

A Bill for an Act Relating to Drinking Water.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds and declares that:

- (1) The protection of public health by the provision of safe drinking water and the prevention, reduction, and elimination of contaminants in drinking water is a public purpose;
- (2) Congress has provided for the funding of loans and other specified financial assistance for improvements to public water systems through the Safe Drinking Water Act Amendments of 1996, Public Law 104-182 (federal act);
- (3) Coordination of state and federal efforts to protect and improve drinking water quality should be encouraged;
- (4) The protection and improvement of the quality of drinking water supplied by public water systems can be encouraged, initiated, or financed with loans and other financial assistance; and
- (5) The state effort to protect and improve the quality of drinking water supplied by public water systems, including the provision of loans and other financial assistance to public water systems, including such systems that are privately owned, is a public purpose.

SECTION 2. Chapter 340E, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . DRINKING WATER FINANCING**

**§340E-A Definitions.** As used in this part, unless the context otherwise requires:

“Drinking water fund” means the drinking water treatment revolving loan fund established by section 340E-E.

**§340E-B Declaration of policy.** The State’s policy is to protect and improve drinking water quality by financing eligible projects consistent with applicable federal and state laws.

**§340E-C Powers and duties.** (a) The director may approve grants, loans, and other financial assistance consistent with this part and the Federal Act to eligible public water systems in the State.

(b) The director may enter into any necessary or required agreement and give or make any necessary or required assurance, designation, or certification with or to any person in order to receive payments or to make or provide any financial assistance in conformance with the Federal Act.

(c) The director may enter into grant agreements with the administrator of the United States Environmental Protection Agency and accept drinking water fund capitalization and other grants. Federal capitalization grants shall be used only for the drinking water fund and other uses allowed by the Federal Act (e.g., section 1452(a)(2), (a)(3), (d), (g)(2), and (k) of the Federal Act).

(d) The director may adopt rules pursuant to chapter 91 for the purposes of this part, including rules setting fees for loans and other financial assistance issued through the drinking water fund and penalties for default of loans or other financial assistance.

(e) The director shall establish fiscal controls and accounting procedures at least sufficient to assure proper accounting for appropriate accounting periods of payments, disbursements, revenues, and fees received and made for fund balances at the beginning and end of the accounting period. Federal funds in the drinking water fund shall be kept in a separate account or series of accounts from the account or accounts for state funds in the drinking water fund.

(f) The director may perform any act considered reasonably necessary, advisable, or expedient for the administration of this part or the advancement of the purposes of this part.

(g) The director may create one or more separate accounts or subaccounts within the drinking water fund and may specify any conditions applicable to the transfer of moneys and securities among such accounts and subaccounts.

(h) The director may create one or more separate accounts or subaccounts outside the drinking water fund to handle funds for programs and administrative expenses consistent with the Federal Act, and the director may specify any conditions applicable to the transfer of moneys and securities among such accounts and subaccounts and to the drinking water fund.

(i) Moneys in accounts outside the drinking water fund may be placed in interest bearing investments or otherwise invested at the discretion of the director until such time as the moneys may be needed. All interest accruing from the investment of these moneys shall be credited to accounts established under this part as the director considers appropriate.

(j) Not less than twenty days prior to the convening of each regular session of the legislature, the director shall submit to the legislature a financial report addressing the operations of the drinking water fund during the last completed fiscal year, including information on each grant, loan, or other financial assistance made during that year. The report shall include:

- (1) The name of the recipient;
- (2) The effective date of the financial assistance;
- (3) The amount provided; and
- (4) The intended or actual use of the funds.

**§340E-D Grants.** (a) The director may make grants to public water systems from state funds as authorized and appropriated by the legislature for the construction of necessary water treatment works or other related drinking water projects. Grants shall not be made from the drinking water fund.

(b) The director shall coordinate the granting of state funds with available federal funds for the same purpose. Grants involving federal funds shall be consistent with federal law.

(c) The director may allocate grants to drinking water projects on the basis of existing health concerns. No grant shall be made for any project unless:

- (1) The project conforms with the state grant plan to provide safe drinking water;
- (2) The project is certified by the director as being entitled to priority over other eligible projects on the basis of financial as well as drinking water quality needs; and
- (3) In the case of water treatment works, the applicant for the grant commits to maintain the water treatment plant efficiently and properly after its construction.

**§340E-E Drinking water treatment revolving loan fund; establishment, purpose.** There is established in the state treasury a fund to be known as the drinking water treatment revolving loan fund to be administered by the director. The fund shall be administered, operated, and maintained to remain available in perpetuity to

provide loans and other financial assistance to eligible public water systems for projects or activities eligible under this part and the Federal Act.

**§340E-F Drinking water fund; uses and limitations; types of assistance.**

(a) Moneys in the drinking water fund may be used only as allowed and limited by sections 1452(a)(2) and (3), 1452(d), and 1452(k)(1) and (2) of the Federal Act and this part. Such uses include loans and other financial assistance for facilitating compliance with applicable national primary drinking water regulations or otherwise significantly furthering the health protection objectives of the Federal Act.

(b) Moneys in the drinking water fund may be used only:

- (1) To provide, make, and condition loans;
- (2) To buy or refinance debt obligations of a municipality as defined by the Federal Act at or below market interest rates if the debt obligation is incurred after July 1, 1993;
- (3) To guarantee or purchase or provide insurance for a public water system obligation if such action would improve credit market access or reduce interest rates applicable to the obligation;
- (4) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of the bonds will be deposited into the drinking water fund; and
- (5) To earn interest on the amounts deposited into the drinking water fund.

(c) Five per cent of the moneys in the drinking water fund shall be set aside for use in the geographic areas of the State serviced by water catchment systems for the purposes identified in subsection (b); provided, if no such area qualifies for use of the moneys in the drinking water fund, the moneys shall no longer be set aside and revert back as unrestricted moneys to the fund.

**§340E-G Drinking water fund; conditions.** (a) No loan or other financial assistance shall be made from the drinking water fund for any project unless:

- (1) The project conforms with the state intended use plan to provide safe drinking water which meets section 1452 of the Federal Act;
- (2) The project is certified by the director as being entitled to priority over other eligible projects on the basis of financial as well as drinking water quality needs; and
- (3) In the case of water treatment works, the applicant for the loan or other financial assistance commits to maintain the water treatment works efficiently and properly after its construction.

(b) Except for subsidies to disadvantaged communities made consistently with section 1452(d) of the Federal Act, all loans from the drinking water fund shall:

- (1) Be made at or below market interest rates, including interest free loans;
- (2) Require payments of principal and interest with repayment commencing not later than one year after completion of the project for which the loan is made, and be fully amortized not later than twenty years after project completion, except that for disadvantaged communities an extended repayment term may be provided as allowed by the Federal Act;
- (3) Require the recipient of the loan to establish a dedicated source of revenue (or in the case of a privately owned system, demonstrate that there is adequate security) for the repayment of the loans. For a county, the dedicated source may be a pledge of the county's full faith and credit (a general obligation payable from its general fund), of special assessments, of revenues from an undertaking, system or improvements, including user charges, or of any other source of revenue; and

- (4) Be repaid, both principal and any interest, to the credit of the drinking water fund.

**§340E-H Drinking water fund; deposits.** The following may be deposited into the drinking water fund:

- (1) Federal capitalization grant funds and other federal grants, loans, or appropriations;
- (2) Appropriations by the legislature to the drinking water fund;
- (3) Payments of principal and interest, matching funds, and other amounts made by public water systems under loans or other agreements entered into with the director under this part;
- (4) Fees for loans and other items;
- (5) Moneys paid to the drinking water fund as a result of court-ordered awards of judgments;
- (6) Moneys paid to the drinking water fund in court-approved or out-of-court settlements;
- (7) All interest attributable to investment of moneys deposited in the drinking water fund; and
- (8) All moneys allotted or directed to the drinking water fund from other sources.

**§340E-I Drinking water fund; fees.** (a) If established, fees shall cover the costs of current activities, including the issuance of loans and other financial assistance, monitoring of loans and other financial assistance repayments and conditions, technical review of the planning and design documents, monitoring of construction activities, conducting operation and maintenance inspections of drinking water facilities, and activities of the drinking water fund under the Federal Act and shall be used exclusively to support the activities of the drinking water fund.

(b) All moneys collected as fees shall be deposited into an administrative expense account or accounts as needed to comply with the Federal Act and shall be used exclusively to support the activities of the drinking water fund.

**§340E-J Drinking water fund; interest and investment on accounts.** Moneys in the drinking water fund shall be placed in interest bearing investments or otherwise invested at the discretion of the director until such time as the moneys may be needed. All interest accruing from the investment of these moneys shall be credited to the drinking water fund.

**§340E-K Compliance.** The failure or inability of any public water system to receive funds under this part or any other loan or grant program, or any delay in obtaining the funds, shall not alter the obligation of the public water system to comply in a timely manner with all applicable requirements of this chapter or rules adopted under this chapter.”

SECTION 3. Chapter 340E, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§340E- Water catchment systems.** (a) The department shall establish a program to conduct annual testing of water from water catchment systems for lead and copper. Any resident residing in a legal dwelling which relies on a water catchment system for the resident’s water needs shall be eligible to participate in the program, subject to the department’s procedures and guidelines and the availability of program funds. Residents shall utilize a certified private analytical laboratory specified by the department or the department may conduct the tests. Participating

residents shall pay \$25 for the tests and the department shall cover the remainder of the testing cost. One set of tests a year for each legal dwelling may be requested under this program.

(b) The department shall establish procedures and guidelines for the testing which shall:

- (1) Identify sampling and analytical protocols;
- (2) Specify report and notice requirements; and
- (3) Determine participation eligibility procedures and requirements.

(c) The department shall establish a nonregulatory program that provides technical assistance to any resident residing in a legal dwelling which relies on a water catchment system for the resident's water needs for the purpose of improving water quality in that system. To the extent practicable, the department shall assist the resident by recommending practical and affordable methods to improve water quality, based on the specific design and conditions of the water catchment system.

**§340E- Capacity development.** The director may adopt rules to ensure that public water systems demonstrate technical, managerial, and financial capacity with respect to each state primary drinking water regulation in effect, or likely to be in effect, when the systems supply drinking water or commence operations."

SECTION 4. Section 340E-1, Hawaii Revised Statutes, is amended to read as follows:

**“§340E-1 Definitions.** As used in this [part:] chapter:

[(1)] “Department” means the department of health.

[(2)] “Director” means the director of [the department of] health or the director’s authorized agent.

[(3)] “Public water system” means a system which provides [piped] water for human consumption through pipes or other constructed conveyances if the system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes:

[(A)] (1) Any collection, treatment, storage, and distribution facilities controlled by the system and used primarily in connection with the system; and

[(B)] (2) Any collection or pretreatment storage facilities not under the control of, but which are used primarily in connection with the system.

[(4)] “Person” means an individual, corporation, company, association, partnership, county, city and county, state, or federal agency.

[(5)] “Federal agency” means any department, agency, or instrumentality of the United States.

[(6)] “Supplier of water” means any person who owns or operates a public water system.

[(7)] “Contaminant” means any physical, chemical, biological, or radiological substance or matter in water.

[(8)] “Administrator” means the administrator of the United States Environmental Protection Agency.

[(9)] “Federal Act” means the Safe Drinking Water Act, Public Law 93-523, as amended by the Safe Drinking Water Act Amendments of 1986, Public Law 99-339[.], and the Safe Drinking Water Act Amendments of 1996, Public Law 104-182. This Act is also known as Title XIV of the Public Health Service Act (42 U.S.C. §§300f et seq).

[(10)] “Primary [Drinking Water Regulation] drinking water regulation” means a regulation or rule which:

- [(A)] (1) Applies to public water systems;
- [(B)] (2) Specifies contaminants which, in the judgment of the director, may have any adverse effect on the health of persons;
- [(C)] (3) Specifies for each contaminant either:
  - [(i)] (A) A maximum contaminant level if, in the judgment of the director, it is economically and technologically feasible to ascertain the level of such contaminant in public water systems; or
  - [(ii)] (B) If, in the judgment of the director, it is not economically or technologically feasible to ascertain the contaminant level<sup>1</sup> each treatment technique known to the director which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 340E-2; and
- [(D)] (4) Contains criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels, [it includes] including accepted methods for quality control and testing procedures to insure compliance with such levels and proper operation and maintenance of the system, and requirements as to:
  - [(i)] (A) The minimum quality of water which may be taken into the system; and
  - [(ii)] (B) Siting for new facilities for public water systems. Quality control and testing procedures published in the Federal Register as guidance by the administrator may be adopted by the director by rule as an alternative for public water systems to the quality control and testing procedures listed in the corresponding and previously promulgated federal primary drinking water regulation.

[(11)] “Secondary [Drinking Water Regulation] drinking water regulation” means a regulation or rule which applies to public water systems and which specifies the maximum contaminant levels which, in the judgment of the director, are requisite to protect the public welfare.

[(12)] “National [Primary Drinking Water Regulations] primary drinking water regulations” means primary drinking water regulations promulgated by the administrator pursuant to the Federal Act.

[(13)] “Injection” means the subsurface emplacement of any material, liquid, semi-solid, or solid, or any admixture thereof, which may add a contaminant to underground waters.”

SECTION 5. Section 340E-6, Hawaii Revised Statutes, is amended to read as follows:

**“§340E-6 Notification of users and department.** (a) Whenever a public water system:

- (1) Fails to comply with an applicable maximum contaminant level, treatment technique, or testing procedure requirement of a state primary drinking water regulation;
- (2) Fails to perform monitoring required by regulations adopted by the director;
- (3) Is subject to a variance granted for an inability to meet a maximum contaminant level requirement;
- (4) Is subject to an exemption; or
- (5) Fails to comply with the requirements of any schedule prescribed by such a variance or exemption;

the public water system shall promptly notify the department, and in the case of a violation under subsection (a)(1), the local communications media, of the conditions and the extent to which they may impose adverse effects on public health and the corrective action being taken when appropriate.

(b) [Notification shall be provided as follows:

- (1) Notice of any violation of a maximum contaminant level or any other violation determined by the director as posing a serious potential adverse health effect shall be given as soon as possible, but in no case later than fourteen days after the violation;
- (2) Notice of a continuous violation of subsection (a) other than a violation of a maximum contaminant level shall be given not less frequently than every three months;
- (3) Notice of a variance or exemption shall be given not less frequently than every three months;
- (4) The public water system shall also publish notice in a newspaper of general circulation within the areas served by the public water system. The notice shall also accompany the water bills of the public water system so long as the violation, variance, or exemption continues; and] Notice of any violation determined by the director as posing a serious adverse health effect as a result of short term exposure shall be given as soon as practicable, but not later than twenty four hours after the violation.

[(5)] (c) The director shall prescribe by rules the form, content, and manner for giving [such] notice. The rules may contain such additional public notification requirements as the director determines are necessary to best effectuate the purpose of this [section] chapter, including consumer confidence reports, and may also contain alternative notice requirements [for systems principally serving nonresident users.] as allowed by the Federal Act.”

SECTION 6. Section 340E-7, Hawaii Revised Statutes, is amended to read as follows:

“**§340E-7 Prohibited acts.** (a) No supplier of water shall violate any rule adopted pursuant to section 340E-2.

(b) No supplier of water shall violate any condition or provision of a variance, exemption, permit, or other written authorization issued under this part.

(c) No supplier of water shall violate any requirement of an emergency plan promulgated pursuant to section 340E-5.

(d) No supplier of water shall violate any rule adopted under section 340E-6 or disseminate any false or misleading information with respect to notices required pursuant to section 340E-6 or with respect to remedial actions undertaken to achieve compliance with state primary drinking water regulations.

(e) No person shall violate any order issued by the director pursuant to this part.

(f) No person shall cause a public water system to violate the state primary drinking water regulations.

(g) No person shall violate underground injection control rules adopted pursuant to this part.

(h) No person shall fail or refuse to comply with the director’s authority to inspect the premises of a supplier of water pursuant to section 340E-4.6.

(i) No person shall install or repair any public water system or any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system with any pipe, solder, or flux that is not lead free. “Lead free” with respect to solders and flux means containing not more

than 0.2 per cent lead and with respect to pipes and pipe fittings means containing not more than 8.0 per cent lead. This subsection shall not apply to leaded joints necessary for the repair of cast iron pipes.

(j) No person shall violate rules on public water system capacity adopted pursuant to this part.”

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date. Rules adopted pursuant to chapter 340E, Hawaii Revised Statutes, shall remain in effect until the rules are amended, repealed, or replaced.

SECTION 8. This Act shall not be construed to limit powers set forth in chapter 340E, Hawaii Revised Statutes, and not amended or repealed by this Act.

SECTION 9. In codifying the new part added to chapter 340E, Hawaii Revised Statutes, by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the new sections’ designations in this Act.

SECTION 10. In revising the statutes, the revisor of statutes shall alphabetize the definitions in section 340E-1, Hawaii Revised Statutes.

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 12. This Act shall take effect upon its approval.

(Approved June 16, 1997.)

#### Notes

1. Prior to amendment “,” appeared here.
2. Edited pursuant to HRS §23G-16.5.