan program on the effective date of the bill.

b. Expand eligibility for the current grant program to include POWTS that were installed before July 1, 1997 (instead of before July 1, 1978 under current law).

c. Decrease funding by \$100,000 PR in 2017-18 and \$200,000 PR in 2018-19 for the POWTS grant program.

<b>ALT B2c</b>	<b>Change to</b>	
	<b>Base</b>	<b>Bill</b>
PR	- \$300,000	- \$300,000

d. Increase funding by \$160,000 PR in 2018-19 for the POWTS grant program.

<b>ALT B2d</b>	<b>Change to</b>	
	<b>Base</b>	<b>Bill</b>
PR	\$160,000	\$160,000

### **C. Local Funding Option**

1. In addition to any of the alternatives under Sections "A" or "B," authorize cities, villages, towns, and counties to provide loans to owners of failing POWTS at or below the market interest rate (as defined under environmental improvement fund statutes) and to establish repayment of the loan as a special charge or special assessment against the owner's real property.

2. Take no action.

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