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May, 2019

Joint Committee on Finance

Paper #637

Private Onsite Wastewater Treatment System Grant Program (Safety and Professional Services)

[LFB 2019-21 Budget Summary: Page 374, #4]

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 41 or more years ago.

Wisconsin counties and tribal governments may voluntarily apply to DSPS to participate in the program. Participation generally is at the discretion of counties, as they are responsible for the regulation of POWTS installations. Persons seeking grant funding apply typically through their participating county. 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 to 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 fully or partially funded, depending on the amount of remaining funds.

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 code, 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 funding tables in administrative code Chapter SPS 387 were revised effective for grant year 2019-20.

The grant program is appropriated \$840,000 in 2017-18 and \$840,000 in 2018-19 as a transfer from the Division of Industry Services 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.

Under 2017 Wisconsin Act 59, the program was repealed effective June 30, 2021. The statutes specify that counties must submit applications for funding in 2020-21 to DSPS before February 1, 2020.

GOVERNOR

Repeal the June 30, 2021, sunset of the POWTS grant program. Maintain base funding of \$840,000 PR annually.

DISCUSSION POINTS

1. The 2017 Act 59 repeal of the grant program effective June 30, 2021, recognized the number of POWTS in use that are more than 41 years old is decreasing. Act 59 provided about two and one-half years after enactment for potentially eligible households and small commercial establishments to submit POWTS grant applications to counties. Applications for funding in 2017-18 were due to DSPS by February 1, 2017, and potential applicants have between the fall of 2017 and February 1, 2020, to submit applications before the current law repeal.

2. Since the program's first year in 1978-79, through 2018-19, the state has awarded \$108.3 million in grants to assist 43,200 residences and small businesses to replace or rehabilitate private onsite wastewater treatment systems. Prior to 2015-16, the program was funded from GPR with \$2,338,600 annually. In 2015-16, funding was converted from GPR to PR. Funding was reduced to \$1,645,000 in 2015-16, and \$840,000 in each of 2016-17, 2017-18, and 2018-19. The number of grants awarded under the program decreased from 879 in 2011-12 to 146 in 2017-18. In 2018-19, 212

category one and two grants received \$904,021, including 187 principal residences that received 100% of the eligible grant amount, and 25 small commercial establishments that received 84% of the eligible grant amount to stay within 10% of total available funds, including unspent funds carried forward from 2017-18.

3. DSPS received 193 applications for the 2019-20 funding cycle by the February 1, 2019, statutory deadline. The Department's initial estimate is that it will award approximately \$992,200 in 2019-20 grant awards, including unspent funds from the previous fiscal year. DSPS estimates that 167 category one principal residence applicants will be prorated to receive awards of approximately 87% of the eligible grant amount, and 19 small commercial establishment applicants will be prorated to receive 78% of the eligible grant amount to remain within 10% of available funds. Seven category two principal residence applicants will not receive grants due to insufficient funding. DSPS indicates that the number of eligible applications could increase or decrease as the Department reviews and approves applications, and proration of eligible grant amounts may change. DSPS will finalize grant awards to counties by the fall of 2019.

4. The administration's rationale for maintaining the program instead of ending it in 2021 is that there is still an undetermined number of POWTS and lower-income households that qualify for grant funding. Maintaining the program would provide additional time to determine who may still qualify for grant funding and what the continuing need may be for the program.

5. Since the grant program was created, the program has required that the POWTS was installed before July 1, 1978, in order to be eligible for grant assistance. Since 1991, the maximum eligible grant has been provided 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.

6. Under the current June 30, 2021, repeal date for the grant funding, low- to moderate-income households who discover they have a failing POWTS older than 41 years may find it difficult to pay for replacement or repair of the POWTS. Some may suggest that continuing to provide state assistance to low- and moderate-income homeowners to replace failing POWTS 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 approving the Governor's recommendation to maintain the current POWTS grant program instead of repealing it [Alternative 1].

7. Under 2017 Wisconsin Act 69, the statutes authorize a city, village, town, or county to rehabilitate, replace, or abandon a failing POWTS with the agreement of the owner of the system. The local government may make a loan at or below the market interest rate, including an interest-free loan, to the owner of the POWTS to rehabilitate, replace, or abandon the system. Further, Act 69 authorizes the local government to recover its costs or collect the loan repayment as a special charge or special assessment, and may collect it in installments. Local governments that choose to use this authority could do so regardless of the age of the POWTS or the income of the owner of the system. It is unknown whether any local governments have used this authority to rehabilitate or replace POWTS. Further, if any local governments choose to establish programs under the provisions of Act

69, it would be up to each local government to structure its program, including: (a) how to prioritize the local government upfront costs of rehabilitating or replacing a POWTS in comparison with other local government costs; (b) which systems would be funded; (c) how to determine eligibility of households; (d) how to recover their costs from the POWTS owner; and (e) what loan interest rate to charge to the POWTS owner.

8. There is no state financial grant assistance other than the current POWTS grant program for these households. There also are few or minimal federal grant assistance programs specifically targeted to these households or POWTS.

9. As July 1, 1978, recedes further into the past, there will be fewer old systems installed before that date in need of replacement and potentially eligible for grants. It is likely that this older date has been a contributing factor to the decline in applications for the program. However, applications continue to be received under the program, demonstrating some homeowners and small commercial establishments continue to have POWTS older than 41 years in age. DSPS indicated it does not have information about how many POWTS in active use were installed before that date, and the Department is not able to estimate how many POWTS older than 41 years old continue to be used. Counties determine the installation date based on local records they maintain. During the past 10 years, approximately 12,000 POWTS have been installed annually, of which 60% were replacement systems and 40% were new.

10. The POWTS grant program could be extended for two years instead of being extended permanently or being repealed in 2021 [Alternative 2]. This could provide two additional years for owners of POWTS older than 41 years to determine if the systems are failing, and, if so, to request state financial assistance for the rehabilitation or replacement of the system.

11. As mentioned earlier, grant applications for 2019-20 funding have been received, are being processed, and will be prorated to remain within available funds. The Committee could choose to provide an additional \$185,000 in 2019-20, which would be expected to fully fund grant applications received before February 1, 2019 [Alternative 3].

12. A properly designed, installed and maintained POWTS can be expected to operate for approximately 25 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 between 20 and 41 years old 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.

13. 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 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 less than 41 years old. The program could be continued and could be updated by providing

eligibility to failing systems installed prior to July 1, 1999 [Alternative 4]. This would expand eligibility to failing POWTS currently 20 or more years old. While it is likely that many POWTS between 20 and 41 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 41 years old would increase applications under the program, it is uncertain what the extent of that increase in demand would be.

14. The July 1, 2018, opening balance of the Division of Industry Services operations appropriation was \$15.7 million. It is estimated the appropriation will have a June 30, 2021, balance of almost \$15.3 million under the bill as introduced. Estimated revenue in 2020-21 will total \$17.7 million, and, after transferring \$840,000 in each year to the POWTS grant appropriation, authorized expenditures and reserves will total approximately \$17.4 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.

15. Some might argue that the current law repeal of the program should be maintained because: (a) POWTS installed before July 1, 1978, are old enough that they should have been replaced by now; (b) POWTS installed in the 1980s, 1990s, and 2000s have never been covered by the program and should be replaced by the owner if the system fails, as a normal part of the responsibility of owning a property; (c) households that do not have sufficient funds to pay for the cost of POWTS replacement have the option of seeking a loan from a bank or seeking local government loans under the provisions of 2017 Act 69; and (d) the state should not use financial resources from current program funding mechanisms to help lower-income households pay for the replacement of a POWTS. Based on this, the Committee could choose to take no action and maintain the current June 30, 2021, repeal date of the program [Alternative 5].

ALTERNATIVES

1. Approve the Governor's recommendation to repeal the June 30, 2021, sunset of the private onsite wastewater treatment system (POWTS) grant program.
2. Extend the sunset of the POWTS grant program by two years, from June 30, 2021, to June 30, 2023.
3. Provide \$185,000 PR in 2019-20, which would be expended to fully fund applications received for POWTS grants in 2019-20. (This alternative could be moved in addition to one of Alternatives 1 or 2.)

ALT 3	Change to	
	Base	Bill
PR	\$185,000	\$185,000

4. Expand eligibility to systems installed prior to July 1, 1999 (20 years ago), instead of the

current date of July 1, 1978. (This alternative could be moved in addition to one of Alternatives 1 or 2, and also in addition to Alternative 3.)

5. Take no action. Under current law, no grants would be provided after the 2020-21 grant cycle.

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