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AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE WASTEWATER FACILITY  
CONSTRUCTION LOAN ACT TO INCLUDE MUTUAL DOMESTIC WATER  
CONSUMERS ASSOCIATION IN THE DEFINITION OF "LOCAL AUTHORITY";  
EXTENDING THE LOAN REPAYMENT PERIOD.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 74-6A-3 NMSA 1978 (being Laws 1986,  
Chapter 72, Section 3, as amended) is amended to read:

"74-6A-3. DEFINITIONS.--As used in the Wastewater  
Facility Construction Loan Act:

A. "administrative fee" means a fee assessed and  
collected by the department from a local authority on each  
loan and expressed as a percentage per year on the  
outstanding principal amount of the loan, payable by the  
borrower on the same date that principal and interest on the  
loan are due, for deposit in the clean water administrative  
fund;

B. "commission" means the water quality control  
commission;

C. "division" or "department" means the department  
of environment;

D. "financial assistance" means loans, the  
purchase or refinancing of existing local political  
subdivision obligations, loan guarantees, credit enhancement

1 techniques to reduce interest on loans and bonds, bond  
2 insurance and bond guarantees or any combination of these  
3 purposes;

4 E. "fund" means the wastewater facility  
5 construction loan fund;

6 F. "local authority" means any municipality,  
7 county, incorporated county, mutual domestic water consumers  
8 association as defined by the Sanitary Projects Act,  
9 sanitation district, water and sanitation district or any  
10 similar district, recognized Indian tribe or other issuing  
11 agency created pursuant to a joint powers agreement acting on  
12 behalf of any entity listed in this subsection;

13 G. "operate and maintain" means to perform all  
14 necessary activities, including replacement of equipment or  
15 appurtenances, to ensure the dependable and economical  
16 function of a wastewater facility in accordance with its  
17 intended purpose;

18 H. "wastewater facility" means a publicly owned  
19 system for treating or disposing of sewage or wastes either  
20 by surface or underground methods, including any equipment,  
21 plant, treatment works, structure, machinery, apparatus or  
22 land, in any combination, that is acquired, used, constructed  
23 or operated for the storage, collection, reduction,  
24 recycling, reclamation, disposal, separation or treatment of  
25 water or wastes or for the final disposal of residues

1 resulting from the treatment of water or wastes, such as  
2 pumping and ventilating stations, facilities, plants and  
3 works, outfall sewers, interceptor sewers and collector  
4 sewers and other real or personal property and appurtenances  
5 incident to their use or operation. "Wastewater facility"  
6 also includes a nonpoint source water pollution control  
7 project as eligible under the Clean Water Act;

8 I. "account" means the wastewater suspense  
9 account;

10 J. "board" means the state board of finance;

11 K. "bonds" means wastewater bonds or other  
12 obligations authorized by the commission to be issued by the  
13 board pursuant to the Wastewater Facility Construction Loan  
14 Act;

15 L. "Clean Water Act" means the federal Clean Water  
16 Act of 1977 and its subsequent amendments or successor  
17 provisions;

18 M. "federal securities" means direct obligations  
19 of the United States, or obligations the principal and  
20 interest of which are unconditionally guaranteed by the  
21 United States, or an ownership interest in either of the  
22 foregoing;

23 N. "force account construction" means construction  
24 performed by the employees of a local authority rather than  
25 through a contractor;

1 O. "holders" means persons who are owners of  
2 bonds, whether registered or not, issued pursuant to the  
3 Wastewater Facility Construction Loan Act;

4 P. "issuing resolution" means a formal statement  
5 adopted by the board to issue bonds pursuant to the  
6 Wastewater Facility Construction Loan Act, including any  
7 trust agreement, trust indenture or similar instrument  
8 providing terms and conditions for the bonds to be issued;  
9 and

10 Q. "recommending resolution" means a formal  
11 statement adopted by the commission recommending to the board  
12 that bonds be issued pursuant to the Wastewater Facility  
13 Construction Loan Act, including any trust agreement, trust  
14 indenture or similar instrument providing the terms and  
15 conditions for the bonds that are issued."

16 SECTION 2. Section 74-6A-8 NMSA 1978 (being Laws 1991,  
17 Chapter 172, Section 6) is amended to read:

18 "74-6A-8. FINANCIAL ASSISTANCE--CRITERIA.--

19 A. Financial assistance shall be provided only to  
20 local authorities that:

21 (1) meet the requirements for financial  
22 capability set by the division to assure sufficient revenues  
23 to operate and maintain the wastewater facility for its  
24 useful life and to repay the financial assistance;

25 (2) agree to operate and maintain the

1 wastewater facility so that the facility will function  
2 properly over its structural and material design life;

3 (3) agree to maintain separate project  
4 accounts, to maintain project accounts properly in accordance  
5 with generally accepted governmental accounting standards and  
6 to conduct an audit of the project's financial records;

7 (4) provide a written assurance, signed by  
8 an attorney, that the local authority has or will acquire  
9 proper title, easements and rights of way to the property  
10 upon or through which the wastewater facility proposed for  
11 funding is to be constructed or extended;

12 (5) require the contractor of the wastewater  
13 facility construction project to post a performance and  
14 payment bond in accordance with the requirements of  
15 Section 13-4-18 NMSA 1978 and its subsequent amendments and  
16 successor provisions;

17 (6) provide a written notice of completion  
18 and start of operation of the wastewater facility;

19 (7) appear on the priority list of the fund,  
20 regardless of rank on such list; and

21 (8) provide such information to the division  
22 as required by the commission in order to comply with the  
23 provisions of the Clean Water Act and state law.

24 B. Loans shall be made only to local authorities  
25 that establish one or more dedicated sources of revenue to

1 repay the money received from the commission and to provide  
2 for operation, maintenance and equipment replacement  
3 expenses. A local authority, any existing statute to the  
4 contrary notwithstanding, may do any of the following:

5 (1) obligate itself to pay to the commission  
6 at periodic intervals a sum sufficient to provide all or any  
7 part of bond debt service with respect to the bonds  
8 recommended by the commission and issued by the board to fund  
9 the loan for the wastewater facility project of the local  
10 authority and pay over the debt service to the account of the  
11 wastewater facility project for deposit to the fund;

12 (2) fulfill any obligation to pay the  
13 commission by the issuance of bonds, notes or other  
14 obligations in accordance with the laws authorizing issuance  
15 of local authority obligations; provided, however that,  
16 notwithstanding the provisions of Section 4-54-3 or 6-15-5  
17 NMSA 1978 or other statute or law requiring the public sale  
18 of local authority obligations, such obligations may be sold  
19 at private sale to the commission at the price and upon the  
20 terms and conditions the local authority shall determine;

21 (3) levy, collect and pay over to the  
22 commission and obligate itself to continue to levy, collect  
23 and pay over to the commission the proceeds of one or more of  
24 the following:

25 (a) sewer or waste disposal service

1 fees or charges;

2 (b) licenses, permits, taxes and fees;

3 (c) special assessments on the property  
4 served or benefited by the wastewater facility project; or

5 (d) other revenue available to the  
6 local authority;

7 (4) undertake and obligate itself to pay its  
8 contractual obligation to the commission solely from the  
9 proceeds from any of the sources specified in Paragraph (3)  
10 of this subsection or, in accordance with the laws  
11 authorizing issuance of local authority obligations, impose  
12 upon itself a general obligation pledge to the commission  
13 additionally secured by a pledge of any of the sources  
14 specified in Paragraph (3) of this subsection; or

15 (5) enter into agreements, perform acts and  
16 delegate functions and duties as its governing body shall  
17 determine is necessary or desirable to enable the division as  
18 agent for the commission to fund a loan to the local  
19 authority to aid it in the construction or acquisition of a  
20 wastewater facility project.

21 C. Each loan made by the division as agent for the  
22 commission shall provide that repayment of the loan shall  
23 begin not later than one year after completion of  
24 construction of the wastewater facility project for which the  
25 loan was made and shall be repaid in full no later than

1 thirty years after completion of the construction. All  
2 principal and interest on loan payments shall be deposited in  
3 the fund.

4 D. Financial assistance shall be made with an  
5 annual interest rate to be five percent or less as determined  
6 by the commission.

7 E. A zero-percent interest rate may be approved by  
8 the division when the following conditions have been met by  
9 the local authority:

10 (1) the local authority's average user cost  
11 is at least fifteen dollars (\$15.00) per month or a higher  
12 amount as determined by the commission; and

13 (2) the local authority's median household  
14 income is less than three-fourths of the statewide  
15 nonmetropolitan median household income.

16 F. A local authority may use the proceeds from  
17 financial assistance received under the Wastewater Facility  
18 Construction Loan Act to provide a local match or any other  
19 nonfederal share of a wastewater facility construction  
20 project as allowed pursuant to the Clean Water Act.

21 G. Financial assistance received pursuant to the  
22 Wastewater Facility Construction Loan Act shall not be used  
23 by a local authority on any wastewater facility project  
24 constructed in fulfillment or partial fulfillment of  
25 requirements made of a subdivider under the provisions of the



1 Land Subdivision Act or the New Mexico Subdivision Act.

2 H. Financial assistance shall be made only to  
3 local authorities that employ or contract with a registered  
4 professional engineer to provide and be responsible for  
5 engineering services on the wastewater facility project.  
6 Such services include but are not limited to an engineering  
7 report, construction contract documents, supervision of  
8 construction and start-up services.

9 I. Financial assistance shall be made only for  
10 eligible items. For financial assistance composed entirely  
11 of state funds, eligible items include but are not limited to  
12 the costs of engineering feasibility reports, contracted  
13 engineering design, inspection of construction, special  
14 engineering services, start-up services, contracted  
15 construction, materials purchased or equipment leased for  
16 force account construction, land or acquisition of existing  
17 facilities, but eligible items do not include the costs of  
18 water rights and local authority administrative costs. For  
19 financial assistance made from federal funds, eligible items  
20 are those identified pursuant to the Clean Water Act.

21 J. In the event of default by the local authority,  
22 the commission may enforce its rights by suit or mandamus  
23 or may utilize all other available remedies under state  
24 law." \_\_\_\_\_