

Senate File 339 - Enrolled

SENATE FILE 339

AN ACT

RELATING TO WASTEWATER TREATMENT AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

WASTEWATER TREATMENT FINANCIAL ASSISTANCE PROGRAM

Section 1. Section 16.134, Code 2009, is amended to read as follows:

16.134 WASTEWATER TREATMENT FINANCIAL ASSISTANCE PROGRAM.

1. The Iowa finance authority shall establish and administer a wastewater treatment financial assistance program. The purpose of the program shall be to provide ~~grants financial assistance to enhance water quality and to assist communities to comply with water quality standards adopted by the department of natural resources.~~ The program shall be administered in accordance with rules adopted by the authority pursuant to chapter 17A.

2. A wastewater treatment financial assistance fund is created under the authority of the Iowa finance authority. The fund shall consist of appropriations made to the fund and transfers of interest, earnings, and moneys from other funds as provided by law. Moneys in the fund are not subject to section 8.33. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the fund shall be credited to the fund.

3. Financial assistance under the program shall be used to install or upgrade wastewater treatment facilities and systems, and for engineering or technical assistance for facility planning and design.

4. The authority shall distribute financial assistance in the fund in accordance with the following:

0a. The goal of the program shall be to base awards on the impact of the grant combined with other sources of financing to ensure that sewer rates do not exceed one and one-half percent of a community's median household income.

~~a. Communities shall be eligible for financial assistance by qualifying as a disadvantaged community and seeking financial assistance for the installation or upgrade of wastewater treatment facilities due to regulatory activity in response to water quality standards adopted by the department of natural resources in calendar year 2006. For purposes of this section, the term "disadvantaged community" means the same as defined by the department of natural resources for the drinking water facilities revolving loan fund established in section 455B.295. Communities with a population of three thousand or more do not qualify for financial assistance under the program.~~

b. Priority shall be given to projects in which the financial assistance is used to obtain financing under the Iowa water pollution control works and drinking water facilities financing program pursuant to section 16.131 or other federal or state financing.

c. Priority shall also be given to projects whose completion will provide significant improvement to water quality in the relevant watershed.

d. Priority shall also be given to communities that employ an alternative wastewater treatment technology pursuant to section 455B.199C.

e. Priority shall be also given to those communities where sewer rates are the highest as a percentage of that community's median household income.

~~d. A community meeting the criteria of paragraph "a" shall be required to provide matching moneys in accordance with the following:~~

~~(1) Unsewered incorporated communities with a population of less than five hundred and communities with a population of less than five hundred shall be required to provide a five percent match.~~

~~(2) Communities with a population of five hundred or more but less than one thousand shall be required to provide a ten~~

percent match.

~~(3) Communities with a population of one thousand or more but less than one thousand five hundred shall be required to provide a twenty percent match.~~

~~(4) Communities with a population of one thousand five hundred or more but less than two thousand shall be required to provide a thirty percent match.~~

~~(5) Communities with a population of two thousand or more but less than three thousand shall be required to provide a forty percent match.~~

~~e. f.~~ Financial assistance in the form of grants shall be issued on ~~a quarterly~~ an annual basis.

~~g. An applicant shall not receive a grant that exceeds five hundred thousand dollars.~~

5. The authority in cooperation with the department of natural resources shall share information and resources when determining the qualifications of a community for financial assistance from the fund.

6. The authority may use an amount of not more than four percent of any moneys appropriated for deposit in the fund for administration purposes.

~~7. It is the intent of the general assembly that for the fiscal period beginning July 1, 2007, and ending June 30, 2016, a minimum of four million dollars shall be appropriated each fiscal year to the authority for deposit in the wastewater treatment financial assistance fund.~~

Sec. 2. NEW SECTION. 16.135 WASTEWATER VIABILITY ASSESSMENT.

1. The authority, in cooperation with the department of natural resources and the department of economic development, shall require the use of a wastewater viability assessment for any wastewater treatment facility seeking a grant under the wastewater treatment financial assistance program. A wastewater viability assessment shall determine the long-term operational and financial capacity of the facility and its ratepayers. The authority shall develop minimum criteria for eligibility based on the viability assessment.

2. The authority, in cooperation with the department of natural resources, shall develop a wastewater viability assessment. The assessment shall include as part of the assessment all of the following factors:

a. The ability of the applicant to provide proper oversight and management through a certified operator.

b. The financial ability of the users to support the existing system, improvements to the system, and the long-term maintenance of the system.

DIVISION II SPONSORED PROJECTS

Sec. 3. Section 384.80, subsection 12, Code 2009, is amended to read as follows:

12. "Project" means the acquisition, construction, reconstruction, extending, remodeling, improving, repairing, and equipping of all or part of a city utility, combined utility system, city enterprise, or combined city enterprise, or a water resource restoration project within or without the corporate limits of the city.

Sec. 4. Section 384.80, Code 2009, is amended by adding the following new subsection:

NEW SUBSECTION. 15. "Water resource restoration project" means the acquisition of real property or improvements or other activity or undertaking that will assist in improving the quality of the water in the watershed where a city water or wastewater utility is located.

Sec. 5. Section 384.82, subsection 1, unnumbered paragraph 1, Code 2009, is amended to read as follows:

A city may carry out projects, borrow money, and issue revenue bonds and pledge orders to pay all or part of the cost of projects, which may include a qualified water resource restoration project, such revenue bonds and pledge orders to be payable solely and only out of the net revenues of the city utility, combined utility system, city enterprise, or combined city enterprise involved in the project. The cost of a project includes the construction contracts, interest upon the revenue bonds and pledge orders during the period or estimated period of construction and for twelve months thereafter, or for twelve months after the acquisition date, such reserve funds as the governing body may deem advisable in connection with the project and the issuance of revenue bonds and pledge orders, and the costs of engineering, architectural, technical and legal services, preliminary reports, surveys, property valuations, estimates, plans, specifications, notices,

acquisition of real and personal property, consequential damages or costs, easements, rights-of-way, supervision, inspection, testing, publications, printing and sale of bonds and provisions for contingencies. A city may sell revenue bonds or pledge orders at public or private sale in the manner prescribed by chapter 75 and may deliver revenue bonds and pledge orders to the contractors, sellers, and other persons furnishing materials and services constituting a part of the cost of the project in payment therefor.

Sec. 6. Section 384.84, Code 2009, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. The governing body of a city water or wastewater utility may enter into an agreement with a qualified entity to use proceeds from revenue bonds for a water resource restoration project if the rate imposed is no greater than if there was not a water resource restoration project agreement. For purposes of this subsection, "qualified entity" is an entity created pursuant to chapter 28E or two entities that have entered into an agreement pursuant to chapter 28E, whose purpose is to undertake a watershed project that has been approved for water quality improvements in the watershed.

Sec. 7. NEW SECTION. 455B.199 WATER RESOURCE RESTORATION SPONSOR PROGRAM.

1. The department shall establish and administer a water resource restoration sponsor program to assist in enhancing water quality in the state through the provision of financial assistance to communities for a variety of impairment-based, locally directed watershed projects.

2. For purposes of this section, unless the context otherwise requires:

a. "Qualified entity" means the same as defined in section 384.84.

b. "Sponsor project" means a water resource restoration project as defined in section 384.80.

3. Moneys in the water pollution control works revolving loan fund created in section 455B.295, and the drinking water facilities revolving loan fund created in section 455B.295, shall be used for the water resource restoration sponsor program. The department shall establish on an annual basis the percentage of moneys available for the sponsor program from the funds.

4. The interest rate on the loan under the program for communities participating in a sponsor project shall be set at a level that requires the community to pay not more than the amount the community would have paid if they did not participate in a sponsor project.

5. Not more than ninety percent of the projected interest payments on bonds issued under section 384.84 or the total cost of the sponsor project shall be advanced to the community, whichever is lower.

6. A proposed sponsor project must be compatible with the goals of the water resource restoration sponsor program, shall include the application of best management practices for the primary purpose of water quality protection and improvement, and may include but not be limited to any of the following:

a. Riparian buffer acquisition, enhancement, expansion, or restoration.

b. Conservation easements.

c. Riparian zone or wetland buffer extension or restoration.

d. Wetland restoration in conjunction with an adjoining high-quality water resource.

e. Stream bank stabilization and natural channel design techniques.

f. In-stream habitat enhancements and dam removals.

7. A proposed sponsor project shall not include any of the following:

a. Passive recreation activities and trails including bike trails, playgrounds, soccer fields, picnic tables, and picnic grounds.

b. Parking lots.

c. Diverse habitat creation contrary to the botanical history of the area.

d. Planting of nonnative plant species.

e. Dredging.

f. Supplemental environmental projects required as a part of a consent decree.

8. A sponsor project must be approved by the department prior to participating in the water resource restoration sponsor program.

9. A resolution by the city council must be approved and included as part of an application for the water resource restoration sponsor program. After approval of the project, the city council shall enter into an agreement pursuant to chapter 28E with the qualified entity who shall implement the project.

10. A water resource restoration project shall not include the acquisition of property, an interest in property, or improvements to property through condemnation.

11. The commission shall adopt rules pursuant to chapter 17A necessary for the administration of this section.

Sec. 8. Section 455B.295, subsection 2, Code 2009, is amended to read as follows:

2. Each of the revolving loan funds shall include sums appropriated to the revolving loan funds by the general assembly, sums transferred by action of the governor under section 455B.296, subsection 3, sums allocated to the state expressly for the purposes of establishing each of the revolving loan funds under the Clean Water Act and the Safe Drinking Water Act, all receipts by the revolving loan funds, and any other sums designated for deposit to the revolving loan funds from any public or private source. All moneys appropriated to and deposited in the revolving loan funds are appropriated and shall be used for the sole purpose of making loans to eligible entities to finance all or part of the cost of projects, including sponsor projects under the water resource restoration sponsor program established in section 455B.199. The moneys appropriated to and deposited in the water pollution control works revolving loan fund shall not be used to pay the nonfederal share of the cost of projects receiving grants under the Clean Water Act. The moneys in the revolving loan funds are not considered part of the general fund of the state, are not subject to appropriation for any other purpose by the general assembly, and in determining a general fund balance shall not be included in the general fund of the state but shall remain in the revolving loan funds to be used for their respective purposes. The revolving loan funds are separate dedicated funds under the administration and control of the authority and subject to section 16.31. Moneys on deposit in the revolving loan funds shall be invested by the treasurer of state in cooperation with the authority, and the income from the investments shall be credited to and deposited in the appropriate revolving loan funds.

DIVISION III

PERMITTING == VARIANCES == ALTERNATIVE WASTEWATER TREATMENT TECHNOLOGIES

Sec. 9. NEW SECTION. 455B.199A PRIORITIZATION OF MUNICIPAL WATER QUALITY IMPROVEMENT PROJECTS.

1. The department may allow schedules of compliance to be included in permits whenever authorized by federal law or regulations. Such schedules shall be established to maximize benefits and minimize local financial impact while improving water quality, where such opportunities arise. If information is provided showing that the anticipated costs of compliance with a schedule have no reasonable relationship to environmental or public health needs or benefits, or may result in other detrimental environmental impacts, such as significant greenhouse gas emissions, the projects may be deferred, in whole or in part as determined appropriate by the department, and a variance granted, as consistent with applicable federal law or regulations.

2. Unless otherwise restricted by federal law or regulations, the department may allow compliance schedules of up to thirty years in national pollutant discharge elimination system permits, particularly where the costs of compliance with federal program mandates will adversely impact the construction of other necessary local capital improvement projects. If the department determines an existing condition constitutes a significant public health or environmental threat, the schedule of compliance shall be based on the shortest practicable time frame for remedying the condition.

Sec. 10. NEW SECTION. 455B.199B DISADVANTAGED COMMUNITIES VARIANCE.

1. The department may provide for a variance of regulations pursuant to this part when it determines that regulations adopted pursuant to this part affect a disadvantaged community. Such a variance shall be consistent with federal rules and regulations. In considering an application for a variance, the department shall consider the substantial and widespread economic and social impact to the

ratepayers and the affected community that may occur as a result of compliance with a federal regulation, a rule adopted by the department, or an order of the department pursuant to this part. In considering an application for a variance, the department shall take into account the rules adopted pursuant to this part with which a regulated entity and the commensurate affected community are required to comply.

2. The department shall find that a regulated entity and the affected community are a disadvantaged community by using all of the following criteria:

- a. Median household income in the community as a percentage of statewide household income.
- b. Annual water and sewer rates as a percentage of median household income.
- c. Families below the poverty level in the community as a percentage of the statewide number of families below the poverty level.
- d. Per capita outstanding debt of the system as a percentage of median household income.
- e. Cost effectiveness calculated by determining construction costs per user.

3. The department may grant a regulated entity a variance from complying with a rule adopted pursuant to this part or as otherwise allowed by federal law or regulations, if the department determines that the regulated entity or the affected community will suffer substantial and widespread economic and social impact. The department shall ensure the conditions of any variance improve water quality and represent reasonable progress toward complying with rules adopted pursuant to this part, but do not result in substantial and widespread economic and social impact.

4. The Iowa finance authority, in cooperation with the department, shall utilize the disadvantaged community criteria in this section to determine the appropriate interest rates for loans awarded from the revolving loan funds created in sections 455B.291 through 455B.299, as allowed by federal law or regulations.

5. The department of economic development shall utilize the disadvantaged community criteria in this section to determine eligibility for water or sewer community development block grants as provided in section 15.108, subsection 1, paragraph "a".

Sec. 11. NEW SECTION. 455B.199C ALTERNATIVE WASTEWATER TREATMENT TECHNOLOGIES == LEGISLATIVE INTENT AND PURPOSE.

1. The intent of the general assembly is to address the rising costs of water and wastewater treatment compliance for regulated entities and affected communities by authorizing the use of alternative treatment technologies. The purpose of this section is to eliminate regulatory barriers that limit or prevent the use of new or innovative technologies.

2. The department shall produce and publish design guidance documents for alternative wastewater treatment technologies. The guidance documents shall be intended to encourage regulated entities to use such technologies and to assist design engineers with the submission of projects employing alternative wastewater treatment technologies that can be readily approved by the department.

3. In writing design guidance documents for alternative wastewater treatment technologies the department shall review all of the following:

- a. The on-site sewage design and reference manual published by the department of natural resources.
- b. The guidance manual for the management of on-site and decentralized wastewater systems published by the United States environmental protection agency.
- c. Other credible sources of information on the design, operation, and performance of alternative wastewater treatment technologies.

Sec. 12. Section 455B.176A, subsection 7, 8, and 9, Code 2009, are amended by striking the subsections.

DIVISION IV
SANITARY DISTRICTS

Sec. 13. Section 358.16, subsection 2, unnumbered paragraph 1, Code 2009, is amended to read as follows:

The board of trustees may require connection to the sanitary sewer system established, maintained, or operated by the district from any adjacent property within the district, and require the installation of sanitary toilets or other sanitary sewage facilities and removal of other toilet and other sewage facilities on the property. However, the board of trustees shall not regulate, restrict the use, or require

the connection of a private sewage disposal facility previously approved by the county board of health pursuant to section 455B.172 without the prior approval of that board of health.

Sec. 14. EFFECTIVE DATE. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

JOHN P. KIBBIE
President of the Senate

PATRICK J. MURPHY
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 339, Eighty-third General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved _____, 2009

CHESTER J. CULVER
Governor