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HOUSE BILL 128

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Kelly K. Fajardo

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

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1 deposit in the clean water administrative fund;

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

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

6 D. "financial assistance" means loans, the purchase
7 or refinancing of existing local political subdivision
8 obligations, loan guarantees, credit enhancement techniques to
9 reduce interest on loans and bonds, bond insurance and bond
10 guarantees or any combination of these purposes;

11 E. "fund" means the wastewater facility
12 construction loan fund;

13 F. "local authority" means any municipality,
14 county, incorporated county, mutual domestic water consumers
15 association as defined by the Sanitary Projects Act, sanitation
16 district, water and sanitation district or any similar
17 district, recognized Indian tribe or other issuing agency
18 created pursuant to a joint powers agreement acting on behalf
19 of any entity listed in this subsection;

20 G. "operate and maintain" means to perform all
21 necessary activities, including replacement of equipment or
22 appurtenances, to ensure the dependable and economical function
23 of a wastewater facility in accordance with its intended
24 purpose;

25 H. "wastewater facility" means a publicly owned

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1 system for treating or disposing of sewage or wastes either by
2 surface or underground methods, including any equipment, plant,
3 treatment works, structure, machinery, apparatus or land, in
4 any combination, that is acquired, used, constructed or
5 operated for the storage, collection, reduction, recycling,
6 reclamation, disposal, separation or treatment of water or
7 wastes or for the final disposal of residues resulting from the
8 treatment of water or wastes, such as pumping and ventilating
9 stations, facilities, plants and works, outfall sewers,
10 interceptor sewers and collector sewers and other real or
11 personal property and appurtenances incident to their use or
12 operation. "Wastewater facility" also includes a nonpoint
13 source water pollution control project as eligible under the
14 Clean Water Act;

15 I. "account" means the wastewater suspense account;

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

17 K. "bonds" means wastewater bonds or other
18 obligations authorized by the commission to be issued by the
19 board pursuant to the Wastewater Facility Construction Loan
20 Act;

21 L. "Clean Water Act" means the federal Clean Water
22 Act of 1977 and its subsequent amendments or successor
23 provisions;

24 M. "federal securities" means direct obligations of
25 the United States, or obligations the principal and interest of

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1 which are unconditionally guaranteed by the United States, or
2 an ownership interest in either of the foregoing;

3 N. "force account construction" means construction
4 performed by the employees of a local authority rather than
5 through a contractor;

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

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

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

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

22 "74-6A-8. FINANCIAL ASSISTANCE--CRITERIA.--

23 A. Financial assistance shall be provided only to
24 local authorities that:

25 (1) meet the requirements for financial

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1 capability set by the division to assure sufficient revenues to
2 operate and maintain the wastewater facility for its useful
3 life and to repay the financial assistance;

4 (2) agree to operate and maintain the
5 wastewater facility so that the facility will function properly
6 over its structural and material design life;

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

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

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

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

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

25 (8) provide such information to the division

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1 as required by the commission in order to comply with the
2 provisions of the Clean Water Act and state law.

3 B. Loans shall be made only to local authorities
4 that establish one or more dedicated sources of revenue to
5 repay the money received from the commission and to provide for
6 operation, maintenance and equipment replacement expenses. A
7 local authority, any existing statute to the contrary
8 notwithstanding, may do any of the following:

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

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

25 (3) levy, collect and pay over to the

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1 commission and obligate itself to continue to levy, collect and
2 pay over to the commission the proceeds of one or more of the
3 following:

4 (a) sewer or waste disposal service fees
5 or charges;

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

7 (c) special assessments on the property
8 served or benefited by the wastewater facility project; [~~and~~]
9 or

10 (d) other revenue available to the local
11 authority;

12 (4) undertake and obligate itself to pay its
13 contractual obligation to the commission solely from the
14 proceeds from any of the sources specified in Paragraph (3) of
15 this subsection or, in accordance with the laws authorizing
16 issuance of local authority obligations, impose upon itself a
17 general obligation pledge to the commission additionally
18 secured by a pledge of any of the sources specified in
19 Paragraph (3) of this subsection; [~~and~~] or

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

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1 C. Each loan made by the division as agent for the
2 commission shall provide that repayment of the loan shall begin
3 not later than one year after completion of construction of the
4 wastewater facility project for which the loan was made and
5 shall be repaid in full no later than [~~twenty~~] thirty years
6 after completion of the construction. All principal and
7 interest on loan payments shall be deposited in the fund.

8 D. Financial assistance shall be made with an
9 annual interest rate to be five percent or less as determined
10 by the commission.

11 E. A zero-percent interest rate may be approved by
12 the division when the following conditions have been met by the
13 local authority:

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

17 (2) the local authority's median household
18 income is less than three-fourths of the statewide
19 nonmetropolitan median household income.

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

25 G. Financial assistance received pursuant to the

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1 Wastewater Facility Construction Loan Act shall not be used by
2 a local authority on any wastewater facility project
3 constructed in fulfillment or partial fulfillment of
4 requirements made of a subdivider under the provisions of the
5 Land Subdivision Act or the New Mexico Subdivision Act.

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

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

25 J. In the event of default by the local authority,

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1 the commission may enforce its rights by suit or mandamus or
2 may utilize all other available remedies under state law."

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