



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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TO: Senator Alberta Darling
Room 317 East, State Capitol

FROM: Daryl Hinz, Program Supervisor

SUBJECT: Municipal Dam Safety Grant Eligibility

You asked about eligibility criteria for the state dam safety grant program, particularly as it relates to the Estabrook Dam in Milwaukee County. Milwaukee County owns the Estabrook Dam on the Milwaukee River in the City of Milwaukee. In 2008 the Department of Natural Resources (DNR) required the County to open the dam gates due to safety concerns, and in 2009 issued an order to repair or remove the dam. The approximately 100-acre impoundment, which extends into Glendale, has been drawn down since 2008. The county and city of Milwaukee and several nearby communities have been debating how to proceed on the project for years, with the decision regarding repair versus removal of the dam being a central issue. The Milwaukee Metropolitan Sewerage District (MMSD) is a metropolitan sewerage district organized under Chapter 200 of the Wisconsin statutes and is governed by an eleven-member commission. Commissioners are appointed by local elected officials as directed by the statutes. Public inland lake protection and rehabilitation districts (lake districts) are formed under Chapter 33 of the statutes. MMSD, lake districts, and similar entities (such as drainage districts and local stormwater utilities) are often referred to as special purpose districts that exercise specific governmental powers, and often have limited taxing authority, to perform their public purpose duties.

The Milwaukee County Executive recently announced an agreement on a plan with the city of Milwaukee Mayor and MMSD to transfer ownership of the dam to MMSD so the District could then proceed with dam removal. You asked whether MMSD would qualify for a state dam safety grant.

Municipal Dam Safety Grants. Since the 1989-91 biennium, DNR has administered the municipal dam safety grant program under section 31.385 of the Wisconsin statutes. The program provides matching grants to counties, cities, villages, towns and lake districts for the repair, reconstruction, or removal of municipal dams. To qualify for a grant, the locality must own a dam that has been inspected by DNR and be under a DNR directive to repair or remove the dam. Dam safety grants may also be awarded to a private dam owner to remove their dam, or to any person to

remove abandoned dams. A total of \$28.1 million in bonding revenues for dam safety grants has been authorized by the Legislature for this program, including \$4 million in each of the last four biennia.

Grants for dam repair and reconstruction may be provided for up to 50% of the first \$400,000 in project costs and up to 25% of the next \$800,000 in project costs (\$400,000 maximum grant award for a \$1.2 million project).

The Estabrook Dam project, if eligible, would likely qualify for the maximum \$400,000 state grant under this program. However, since the statutes specifically define "municipalities" for dam safety grant purposes to be a "town, village, city or county" [§31.01 (4)] and specifically includes lake districts [§31.385 (1m)(a)] as the only listed eligible special purpose district, it could be argued that dam safety grants to MMSD would not be allowed. Although dam removal grants may be made to private owners (in addition to municipalities and lake districts), MMSD is a public special purpose district, and therefore is unlikely to qualify as a private owner. If so, MMSD would not appear to fit the definition of an eligible entity for a dam safety grant. Legislative attorneys consulted agreed this was a straight forward reading of current law. However, some did raise the possibility that, despite the statutes specifying lake districts as the only special purpose district eligible, if litigated it is possible that a court might construe the statute, on the whole, to contemplate granting eligibility to all owners for dam removal projects.

DNR officials report they could find no evidence of a dam safety grant being provided to a sewerage district, or to any other special purpose district other than a lake district. The Department indicates the dam grants currently set-aside for the County project would not transfer to MMSD. If MMSD were to take ownership of the dam they would have to apply during a future state dam grant process. Based on the application, if MMSD were deemed eligible for any state dam grant program, the project would be reviewed and ranked along with all other eligible applicants.

County dam grant program. In addition to the municipal program, 2011 Act 32 specified that DNR set aside not more than \$6,000,000 in existing bonding revenue, from the land acquisition subprogram of the Warren Knowles-Gaylord Nelson Stewardship program for dam safety grants to counties. The grants may only be awarded for a county-owned dam that is under an order by DNR for maintenance, modification, abandonment or removal as of July 1, 2011. These grants may be provided for up to 25% of eligible project costs, with a maximum grant award of \$2,500,000 (\$10,000,000 project).

Estabrook dam meets the statutory criteria to be a county-owned dam under a DNR repair or removal order as of July 1, 2011. However, since section 31.385 (7) specifies the stewardship grants may only be used to provide financial assistance to counties, DNR indicates that a MMSD-owned dam would not qualify for a grant under the stewardship program because the Sewerage District is not a county.

I hope this information is helpful. Please contact me if I can be of further assistance.

DH/lb