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# A BILL FOR AN ACT

RELATING TO WATER POLLUTION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The purpose of this Act is to improve the  
2 State's ability to control and reduce water pollution from  
3 nonpoint sources and individual wastewater systems. This Act  
4 requires the director of health to establish by rule fees to  
5 fund programs that reduce pollution from nonpoint sources and  
6 operating fees for owners of individual wastewater systems.

7           SECTION 2. Chapter 342D, Hawaii Revised Statutes, is  
8 amended by adding two new sections to be appropriately  
9 designated and to read as follows:

10           "§342D-A Revolving fund; water pollution control account.

11           (a) There is established within the water pollution control  
12 revolving fund established under section 342D-83, a separate  
13 account to be designated as the water pollution control account  
14 and into which shall be deposited:

15           (1) All revenues generated from the fees authorized in  
16 rules adopted pursuant to chapter 91 under section  
17 342D-B and 342E-E;



- 1        (2) Any moneys appropriated from the general revenues of  
2        the State for these purposes; and
- 3        (3) All interest earned or accrued on moneys deposited  
4        into the water pollution control account shall become  
5        a part of the account.
- 6        (b) The moneys in the water pollution control account  
7        shall be expended by the department for controlling and reducing  
8        pollution from point sources, nonpoint sources, and individual  
9        wastewater systems, as those terms are defined in section 342E-  
10       1, including by:
- 11       (1) Preparing generally applicable rules or guidelines;  
12       (2) Implementing and enforcing the terms and conditions of  
13       any rules, permits, and management plans, as defined  
14       in section 342E-1, relating to point source pollution  
15       and nonpoint source pollution, as those terms are  
16       defined in section 342E-1, and department-approved  
17       plans for individual wastewater systems, as defined in  
18       section 342E-1, including legal support as defined by  
19       rules;
- 20       (3) Monitoring discharges from point sources, nonpoint  
21       sources, and individual wastewater systems;



- 1        (4) Performing or reviewing modeling, analyses, and  
2                demonstrations; and  
3        (5) Administering the water pollution control account.

4        **§342D-B Operating fees; individual wastewater systems.**

5        The director shall adopt rules pursuant to chapter 91  
6        establishing operating fees for owners of individual wastewater  
7        systems, as defined in section 342E-1, to be collected by the  
8        counties along with property taxes or by any other alternative  
9        mechanism as the director may provide by rule. Counties that  
10       collect fees pursuant to this section shall timely remit the  
11       fees minus reasonable collection charges as the director may  
12       establish by rule after consultation with the counties, for  
13       deposit to the credit of the water pollution control account  
14       established under section 342D-A."

15       SECTION 3. Chapter 342E, Hawaii Revised Statutes, is  
16       amended by adding thirteen new sections to be appropriately  
17       designated and to read as follows:

18       **"§342E-A Management plans; procedures for.** (a) Where the  
19       director finds that an area has nonpoint source pollution that  
20       is impairing state waters, the director may order in writing  
21       that any person in that area, including any public entity, but  
22       not including any farming operation as defined in section 165-2,



1 or any system for supplying agricultural irrigation water, or  
2 any landowner owning property of less than ten acres in the  
3 area, file a management plan application for approval by the  
4 director prior to discharging any water pollutant into state  
5 waters from a nonpoint source, other than an individual  
6 wastewater system, or causing or allowing any water pollutant to  
7 enter state waters from a nonpoint source.

8 (b) An application for approval of a management plan shall  
9 be in a form prescribed by the director; provided that the  
10 director shall attempt to coordinate with agencies responsible  
11 for soil conservation plans and stormwater management plans to  
12 make the forms as identical as reasonably feasible consistent  
13 with the department's duty to prevent, control, and abate water  
14 pollution in the State. The department may require that an  
15 application for approval of a management plan be accompanied by  
16 plans, specifications, and any other information that it deems  
17 necessary to determine whether the proposed installation,  
18 alteration, or use will be in accord with applicable rules and  
19 standards, including water quality standards and standards of  
20 performance for specific areas and types of discharges in the  
21 control of water pollution, thereby allowing for varying local



1 conditions, as adopted by the director in rules pursuant to  
2 section 342D-5.

3 (c) The director shall approve a management plan for a  
4 term not to exceed five years, if the director determines that  
5 it will be in the public interest; provided that the management  
6 plan may be subject to any reasonable conditions that the  
7 director may prescribe. The director, on application, shall  
8 renew a management plan from time to time for a term not  
9 exceeding five years if the director determines that it will be  
10 in the public interest. The director shall not deny an  
11 application for the approval or renewal of a management plan  
12 without affording the applicant an opportunity for a hearing in  
13 accordance with chapter 91. A request for a hearing and any  
14 judicial review of the hearing decision shall not stay the  
15 effect of the approval or renewal of a management plan unless  
16 specifically ordered by the director or a court.

17 (d) Applicants shall comply with all department orders,  
18 conditions of approval, and minimum criteria that the department  
19 may establish by rule.

20 (e) The director, on the director's own motion or the  
21 application of any person, may modify, suspend, revoke, or  
22 revoke and reissue any management plan approval if, after



1 affording the applicant an opportunity for a hearing in  
2 accordance with chapter 91, the director determines that:

3 (1) There is a violation of any condition of the  
4 management plan;

5 (2) The management plan was obtained by misrepresentation  
6 or the applicant failed to disclose fully all relevant  
7 facts;

8 (3) There is a change in any condition that requires  
9 either a temporary or permanent change in the  
10 management plan; or

11 (4) It is in the public interest.

12 (f) The director shall ensure that the public receives  
13 notice of each application for a management plan approval. The  
14 director may hold a public hearing before ruling on an  
15 application for a management plan approval if the director  
16 determines the public hearing to be in the public interest. In  
17 determining whether a public hearing would be in the public  
18 interest, the director shall be guided by whether the director  
19 finds, on the basis of requests, a significant degree of public  
20 interest in a management plan or a need to clarify issues in a  
21 management plan.



1       (g) In determining the public interest regarding  
2 management plan approval issuance or renewal, the director shall  
3 consider the environmental impact of the plan, any adverse  
4 environmental effects that cannot be avoided if the plan is  
5 implemented, the alternatives to the plan, the relationship  
6 between local short-term uses of the environment and the  
7 maintenance and enhancement of long-term productivity, any  
8 irreversible and irretrievable commitments of resources that  
9 would be involved in the plan if it is implemented, and any  
10 other factors that the director, by rule, may prescribe;  
11 provided that any determination of public interest shall promote  
12 the optimum balance between economic development and  
13 environmental quality.

14       (h) No applicant for a modification or renewal of a  
15 management plan approval shall be held in violation of this  
16 chapter during the pendency of the applicant's application so  
17 long as the applicant acts consistently with the management plan  
18 previously granted and the application and all plans,  
19 specifications, and other information submitted as part thereof.

20       (i) The director shall establish an outreach program to  
21 provide landowners and owners of individual waste water systems  
22 with assistance in complying with this section, including



1 guidance on the management plan application process and the  
2 requirements of this section, and education on nonpoint source  
3 pollution and its prevention, sewer connections, and upgrades.

4 §342E-B Enforcement. (a) If the director determines that  
5 any person has violated or is violating this chapter, any rule  
6 adopted pursuant to this chapter, any management plan approval  
7 issued pursuant to this chapter, or any water quality standard,  
8 thereby allowing for varying local conditions, as adopted by  
9 rule pursuant to section 342E-3, the director:

10 (1) Shall cause written notice to be served upon the  
11 alleged violator or violators. The notice shall  
12 specify the alleged violation and may contain an order  
13 specifying a reasonable time during which that person  
14 shall be required to take any measures that may be  
15 necessary to correct the violation and to give  
16 periodic progress reports;

17 (2) May require that the alleged violator or violators  
18 appear before the director for a hearing at a time and  
19 place specified in the notice and answer the charges  
20 complained of; and

21 (3) May impose penalties as provided in section 342E-I by  
22 sending written notice, by certified mail or by





1 personal service, to the alleged violator or violators  
2 describing the violation; provided that no penalties  
3 may be imposed until at least one year has transpired  
4 from the date of service of the notice required under  
5 paragraph (1) and efforts at achieving voluntary  
6 compliance have not been successful.

7 (b) If the director determines that any person is  
8 continuing to violate this chapter, any rule adopted pursuant to  
9 this chapter, or any management plan approval issued pursuant to  
10 this chapter after having been served notice of violation, the  
11 director:

12 (1) Shall cause written notice to be served upon the  
13 alleged violator or violators. The notice shall  
14 specify the alleged violation and shall contain an  
15 order requiring that person to submit a written  
16 schedule within thirty days specifying the measures to  
17 be taken and the time within which the measures shall  
18 be taken to bring that person into compliance with  
19 this chapter, any rule adopted pursuant to this  
20 chapter, or any management plan approval issued  
21 pursuant to this chapter;



1       (2) Shall accept or modify the schedule submitted under  
2       paragraph (1) within thirty days of receipt of the  
3       schedule. Any schedule not acted upon after thirty  
4       days of receipt by the director shall be deemed  
5       accepted by the director;

6       (3) Shall issue to the alleged violator or violators a  
7       cease and desist order against the activities that  
8       violate this chapter, any rule adopted pursuant to  
9       this chapter, or any management plan approval issued  
10       pursuant to this chapter if that person does not  
11       submit a written schedule to the director within the  
12       timeline specified in paragraph (1). The order shall  
13       remain in effect until the director accepts the  
14       written schedule; and

15       (4) May impose penalties as provided in section 342E-I by  
16       sending a notice in writing, either by certified mail  
17       or by personal service, to the alleged violator or  
18       violators describing the violation.

19       (c) If the director determines that any person has  
20       violated an accepted schedule or an order issued under this  
21       section, the director shall impose penalties by sending a notice  
22       in writing, by certified mail or by personal service, to that



1 person, describing the nonadherence or violation with reasonable  
2 particularity.

3 (d) Any order issued under this chapter shall become  
4 final, unless not later than twenty days after the notice of  
5 order is served, the person named therein requests in writing a  
6 hearing before the director. Any penalty imposed under this  
7 chapter shall become due and payable twenty days after the  
8 notice of penalty is served unless the person named therein  
9 requests in writing a hearing before the director. Whenever a  
10 hearing is requested on any penalty imposed under this chapter,  
11 the penalty shall become due and payable only upon completion of  
12 all review proceedings and the issuance of a final order  
13 confirming the penalty in whole or in part. Upon request for a  
14 hearing, the director shall require that the alleged violator  
15 appear before the director for a hearing at a time and place  
16 specified in the notice and answer the charges complained of.

17 (e) Any hearing conducted under this section shall be  
18 conducted as a contested case under chapter 91. If after a  
19 hearing held pursuant to this section, the director finds that a  
20 violation has occurred, the director shall affirm or modify any  
21 penalties imposed or shall modify or affirm the order previously  
22 issued or issue an appropriate order for the prevention,



1 abatement, or control of the violation or water pollution  
2 discharges involved or for the taking of other corrective action  
3 as may be appropriate. If, after a hearing on an order or  
4 penalty contained in a notice, the director finds that no  
5 violation has occurred or is occurring, the director shall  
6 rescind the order or penalty. Any order issued after hearing  
7 may prescribe the date by which any violation shall cease and  
8 may prescribe a timetable for necessary action in preventing,  
9 abating, or controlling the violation or water pollution  
10 discharges.

11 (f) If the amount of any penalty is not paid to the  
12 department within thirty days after it becomes due and payable,  
13 the director may institute a civil action in the name of the  
14 State to collect the administrative penalty, which shall be a  
15 government realization.

16 In any proceeding to collect the administrative penalty  
17 imposed, the director need only show that:

- 18 (1) Notice was given;  
19 (2) A hearing was held or the time granted for requesting  
20 a hearing expired without a request for a hearing;  
21 (3) The administrative penalty was imposed; and  
22 (4) The penalty remains unpaid.



1        (g) In connection with any hearing held pursuant to this  
2 section, the director shall have the power to subpoena the  
3 attendance of witnesses and the production of evidence on behalf  
4 of all parties.

5        §342E-C Injunctive and other relief. The director may  
6 institute a civil action in any court of competent jurisdiction  
7 for injunctive and other relief to prevent any violation of this  
8 chapter, any rule adopted pursuant to this chapter, or any  
9 condition of a management plan approval issued pursuant to this  
10 chapter, without the necessity of a prior revocation of the  
11 management plan approval, to impose and collect civil penalties,  
12 to collect administrative penalties, or to obtain other relief.  
13 The court shall have power to grant relief in accordance with  
14 the Hawaii rules of civil procedure.

15        §342E-D Appeal. Any party aggrieved by the decision of  
16 the director may appeal in the manner provided in chapter 91 to  
17 the circuit court of the circuit in which the party resides or  
18 the party's principal place of business is located or in which  
19 the action in question occurred; provided that the operation of  
20 a cease and desist order shall not be stayed on appeal unless  
21 specifically ordered by a court of competent jurisdiction.



1        §342E-E Fees.    The director by rules adopted pursuant to  
2 chapter 91 shall establish reasonable fees to cover the costs of  
3 reviewing management plans and issuing approvals, implementing  
4 and enforcing the terms and conditions of management plan  
5 approvals, and other department efforts to control nonpoint  
6 source pollution; provided that no fees for this purpose shall  
7 be collected from any farming operation as defined in section  
8 165-2. The fees shall be deposited to the credit of the water  
9 pollution control account established under section 342D-A.

10       §342E-F Public records; confidential information;  
11 penalties.    Reports submitted to the department on discharges of  
12 waste shall be made available for public inspection during  
13 established office hours unless the reports contain information  
14 of a confidential nature concerning proprietary processes or  
15 methods of manufacture. Any officer, employee, or agent of the  
16 department acquiring confidential information from the  
17 inspection of records pursuant to section 342E-3(b)(2) and who  
18 divulges information except as authorized in this chapter or  
19 except as ordered by a court or at an administrative hearing  
20 regarding an alleged violation of this chapter or of any rule or  
21 standard adopted pursuant to this chapter shall be fined not  
22 more than \$1,000.



1           §342E-G Nonliability of department personnel.

2   Notwithstanding any other law to the contrary, no member,  
3   officer, or employee of the department shall be criminally  
4   liable or responsible under this chapter for any acts of  
5   trespass by the member, officer, or employee in the performance  
6   of the member's, officer's, or employee's duties.

7           §342E-H Other action not barred. No civil remedy or  
8   criminal penalty for any wrongful action that is a violation of  
9   any statute or any rule of the department or the ordinance of  
10   any county shall be precluded or impaired by this chapter. No  
11   civil remedy or criminal penalty shall exclude or impair the  
12   remedies provided in this chapter.

13          §342E-I Administrative penalties. (a) In addition to any  
14   other administrative or judicial remedy provided by this  
15   chapter, or by rules adopted under this chapter, the director  
16   may impose by order the penalties specified in section 342E-4.

17          (b) Factors to be considered in imposing an administrative  
18   penalty include:

19          (1) The nature, circumstances, extent, gravity, and  
20          history of the violation and of any prior violations;

21          (2) The economic benefit to the violator, or anticipated  
22          by the violator, resulting from the violation;



1       (3) The opportunity, difficulty, and history of corrective  
2            action;

3       (4) Good faith efforts to comply;

4       (5) Degree of culpability; and

5       (6) Such other matters as justice may require.

6       (c) It is presumed that the violator's economic and  
7       financial conditions allow payment of the penalty, and the  
8       burden of proof to the contrary shall be on the violator.

9       §342E-J False statements. Any person who knowingly makes  
10       any false material statement, representation, or certification  
11       in any application, record, report, plan, or other document  
12       filed or required to be maintained under this chapter or who  
13       knowingly falsifies, tampers with, or renders inaccurate any  
14       monitoring device or method required to be maintained under this  
15       chapter, shall be fined not more than \$10,000, or imprisoned for  
16       not more than two years, or both. Any person convicted of a  
17       second offense under this section shall be fined not more than  
18       \$20,000 per day of violation, or imprisoned not more than four  
19       years, or both.

20       §342E-K Prohibition. (a) No person, including any public  
21       body, shall discharge any water pollutant into state waters, or  
22       cause or allow any water pollutant to enter state waters from a





1 nonpoint source, except in compliance with this chapter, rules  
2 adopted pursuant to this chapter, or a management plan approval  
3 issued by the director.

4 (b) No person, including any public body, shall violate  
5 any rule adopted pursuant to this chapter or any management plan  
6 approval issued or modified pursuant to this chapter.

7 **§342E-L Public participation activities; appointment of**  
8 **hearings officers.** The director may appoint, without regard to  
9 chapter 76, hearings officers to conduct public participation  
10 activities, including public hearings and public informational  
11 meetings.

12 **§342E-M Consultation and advice.** The director may consult  
13 with and advise:

14 (1) Any person engaged or intending to be engaged in any  
15 business or undertaking whose waste, sewage, or  
16 drainage is polluting or may tend to pollute state  
17 waters; and

18 (2) Persons intending to alter or to extend any system of  
19 drainage, sewage, or water supply."

20 SECTION 4. Section 342E-1, Hawaii Revised Statutes, is  
21 amended by adding ten new definitions to be appropriately  
22 inserted and to read as follows:



1       "Best management practices" mean schedules of activities,  
2 prohibitions or designations of practices, maintenance  
3 procedures, and other management practices to prevent or reduce  
4 the pollution of state waters. Best management practices  
5 includes treatment requirements, operating procedures and  
6 practices to control site runoff, spillage or leaks, sludge or  
7 waste disposal, or drainage from raw material storage.

8       "Domestic wastewater" is waste and wastewater from humans  
9 or household operations that:

10       (1) Is discharged to or otherwise enters a treatment  
11       works; or

12       (2) Is of a type that is usually discharged to or  
13       otherwise enters a treatment works or an individual  
14       wastewater system.

15       "Individual wastewater systems" means facilities, including  
16 cesspools, septic systems, and aerobic treatment units, that are  
17 not connected to a sewer and are used and designed to receive  
18 and dispose of no more than one thousand gallons per day of  
19 domestic wastewater or greater than one thousand gallons with a  
20 variance.

21       "Management plan" means a document that describes likely  
22 nonpoint source pollution from a property and measures to



1 control, minimize, and reduce such pollution, including general,  
2 industry-specific, or site-specific best management practices.

3 "Management plan approval" means written authorization from  
4 the director to construct, modify, or operate any nonpoint water  
5 pollution source under the terms of the management plan,  
6 including any conditions required by the director.

7 "Party" means each person or agency named as party or  
8 properly entitled to be a party in any court or agency  
9 proceeding.

10 "Waste" means sewage, industrial and agricultural matter,  
11 and any other liquid, gaseous, or solid substance, including  
12 radioactive substance, whether or not treated, which may pollute  
13 or tend to pollute the waters of this State.

14 "Wastewater" means any liquid waste, whether or not treated  
15 and whether animal, mineral, or vegetable, including  
16 agricultural, industrial, and thermal wastes.

17 "Water pollutant" means dredged spoil, solid refuse,  
18 incinerator residue, sewage, garbage, sewage sludge, munitions,  
19 chemical waste, biological materials, radioactive materials,  
20 heat, wrecked or discarded equipment, rock, sand, soil,  
21 sediment, cellar dirt, and industrial, municipal, and  
22 agricultural waste.



1       "Water pollution" means:  
2       (1) The contamination or other alteration of the physical,  
3       chemical, or biological properties of any state  
4       waters, including change in temperature, taste, color,  
5       turbidity, or odor of the waters, or  
6       (2) The discharge of any liquid, gaseous, solid,  
7       radioactive, or other substances into any state  
8       waters,  
9       that will or is likely to create a nuisance or render the waters  
10       unreasonably harmful, detrimental, or injurious to public  
11       health, safety, or welfare, including harm, detriment, or injury  
12       to public water supplies, fish and aquatic life and wildlife,  
13       recreational purposes, and agricultural and industrial research  
14       and scientific uses of the waters or as will or is likely to  
15       violate any water quality standards, effluent standards,  
16       treatment and pretreatment standards, or standards of  
17       performance for new sources adopted by the department."

18       SECTION 5. Section 342E-1, Hawaii Revised Statutes, is  
19       amended by amending the definition of "person" to read as  
20       follows:

21        "Person" means any individual, partnership, firm,  
22       association, public or private corporation, federal agency, the



1 State or a county, trust, estate, [~~or~~] any other legal entity[~~or~~]  
2 and any responsible corporate officer."

3 SECTION 6. Section 342E-4, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "~~[§]~~**342E-4**~~[§]~~ **Civil penalties.** (a) Any person who  
6 violates any rule adopted under this chapter shall be fined not  
7 more than [~~\$10,000~~] \$25,000 for each separate offense. Each day  
8 of each violation shall constitute a separate offense. Any  
9 action taken in court to impose or collect the penalty provided  
10 for in this [~~section~~] subsection shall be considered a civil  
11 action. In determining the amount of a civil penalty, the court  
12 shall consider the seriousness of the violation, the economic  
13 benefit, if any, resulting from the violation, any history of  
14 violations, good faith efforts to comply with the applicable  
15 requirements, the economic impact of the penalty on the  
16 violation, and any other matters that justice may require. It  
17 shall be presumed that the violator's economic and financial  
18 conditions allow payment of the penalty, and the burden of proof  
19 of the contrary shall be on the violator.

20 (b) Any person who denies, obstructs, or hampers the  
21 entrance to and inspection by any duly authorized officer or  
22 employee of the department of any building, place, or vehicle



1 that the officer or employee is authorized to enter or inspect  
2 shall be fined not more than [~~\$5,000~~] \$10,000 for each day of  
3 such a denial, obstruction, or hampering. Any action taken in  
4 court to impose or collect the penalty provided for in this  
5 [~~section~~] subsection shall be considered a civil action.

6 (c) Any fine or penalty collected shall be placed in the  
7 environmental response revolving fund pursuant to [+]~~section~~[+]  
8 128D-2."

9 SECTION 7. The director of health shall prescribe a  
10 management plan application form no later than July 1, 2014;  
11 provided that the management plan application requirements  
12 provided under section 342E-A, Hawaii Revised Statutes, shall  
13 become effective on July 1, 2015.

14 SECTION 8. In codifying the new sections added to chapters  
15 342D and 342E, Hawaii Revised Statutes, by sections 2 and 3 of  
16 this Act, the revisor of statutes shall substitute appropriate  
17 section numbers for the letters used in the designations of, and  
18 references to, those new sections in this Act.

19 SECTION 9. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

21 SECTION 10. This Act, upon its approval, shall take effect  
22 on July 1, 2013.



**Report Title:**

Nonpoint Source Water Pollution; Fee Rules; Separate Account

**Description:**

Establishes a separate Water Pollution Control account and authorizes the Director of Health to prescribe fees to help fund the operations of the Department of Health in managing pollution from nonpoint sources and individual wastewater systems. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

