



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: <http://legis.wisconsin.gov/lfb>

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Joint Committee on Finance

Paper #551

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

[LFB 2021-23 Budget Summary: Page 521, #3]

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 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 43 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 DSPS 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 2020 (2020-21 grant cycle), the state has awarded \$110.4 million in grants to assist 43,700 residences and businesses to replace or rehabilitate private onsite wastewater treatment systems. The grant program is appropriated \$1,025,000 in 2019-20 and \$840,000 in 2020-21 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 is repealed on June 30, 2021, and final awards were made in the fall of 2020. Administrative code for the grant program (Chapter SPS 387) would also be repealed on June 30, 2021.

DISCUSSION POINTS

1. Assembly Bill 68/Senate Bill 111 would extend the POWTS grant program indefinitely by recreating the program's statutory authorizing language mostly consistent with the authorizations 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) indexing maximum participant income for the 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 68/SB 111 as introduced.

POWTS Grant Program Extension

2. One rationale for maintaining the program instead of ending it in 2021 is that there remain an undetermined number of POWTS and lower-income households that qualify for grant funding. DSPS estimates that there are 756,000 POWTS in the state. Approximately 10,900 permits were issued statewide for POWTS during calendar year 2019 and 11,700 in 2018. DSPS indicates that about 45% of these permits were for new systems and 55% 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 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. In February of 2019, the Speaker's Water Quality Task Force was created to study ongoing risks to clean surface and drinking water and recommend actions to address those issues. Among the bills introduced as a result of the task force's findings was 2019 Assembly Bill 791/Senate Bill 710, which would have extended the POWTS grant program two years, through June 30, 2023, among other provisions. The bill had bipartisan co-sponsorship and passed the Assembly on February 18, 2020, but failed to pass pursuant to SJR 1. In the 2021-22 session, Assembly Bill 123/Senate Bill 84 would also extend the program through June 30, 2023.

4. 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.

5. The two most recent POWTS grant cycles exhibited continuing demand for financial assistance for POWTS replacement. In 2019-20, 190 category one and seven category two grants received awards. Principal residences and small commercial establishments received nearly 100% of the eligible grant amount. In 2020-21, 290 category one grants received awards. Principal residences received 48%, and small commercial establishments received 38%. Four category two applications were not awarded grants due to the amount of funding available, but were eligible for \$23,800.

6. Geology and topography in certain parts of the state may mean that groundwater and surface waters in certain areas remain susceptible to POWTS failures that go unaddressed. A water quality study in Kewaunee County from 2015 to 2017 sampled private wells and concluded that of the wells with detected signs of fecal contamination, human sources were likely partially contributing. Additionally, the ongoing Southwest Wisconsin Groundwater and Geology Study (SWIGG) aims to better understand the quality of groundwater accessed by private wells in Grant, Iowa, and Lafayette Counties, specifically as related to potential contamination from nitrate and microbiological contaminants. While final results are still pending, the most recent sampling from 2020 indicated that 46% of sampled wells had viruses or bacteria associated with human waste.

7. 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.

8. In April and May of 2021, survey data was gathered from 29 Wisconsin counties that have been active participants in the POWTS grant program. Responses indicate that these counties have a combined total of approximately 358,800 POWTS and approximately 13,800 that are currently failing. Two counties indicated they had initiated loan programs. One county (Taylor) indicated it has established a loan program with \$300,000 in funding. Another county (Marathon) indicates its loan program is operated in conjunction with a local nonprofit organization. Fourteen counties indicated that they had not created any municipal aid programs for failing POWTS, under 2017 Act 69, due to funding insufficiencies. Thirteen other counties indicated that they were not sure or had no answer as to why no municipal aid programs had been created in their county. 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.

9. The POWTS grant program is funded from a transfer from the DSPS Division of Industry Services safety and buildings general operations appropriation. The appropriation had a July 1, 2020, balance of \$16.6 million, and is anticipated to have a June 30, 2023, balance of approximately \$20 million under current law and Committee action to date.

10. There is no direct state financial grant assistance other than the current POWTS grant program for households with a failing POWTS. There also are few or minimal regular federal grant assistance programs specifically targeted to these households or POWTS. Under the American Rescue Plan Act (ARPA) of 2021, Wisconsin is expecting to receive \$2.5 billion in direct payments from the State Fiscal Recovery Fund. Local governments also are expecting to receive direct payments under the Local Fiscal Recovery Fund. ARPA provides eligible uses of funds are, among other purposes, necessary investments in water infrastructure. An interim final rule from the U.S. Treasury Department establishes eligible water infrastructure projects as those eligible under the federal clean water (CWSRF) and safe drinking water state revolving funds. CWSRF-eligible projects include financial assistance "for the construction, repair, or replacement of decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage," could be interpreted to include POWTS.

11. 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 current funding of \$840,000. The Committee could consider a permanent restoration, as under AB 68/SB 111 [Alternative A1], or a two-year extension, as under 2021 AB 123/SB 84 [Alternative A2].

12. 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.

13. The Committee could also take no action [Alternative A4]. Certain local governments 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

14. AB 68/SB 111 would expand POWTS grant program eligibility to POWTS installed at least 33 years before a person submitted a grant application. 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.

15. Since the creation of the POWTS grant program, the eligible date of installation has never been updated. County survey responses indicate that approximately 27,500 failing POWTS would become eligible under the AB 68/SB 111 provision, if their owners met income requirements, as these systems are at least 33 years old.

16. It is likely that the state of Wisconsin 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

17. 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 DSPS to adjust applicant income limits based on the change in the CPI [Alternative C1].

18. 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 Committee could take no action [Alternative C2].

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.

ALT A1	Change to Base
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, 2023, repeal of the program provisions.

ALT A2	Change to Base
PR	\$1,680,000

3. Create a pilot grant program to provide one-time funding in 2021-22 to aid to municipalities in establishing revolving loan funds in the 2021-23 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. 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 DSPS on July 1, 2022, 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 DSPS 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.

Prepared by: Moriah Hayes