

Senate Bill No. 302-Senator Adler

CHAPTER

477

AN ACT relating to water systems; establishing procedures for the acceptance by this state of subsidies under the federal Safe Drinking Water Act; increasing the amount of general obligation bonds that may be issued to provide grants to publicly owned water systems for capital improvements; repealing the authority of the board for financing water projects to make loans to community water systems for capital improvements; making an appropriation; and providing other matters properly relating thereto.

[Approved July 16, 1997]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

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Section 1. Chapter 445A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 24, inclusive, of this act.

Sec. 2. *As used in sections 2 to 24, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 14, inclusive, of this act, have the meanings ascribed to them in those sections.*

Sec. 3. *"Account for the revolving fund" means the account created pursuant to section 16 of this act to finance the construction of projects.*

Sec. 4. *"Account for set-aside programs" means the account created pursuant to section 16 of this act to fund activities, other than projects, authorized by the Safe Drinking Water Act pursuant to sections 19 and 20 of this act.*

Sec. 5. *"Administrator" means the administrator of the division.*

Sec. 6. *"Board" means the state board of health.*

Sec. 7. *"Construction" includes:*

1. *Preliminary planning to determine the feasibility of a project;*
2. *Engineering, architectural, legal, environmental, fiscal or economic investigations or studies, surveys, designs, plans, working drawings, specifications or procedures that comply with the Safe Drinking Water Act, and regulations adopted pursuant thereto; and*
3. *Other necessary actions related to a project including the erection, building, acquisition, alteration, remodeling, improvement or extension of a project, or the inspection or supervision of any item set forth in this section.*

Sec. 8. *"Division" means the health division of the department of human resources.*

Sec. 9. *"Federal grant" means money authorized by the Safe Drinking Water Act to:*

1. *Create a revolving fund to assist public water systems to finance the costs of facilities needed to achieve or maintain compliance with the Safe Drinking Water Act and regulations adopted pursuant thereto and to protect public health; and*
2. *Fund set-aside programs authorized by the Safe Drinking Water Act.*

Sec. 10. *"Project" means the initial construction, or renovation, modification or expansion, of portions of a public water system for:*

1. *The impoundment, collection, pumping, treatment, storage or distribution of water;*
2. *Increasing, sustaining or reducing water pressure; or*
3. *The supervision, monitoring, administration, management, operation or maintenance of the water system, including acquisition of water rights,*
subject to any restrictions set forth in the Safe Drinking Water Act.

Sec. 11. *"Public water system" means a system, regardless of ownership, that provides the general public with piped water for human consumption, if the system has 15 or more connections used by residents of the state throughout the year or regularly serves 25 or more persons for 60 or more days a year. The term includes:*

1. *A facility for the collection, pumping, treatment, storage or distribution of water which is*

controlled by the operator of the system and used primarily in connection with the system; and
2. A facility for the collection or storage before treatment of water which is not controlled by the operator of the system but is used primarily in connection with the system.

Sec. 12. "Safe Drinking Water Act" means 42 U.S.C. §§ 300f et seq., as amended.

Sec. 13. "Small water system" means a public water system serving less than 10,000 persons.

Sec. 14. "State securities" means securities of the kinds described in NRS 349.198 authorized to be issued in the name and on behalf of the state upon the authorization of the administrator.

Sec. 15. The legislature finds and declares that any state securities issued pursuant to section 24 of this act are necessary for the protection and preservation of the property and natural resources of this state and for the purpose of obtaining the benefits thereof, and their issuance constitutes an exercise of the authority conferred by the second paragraph of section 3 of article 9 of the constitution of the State of Nevada.

Sec. 16. 1. The account to finance the construction of projects, to be known as the account for the revolving fund, is hereby created in the state treasury.

2. The account to fund activities, other than projects, authorized by the Safe Drinking Water Act, to be known as the account for set-aside programs, is hereby created in the state treasury.

3. The money in the account for the revolving fund and the account for set-aside programs may be used only for the purposes set forth in the Safe Drinking Water Act.

4. All claims against the account for the revolving fund and the account for set-aside programs must be paid as other claims against the state are paid.

5. The faith of the state is hereby pledged that the money in the account for the revolving fund and the account for set-aside programs will not be used for purposes other than those authorized by the Safe Drinking Water Act.

Sec. 17. 1. The interest and income earned on money in the account for the revolving fund and the account for set-aside programs must be credited to the account for the revolving fund and the account for set-aside programs, respectively.

2. All payments of principal and interest on all loans made to a public water system and all proceeds from the sale, refunding or prepayment of obligations of a public water system acquired or loans made in carrying out the purposes of the account for the revolving fund must be deposited in the state treasury for credit to the account for the revolving fund.

3. The division may accept gifts, appropriations from the state general fund, contributions, grants and bequests of money from any public or private source. The money so accepted must be deposited in the state treasury for credit to the account for the revolving fund, or the account for set-aside programs, and can be used to provide money from the state to match the federal grant, as required by the Safe Drinking Water Act.

4. Amounts deposited in the account for the revolving fund, including repayments of principal and interest on loans, and interest and income earned on money in the account for the revolving fund, may be used only for providing or guaranteeing loans or as a source of reserve and security for leveraged loans, except that repayments of interest on loans, and interest and income earned on money in the account for the revolving fund, may be used to secure the sale of state securities or otherwise be pledged to provide money from the state to match the federal grant, as required by the Safe Drinking Water Act.

5. Except as otherwise provided in subsection 6, only federal money deposited in a separate subaccount of the account for the revolving fund, including repayments of principal and interest on loans made solely from federal money, and interest and income earned on federal money in the account for the revolving fund, may be used to benefit public water systems not governmentally owned.

6. In addition to the sources described in subsection 5, the proceeds of state securities that are solely secured by and solely payable from one or more of the sources set forth in subsection 5 may be used to benefit public water systems not governmentally owned.

Sec. 18. 1. The division shall:

(a) Use the money in the account for the revolving fund and the account for set-aside programs for the purposes set forth in the Safe Drinking Water Act.

(b) Determine whether public water systems which receive money or other assistance from the account for the revolving fund or the account for set-aside programs comply with the Safe Drinking Water Act and regulations adopted pursuant thereto.

2. The division may:

(a) Prepare and enter into required agreements with the Federal Government for the acceptance of grants of money for the account for the revolving fund and the account for set-aside programs.

(b) Bind itself to terms of the required agreements.

(c) Accept grants made pursuant to the Safe Drinking Water Act.

(d) Manage the account for the revolving fund and the account for set-aside programs in accordance with the requirements and objectives of the Safe Drinking Water Act.

(e) Provide services relating to management and administration of the account for the revolving fund and the account for set-aside programs, including the preparation of any agreement, plan or report.

(f) Perform, or cause to be performed by the Nevada Rural Water Association or other agencies or organizations through interagency agreement, contract or memorandum of understanding, set-aside programs pursuant to 42 U.S.C. § 300j-12 of the Safe Drinking Water Act.

3. The division shall not:

(a) Commit any money in the account for the revolving fund for expenditure for the purposes set forth in section 19 of this act; or

(b) Establish the priorities for determining which public water systems will receive money or other assistance from the account for the revolving fund, without obtaining the prior approval of the board for financing water projects.

Sec. 19. 1. Except as otherwise provided in sections 17 and 20 of this act, money in the account for the revolving fund may be used only to:

(a) Make loans at or below the market rate to public water systems for the construction of projects.

(b) Buy or refinance at or below the market rate the obligations of public water systems if:

(1) The project for which the obligations were incurred complies with the Safe Drinking Water Act and regulations adopted pursuant thereto; and

(2) The obligations were incurred after July 1, 1993.

(c) Guarantee or purchase insurance for local obligations, including nongovernmental debt or municipal debt, if the action would improve access to credit or reduce the rate of interest applicable to the obligation.

(d) Arrange for the sale of state securities, including state securities issued to provide money from the state to match the federal grant, as required by the Safe Drinking Water Act, if the net proceeds from the sale of those state securities are deposited in the account for the revolving fund.

2. Money in the account for set-aside programs may be used only to fund set-aside programs authorized by the Safe Drinking Water Act. Money in the account for set-aside programs may be transferred to the account for the revolving fund pursuant to the Safe Drinking Water Act.

3. A public water system which requests a loan or other financial assistance must demonstrate that it has:

(a) Complied with the Safe Drinking Water Act and regulations adopted pursuant thereto; or

(b) Agreed to take actions that are needed to ensure that it has the capability to comply with the Safe Drinking Water Act and regulations adopted pursuant thereto.

4. Funding from the account for the revolving fund may not be given to an existing public water system unless it has the technical, managerial and financial capability to ensure compliance with the Safe Drinking Water Act and regulations adopted pursuant thereto. A new public water system, to receive such funding, must demonstrate that it has the technical, managerial and

financial capability to ensure compliance with the Safe Drinking Water Act and regulations adopted pursuant thereto.

Sec. 20. *1. The administrator shall not:*

(a) Spend more than 4 percent of the federal grant for a set-aside program for administration pursuant to 42 U.S.C. § 300j-12(g)(2) of the Safe Drinking Water Act;

(b) Spend more than 10 percent of the federal grant for a set-aside program for activities authorized pursuant to 42 U.S.C. § 300j-12(g)(2) of the Safe Drinking Water Act if matched equally by the state;

(c) Spend more than 2 percent of the federal grant for a set-aside program for technical assistance to small water systems pursuant to 42 U.S.C. § 300j-12(g)(2) of the Safe Drinking Water Act; or

(d) Spend more than 15 percent of the federal grant for a set-aside program for activities authorized pursuant to 42 U.S.C. § 300j-12(k) of the Safe Drinking Water Act.

2. The administrator may impose and collect a fee from each public water system that receives a loan or other financial assistance from the account for the revolving fund or the account for set-aside programs. The fee must be used to defray the costs of administering the account for the revolving fund or the account for set-aside programs.

3. If the administrator imposes a fee pursuant to subsection 2, the board shall adopt regulations establishing the amount of the fee to be collected.

Sec. 21. *The administrator may employ any legal, fiscal, engineering and other expert services necessary to carry out his duties pursuant to sections 2 to 24, inclusive, of this act.*

Sec. 22. *1. The board shall adopt such regulations as are necessary relating to the environmental review required by the Safe Drinking Water Act.*

2. Each public water system which receives money from the account for the revolving fund shall prepare an environmental assessment which complies with the regulations adopted by the board and submit it to the division for review.

3. The division shall review each such assessment.

Sec. 23. *The board may adopt such regulations as are necessary to carry out the provisions of sections 2 to 24, inclusive, of this act.*

Sec. 24. *1. The administrator may authorize the state treasurer to issue, sell or deliver state securities as general obligations or secured by pledged revenue if viable to carry out the purposes of the account for the revolving fund, or to provide money from the state to match the federal grant as required by the Safe Drinking Water Act.*

2. If the administrator authorizes the issuance of state securities, the state treasurer may:

(a) Sue and be sued to establish or enforce any right arising out of a project receiving financial assistance or of any state securities issued pursuant to this authorization;

(b) Acquire and hold municipal securities, and exercise all of the rights of holders of those securities;

(c) Sell or otherwise dispose of municipal securities and assets acquired in connection with those securities, unless limited by any agreement which relates to the securities;

(d) Make contracts and execute all necessary or convenient instruments;

(e) Accept grants of money from the Federal Government, the state, any agency or political subdivision thereof, or any other person;

(f) Adopt financial regulations relating to projects receiving financial assistance and the administration of those projects;

(g) Employ for himself or for any public water system, any necessary legal, fiscal, engineering and other expert services in connection with projects receiving financial assistance and with the authorization, sale and issuance of state securities, and the purchase of municipal securities or nongovernmental debt;

(h) Enter into agreements and arrangements consistent with sections 2 to 24, inclusive, of this act concerning the authorization, sale and issuance of state securities and the purchase of municipal

securities or nongovernmental debt;

(i) Require, as appropriate to secure a nongovernmental debt, enhancements of credit or the pledge of any variety of collateral or other types of security, such as corporate or personal guarantees; and

(j) Undertake other matters which he determines to be necessary or desirable to accomplish the purposes of sections 2 to 24, inclusive, of this act.

3. The money in the account for the revolving fund which is available for the payment of the interest and installments of principal on the state securities must be pledged as the primary source for the payment of the state securities. The full faith and credit of the state may be pledged as additional security for the payment of the state securities.

Sec. 25. NRS 349.986 is hereby amended to read as follows:

349.986 The state board of finance shall issue general obligation bonds of the State of Nevada in the face amount of not more than [~~\$25,000,000~~] *\$40,000,000* to support the purposes of the program. The net proceeds from the sale of the bonds must be deposited in the fund. The bonds must be redeemed through the consolidated bond interest and redemption fund.

Sec. 26. NRS 349.970, 349.971, 349.972, 349.973, 349.974, 349.975, 349.976 and 349.978 are hereby repealed.

Sec. 27. The state treasurer shall transfer any balance remaining unexpended on June 30, 1997, in the revolving fund to finance capital improvements to community water systems to the account for the revolving fund created pursuant to section 16 of this act.

Sec. 28. 1. There is hereby appropriated from the state general fund to the health division of the department of human resources the sum of \$750,000 to carry out the provisions of sections 1 to 24, inclusive, of this act.

2. Any remaining balance of the appropriation must not be committed for expenditure after June 30, 1999, and reverts to the state general fund as soon as all payments of money committed have been made.

Sec. 29. This act becomes effective upon passage and approval or on June 30, 1997, whichever occurs earlier.

(a) Four persons who are:

- (1) Residents of this state; and
- (2) Knowledgeable and experienced in the fields of planning and the development and reclamation of water resources.

(b) One person who is a resident of this state and knowledgeable in the field of municipal finance.

3. The administrator of the health division of the department of human resources, or a person he designates, shall serve ex officio as a nonvoting member of the board.

4. Not more than three voting members of the board may be members of the same political party and not more than two may be residents of the same county.
(Added to NRS by 1987, 2278; A 1991, 532)

349.958 Board for financing water projects: Compensation of members.

1. Each voting member of the board is entitled to receive a salary of not more than \$80 per day, as fixed by the board, for his services while actually engaged in the performance of his duties as a member of the board.

2. While engaged in the business of the board, each voting member and employee of the board is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.

(Added to NRS by 1987, 2279; A 1989, 1712; 1991, 533)

349.959 Board for financing water projects: Election of chairman; meetings.

The board shall:

1. At its first meeting and annually thereafter elect a chairman from among its voting members.

2. Meet regularly at least once in each calendar quarter and at other times upon the call of the chairman.

(Added to NRS by 1987, 2279; A 1991, 533)

349.960 State engineer may advise board; state engineer and director may assist in preparation of preliminary plan.

1. The state engineer shall advise the board, upon its request, of the existence and status of any water rights which affect a water project under consideration by the board.

2. Upon the board's request and within the limits of available resources and staff, the state engineer and the director may on a case by case basis assist persons in the preparation of a preliminary plan for a water project.

(Added to NRS by 1987, 2279)

349.961 Water projects: Preliminary plan; approval.

1. When any municipality or other obligor desires to undertake a water project it may present its preliminary plan to the board for approval. If the proposed water project affects drinking water, the board shall request the administrator of the health division of the department of human resources to submit comments and recommendations regarding the project. The board shall analyze the potential yield of the water project, and may tentatively approve it if it will preserve or increase the water available for beneficial use in this state.

2. If the board, after a public hearing on the issue, tentatively approves the water project, the municipality or other obligor may proceed to prepare a final plan and submit it for final approval. If the board finally approves the water project, the cost

of the final plan may be included in the cost of the water project. If the board does not finally approve the water project, the director may, within the limits of money available for this purpose in the account for the financing of water projects, reimburse a municipality for the costs incurred after the tentative approval.

(Added to NRS by 1987, 2279; A 1991, 533; 1993, 639)

**LOANS FOR CAPITAL IMPROVEMENTS TO
COMMUNITY WATER SYSTEMS**

WEST PUBLISHING CO.
States ⇄ 124, 147.

WESTLAW Topic No. 360.
C.J.S. States §§ 225, 252.

349.970 Definitions. As used in NRS 349.970 to 349.978, inclusive, unless the context otherwise requires:

1. "Board" means the board for financing water projects created pursuant to NRS 349.957.

2. "Community water system" means a public water system which:

(a) Has 15 or more service connections; or

(b) Serves 25 or more persons,

at places which are intended for year-round occupancy.

3. "Fund" means the revolving fund to finance capital improvements to community water systems created by NRS 349.974.

4. "Public water system" has the meaning ascribed to it in NRS 445.376.

5. "Supplier of water" has the meaning ascribed to it in NRS 445.377.

(Added to NRS by 1991, 1831)

349.971 Program to provide loans to suppliers of water. There is hereby established a program to provide loans at or below the market rate to suppliers of water to pay for costs of capital improvements to community water systems required or made necessary by the state board of health pursuant to NRS 445.361 to 445.399, inclusive, or by the Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.) and the regulations adopted pursuant thereto.

(Added to NRS by 1991, 1831)

REVISER'S NOTE.

See LCB Bulletin No. 91-8, Study of the Laws, Regulations and Policies Relating to

Water and Waste Water Resources in Nevada, which recommended the adoption of this program.

349.972 Powers and duties of board for financing water projects: Administration of program; adoption of regulations; imposition of administrative fee.

1. The board shall administer the program and shall adopt regulations necessary for that purpose.

2. The regulations must provide such requirements for participation in the program as the board deems necessary.

3. The board may, by regulation, impose an administrative fee which must be collected from each recipient of a loan from the fund. If such a fee is imposed, all revenue derived from the fee must be used to defray the costs of administering the fund and the expenses of the board in administering the program.

(Added to NRS by 1991, 1831)

ADMINISTRATIVE REGULATIONS.
Loans for Community Water Systems, NAC
349.550 et seq.

349.973 Loans limited to systems in operation on July 3, 1991; preference for smaller systems; sole discretion of board to make loans; administration of federal money.

1. Loans may be made under the program only for those community water systems that are in operation on July 3, 1991.
2. In making its determination of which suppliers of water are to receive loans, the board shall give preference to those suppliers whose community water systems regularly serve fewer than 6,000 persons.
3. Except as otherwise provided in subsections 1 and 2, the determination of which suppliers of water are to receive loans is solely within the discretion of the board.
4. The board shall administer any money made available to this state by the Federal Government for the purposes of the program.
(Added to NRS by 1991, 1831)

349.974 Fund to finance capital improvements to community water systems: Creation; use; payment of claims.

1. The revolving fund to finance capital improvements to community water systems is hereby created.
2. Except as otherwise provided by subsection 3 of NRS 349.972, the money in the fund must be used only to make loans in furtherance of the program.
3. All claims against the fund must be paid as other claims against the state are paid.
(Added to NRS by 1991, 1832)

349.975 Fund to finance capital improvements to community water systems: Deposit of money; interest and income credited to fund. All money received for the fund:

1. From the issuance of bonds pursuant to NRS 349.976;
 2. As payment of principal or interest on loans made from the fund; or
 3. From any other source,
- must be deposited with the state treasurer to the credit of the fund. The interest and income earned on the money in the fund, after deducting any applicable charges, must be credited to the fund.
(Added to NRS by 1991, 1832)

349.976 Revenue bonds.

1. The state board of examiners shall issue revenue bonds in the face amount of not more than \$100,000,000 to support the purposes of the program established by NRS 349.971. The net proceeds from the sale of the bonds, after deduction of the expenses related to the issuance of the bonds, must be deposited in the fund to finance capital improvements to community water systems.
2. The bonds and the interest thereon are payable solely from the net revenues received for the fund as payment of principal and interest on loans made from the fund.
(Added to NRS by 1991, 1832)

349.977 Limitation on use of money loaned to supplier of water. Money obtained by a supplier of water from a loan made pursuant to the program may not be used as any part of an amount of money required to be provided by the recipient as a condition of receiving a grant of money for similar purposes.
(Added to NRS by 1991, 1832)

349.978 Applicability of certain provisions governing financing of water projects. The provisions of NRS 349.935 to 349.956, inclusive, and 349.961 do not apply to the program or to any loans made or bonds issued pursuant to NRS 349.970 to 349.978, inclusive.
(Added to NRS by 1991, 1832)

GRANTS FOR CAPITAL IMPROVEMENTS TO PUBLICLY OWNED WATER SYSTEMS

WEST PUBLISHING CO.
States ⇌ 129.

WESTLAW Topic No. 360.
C.J.S. States §§ 230, 232.

349.980 Definitions. As used in NRS 349.980 to 349.987, inclusive, unless the context otherwise requires:

1. "Board" means the board for financing water projects created pursuant to NRS 349.957.
2. "Community water system" means a public water system which:
 - (a) Has 15 or more service connections; or
 - (b) Serves 25 or more persons,
 at places which are intended for year-round occupancy.
3. "Costs of capital improvements to community water systems and nontransient water systems" means the costs traditionally associated with capital improvements to such systems and includes costs associated with the:
 - (a) Consolidation of existing systems; and
 - (b) Transfer and connection of a public water system to a system owned by a purveyor of water or a public utility.
4. "Fund" means the fund for grants to certain purveyors of water.
5. "Nontransient water system" means a public water system that regularly serves 25 or more of the same persons for more than 6 months per year, but which is not a community water system.
6. "Public water system" has the meaning ascribed to it in NRS 445.376.
7. "Purveyor of water" means a political subdivision engaged in the business of furnishing water, for compensation, to persons within the political subdivision.
(Added to NRS by 1991, 1833)

349.981 Program to provide grants to purveyors of water. There is hereby established a program to provide grants of money to purveyors of water to pay for costs of capital improvements to publicly owned community water systems and publicly owned nontransient water systems required or made necessary by the state board of health pursuant to NRS 445.361 to 445.399, inclusive, or made necessary by the Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.) and the regulations adopted pursuant thereto.
(Added to NRS by 1991, 1833)

Memorandum

Date: June 7, 1995

To: Board for Financing Water Projects

Re: The potential for broadening the purposes of the AB198 Grants Program, and the AB197 Loan Program.

AB197 WAS SPELLED OUT
IN NRS 349.970 - .978

(BB 302 - 1997 - REPEALED
NRS 349.970 - .978 AS
IT ADOPTED STATUTES FOR
THE DWSRF)

There has been increasing interest in broadening the uses and purposes of the Grant and Loan programs administered by the Board for Financing Water Projects. There is also interest in removing the restrictions which have prevented the AB197 loan program from being used.

Are these programs working or are they broken and in need of a fix? Perhaps they are working and should not be changed? Perhaps some adjustment would improve the programs. These are issues which we would like to discuss with the Board. We would like to provide the Board with information about activities which may impact these two programs, and to offer the Board an opportunity to provide insight or guidance to the Division regarding options which may be considered.

BACKGROUND

As you know, AB198 and AB197 were the Legislature's responses to a situation where new federal water regulations were about to be imposed. The new regulations were in the Safe Drinking Water Act (SDWA), and provided for regulation of a long list of contaminants, and a much stricter standard for surface water quality. The new Surface Water Treatment Rule (STWR) required highly effective filtration methods for sources such as lakes, streams and springs where testing proved the waters to be under the direct influence of surface waters. These filtration systems are expensive to purchase, and require skilled operators for their maintenance.

State Health had regulatory experience with a long list (\pm 786) of systems. Of these 84 were publicly owned community water systems, and 31 were non transient systems, such as schools. Of the community and nontransient systems there were perhaps 35 with ongoing difficulty complying with drinking water requirements.

Concurrently, other state and federal water regulations were reviewed. It was determined that it was time to provide financial assistance to communities seeking to upgrade their water systems.

Legislation (AB198, AB197) was approved to provide grants and loans to small communities which were constructing system improvements made necessary by these water standards.

Both of these programs address the same type of entity. They both seek to assist small, community and non-transient, water systems. The grants are limited to publicly owned systems. The loans may be extended to private operators or suppliers. They each must show that their proposed improvements are made necessary by state and federal standards.

To date there have been eighteen projects approved for AB198 grants, and none for the loan program. There has not been an application for a loan in the AB197 program. (You have, however, had successful bond projects in Carson City and Fernley through a revenue bond program administered by the Department of Business and Industry.)

Funded elements for these eighteen grants have included water treatment plants, essential water storage facilities, decaying waterline replacements, and water source replacements. Seven projects have been denied. The denials have resulted due to lack of eligibility (not publicly owned) or because the projects could not be correlated to state and federal standards. One other reason cited for denial was the applicant's financial capacity to make required improvements without the assistance of the state.

NEW INTERESTS

Removal of AB197 Loan Program Blockages.

It has been observed that there have been no projects funded by the AB197 Loan Program. Some of the reasons for this inactivity have been identified and are discussed below. There has been some preliminary exploration into possible fixes to eliminate blockages in this program. The blockages appear to include: an inconsistency between the statute and Article 8, section 9 of the constitution; the funding of the State Revolving Fund by use of *revenue* bonds rather than the *general obligation* bonds recommended by the legislative committee in Bulletin 91-8; the lack of an apparent method to accomplish the "below market" interest rate; a clause in NAC which requires applicants to be publicly owned; and the prohibition in NRS against the use of Loan and Grant funds to match each other. The latter blockage will be removed from the grant program upon the passage of SB141 in the current legislative session.

The constitutional problem was identified by the Legislative Study Committee which prepared the recommendations to create these programs. A copy of Art 8 Sec 9 of the State Constitution is attached. This Section prohibits use of grant or loan money to companies and corporations serving other than charitable and educational purposes. Utility companies whether investor owned, or mutual companies would not qualify while this provision remains. The Study committee recommended the constitution be amended to remove this restriction.

When the study committee recommended the creation of the loan program, they recommended the sale of *General Obligation* bonds for funding the revolving loan program. Such a sale could provide one deposit to the fund, which could then be loaned out to applicants at rates determined by the Board. Instead of this plan, the Legislature provided for the fund to be created through the sale of *Revenue Bonds*. These revenue bonds cannot be sold without a source of repayment identified. They can be secured only by the revenues produced by a funded project. Revenue

bonds for the program can probably only be sold after considerable and expensive effort by an applicant. The Administrative overhead for these bonds, however, and their fixed costs, are almost prohibitive for small projects such as those envisioned during the program's creation. The relative small size of many of the projects, and the relatively tenuous nature of revenue streams produced by them, would almost guarantee that the rates resulting from a revenue bond sale would be exorbitant.

The NAC reference to "Publicly Owned" in the loan regulations appears to be derived from the language used in creating the AB198 grant regulations. It would be a relatively easy matter to delete that provision from the Code.

The restriction on the use of Grant and Loan funds to match other state funds appears to be intended to require that applicants must provide some of their own money for their project. In exploring the possibility of enhancement of the loan program, it looked like it might be possible for the grant program to provide some credit enhancement by reduction of the principal amount of a loan, or the buy-down of the interest rate. A portion of this blockage will be removed if the current version of SB141 is passed (Included in this binder).

A Comparison of the three water finance programs is provided, along with the german Statutes.

The Division of Water Planning, with the assistance of State Health and the Attorney Generals Office, has been working to identify the source of these blockages, and will continue to assist all those considering potential resolutions for the program.

There is a new committee, created through the initiative of the Rural Community Assistance Corporation named the "**Nevada Interagency Infrastructure Coordinating Group (NIIFG).**" We are working on a new name. This group seeks to eliminate the gaps between funding sources, and simplify the process for technically challenged communities.

One topic discussed by this group is the **leveraging** of the funds. It might be possible to disburse more federal funds in the State, if more matching funds were available, or restrictions on the use of matching funds were reduced. The use of government funds frequently requires some level of matching with other funds. AB198 requires fifteen to seventy five percent to be non-state funds. The State Revolving Fund which responds to wastewater and pollution issues and is administered by the Division of Environmental Protection requires a 50% non-federal match. This group is working on fitting the various funding programs together to better serve the rural communities of the state. This group has been exploring modifications to various programs which will allow for better fits between programs. For example, the State DEP has successfully received federal permission to change to the State Fiscal Year for their project competitions. State monies will therefor become available at the same time as the federal funds.

Broadening the Scope of Fundable Projects

At this point in time, there is also a growing interest in **broadening the scope** of projects which would be eligible for state AB198 and AB197 assistance. It arises from recognition that there are

unfundable but worthy projects, people who need project financial support, communities which have demonstrable health threats, and other communities where an alternate solution, not presently fundable within existing AB197-AB198 guidelines, would be more cost effective than a fundable project.

It is also readily apparent to the administrators of other funding programs (Rural Economic and Community Development System (previously FmHA) and Community Development Block Grant) that there are many projects which may not relate to water which would provide great public benefit if funded. These projects may provide employment opportunities or economic diversification in a community or provide for growth into previously unserved areas around a community.

It has been within this environment that there have been suggestions made to broaden the purposes for AB198 or AB197 funding. The suggestions have come during NIIFG meetings, and by letter from RECDS (attached). Some specific projects which have been discussed include: an extension of service to unserved areas near Fernley to help remove residents from an arsenic laden aquifer; construction of waterlines into unserved areas near Moapa Valley to provide for growth; construction of wastewater collection facilities in Ridgeview Estates to eliminate the source of nitrates and chlorides which impair water quality in their community wells; construction of wastewater facilities in un-improved neighborhoods such as Johnson Lane to provide for longer lives of the individual wells which serve the residents; and participation in the construction of new solid waste disposal facilities. Another possible extension would be the funding of water treatment facilities for mutual water companies, cooperatives, or other *private non-profit* companies.

The eligibility criteria for the AB197-AB198 programs would have to be broadened by the State Legislature in order for these projects to be funded.

Does the Board have any specific interest in any particular type of extended project scope?

As is readily apparent, the balance of the \$25 million grant allocation provided by the legislature in 1991 could quickly be exhausted if the program were extended into these new areas. It would seem appropriate for the broader scope expansions of these funding programs to include authorization of additional funds to cover the costs of the projects identified for funding.

If it is agreed by the Legislature that funding from these programs should be extended into new areas, the next question is where do you identify or specify the next logical cut-off criteria. So as to provide clear guidelines to potential applicants it should be clearly stated what benefits must accrue from the grant investment. It should be clear who the recipients are intended to be.

Would the Board have any suggestions for applicants or sample projects where a clear limit to eligible project components could be determined?

Impacts to the Division of Water Planning

If the purposes of these two programs were broadened, it is very possible that funds would be quickly exhausted. In that event it might be necessary to provide a competitive evaluation program which would fund only the most beneficial and economical of the proposals.

Alternatively, the broadening of the program might be accompanied by increasing the funding by an amount approximating the expected volume of eligible projects.

Another impact would be to the staff of the Division. The volume of concurrent applications could require the addition of new staff members.