

SENATE
STATE OF MINNESOTA
NINETIETH SESSION

S.F. No. 684

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DATE
02/06/2017

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523 Introduction and first reading
Referred to Capital Investment

OFFICIAL STATUS

1.1 A bill for an act
1.2 relating to capital investment; appropriating money and providing for clean water,
1.3 water infrastructure, and related purposes; authorizing the sale and issuance of
1.4 state bonds; amending Minnesota Statutes 2016, sections 446A.072; 446A.073;
1.5 446A.081, subdivision 9.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2016, section 446A.072, is amended to read:

1.8 **446A.072 ~~WASTEWATER~~ WATER INFRASTRUCTURE FUNDING PROGRAM.**

1.9 Subdivision 1. **Establishment of program.** The authority will establish a ~~wastewater~~
1.10 water infrastructure funding program to provide supplemental assistance to governmental
1.11 units receiving funding through the clean water revolving fund program, the drinking water
1.12 revolving fund program, or the United States Department of Agriculture Rural Economic
1.13 and Community Development's (USDA/RECD) Water and Waste Disposal Loans and
1.14 Grants program for the predesign, design, and construction of municipal wastewater ~~treatment~~
1.15 and drinking water systems, including purchase of land and easements. The purpose of the
1.16 program is to assist governmental units demonstrating financial need to build cost-effective
1.17 projects to address existing environmental or public health problems. To implement the
1.18 program, the authority shall establish a ~~wastewater~~ water infrastructure fund to provide
1.19 grants ~~and loans~~ for the purposes authorized under title VI of the Federal Water Pollution
1.20 Control Act and the federal Safe Drinking Water Act. The fund shall be credited with all
1.21 investment income from the fund and all repayments of loans, grants, and penalties.

1.22 Subd. 3. **Program administration.** (a) The authority shall provide supplemental
1.23 assistance, as provided in subdivision 5a to governmental units:

(1) whose projects are listed on the Pollution Control Agency's project priority list or the commissioner of health's project priority list;

(2) that demonstrate their projects are a cost-effective solution to an existing environmental or public health problem; and

(3) whose projects are approved by the USDA/RECD or certified by the commissioner of the Pollution Control Agency or the commissioner of health.

(b) For a governmental unit receiving grant funding from the USDA/RECD, applications must be made to the USDA/RECD with additional information submitted to the authority as required by the authority. Eligible project costs and affordability criteria shall be determined by the USDA/RECD.

(c) For a governmental unit not receiving grant funding from the USDA/RECD, application must be made to the authority on forms prescribed by the authority for the clean water revolving fund program or the drinking water revolving fund program with additional information as required by the authority. In accordance with section 116.182, the Pollution Control Agency or the commissioner of health shall:

(1) calculate the essential project component percentage based on the portion of project costs necessary to convey or treat the existing wastewater flows and loadings or, for drinking water projects, to provide safe drinking water to meet existing needs, which must be multiplied by the total project cost to determine the eligible project cost for the program under this section; and

(2) review and certify approved projects to the authority.

(d) Each fiscal year the authority shall make funds available for projects based on their ranking on the Pollution Control Agency's project priority list or the commissioner of health's project priority list. The authority shall reserve funds for a project when the applicant receives a funding commitment from the United States Department of Agriculture Rural Development (USDA/RECD) or ~~submits plans and specifications to the project~~ is certified by the Pollution Control Agency or the commissioner of health. Funds must be reserved in an amount based on the project cost estimate submitted to the authority ~~prior to the appropriation of the funds and awarded based on the lesser of that amount or the as-bid cost~~ when the project is certified or the as-bid cost, whichever is less.

Subd. 5a. **Type and amount of assistance.** (a) For a governmental unit receiving grant funding from the USDA/RECD, the authority may provide assistance in the form of a grant of up to 65 percent of the eligible grant need determined by USDA/RECD. A governmental

unit may not receive a grant under this paragraph for more than ~~\$4,000,000~~ \$5,000,000 per project or ~~\$15,000~~ \$20,000 per existing connection, whichever is less, unless specifically approved by law.

(b) For a governmental unit receiving a loan from the clean water revolving fund under section 446A.07, the authority may provide assistance under this section in the form of a grant if the average annual residential wastewater system cost after completion of the project would otherwise exceed 1.4 percent of the median household income of the project service area. In determining whether the average annual residential wastewater system cost would exceed 1.4 percent, the authority must consider the total costs associated with building, operating, and maintaining the wastewater system, including existing wastewater debt service, debt service on the eligible project cost, and operation and maintenance costs. Debt service costs for the proposed project are calculated based on the maximum loan term permitted for the clean water revolving fund loan under section 446A.07, subdivision 7. The amount of the grant is equal to 80 percent of the amount needed to reduce the average annual residential wastewater system cost to 1.4 percent of median household income in the project service area, to a maximum of ~~\$4,000,000~~ \$5,000,000 per project or ~~\$15,000~~ \$20,000 per existing connection, whichever is less, unless specifically approved by law. The eligible project cost is determined by multiplying the total project costs minus any other grants by the essential project component percentage calculated under subdivision 3, paragraph (c), clause (1). In no case may the amount of the grant exceed 80 percent of the eligible project cost.

(c) For a governmental unit receiving a loan from the drinking water revolving fund under section 446A.081, the authority may provide assistance under this section in the form of a grant if the average annual residential drinking water system cost after completion of the project would otherwise exceed 1.2 percent of the median household income of the project service area. In determining whether the average annual residential drinking water system cost would exceed 1.2 percent, the authority must consider the total costs associated with building, operating, and maintaining the drinking water system, including existing drinking water debt service, debt service on the eligible project cost, and operation and maintenance costs. Debt service costs for the proposed project are calculated based on the maximum loan term permitted for the drinking water revolving fund loan under section 446A.081, subdivision 8, paragraph (c). The amount of the grant is equal to 80 percent of the amount needed to reduce the average annual residential drinking water system cost to 1.2 percent of median household income in the project service area, to a maximum of \$5,000,000 per project or \$20,000 per existing connection, whichever is less, unless

specifically approved by law. The eligible project cost is determined by multiplying the total project costs minus any other grants by the essential project component percentage calculated under subdivision 3, paragraph (c), clause (1). In no case may the amount of the grant exceed 80 percent of the eligible project cost.

~~(e)~~ (d) Notwithstanding the limits in paragraphs (a) and (b), and (c), for a governmental unit receiving supplemental assistance under this section after January 1, 2002, if the authority determines that the governmental unit's construction and installation costs are significantly increased due to geological conditions of crystalline bedrock or karst areas and discharge limits that are more stringent than secondary treatment, the maximum award under this section shall not be more than \$25,000 per existing connection.

~~Subd. 5b. **Special assessment deferral.** A governmental unit receiving a loan under subdivision 5a that levies special assessments to repay the loan under subdivision 5a or section 446A.07 may defer payment of such assessments under the provisions of sections 435.193 to 435.195.~~

Subd. 6. **Disbursements.** Disbursements of grants or loans awarded under this section by the authority to recipients must be made for eligible project costs as incurred by the recipients, and must be made by the authority in accordance with the project financing agreement and applicable state and federal laws and rules governing the payments.

~~Subd. 7. **Loan repayments.** Notwithstanding the limitations set forth in section 475.54, subdivision 1, this subdivision shall govern the maturities and mandatory sinking fund redemptions of the loans under this section. A governmental unit receiving a loan under this section shall repay the loan in semiannual payment amounts determined by the authority. The payment amount must be based on the average payments on the governmental unit's clean water revolving fund loan or, if greater, the minimum amount required to fully repay the loan by the maturity date. Payments must begin within one year of the date of the governmental unit's final payment on the clean water revolving fund loan. The final maturity date of the loan under this section must be no later than 20 years from the date of the first payment on the loan under this section and no later than 40 years from the date of the first payment on the clean water revolving fund loan.~~

Subd. 8. **Eligibility.** A governmental unit is eligible for assistance under this section only after applying for grant funding from other sources and funding has been obtained, rejected, or the authority has determined that the potential funding is unlikely.

Subd. 9. **Funding limitation.** Supplemental assistance may not be used to reduce the sewer service charges of a significant wastewater contributor industrial user that has a

5.1 separate service charge agreement with the recipient, or a single user that has caused the
5.2 need for the project or whose current or projected ~~flow and load exceed~~ usage exceeds
5.3 one-half of the current wastewater ~~treatment plant's~~ or drinking water system capacity.

5.4 Subd. 11. **Report on needs.** By February 1 of each even-numbered year, the authority,
5.5 in conjunction with the Pollution Control Agency and the commissioner of health, shall
5.6 prepare a report to the Finance Division of the senate Environment and Natural Resources
5.7 Committee and the house of representatives Environment and Natural Resources Finance
5.8 Committee on wastewater and drinking water funding assistance needs of governmental
5.9 units under this section.

5.10 Subd. 12. **System replacement fund.** Each governmental unit receiving a ~~loan or grant~~
5.11 under this section shall establish a system replacement fund and shall annually deposit a
5.12 minimum of \$.50 per 1,000 gallons of flow for major rehabilitation ~~or~~ expansion, or
5.13 replacement of the ~~treatment~~ wastewater or drinking water system, ~~or replacement of the~~
5.14 ~~treatment system at the end of its useful life~~. Money must remain in the account for the life
5.15 of the corresponding project loan from the authority or USDA/RECD, unless use of the
5.16 fund is approved in writing by the authority for major rehabilitation, expansion, or
5.17 replacement of the ~~treatment~~ wastewater or drinking water system. By March 1 each year
5.18 during the life of the loan, each recipient shall submit a report to the authority regarding the
5.19 amount deposited and the fund balance for the prior calendar year. A recipient is not required
5.20 to maintain a fund balance greater than the amount of the grant received. Failure to comply
5.21 with the requirements of this subdivision shall result in the authority assessing a penalty
5.22 fee to the recipient equal to one percent of the supplemental assistance amount for each
5.23 year of noncompliance. ~~Failure to make the required deposit or pay the penalty fee as~~
5.24 ~~required constitutes a default on the loan.~~

5.25 Subd. 14. **Consistency with land use plans.** A governmental unit applying for a project
5.26 in an unsewered area shall include in its application to the authority a certification from the
5.27 county in which the project is located that:

5.28 (1) the project is consistent with the county comprehensive land use plan, if the county
5.29 has adopted one;

5.30 (2) the project is consistent with the county water plan, if the county has adopted one;
5.31 and

5.32 (3) the county has adopted specific land use ordinances or controls so as to meet or
5.33 exceed the requirements of Minnesota Rules, part 7082.0050.

Sec. 2. Minnesota Statutes 2016, section 446A.073, is amended to read:

446A.073 POINT SOURCE IMPLEMENTATION GRANTS.

Subdivision 1. **Program established.** When money is appropriated for grants under this program, the authority shall award grants up to a maximum of ~~\$3,000,000~~ \$7,000,000 to governmental units to cover ~~up to one-half~~ 80 percent of the cost of water infrastructure projects made necessary by:

(1) a wasteload reduction prescribed under a total maximum daily load plan required by section 303(d) of the federal Clean Water Act, United States Code, title 33, section 1313(d);

(2) a phosphorus concentration or mass limit which requires discharging one milligram per liter or less at permitted design flow which is incorporated into a permit issued by the Pollution Control Agency;

(3) any other water quality-based effluent limit established under section 115.03, subdivision 1, paragraph (e), clause (8), and incorporated into a permit issued by the Pollution Control Agency that exceeds secondary treatment limits; or

(4) a total nitrogen concentration or mass limit of that requires discharging ten milligrams per liter or less ~~for a land-based treatment system~~ at permitted design flow.

Subd. 2. **Grant application.** Application for a grant must be made to the authority on forms prescribed by the authority ~~for the total maximum daily load grant program, with additional information as required by the authority, including a project schedule and cost estimate for the work necessary to comply with the point source wasteload allocation requirements listed in subdivision 1.~~ The Pollution Control Agency shall:

~~(1) in accordance with section 116.182, calculate the essential project component percentage, which must be multiplied by the total project cost to determine the eligible project cost; and~~

~~(2)~~ review and certify to the authority those projects that have plans and specifications approved under section 115.03, subdivision 1, paragraph (f).

Subd. 3. **Project priorities.** ~~When money is appropriated for grants under this program,~~ The authority shall accept applications under this program during the month of July and reserve money for projects expected to proceed with construction by the end of the fiscal year in the order listed on the Pollution Control Agency's project priority list and in an amount based on the cost estimate submitted to the authority in the grant application or the as-bid costs, whichever is less. Notwithstanding Minnesota Rules, chapter 7077, the Pollution

Control Agency may rank a drinking water infrastructure project on the agency's project priority list if the project is necessary to meet an applicable requirement in subdivision 1.

Subd. 4. **Grant approval.** The authority must make a grant for an eligible project only after:

(1) the applicant has submitted the as-bid cost for the water infrastructure project;

(2) the Pollution Control Agency has approved the as-bid costs and certified the grant eligible portion of the project; and

(3) the authority has determined that the additional financing necessary to complete the project has been committed from other sources.

Subd. 5. **Grant disbursement.** Disbursement of a grant must be made for eligible project costs as incurred by the governmental unit and in accordance with a project financing agreement and applicable state and federal laws and rules governing the payments.

Sec. 3. Minnesota Statutes 2016, section 446A.081, subdivision 9, is amended to read:

Subd. 9. **Other uses of fund.** (a) The drinking water revolving loan fund may be used as provided in the act, including the following uses:

(1) to buy or refinance the debt obligations, at or below market rates, of public water systems for drinking water systems, where the debt was incurred after the date of enactment of the act, for the purposes of construction of the necessary improvements to comply with the national primary drinking water regulations under the federal Safe Drinking Water Act;

(2) to purchase or guarantee insurance for local obligations to improve credit market access or reduce interest rates;

(3) to provide a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the authority if the bond proceeds are deposited in the fund;

(4) to provide loans or loan guarantees for similar revolving funds established by a governmental unit or state agency;

(5) to earn interest on fund accounts;

(6) to pay the reasonable costs incurred by the authority, the Department of Employment and Economic Development, and the Department of Health for conducting activities as authorized and required under the act up to the limits authorized under the act;

(7) to develop and administer programs for water system supervision, source water protection, and related programs required under the act;

(8) notwithstanding Minnesota Rules, part 7380.0280, to provide principal forgiveness or grants to the extent permitted under the federal Safe Drinking Water Act and other federal law, based on the criteria and requirements established for drinking water projects under the water infrastructure funding program under section 446A.072;

(9) to provide loans, principal forgiveness or grants to the extent permitted under the federal Safe Drinking Water Act and other federal law to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities; and

(10) to provide principal forgiveness, or grants for 50 percent of the project cost up to a maximum of \$10,000 for projects needed to comply with national primary drinking water standards for an existing community or noncommunity public water system.

~~(b) Principal forgiveness or grants under paragraph (a), clause (8), must only be provided if the average annual residential drinking water system cost after completion of the project would otherwise exceed 1.2 percent of the median household income in the project service area. In determining whether the average annual residential drinking water system cost would exceed 1.2 percent, the authority must consider the total costs associated with building, operating, and maintaining the drinking water system, including debt service and operation and maintenance costs. Debt service costs for the proposed project must be calculated based on the maximum loan term permitted for the drinking water revolving fund loan under this section. The amount of the principal forgiveness or grant must be equal to 80 percent of the amount needed to reduce the average annual residential drinking water system cost to 1.2 percent of median household income in the project service area, to a maximum of \$4,000,000 or \$15,000 per connection, whichever is less, and not to exceed 80 percent of the total project cost.~~

~~(e)~~ (b) Principal forgiveness or grants provided under paragraph (a), clause (9), may not exceed 25 percent of the eligible project costs as determined by the Department of Health for project components directly related to green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities, up to a maximum of \$1,000,000.

~~(d) The authority may reduce the percentage of median household income at which a loan term could extend to 30 years under subdivision 8, paragraph (c), and at which principal forgiveness or grants could be provided under paragraph (b) if it determines that the federal money allotted to the state cannot be fully utilized without the reduction. If it determines~~

that the reduction is necessary to fully utilize the federal money, the authority must effect the change through its approval of the annual intended use plan.

Sec. 4. **CLEAN WATER APPROPRIATIONS.**

Subdivision 1. Total appropriation. \$167,000,000 is appropriated from the bond proceeds fund to the public facilities authority for the purposes of this section.

Subd. 2. State match for federal grants. \$25,000,000 of this appropriation is to match federal grants for the clean water revolving fund under Minnesota Statutes, section 446A.07, and the drinking water revolving fund under Minnesota Statutes, section 446A.081. This appropriation must be used for qualified capital projects.

Subd. 3. Water infrastructure funding program. (a) \$80,000,000 of this appropriation is for grants to eligible municipalities under the water infrastructure funding program under Minnesota Statutes, section 446A.072.

(b) \$55,000,000 is for wastewater projects listed on the Pollution Control Agency's project priority list in the fundable range under the clean water revolving fund program.

(c) \$25,000,000 is for drinking water projects listed on the Department of Health's project priority list in the fundable range under the drinking water revolving fund program.

(d) After all eligible projects under paragraph (b) or (c) have been funded, the Public Facilities Authority may transfer any remaining, uncommitted money to eligible projects under a program defined in paragraph (b) or (c) based on that program's project priority list.

Subd. 4. Point source implementation grants program. \$62,000,000 of this appropriation is for grants to eligible municipalities under the point source implementation grants program under Minnesota Statutes, section 446A.073. This appropriation must be used for qualified capital projects.

Subd. 5. Bond sale. To provide the money appropriated in this section from the bond proceeds fund, the commissioner of management and budget shall sell and issue bonds of the state in an amount up to \$167,000,000 in the manner, upon the terms, and with the effect prescribed by Minnesota Statutes, sections 16A.631 to 16A.675, and by the Minnesota Constitution, article XI, sections 4 to 7.

EFFECTIVE DATE. This section is effective the day following final enactment.