

## ACT 365

H.B. NO. 3452

A Bill for an Act Relating to the Establishment of a State Revolving Fund for Water Pollution Control.

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

**SECTION 1. Legislative findings.** The legislature finds that the protection of the waters of this State is of such magnitude and complexity to justify state participation and assistance.

The Federal Water Pollution Control Act, 33 United States Code, section 1250, and the Hawaii environmental quality law, chapter 342, Hawaii Revised Statutes, provide national and state regulation to ensure the restoration, preservation, and protection of the nation's and State's waters. State agencies are prohibited from polluting navigable waters of the State and are subject to various penalties for failing to meet minimum standards of the Federal Water Pollution Control Act. Pursuant to the requirements of that act, the State has established water quality standards and effluent limitations with respect to the waters of this State. The State must certify compliance with these standards and limitations for federal permits affecting state waters.

Under the Federal Water Pollution Control Act, the State and its political subdivisions may receive federal grants, subject to the availability of funds, to be used for construction of treatment works. The State or its political subdivisions must contribute to the nonfederal share of construction costs of treatment works. It is desirable for the State to seek federal grants and assist in providing financing mechanisms to aid political subdivisions in the acquisition and construction of wastewater projects in order to meet minimum federal standards, to protect the public health and welfare, and to provide for the continuation of timely construction of needed treatment works.

The recent changes in the Water Quality Act of 1987, Public Law 100-4, embody a dramatic shift in the financing of wastewater treatment facilities from the federal government to state and local governments. The new law provides for alternative policy approaches for establishing funding mechanisms and for specific financial strategies for state governments while the federal government is scheduled to phase out its involvement in providing direct federal grants for construction projects by 1990. Under the new law the states may receive federal grants to capitalize a revolving fund up to the year 1994.

In order to qualify for a federal capitalization grant, a state must establish, by statute, a water pollution control revolving fund in accordance with the provisions and requirements of the Water Quality Act of 1987. The legal mechanism used to establish the fund must ensure that the fund, and all requirements for assistance by the fund, be available in perpetuity and be used solely to provide assistance to counties or state agencies for the construction of publicly owned wastewater treat-

## ACT 365

ment works as defined in section 212 of the Federal Water Pollution Control Act; for the implementation of a non-point source pollution management program under section 319(i) of the Act; and for the development and implementation of a conservation and management program under section 320 of the Act.

The legislature further finds that in order to ensure continuity of this perpetual program, thirteen positions currently established as temporary in the department of health's wastewater treatment works construction grants branch shall be converted to permanent positions which are to be federally funded.

SECTION 2. Section 342-34, Hawaii Revised Statutes, is amended to read as follows:

**“§342-34 Treatment works; construction grants; advances[.]; state revolving fund.** (a) The director may make grants or loans to any state or county agency of state funds as authorized and appropriated by the legislature for the construction of necessary 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. The director shall coordinate the granting of state funds with available federal funds for the same purpose. No grant or loan shall be made for any project unless,<sup>1</sup> (1) the project conforms with the state water pollution control plan, and (2) the project is certified by the director as entitled to priority over other eligible projects on the basis of financial as well as water pollution control needs, and, in the case of treatment works, (3) the application for the grant or loan contains reasonable assurances that the applicant will provide for the proper and efficient operation and maintenance of the treatment works after its construction. If federal funds are available, the applicant shall be required to pay sixty per cent of the nonfederal share of the estimated reasonable cost of such approved treatment works as defined by Public Law 92-500. If federal funds are not available, the director may make grants up to one hundred per cent of the estimated reasonable cost of the project.

(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 [are to] shall be reimbursed to the State immediately upon the receipt from the federal government of the [advancement] advanced funds or within four years after the advance is made, whichever occurs first.

(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 receiving federal and state funds to provide financial assistance to governmental agencies for the planning, design, and construction of treatment works owned by a governmental agency in accordance with Title VI of the Water Quality Act of 1987, Public Law 100-4, and implementation of management programs established under sections 319 and 320 of the Water Quality Act of 1987; provided that:

- (1) The director may enter into grant agreements with the administrator of the United States Environmental Protection Agency and accept capitalization grants which shall be deposited into the revolving fund;
- (2) The financial assistance which may be provided to governmental agencies by the revolving fund shall be limited to loans, loan guarantees, and bond guarantees;

- (3) The revolving fund shall be established, maintained, and credited with loan repayments 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. Such 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 Title VI of the Water Quality Act of 1987;
- (7) No loan from the revolving fund shall be made unless the loan recipient establishes a dedicated source of revenue for the repayment of such loans; and
- (8) The director may adopt rules pursuant to chapter 91 necessary for the purposes of this section, including but not limited to, penalties for default of loan repayments.”

SECTION 3. The thirteen positions currently not in civil service in the department of health's wastewater treatment works construction grants branch shall be converted to permanent positions which are to be federally funded. State funds appropriated under Act 216, Session Laws of Hawaii 1987, item D-1, may be utilized as state matching funds in an amount equal to twenty per cent of federal capitalization grants as required by the Water Quality Act of 1987.

The thirteen positions shall be converted to permanent civil service status within the meaning of chapters 76 and 77, Hawaii Revised Statutes, without the necessity of examination, and shall be accorded all of the rights, benefits, and privileges of other civil service employees, including seniority, prior service credit, and vacation and sick leave credits. Positions held by employees converted to civil service status shall be assigned by the director of personnel services to appropriate classes in the position classification plan, and the employees shall be paid in accordance with the salary ranges to which the classes are assigned; provided that employees receiving a salary above the minimum rate may be paid at the rate higher than the minimum rate but not exceeding the highest pay rate in the appropriate salary range.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 14, 1988.)

## **ACT 365**

### **Note**

1. So in original.