

## ACT 161

H.B. NO. 1850

A Bill for an Act Relating to Financial Assistance for Treatment Works.

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

SECTION 1. The legislature finds that the protection of the waters of this State is of such magnitude and complexity as 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 the federal Water Pollution Control 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 until 1994. To qualify for a capitalization grant, the legislature passed Act 365, Session Laws of Hawaii 1988, which established a water pollution control revolving fund in accordance with the provisions and requirements of the Water Quality Act of 1987.

Recent surveys indicate that there will be approximately \$1.4 billion of wastewater treatment facilities required over the next twenty years to protect our valuable, pristine coastal and fresh underground waters. The total federal capitalization grants of \$63 million that the State expects to receive until the year 1994, are not adequate to finance the needed wastewater treatment facilities. Due to the shortage of necessary funds, it is the intent of the legislature that available funds be expended on the construction of new treatment facilities, including primary facilities, if applicable, and for the expansion of existing sewage plant facilities. It is not the intent of the legislature to utilize these funds to upgrade sewage plant facilities to secondary treatment if this level of treatment is not warranted.

The legislature further finds that it is desirable that the State assist in providing financial mechanisms such as grants, loans, or a combination of grants and loans to aid political subdivisions in the construction of wastewater projects in order to meet statutory deadlines, to protect the public health and welfare, to provide for the continuation of prompt construction of needed treatment works to meet the

anticipated growth in the State, and to encourage development of the State's water resources.

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, or both, 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[.]; provided that the director ensures that the grants or loans, or both, are allocated 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. No grant or loan shall be made for any project unless[.];

- (1) [the] The project conforms with the state water pollution control plan[, and];
- (2) [the] 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]
- (3) In the case of treatment works, [(3)] the application for the grant [or], loan, or both, 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 grant funds are available, the applicant shall be required to pay sixty per cent of the nonfederal share of the estimated reasonable cost of [such] the approved treatment works as defined by Public Law 92-500. 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 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 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.

(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[.]; and grants;

- (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] 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 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[.];
- (9) The director may utilize moneys from the revolving fund to finance administrative costs, including monitoring and enforcement, of a non-point source pollution control program; provided that the director shall not utilize more than \$50,000 during fiscal year 1989-90; 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 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, the report shall include:
  - (A) The recipient;
  - (B) The effective date of the grant;
  - (C) The amount provided; and
  - (D) The intended or actual use of the funds.

(d) Nothing in this section shall be construed to restrict the director's authority to make grants or loans, or both, to treatment projects granted waivers under section 301(h) of the Federal Water Pollution Control Act (33 U.S.C. 1331)."

SECTION 3. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$50,000,000, or 2.13 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000,000, or so much thereof as may be necessary for

## **ACT 161**

fiscal year 1989-1990, to be deposited into the water pollution control revolving fund to carry out the purposes of this Act.

The sum appropriated shall be expended by the department of health.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)