

A Bill for an Act Relating to Water Pollution Control.

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

SECTION 1. Chapter 342D, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . WATER POLLUTION CONTROL FINANCING**

**§342D-A Definitions.** As used in this part, unless the context otherwise requires:

“Corpus allocation” means the amount of moneys in the revolving fund which is allocated by the director to provide earnings to reduce a county or state agency’s total financing costs for one or more eligible projects.

“Revolving fund” means the water pollution control revolving fund established by section 342D-D.

**§342D-B Declaration of policy.** The State’s policy is to promote water pollution prevention and control by financing county and state agency eligible projects consistent with applicable federal and state laws. The State intends such financing to occur through a revolving fund loan program that makes loans to counties and state agencies at or below market rates and a leveraging program that uses revenue bonds and revolving fund loan programs together in a coordinated manner that does not cause the state debt ceiling to be exceeded.

**§342D-C Powers and duties.** (a) In addition to any other power or duty prescribed by law, the director shall:

- (1) 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;
  - (2) Comply with sections 39-61 and 39-62 and ensure that any revenue bonds issued are excluded from the state constitutional debt ceiling. The revolving fund is a “special fund” within the meaning of Article VII, section 13, of the State Constitution and part III of chapter 39. The revolving fund is not a “special fund” within the meaning of sections 36-27 and 36-30; and
  - (3) No later than twenty days prior to the convening of each regular session of the legislature, submit to the legislature a financial report addressing the operations of the revolving fund during the last completed fiscal year.
- (b) The director may:
- (1) Provide financial assistance consistent with this part to any county or state agency for the prevention, control, and abatement of water pollution in the State;
  - (2) 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 title 33 United States Code sections 1329, 1330, and 1383 to 1387;
  - (3) Enter into grant agreements with the administrator of the United States Environmental Protection Agency and accept capitalization grants;

- (4) Adopt rules pursuant to chapter 91 for the purposes of this part, including rules setting fees for loans issued through the revolving fund and penalties for default of loan repayments;
- (5) Pledge funds, loans, and accounts or subaccounts in the revolving fund to the payment or security of revenue bonds or loans issued under this part and make such corpus allocations as the director deems appropriate. The pledge shall constitute a lien and security interest on such funds and loans to the extent and with the priority as set forth in the document establishing the pledge, without physical delivery, recording, or other further act;
- (6) Perform any act considered reasonably necessary, advisable, or expedient for the administration of this part or the advancement of the purposes of this part; and
- (7) Direct the creation of one or more separate accounts or subaccounts within the revolving fund and specify any conditions applicable to the transfer of moneys and securities among such accounts and subaccounts.

**§342D-D Revolving fund; establishment, purposes, coordination.** (a)

There is established in the state treasury a fund to be known as the water pollution control revolving fund to be administered by the director. The revolving fund shall be administered, operated, and maintained to remain available in perpetuity for its stated purpose.

(b) The purpose of the revolving fund is to provide financial assistance to counties and state agencies for projects or activities to:

- (1) Plan, design, and construct publicly owned wastewater treatment works in accordance with title 33 United States Code sections 1381 to 1387;
- (2) Implement management programs established under title 33 United States Code section 1329; and
- (3) Implement conservation and management plans established under title 33 United States Code section 1330.

**§342D-E Revolving fund; uses.** (a) Moneys in the revolving fund, if consistent with the purpose of the revolving fund stated in section 342D-D(b), may be used to:

- (1) Provide, make, and condition loans;
- (2) Guarantee county or state agency loans and bonds and to purchase or provide bond insurance or other credit enhancement or liquidity support for county or state agency debt service payments where such action would improve credit market access or reduce interest rates;
- (3) Buy or refinance debt obligations of counties or state agencies at or below market rates, where such debt obligations were incurred after March 7, 1985;
- (4) Support and pay the reasonable costs of administering the revolving fund, including operation and maintenance of the revolving fund, subject to the limits in title 33 United States Code section 1383(d)(7) and title 40 Code of Federal Regulations section 35.3120(g), and to provide a source of revenue or security for such support and payment;
- (5) Pay the principal, interest, and redemption premium, if any, on revenue bonds issued by the director if the proceeds of such revenue bonds will be deposited in the revolving fund; and
- (6) Provide interest rate subsidies from earnings on corpus allocation to subsidize loans to counties and state agencies made from the proceeds of the revenue bonds of the department.

(b) The entire water pollution control loan program, and not only those accounts or subaccounts funded by revenue bond proceeds, shall be subject to section 39-61 for the purposes of accomplishing leveraging and exclusion of the revenue bonds from the state constitutional debt ceiling.

**§342D-F Revolving fund; deposits.** The following may be deposited into the revolving fund:

- (1) Federal capitalization grant funds and other federal grants, loans, or appropriations;
- (2) Appropriations by the legislature to the revolving fund;
- (3) Payments of principal and interest and other amounts made by counties and state agencies pursuant to loans or other agreements entered into with the director pursuant to this part; provided that if such loans were financed by proceeds of revenue bonds of the director, the deposit of such payments into the revolving fund shall be subject to the rights of the holders of the bonds to receive such moneys;
- (4) Fees for loans and other items under section 342D-G;
- (5) Proceeds of revenue bonds issued by the director for the purpose of providing financial assistance to counties and state agencies;
- (6) Moneys paid to the revolving fund as a result of court ordered awards of judgments;
- (7) Moneys paid to the revolving fund in court-approved or out-of-court settlements;
- (8) All interest attributable to investment of moneys deposited in the revolving fund; and
- (9) All moneys allotted or directed to the revolving fund from other sources.

**§342D-G Revolving fund; fees, interest, and investment on accounts.** (a) The director may establish fees for loans, loan and bond guarantees, debt purchase and refinancing, interest rate subsidies, and other credit enhancement or liquidity support issued or provided through the revolving fund.

(b) The director shall adopt rules pursuant to chapter 91 for the purposes of this part, including fees for loans and other financial assistance, and penalties for default of loan and other financial assistance repayments.

(c) 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 wastewater facilities, and other activities of the revolving fund pursuant to title 33 United States Code sections 1381 to 1387.

(d) All moneys collected as fees shall be deposited into an administrative expense account or accounts as needed to comply with title 33 United States Code section 1383(d)(7) and shall be used exclusively to support the activities of the revolving fund.

(e) Moneys in the revolving 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 revolving fund; provided that moneys which are pledged as security for payment of revenue bonds may be invested as provided in section 342D-L.

**§342D-H Revolving fund; conditions.** (a) The following conditions shall apply to each project receiving water pollution control financing under this part:

- (1) The project shall conform with the state water quality management plan developed under title 33 United States Code section 1285(j), 1288, 1313(e), 1329, or 1330;
- (2) The project shall be certified by the director as entitled to priority over other eligible projects on the basis of financial and water pollution control needs;
- (3) In the case of wastewater treatment works construction projects, the application or agreement for the loan shall contain:
  - (A) Reasonable assurances that the applicant will provide for the proper and efficient operation and maintenance of the treatment works after its construction;
  - (B) Reasonable assurances by the applicant that an impact fee structure will be instituted to ensure that new developments pay their appropriate share of the costs of the wastewater treatment works, as determined by the counties; and
  - (C) Such other provisions required by federal or state law or deemed necessary or convenient by the director;
- (4) The county or state agency receiving these funds for a construction project shall require the installation of the low flow water fixtures and devices for faucets, hose bibbs, showerheads, urinals, and toilets in all new construction projects; provided that the fixtures and devices shall be approved by the International Association of Plumbing and Mechanical Officials and shall comply with applicable American National Standards Institute standards and such other standards as may be required by the respective county for all new residential and public buildings; and
- (5) The county receiving these funds shall take specific steps to reduce polluted runoff into state waters through educational and regulatory programs.
  - (b) The use of federal funds and state matching funds in the revolving fund shall be in conformance with title 33 United States Code sections 1381 to 1387.
  - (c) The director may make and condition loans from the revolving fund which shall:
    - (1) Be made at or below market interest rates;
    - (2) Require periodic 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
    - (3) Be fully amortized not later than twenty years after project completion.
  - (d) No loan of funds from the revolving fund shall be made unless the loan recipient pledges a dedicated source of revenue for the repayment of the loans. This pledge may be a county's full faith and credit (a general obligation payable from its general fund), special assessments, revenues from an undertaking, system, or improvements, including user charges, or any other source of revenue.

**§342D-I Revenue bonds; authorization.** (a) The director of health, with the approval of the governor and the director of budget and finance, may issue revenue bonds at such times and in such amount or amounts, not to exceed \$250,000,000 in aggregate principal, as may be necessary to carry out the purposes of this part.

(b) All such bonds shall be issued pursuant to part III of chapter 39, except as provided in this part.

(c) The resolution or certificate providing for the issuance of the bonds may provide that all or part of the proceeds of the bonds shall be deposited in the revolving fund, where the proceeds shall be held and invested in a separate account or accounts until used in accordance with section 342D-E.

**§342D-J Revenue bonds; payment and security.** (a) The revenue bonds shall be payable from and secured by the revenues derived from the benefits of the water pollution control loan program for which the revenue bonds are issued, including:

- (1) Any repayment of eligible loans or other agreements entered into for the water pollution control loan programs;
- (2) Revenues derived from insurance proceeds; and
- (3) Reserve accounts and earnings thereon.

(b) The director may pledge any and all revenues derived from the water pollution control loan program to the punctual payment of the principal, interest, and redemption premiums, if any, on the revenue bonds.

(c) The revenue bonds may be additionally secured by the pledge or assignment of the loans and other agreements or any note, other undertaking, or obligation held by the director or the department to secure the loans.

(d) The director may issue such types of bonds as the director may determine, including bonds on which the principal and interest are payable exclusively from the income and revenues of the water pollution control loan program.

**§342D-K Revenue bonds; amount issued.** The director may include the costs of undertaking, administering, operating, and maintaining the water pollution control loan programs for which the bonds are issued in determining the principal amount of bonds to be issued. In determining the cost of undertaking, administering, operating, and maintaining the loan programs, the director may include the cost of studies and surveys; insurance premiums; underwriting fees; financial consultants, legal, accounting, and other services incurred; reserve account, trustee, custodian, and rating agency fees; and interest on the bonds for a period not to exceed one year beyond the estimated completion of the loan projects for which the bonds are issued.

**§342D-L Revenue bonds; investment of proceeds, and redemption.** Subject to any agreement with the holders of its revenue bonds, the director may:

- (1) Invest moneys not required for immediate use, including proceeds from the sale of any revenue bonds, funds held in reserve or sinking funds or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control. No provisions with respect to the investment of moneys or the acquisition, operation, or disposition of property by other public bodies shall be applicable to the director or department unless the legislature shall specifically so state; and
- (2) Purchase revolving fund revenue bonds out of any fund or money available therefor, and hold, cancel, or resell the revenue bonds.

**§342D-M Trustee; designation; duties.** The director may designate a trustee for each issue of revenue bonds secured under the same indenture; provided that the trustee may be approved by the director of finance. The trustee may have any duties and functions authorized by part III of chapter 39, as deemed necessary, advisable, or expedient by the director for the purposes of this part.

**§342D-N Trust indenture.** (a) Any trust indenture entered into by the director may contain covenants and provisions as authorized by part III of chapter 39, and approved by the director of finance, as deemed necessary, advisable, or expedient by the director for the purposes of this part.

(b) A trust indenture may also contain provisions deemed necessary, advisable, or expedient by the director to obtain or permit, by grant, interest subsidy, or otherwise, the participation of the federal government in the water pollution control

loan program or in the financing of the costs of administering, operating, or maintaining the water pollution control loan program to which such trust indenture relates.’’

SECTION 2. Section 342D-54, Hawaii Revised Statutes, is amended to read as follows:

“**§342D-54 Wastewater treatment works; financial assistance; [state revolving fund.] grants.** (a) The director may make grants [or loans, or both,] to any county or state [or county] agency [of state funds as authorized and appropriated by the legislature] for the construction of necessary wastewater treatment works and for other projects intended for wastewater reclamation or waste management by other than conventional means to prevent or to control the discharge of untreated or inadequately treated sewage or other waste into any state waters[; provided that the director may allocate grants or loans, or both, to projects on the basis of existing and future growth patterns. The director shall coordinate the granting of state funds with available federal funds for the same purpose].

(b) No grant [or loan] shall be made for any project unless:

- (1) The project conforms with the state water pollution control plan;
- (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 water pollution control needs;
- (3) In the case of wastewater treatment works, the application for the grant [or loan, or both,] contains the following:
  - (A) Reasonable assurances that the applicant will provide for the proper and efficient operation and maintenance of the wastewater treatment works after its construction; and
  - (B) Reasonable assurances by the applicant that an impact fee structure will be instituted to [insure] ensure that new developments pay their appropriate share of the costs of the wastewater treatment works, as determined by the counties; [and]
- (4) The county or state [or county] agency receiving these state funds requires the installation of the low flow water fixtures and devices for faucets, hose bibbs, showerheads, urinals, and toilets in all new construction projects, and the fixtures and devices shall be approved by the International Association of Plumbing and Mechanical Officials and shall comply with applicable American National Standards Institute standards and other standards as may be required by the respective county for all new residential and public buildings[.]; and
- (5) The department, where appropriate, determines that the county receiving these funds has taken specific steps to reduce polluted runoff into state waters through educational and regulatory programs.

[(b) If the federal funds are not immediately available, the director may advance the federal share of the planning and design cost to the county or state agency, subject to the following provisions:

- (1) The director shall enter into a contract with the applicant specifying the conditions of the advance; and
- (2) The advances made by the State to the county or state agency shall be reimbursed to the State immediately upon the receipt from the federal government of the advanced funds or within one year after the completion of project construction, whichever is earlier.]

(c) If federal grant funds are available, the applicant shall be required to pay sixty per cent of the nonfederal share of the estimated reasonable cost of the approved wastewater treatment works as defined by title 33 United States Code

section 1251 et seq. If federal grant funds are not available, the director may make grants [or loans, or both,] up to one hundred per cent of the estimated cost of the project.

[(c) There is established in the state treasury a fund to be known as the water pollution control revolving fund solely for the purpose of providing financial assistance to governmental agencies for the planning, design, and construction of wastewater treatment works owned by a governmental agency, and for programs and plans under 33 United States Code section 1383(c); provided that:

- (1) The director may enter into grant agreements with the administrator of the United States Environmental Protection Agency and accept capitalization grants that shall be deposited into the revolving fund;
- (2) The financial assistance that may be provided to governmental agencies from federal funds and matching state funds in the revolving fund shall be limited to those projects and types of assistance allowed under 33 United States Code section 1383. Federal funds shall be kept in a separate account or series of accounts from the account or accounts for state funds in the revolving fund;
- (3) The revolving fund shall be established, maintained, and credited with loan and other financial assistance repayments and investment income, and the fund balance shall be available in perpetuity for its stated purpose;
- (4) The director may make and condition loans from the fund as required by state or federal law. These loans shall:
  - (A) Be made at or below market interest rates;
  - (B) Require annual 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
  - (C) Be fully amortized not later than twenty years after project completion;
- (5) The director shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for appropriate accounting periods of payments and disbursements received and made by the revolving fund and for fund balances at the beginning and end of the accounting period;
- (6) The director may enter into any necessary or required agreement and give or make any necessary or required assurance or certification with any person to receive payments or grants or to make or provide any financial assistance in conformance with 33 United States Code sections 1381 to 1387;
- (7) No loan from the revolving fund shall be made unless the loan recipient establishes a dedicated source of revenue for the repayment of the loan;
- (8) The director shall adopt rules pursuant to chapter 91 for the purposes of this section, including but not limited to fees for loans and other financial assistance, and penalties for default of loan and other financial assistance repayments;
- (9) 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 wastewater facilities, and other activities of the revolving fund pursuant to 33 United States Code sections 1381 to 1387; all moneys collected as fees shall be deposited into an administrative expense account or accounts as needed to comply with 33 United States Code section

1383(d)(7) and shall be used exclusively to support the activities of the revolving fund; and

- (10) Not less than twenty days prior to the convening of each regular session of the legislature, the director shall submit a report to the legislature of all grants or loans made from the revolving fund during the last completed fiscal year, and during the first three months of the fiscal year in progress. For each grant or loan, the report shall include:
- (A) The name of the recipient;
  - (B) The effective date of the grant or loan;
  - (C) The amount provided; and
  - (D) The intended or actual use of the funds.]

(d) Nothing in this section shall restrict the director's authority to make grants [or loans, or both,] to wastewater treatment works or projects granted waivers under title 33 United States Code section 1311(h).

(e) The department of budget and finance, with the approval of the governor, is authorized to issue revenue bonds at such times and in such amount or amounts, not to exceed \$250,000,000 in aggregate principal, as may be necessary to carry out the purposes of this section. All such bonds shall be issued pursuant to part III of chapter 39, except as provided in this section. The resolution or certificate providing for the issuance of the bonds may provide that all or part of the proceeds of the bonds shall be deposited in the revolving fund, where the proceeds may be held and invested in a separate account or accounts until used in accordance with subsection (c). For the purposes of providing a source of revenue or security for these bonds, the director may pledge funds deposited or to be deposited in the revolving fund to the payment or security of the bonds or the loans, and the pledge shall constitute a lien and security interest on the funds to the extent and with the priority set forth in the document establishing the pledge, without physical delivery, recording, or other further act.]

(e) No moneys used or available for financing under part shall be used for grants under this section.

(f) No later 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 status of each grant made during the last completed fiscal year."

SECTION 3. All grants, loans, agreements, and acts which were made before the effective date of this Act under section 342D-54, Hawaii Revised Statutes, are hereby preserved.

SECTION 4. In codifying the new part added to chapter 342D, Hawaii Revised Statutes, by section 1 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 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 16, 1997.)