

## Assembly Bill No. 197—Committee on Government Affairs

## CHAPTER.....

AN ACT relating to community water systems; establishing a program of loans for capital improvements required of community water systems; authorizing the issuance of revenue bonds to support the purposes of the program; and providing other matters properly relating thereto.

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

**Section 1.** Chapter 349 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this act.

**Sec. 2.** *As used in sections 2 to 10, inclusive, of this act, 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 section 5 of this act.

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.

**Sec. 3.** 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.

**Sec. 4. 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.

**Sec. 5. 1.** Loans may be made under the program only for those community water systems that are in operation on the effective date of this act.

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.

Sec. 6. 1. The revolving fund to finance capital improvements to community water systems is hereby created.

2. Except as otherwise provided by subsection 3 of section 4 of this act, 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.

Sec. 7. All money received for the fund:

1. From the issuance of bonds pursuant to section 8 of this act;

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.

Sec. 8. 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 section 3 of this act. 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.

Sec. 9. 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.

Sec. 10. 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 this act.

Sec. 11. This act becomes effective upon passage and approval.

# Memorandum

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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.

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AB197 WAS SPELLED OUT  
IN NRS 349.970 - .978

(SB 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.

DISCUSSION ITEMS  
FOR THE BROADENING OF SERVICE TO NEW PROJECTS:

NRS Law revisions:

**AB 197 Loans:**

- Amend Constitution Article 8 Section 9.
- Broaden the definition of Program to include:

Allow use for matching State AB198 grant funds

Allow use for the extension of service into populated areas not currently subject to state regulations, which are known to depend on poor quality groundwater for domestic use.

Allow use for the protection of groundwater sources for communities. (sewer systems, hazardous waste cleanup, solid waste improvements).

Allow use for wastewater systems.

Allow use for growth of communities (economic development?)

**AB 198 Grants:**

- Amend Article 8 Section 9.
- Eliminate the requirement that grant funds be matched with **non-state** funds.
- Broaden the definition of Program to include:

Allow use for the extension of service into populated areas known to depend on poor quality groundwater for domestic use.

Allow use for the protection of groundwater sources for communities.

Allow use to include wastewater systems.

NAC Regulation revisions:

**AB 197 Loans:**

- Eliminate the need for Loans to go only to **Publicly Owned** community water systems.
- Minimize the importance of the 6,000 population maximum.

**AB 198 Grants:**

- Action would depend on what happens to NRS