



## Legislative Fiscal Bureau

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June 6, 2023

Joint Committee on Finance

Paper #697

### **Private On-Site Wastewater Treatment System (POWTS) Grant Program and Plan Reviewers (Safety and Professional Services -- Safety and Buildings Programs)**

[LFB 2023-25 Budget Summary: Page 567, #4]

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#### **CURRENT LAW**

The Department of Safety and Professional Services (DSPS) administers the private on-site 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 to 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 45 or more years ago.

Wisconsin counties and tribal governments may voluntarily apply to DSPS to participate in the grant program. Participation generally is at the discretion of counties, as they are responsible for the regulation of POWTS installations. Persons seeking grant funding typically apply 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 DSPTS grant funding tables in administrative code, whichever is less. The grant for homeowners with income between \$32,000 and \$45,000 is reduced by 30% of the amount by which the homeowner's income exceeds \$32,000. 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 that they do not exceed 10% of the total funds available.

From 1978 to 2022 (2022-23 grant cycle), the state has awarded \$111.4 million in grants to assist 43,900 residences and businesses to replace or rehabilitate private onsite wastewater treatment systems. The grant program is appropriated \$1,680,000 in 2021-22 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 grant program was to be repealed on June 30, 2021. Administrative code for the grant program (Chapter SPS 387) would have also been repealed on June 30, 2021. However, 2021 Wisconsin Act 67 amended 2017 Act 59 and extended the POWTS grant program by two years. Funding of \$1,680,000 for the 2021-23 biennium was subsequently provided for the program by the Joint Committee on Finance in October of 2021. Currently, the POWTS program is scheduled to sunset on June 30, 2023.

## **DISCUSSION POINTS**

1. Assembly Bill 43/Senate Bill 70 would extend the POWTS grant program indefinitely by recreating the program's statutory authorizing language mostly consistent with the authorizations under current law. (The recreation of language is due to the bill's general effective date of July 1, 2023, occurring after the program's sunset under current law.) Differences would include: (a) expanding program eligibility to POWTS installed at least 33 years before a person submitted a grant application; and (b) beginning July 1, 2024, indexing maximum participant income for the annual change in the Consumer Price Index for all urban wage earners and clerical workers (CPI-W). The following sections discuss the extension of the program and the changes to current law in AB 43/SB 70. The bill would also provide \$123,000 in 2023-24 and \$159,000 in 2024-25 with 2.0 permanent positions for private septic system plan review. DSPTS is authorized 6.0 permanent private septic system plan reviewers and 2.0 project reviewers that expire on June 30, 2023. The provision would make these positions permanent.

## **POWTS Grant Program Extension**

2. One rationale for maintaining the program instead of ending it in 2023 is that there remain an undetermined number of POWTS and lower-income households that qualify for grant funding. DSPS estimates that there are 774,000 POWTS in the state. Approximately 13,900 permits were issued statewide for POWTS during calendar year 2020 and 14,800 in 2021. DSPS indicates that about 48% of these permits were for new systems and 52% were for replacement systems. However, DSPS does not have comprehensive statewide data regarding the number of POWTS of a certain age, those still in active use, or the number that might be failing or at risk of failing based on age or other factors. Counties typically determine the installation date based on local records that they may maintain. (Limited county-level data is noted in a subsequent discussion point.) A properly designed, installed, and maintained POWTS can be expected to operate for approximately 25 years before failing.

3. Maintaining the program would provide additional time to determine who may still benefit from assistance. In the absence of a program for grant funding, some low- to moderate-income households with a failing POWTS 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.

4. The two most recent POWTS grant cycles exhibited continuing demand for financial assistance for POWTS replacement. In 2022-23, 165 category one grants received awards. Of these 165 awards, principal residences received 87%, and small commercial establishments received 13%. All 20 category two grants were for principal residences.

5. 2017 Wisconsin Act 69 authorizes municipalities to offer loans, including interest-free loans, for repairing failing POWTS. Municipalities may collect payments as a special charge against the property, and may collect payments 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. Further, if any local governments would establish programs under the provisions of Act 69, they would have discretion regarding the structure of the programs, 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.

6. Throughout April and May of 2021, survey data was gathered from 29 Wisconsin counties that had been active participants in the POWTS grant program. Responses indicate that these counties had a combined total of approximately 358,800 POWTS and approximately 13,800 that were failing. Two counties indicated they had initiated loan programs. One county (Taylor) indicated it had established a loan program with \$300,000 in funding. Another county (Marathon) indicates its loan program was operated in conjunction with a local nonprofit organization. A county in at least one instance (Calumet) has since offered grants funded from local assistance under the federal American Rescue Plan Act; by federal law all such funds must be obligated by December 31, 2024. In the 2021 survey, a majority of counties indicated that they had not created any municipal aid programs for

failing POWTS, under 2017 Act 69, due to funding insufficiencies or other unspecified reasons. Two counties indicated that their municipalities did not wish to administer local programs. Several counties expressed strong desires to maintain funding for the POWTS grant program. It is likely that these trends have continued into the current year.

7. The POWTS grant program is funded from a transfer from the DSPS Division of Industry Services safety and buildings general operations appropriation. The appropriation is anticipated to have a June 30, 2023, balance of approximately \$9.4 million under current law.

8. There is no direct state financial grant assistance other than the current POWTS grant program for households with a failing POWTS. There are certain regular federal grant and loan assistance programs specifically targeted to low-income households through the U.S. Department of Agriculture (USDA) Rural Development program under which POWTS repair may be an eligible expense. Certain counties use federal Community Development Block Grant (CDBG) housing funds for low-income homeowners to repair or replace POWTS. While ARPA provided that eligible uses of funds were, among other purposes, necessary investments in water infrastructure, those funds must be obligated to projects by December 31, 2024. Additional community action agencies throughout Wisconsin offer housing rehabilitation funds that may be used to remedy failing POWTS.

9. Given the continued prevalence of POWTS in the state and the continuing need for replacing failing POWTS to avoid environmental harms, the Committee could consider reinstating the POWTS grant program at funding of \$840,000 each year. The Committee could consider a permanent restoration, as under AB 43/SB 70 [Alternative A1], or a two-year extension [Alternative A2].

10. Given that the Legislature has created a means for local units of government to fund low-interest loans, but considering many local governments have not initiated such programs due to insufficient funding, the Committee could also consider providing funding for locally-administered POWTS loan programs under 2017 Act 69. The Committee could consider amending the POWTS grant program continuing appropriation under current law to allow for the issuance of grants to counties for the purpose of administering local revolving loan funds for replacing or rehabilitating failing POWTS. DSPS could be provided emergency rule promulgation authority to determine the basis on which awards would be granted to counties. Given the current and anticipated balances in the DSPS safety and buildings operations appropriation, amounts of \$1,000,000 [Alternative A3a] or \$500,000 [Alternative A3b] could be considered.

11. The Committee could also consider providing any program funding from general purpose revenues (GPR) [Alternative A4]. Prior to 2015 Wisconsin Act 55, the POWTS grant program had base funding of \$2,338,600 GPR each year; the program has been PR-funded at \$840,000 in most years since. Funding the program from GPR would allow existing program revenues for DSPS safety and buildings programs to fund operations or staffing proposals discussed in separate budget papers.

12. The Committee could also take no action [Alternative A5]. Certain local governments or other organizations have taken action to address financial assistance to replace failing POWTS in their jurisdictions, as was intended by 2017 Act 69. Further, some might argue that the repeal of the program should be maintained because POWTS should be replaced by the owner if the system fails, as a normal part of the responsibility of owning a property.

### **Installation Deadline**

13. AB 43/SB 70 would expand POWTS grant program eligibility to POWTS installed at least 33 years before a person submitted a grant application. Current program eligibility extends only to systems installed before July 1, 1978, or approximately 45 years ago. Therefore, eligibility would continue to extend to failing POWTS over time on a rolling basis; under current law, eligibility based on a specific date has the effect of lowering the number of eligible systems over time as they fail or are replaced.

14. Since the creation of the POWTS grant program, the eligible date of installation has never been updated. County survey responses from 2021 indicate that approximately 27,500 failing POWTS would become eligible under the AB 43/SB 70 provision, if their owners met income requirements, as these systems are at least 33 years old.

15. It is likely that the state will have POWTS for many years in areas not suitable for centralized sewage systems, and continual failures as POWTS reach the end of their operational lives will present ongoing risks to the waters of the state. Therefore, the Committee could consider changing the installation deadline for eligible POWTS to 33 years from the date of installation [Alternative B1]. On the other hand, given that households with POWTS installed after July 1, 1978, were never eligible, it is assumed that those owners have planned for replacement of a failing POWTS accordingly, and perhaps in certain instances have already done so. The Committee could take no action [Alternative B2].

### **Program Income Limit**

16. The program income limit of \$45,000 was enacted in 1989. However, the relative value of the program income limit of \$45,000 has decreased over time as household incomes have increased. Therefore, the Committee could require DSPPS to adjust applicant income limits based on the change in the CPI [Alternative C1].

17. Alternatively, it could be argued that as the relative value of an income of \$45,000 has decreased with inflation over time, the income limit serves to target program funding to those least able to afford the cost of repairing or replacing a POWTS. The current \$45,000 limit is also generally consistent with the income limits under USDA Rural Development single-family housing repair programs in most Wisconsin counties. The Committee could take no action [Alternative C2].

### **Private Septic System Plan Reviewer Positions**

18. 2021 Act 67 authorized 2.0 project positions through June 30, 2023, for private septic

system plan reviews. The Department reports the additional position authority has been beneficial in providing for dedicated POWTS plan reviewers, rather than the Department occasionally reassigning Division of Industry Services field staff to POWTS plan reviews during seasons with a high volume of reviews. The Department estimates that the time for completing POWTS reviews has been roughly halved during peak seasons, and DSPS staff contend that because the POWTS review and septic system permitting precedes other steps in the home construction process, the 2.0 positions are able to reduce risks of POWTS reviews holding up subsequent construction work. DSPS reports averaging approximately 3,800 POWTS plan reviews yearly from November 1, 2019, through October 31, 2022.

19. The Department also reports that counties have sought additional training and consultation with regard to POWTS permitting and administration. DSPS anticipates that having additional permanent staff with POWTS review expertise would increase outreach and support of county permitting and review activities.

20. The Committee could make the 2.0 private septic system plan review positions permanent [Alternative D1], or take no action [Alternative D2]. If no action is taken, the project positions will expire on June 30, 2023.

**ALTERNATIVES**

**A. Reinstating the Program or Creating a Municipal Grant Program**

1. Reinstating the private onsite wastewater treatment system grant program under provisions of current law. Provide \$840,000 each year in a continuing appropriation.

<b>ALT A1</b>	<b>Change to Base</b>
PR	\$1,680,000

2. Reinstating the private onsite wastewater treatment system grant program and provide \$840,000 each year in a continuing appropriation. Specify a June 30, 2025, repeal of the program provisions.

<b>ALT A2</b>	<b>Change to Base</b>
PR	\$1,680,000

3. Create a pilot grant program to provide one-time funding in 2023-24 to aid to municipalities in establishing revolving loan funds in the 2023-25 biennium to replace failing POWTS. Modify the POWTS grant appropriation to authorize the issuance of grants to counties for the administration of local revolving loan funds for replacement or rehabilitation of failing POWTS. Authorize DSPS to promulgate emergency rules, without the finding of an emergency, for

administration of the program. Specify one of the following funding amounts:

- a. \$1,000,000; or

ALT A3a	Change to Base
PR	\$1,000,000

- b. \$500,000.

ALT A3b	Change to Base
PR	\$500,000

(This alternative could be selected independent of, or in addition to, one of Alternatives A1 or A2.)

4. In addition to any action under Alternatives A1, A2, or A3, specify the program funding source is GPR.

- 5. Take no action.

**B. Installation Deadline**

1. Change the installation deadline for POWTS grant eligibility to include systems installed at least 33 years before a person submitted a grant application.

- 2. Take no action.

**C. Program Income Limit**

1. Require DSPPS on July 1, 2024, and each July 1 thereafter, to adjust the income limit 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. Require DSPPS to publish the income limit on the Department website. Exempt the annual income limit change from being promulgated through the administrative rule process.

- 2. Take no action.

**D. Private Septic System Plan Reviewer Positions**

1. Provide \$123,000 in 2023-24 and \$159,000 in 2024-25 with 2.0 permanent positions for private septic system plan review. (The provision would make 2.0 project positions permanent.)

<b>ALT D1</b>	<b>Change to Base</b>	
	<b>Funding</b>	<b>Positions</b>
PR	\$282,000	2.00

2. Take no action.

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