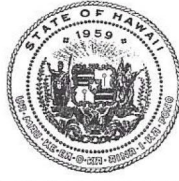


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**Testimony COMMENTING on HB1852
RELATING TO WATER POLLUTION**

REPRESENTATIVE DELLA AU BELATTI, CHAIR
HOUSE COMMITTEE ON HEALTH

Hearing Date: February 10, 2016 Room Number: 325
Time: 8:00 am

1 **Fiscal Implications:** None.

2 **Department Testimony:** The Department supports the intent of this measure and would like to
3 offer the following comments. The Clean Water State Revolving Fund (CWSRF) was
4 established by the 1987 amendments to the Federal Water Pollution Control Act (FWPCA), also
5 known as the Clean Water Act (CWA) as a financial assistance program for a wide range of
6 wastewater infrastructure projects, under title 33 U.S. Code Section 1383. The program is a
7 powerful partnership between the United States Environmental Protection Agency (EPA) and the
8 states that gives states the flexibility to fund a range of projects that address their highest priority
9 water quality needs. The program was amended in 2014 by the Water Resources Reform and
10 Development Act (WRRDA).

11 The WRRDA Public Law 113-121 amended Titles I, II, V, and VI of the Clean Water Act and
12 became effective on October 1, 2014. The amendments made significant changes to the
13 FWPCA, including explicitly expanding the CWSRF loan programs to nonprofit entities. As
14 amended, the FWPCA now includes section 603(c)(11), which states that each CWSRF Program
15 may provide financial assistance to any qualified nonprofit entity, as determined by the
16 Administrator to provide assistance to owners and operators of small and medium publicly
17 owned treatment works (A) to plan, develop, and obtain financing for eligible projects under this
18 subsection, including planning, design, and associated preconstruction activities; and (B) to assist
19 such treatment works in achieving compliance with this Act. Projects that provide assistance to
20 small and medium publicly owned treatment works (POTW) are eligible. The definition of small
21 and medium POTWs shall be determined by the State. Assistance recipients must be a nonprofit
22 entity. A nonprofit entity is one which has Federal tax-exempt status. The CWSRF may not

1 fund ongoing O&M activities; however, planning and design costs for capital projects, as well as
2 broader water quality planning projects, are eligible.

3 The Department recommends the bill allow loans to be made at or below market interest rates to
4 qualifying nonprofit entities, and not zero interest loans. The CWSRF program needs to charge
5 interest in order to be self-sustaining and operate in perpetuity. The term of the loan would be
6 based on the useful life of the project or thirty years, whichever is less.

7 The FWPCA was also amended to expand the eligibility for projects and activities that could be
8 funded under the CWSRF program. The eligible projects and activities include: 1) the
9 construction, repair, or replacement of decentralized wastewater treatment systems and
10 individual wastewater systems that treat municipal wastewater or domestic sewage; 2) measures
11 to manage, reduce, treat, or recapture stormwater or subsurface drainage water; 3) to any
12 municipality or State agency for measures to reduce the demand for publicly owned treatment
13 works capacity through water conservation, efficiency, or reuse; 4) for the development and
14 implementation of watershed projects meeting the criteria set forth in US Title 33 Section 1274;
15 5) to any municipality or State agency for measures to reduce the energy consumption needs for
16 publicly owned treatment works; 6) for reusing or recycling wastewater, stormwater, or
17 subsurface drainage water; and 7) for measures to increase the security of publicly owned
18 treatment works.

19 The bill should be amended to comply with the requirements of WRRDA and to include the new
20 eligibility requirements of the CWSRF program. The Department is providing as an attachment,
21 the suggested language for this bill that would comply with WRRDA.

22 Thank you for the opportunity to testify on this measure.

23 **Offered Amendments:** Refer to the attachment.

The Department of Health's suggested changes for HB1852

Section 342D-83, Hawaii Revised Statutes (HRS), should be amended to read as follows:

§342D-83 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 state purpose.

(b) The purpose of the revolving fund is to provide financial assistance to eligible parties for projects or activities to:

- (1) Enable counties and state agencies to plan, design, and construct publicly owned wastewater treatment works in accordance with title 33 United States Code sections 1381 to 1387;
- (2) Enable eligible parties to implement management programs established under title 33 United States Code section 1329;
- (3) Enable eligible parties to implement conservation and management plans established under title 33 United States Code section 1330;
- (4) Enable eligible parties to construct, repair, or replace a privately owned decentralized wastewater treatment system and individual wastewater system that treats municipal wastewater or domestic sewage under title 33 United States Code section 1383;
- (5) Enable eligible nonprofit entities to provide assistance to small and medium sized publicly owned treatment works for training activities, planning, design and associated preconstruction activities under title 33 United States Code section 1383;
- (6) Enable eligible parties to manage, reduce, treat, or recapture stormwater or subsurface drainage water under title 33 United States Code section 1383;

- (7) Enable eligible parties to develop and implement watershed projects meeting the criteria under title 33 United States Code section 1274;
- (8) Enable counties and state agencies to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse under title 33 United States Code section 1383;
- (9) Enable counties and state agencies to reduce the energy consumption needs for publicly owned treatment works under title 33 United States Code section 1383;
- (10) Enable eligible parties to reuse or recycle wastewater, stormwater, or subsurface drainage water under title 33 United States Code section 1383; and
- (11) Enable eligible parties to increase the security of publicly owned treatment works under title 33 United States Code section 1383.

Section 342D-87, HRS, should be amended to read as follows:

§342D-87 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; and

(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 project completion.~~ All loans will be fully amortized upon the expiration of the term of the loan.

(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. [L 1997, c 221, pt of §1]



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

ON THE FOLLOWING MEASURE:

H.B. NO. 1852, RELATING TO WATER POLLUTION.

BEFORE THE:

HOUSE COMMITTEE ON HEALTH

DATE: Wednesday, February 10, 2016 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Edward G. Bohlen, Deputy Attorney General

Chair Belatti and Members of the Committee:

The Department of the Attorney General has comments regarding a legal inconsistency in this measure.

The measure adds a new section to part V of chapter 342D, Hawaii Revised Statutes (HRS), which seeks to make nonprofit organizations recognized under section 501(c) of the Internal Revenue Code of 1986 eligible to receive loans from the water pollution control revolving fund to enable the planning, designing, and construction of wastewater treatment works.

In this new section, on page 3, lines 11-13, the measure provides that “The director may hold individual members of the nonprofit organization that received the loan separately and jointly liable for the nonpayment and default of the loan.” This wording conflicts with a provision of the Hawaii Nonprofit Corporations Act, section 414D-85, HRS, which provides that “A member of a corporation is not, as such, personally liable for the acts, debts, liabilities, or obligations of the corporation.” If the proposed wording is stricken, however, the Department of Health may be unable to recover for nonpayment or default in some cases.

We recommend that, if the Legislature wishes to provide for individual member liability, it clarify that by inserting at the beginning of subsection (b) on line 11 of page 3 the phrase, “Notwithstanding section 414D-85.” It would then read as follows: “(b) Notwithstanding section 414D-85, the director may hold individual members of the nonprofit organization that received the loan separately and jointly liable for the nonpayment or default of the loan.”

Thank you for the opportunity to submit these comments.