

LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 760**

Introduced by Mello, 5; Ashford, 20; Cook, 13; Harr, 8; Howard, 9;  
Kolowski, 31; Krist, 10; Lathrop, 12; Nelson, 6;  
Nordquist, 7.

Read first time January 09, 2014

Committee: Revenue

A BILL

- 1 FOR AN ACT relating to municipalities; to adopt the Combined Sewer
- 2 Overflow Infrastructure Assistance Act and the Unfunded
- 3 Federal Mandate Infrastructure Assistance Act.
- 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 Combined Sewer Overflow Infrastructure  
3 Assistance Act.

4           Sec. 2. (1) The Legislature finds that municipalities of  
5 the state face an urgent need to construct, upgrade, redevelop, and  
6 replace sewer infrastructure facilities to reduce combined sewer  
7 overflow. By providing sewer facilities, municipalities provide the  
8 building blocks for economic development. Not only does the  
9 investment in infrastructure generate an immediate stream of economic  
10 activity, it also lays the groundwork for private investment that  
11 will use the facilities so provided. Municipalities currently are in  
12 critical need of assistance in providing these facilities.  
13 Municipalities are limited in their ability to finance major  
14 infrastructure projects and are generally required by federal  
15 regulation to follow a cost-of-service user fee system to fund  
16 wastewater operations and maintenance costs including replacement.  
17 Additionally, many alternate financing options contain statutory  
18 budget and tax levy restrictions. In order to minimize the burden on  
19 property taxpayers in Nebraska, the Legislature finds that it is fair  
20 and equitable to encourage the use of fees for services to finance  
21 major infrastructure projects.

22           (2) The Legislature determines that it is in the public  
23 interest to assist municipalities by establishing a fund to provide  
24 funds to municipalities to be used to replace and redevelop sewer  
25 infrastructure facilities to reduce combined sewer overflow.

1           (3) In order that the state may receive long-term  
2 economic and fiscal benefits from such facilities, a need exists to  
3 provide state assistance to municipalities endeavoring to construct,  
4 acquire, substantially reconstruct, expand, operate, improve, or  
5 equip such facilities.

6           (4) It is deemed to be in the best interest of the state  
7 and its municipalities that the state assist municipalities in  
8 financing the construction, acquisition, substantial reconstruction,  
9 expansion, operation, improvement, or equipping of sewer  
10 infrastructure facilities.

11           (5) The amount of state assistance under the Combined  
12 Sewer Overflow Infrastructure Assistance Act shall be limited to  
13 ninety percent of the state sales tax revenue collected by  
14 municipalities on the increase in monthly sewer use fees on and after  
15 July 1, 2013, attributable to combined sewer overflow projects.

16           Sec. 3. For purposes of the Combined Sewer Overflow  
17 Infrastructure Assistance Act:

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

21           (2) Bond means a general obligation bond, redevelopment  
22 bond, lease-purchase bond, revenue bond, or combination of any such  
23 bonds and a loan from the Wastewater Treatment Facilities  
24 Construction Loan Fund;

25           (3) Combined sewer overflow project means a municipal

1 project to reduce overflows from a combined sewer system pursuant to  
2 a long-term control plan approved by the Department of Environmental  
3 Quality;

4 (4) Eligible facility means any facility that is  
5 constructed or installed pursuant to an approved long-term control  
6 plan;

7 (5) General obligation bond means any bond or refunding  
8 bond issued by a municipality and which is payable from the proceeds  
9 of an ad valorem tax; and

10 (6) Revenue bond means any bond or refunding bond issued  
11 by a municipality which is not payable from the proceeds of an ad  
12 valorem tax.

13 Sec. 4. Except as provided in this section, any  
14 municipality that has acquired, constructed, improved, or equipped or  
15 has approved a general obligation bond issue or revenue bond issue to  
16 acquire, construct, improve, or equip eligible facilities may apply  
17 to the board for state assistance. The state assistance shall only be  
18 used (1) to repay the debt borrowed through one or more issues of  
19 bonds to be expended by the municipality to acquire, construct,  
20 improve, and equip eligible facilities until repayment in full of the  
21 amounts expended or borrowed by the municipality, including the  
22 principal of and interest on bonds, for eligible facilities and (2)  
23 to pay amounts to be expended by the municipality without the  
24 issuance of bonds to acquire, construct, improve, and equip eligible  
25 facilities. Any municipality that has applied for and received state

1 assistance under the Unfunded Federal Mandate Infrastructure  
2 Assistance Act may not receive state assistance under the Combined  
3 Sewer Overflow Infrastructure Assistance Act.

4           Sec. 5. (1) All applications for state assistance under  
5 the Combined Sewer Overflow Infrastructure Assistance Act shall be in  
6 writing and shall include a certified copy of the approving action of  
7 the governing body of the applicant describing the proposed eligible  
8 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 Combined Sewer Overflow  
24 Infrastructure Assistance Act, the board shall issue a finding that  
25 the combined sewer overflow project described in the application is

1 eligible for state assistance.

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

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

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

10 (1) Audit or review audits of the sewer use fees  
11 collected by the municipality to determine the state sales tax  
12 revenue and local option sales tax revenue collected by the  
13 municipality on the increase in monthly sewer use fees on and after  
14 July 1, 2013, attributable to the combined sewer overflow project;  
15 and

16 (2) Certify annually the amount of such state sales tax  
17 revenue collected by the municipality on such increased fees to the  
18 State Treasurer.

19 Sec. 8. (1) The Combined Sewer Overflow Infrastructure  
20 Fund is created. Upon the annual certification under subdivision (2)  
21 of section 7 of this act, the State Treasurer shall transfer ninety  
22 percent of the amount certified from the General Fund to the Combined  
23 Sewer Overflow Infrastructure Fund and ten percent of the amount  
24 certified from the General Fund to the Unfunded Federal Mandate  
25 Infrastructure Assistance Fund. Any money in the Combined Sewer

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

4           (2) The board shall distribute from the fund to any  
5 municipality for which an application for state assistance under the  
6 Combined Sewer Overflow Infrastructure Assistance Act has been  
7 approved an amount not to exceed the lesser of the total cost of  
8 acquiring, constructing, improving, or equipping the eligible  
9 facility or ninety percent of the state sales tax revenue collected  
10 by the municipality on the increase in monthly sewer use fees on and  
11 after July 1, 2013, attributable to the combined sewer overflow  
12 project. The distribution shall be conditioned upon the municipality  
13 using the local option sales tax revenue collected on the increase in  
14 monthly sewer use fees attributable to the combined sewer overflow  
15 project for the same purposes as permitted for the funds distributed  
16 under this section notwithstanding any terms or conditions set forth  
17 in the resolution proposing the local option sales tax. Funds  
18 distributed under this section shall be used only to assist with the  
19 costs of acquiring, constructing, improving, or equipping the  
20 eligible facilities, including any financing costs, shall be kept in  
21 a separate fund, and shall not be used to fund the general operations  
22 of the municipality.

23           (3) State assistance to the applicant shall no longer be  
24 available upon the retirement of the bonds issued to acquire,  
25 construct, improve, or equip the eligible facility or any subsequent

1 bonds that refunded the original issue, or if bonds are not issued,  
2 upon payment of the cost to acquire, construct, improve, or equip the  
3 eligible facility or when state assistance reaches the amount  
4 determined under subsection (2) of this section, whichever comes  
5 first.

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

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

23           Sec. 11. The Department of Revenue may adopt and  
24 promulgate rules and regulations to carry out the Combined Sewer  
25 Overflow Infrastructure Assistance Act.

1           Sec. 12. Sections 12 to 19 of this act shall be known and  
2 may be cited as the Unfunded Federal Mandate Infrastructure  
3 Assistance Act.

4           Sec. 13. For purposes of the Unfunded Federal Mandate  
5 Infrastructure Assistance Act:

6           (1) Department means the Department of Environmental  
7 Quality;

8           (2) Federally mandated project means a sewer or water  
9 project undertaken by a municipality as a result of an unfunded  
10 federal mandate; and

11           (3) Fund means the Unfunded Federal Mandate  
12 Infrastructure Assistance Fund.

13           Sec. 14. (1) The Unfunded Federal Mandate Infrastructure  
14 Assistance Fund is created. The fund shall be administered by the  
15 department. Any money in the fund available for investment shall be  
16 invested by the state investment officer pursuant to the Nebraska  
17 Capital Expansion Act and the Nebraska State Funds Investment Act.

18           (2) The department shall use the fund for grants of  
19 assistance for federally mandated projects and for reasonable and  
20 necessary costs of the department directly related to the  
21 administration of the fund, not to exceed the amount needed to employ  
22 a one-half full-time equivalent employee.

23           Sec. 15. (1) Any municipality that has received state  
24 assistance under the Combined Sewer Overflow Infrastructure  
25 Assistance Act shall not receive state assistance under the Unfunded

1 Federal Mandate Infrastructure Assistance Act.

2 (2) A municipality undertaking a federally mandated  
3 project may apply for a grant of assistance from the fund.  
4 Application shall be made on forms developed by the department. The  
5 application shall include a description of the unfunded federal  
6 mandate.

7 Sec. 16. (1) The department shall evaluate all  
8 applications for grants of assistance under section 14 of this act  
9 based on the following criteria, which are listed in no particular  
10 order of preference:

11 (a) The cost of the federally mandated project;  
12 (b) The scope of the federally mandated project;  
13 (c) The availability of local resources;  
14 (d) Any restrictions on local funding; and  
15 (e) The burden placed on local residents by the federally  
16 mandated project.

17 (2) Any grant of assistance shall be matched at least ten  
18 percent from local sources.

19 (3) To receive a grant of assistance, the project for  
20 which the grant is requested shall be owned and operated by the  
21 municipality that applies for the grant or a metropolitan utilities  
22 district.

23 Sec. 17. If a grant of assistance is approved by the  
24 department, the applicant shall receive conditional approval of the  
25 level of assistance. Projects shall receive funding from the fund in

1 the order conditional approval is received and whenever there is  
2 sufficient money in the fund to provide the assistance. It is the  
3 intent of the Legislature to appropriate funds to support projects  
4 which have received conditional approval from the department. A grant  
5 of assistance shall be finally approved when funds for the project  
6 are appropriated by the Legislature.

7           Sec. 18. The department shall annually submit the  
8 following information regarding the Unfunded Federal Mandate  
9 Infrastructure Assistance Act to the Governor and Legislature:

10           (1) Information documenting the grants conditionally  
11 approved for funding by the Legislature in the following fiscal year;

12           (2) Reasons why a full application was not sent to any  
13 municipality seeking assistance under the act;

14           (3) The amount of sales tax revenue generated for the  
15 fund pursuant to subsection (1) of section 8 of this act, the total  
16 amount of grants applied for under the act, the year-end fund  
17 balance, and, if all available funds have not been committed to  
18 funding grants under the act, an explanation of the reasons why all  
19 such funds have not been so committed;

20           (4) The amount of appropriated funds actually expended by  
21 the department for the year;

22           (5) The department's current budget for administration of  
23 the act and the department's planned use and distribution of funds,  
24 including details on the amount of funds to be expended on grants and  
25 the amount of funds to be expended by the department for

1 administrative purposes; and

2 (6) Grant summaries, including the applicant  
3 municipality, project description, grant amount requested, amount and  
4 type of matching funds, and reasons for approval or denial based on  
5 evaluation criteria for every application seeking assistance under  
6 the act.

7 The report submitted to the Legislature shall be  
8 submitted electronically to the Clerk of the Legislature.

9 Sec. 19. The department may adopt and promulgate rules  
10 and regulations to carry out the Unfunded Federal Mandate  
11 Infrastructure Assistance Act.