

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 682

Introduced by Mello, 5; Ashford, 20; Cook, 13; Council, 11; Krist,
10; Lathrop, 12; Nordquist, 7.

Read first time January 19, 2011

Committee: Revenue

A BILL

- 1 FOR AN ACT relating to public utilities; to adopt the Major Gas,
- 2 Water, and Sewer Infrastructure Improvement and
- 3 Replacement Assistance Act; and to create a fund.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 11 of this act shall be known
2 and may be cited as the Major Gas, Water, and Sewer Infrastructure
3 Improvement and Replacement Assistance Act.

4 Sec. 2. (1) The Legislature finds that municipalities,
5 natural gas utilities, and water utilities of the state face an
6 urgent need to construct, upgrade, redevelop, and replace sewer,
7 natural gas, and water cast iron infrastructure facilities to reduce
8 combined sewer overflow and to redevelop and replace obsolete cast
9 iron natural gas and water facilities. By providing sewer, natural
10 gas, and water facilities, the municipalities, natural gas utilities,
11 and water utilities of the state provide the building blocks for
12 economic development. Not only does the investment in infrastructure
13 generate an immediate stream of economic activity, it also lays the
14 groundwork for private investment that will use the facilities so
15 provided. Municipalities, natural gas utilities, and water utilities
16 in the state currently are in critical need of assistance in
17 providing these facilities. Political subdivisions are limited in
18 their ability to finance major infrastructure projects and are able
19 to use property taxes, local option sales taxes, bond funding, fees
20 for services, or a combination thereof. Additionally, many of these
21 financing options contain statutory budget and tax levy restrictions.
22 In order to minimize the burden on property taxpayers in Nebraska,
23 the Legislature finds that it is fair and equitable to encourage the
24 use of fees for services to finance major infrastructure projects.

25 (2) The Legislature determines that it is in the public

1 interest to assist municipalities, natural gas utilities, and water
2 utilities by establishing a fund to provide funds to municipalities,
3 natural gas utilities, and water utilities to be used to replace and
4 redevelop sewer, natural gas, and water cast iron infrastructure
5 facilities to reduce combined sewer overflow and to redevelop and
6 replace obsolete cast iron natural gas and water piping facilities.

7 (3) In order that the state may receive long-term
8 economic and fiscal benefits from such facilities, a need exists to
9 provide state assistance to municipalities, natural gas utilities,
10 and water utilities endeavoring to construct, acquire, substantially
11 reconstruct, expand, operate, improve, or equip such facilities.

12 (4) Therefor, it is deemed to be in the best interest of
13 the state, its municipalities, its natural gas utilities, and its
14 water utilities that the state assist municipalities, natural gas
15 utilities, and water utilities in financing the construction,
16 acquisition, substantial reconstruction, expansion, operation,
17 improvement, or equipping of sewer, natural gas, and water cast iron
18 infrastructure facilities.

19 (5) The amount of state assistance shall be limited to
20 the state sales tax revenue collected (a) by municipalities on the
21 increase in monthly sewer use fees after July 1, 2013, attributable
22 to combined sewer overflow projects and (b) by natural gas utilities
23 and water utilities on the increase in monthly charges after July 1,
24 2013, collected for natural gas and water infrastructure replacement.

25 Sec. 3. For purposes of the Major Gas, Water, and Sewer

1 Infrastructure Improvement and Replacement Assistance Act:

2 (1) Board means a board consisting of the Director of
3 Environmental Quality, the chief executive officer of the Department
4 of Health and Human Services, and the State Fire Marshal;

5 (2) Bond means a general obligation bond, redevelopment
6 bond, lease-purchase bond, revenue bond, or combination of any such
7 bonds and a loan from the Wastewater Treatment Facilities
8 Construction Loan Fund or Drinking Water Facilities Loan Fund;

9 (3) Combined sewer overflow project means a municipal
10 project to reduce overflows from a combined sewer system pursuant to
11 a long-term control plan approved by the Department of Environmental
12 Quality;

13 (4) Eligible facility means (a) relating to combined
14 sewer overflow projects, any facility that is constructed or
15 installed pursuant to an approved long-term control plan and (b)
16 relating to natural gas facilities and water facilities, any facility
17 that is constructed or installed to redevelop or replace existing
18 cast iron main piping, service piping connected to cast iron main
19 piping, and related facilities;

20 (5) General obligation bond means any bond or refunding
21 bond issued by a political subdivision and which is payable from the
22 proceeds of an ad valorem tax;

23 (6) Natural gas utility means any natural gas utility
24 owned and operated by a political subdivision;

25 (7) Natural gas and water infrastructure replacement

1 project means any project that is constructed or installed to
2 redevelop or replace existing cast iron main piping, service piping
3 connected to cast iron main piping, and related facilities;

4 (8) Political subdivision means any local governmental
5 body formed and organized under state law and any joint entity or
6 joint public agency created under state law to act on behalf of
7 political subdivisions which has statutory authority to issue general
8 obligation bonds;

9 (9) Revenue bond means any bond or refunding bond issued
10 by a political subdivision which is not payable from the proceeds of
11 an ad valorem tax; and

12 (10) Water utility means any water utility operated by a
13 political subdivision.

14 Sec. 4. Any municipality, natural gas utility, or water
15 utility that has acquired, constructed, improved, or equipped or has
16 approved a general obligation bond issue or revenue bond issue to
17 acquire, construct, improve, or equip eligible facilities may apply
18 to the board for state assistance. The state assistance may be used
19 to pay amounts expended or borrowed through one or more issues of
20 bonds to be expended by the municipality, natural gas utility, or
21 water utility to acquire, construct, improve, and equip eligible
22 facilities until repayment in full of the amounts expended or
23 borrowed by the municipality, natural gas utility, or water utility,
24 including the principal of and interest on bonds, for eligible
25 facilities. The state assistance may also be used to pay amounts to

1 be expended by the municipality, natural gas utility, or water
2 utility without the issuance of bonds to acquire, construct, improve,
3 and equip eligible facilities.

4 Sec. 5. (1) All applications for state assistance under
5 the Major Gas, Water, and Sewer Infrastructure Improvement and
6 Replacement Assistance Act shall be in writing and shall include a
7 certified copy of the approving action of the governing body of the
8 applicant describing the proposed eligible facility.

9 (2) The application shall contain:

10 (a) A description of the proposed financing of the
11 eligible facility, including the estimated principal and interest
12 requirements for bonds proposed to be issued in connection with the
13 eligible facility or, if no bonds are to be issued, a description of
14 the costs of the eligible facility; and

15 (b) Any other project information deemed appropriate by
16 the board.

17 (3) Upon receiving an application for state assistance,
18 the board shall review the application and notify the applicant of
19 any additional information needed for a proper evaluation of the
20 application.

21 Sec. 6. (1) After consideration of the application and
22 determination that the application conforms to all requirements for
23 eligibility for state assistance under the Major Gas, Water, and
24 Sewer Infrastructure Improvement and Replacement Assistance Act, the
25 board shall issue a finding that the combined sewer overflow project

1 or natural gas and water infrastructure replacement project described
2 in the application is eligible for state assistance.

3 (2) If the board finds that the project described in the
4 application is an eligible facility, the application shall be
5 approved.

6 (3) A majority of the board members constitutes a quorum
7 for the purpose of conducting business. All actions of the board
8 shall be by a majority vote of all the board members.

9 Sec. 7. If an application is approved, the Tax
10 Commissioner shall:

11 (a) Audit or review audits of the sewer use fees
12 collected by municipalities, charges for natural gas infrastructure
13 replacement collected by natural gas utilities, or charges for water
14 infrastructure replacement collected by water utilities to determine
15 the state sales tax revenue collected by such entities on such fees
16 and charges; and

17 (b) Certify annually the amount of such state sales tax
18 revenue collected by municipalities, natural gas utilities, and water
19 utilities on such fees and charges to the State Treasurer.

20 Sec. 8. (1) The Major Gas, Water, and Sewer
21 Infrastructure Improvement and Replacement Fund is created. Upon the
22 annual certification under section 7 of this act, the State Treasurer
23 shall transfer the amount certified from the General Fund to the
24 Major Gas, Water, and Sewer Infrastructure Improvement and
25 Replacement Fund. Any money in the fund available for investment

1 shall be invested by the state investment officer pursuant to the
2 Nebraska Capital Expansion Act and the Nebraska State Funds
3 Investment Act.

4 (2) The board shall distribute from the fund to any
5 municipality, natural gas utility, or water utility for which an
6 application for state assistance under the Major Gas, Water, and
7 Sewer Infrastructure Improvement and Replacement Assistance Act has
8 been approved an amount not to exceed the lesser of the total cost of
9 acquiring, constructing, improving, or equipping the eligible
10 facility or the total state sales tax revenue collected by (a)
11 municipalities on the increase in monthly sewer use fees attributable
12 to the combined sewer overflow projects, (b) natural gas utilities on
13 the increase in monthly charges specifically collected for natural
14 gas infrastructure replacement, or (c) water utilities on the
15 increase in monthly charges specifically collected for water
16 infrastructure replacement. Funds distributed under this section
17 shall be used only to assist with paying the costs of acquiring,
18 constructing, improving, or equipping the eligible facilities,
19 including any financing costs, shall be kept in a separate fund, and
20 shall not be used to fund the general operations of the municipality
21 or the utility.

22 (3) State assistance to the applicant shall no longer be
23 available upon the retirement of the bonds issued to acquire,
24 construct, improve, or equip the eligible facility or any subsequent
25 bonds that refunded the original issue, or if bonds are not issued,

1 upon payment of the cost to acquire, construct, improve, or equip the
2 eligible facility or when state assistance reaches the amount
3 determined under subsection (2) of this section, whichever comes
4 first.

5 Sec. 9. The applicant may issue from time to time its
6 bonds and refunding bonds to finance and refinance the acquisition,
7 construction, improvement, and equipping of eligible facilities and
8 appurtenant public facilities that are a part of the same project.
9 The bonds may be sold by the applicant in such manner and for such
10 price as the applicant deems appropriate.

11 Sec. 10. The Department of Revenue shall submit an annual
12 report to the Legislature on or before August 1 of each year which
13 includes, but is not limited to, a description of the demand for
14 state assistance under the Major Gas, Water, and Sewer Infrastructure
15 Improvement and Preplacement Assistance Act, a list of the recipients
16 and amounts of state assistance awarded pursuant to the act in the
17 previous fiscal year, the status of each project awarded state
18 assistance, and the number of jobs created by each such project. The
19 department may require recipients of financial assistance to provide
20 reports to enable the department to fulfill the requirements of this
21 section.

22 Sec. 11. The Department of Revenue may adopt and
23 promulgate rules and regulations to carry out the Major Gas, Water,
24 and Sewer Infrastructure Improvement and Replacement Assistance Act.