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HOUSE BILL 415

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Randal S. Crowder and Rodolpho "Rudy" S. Martinez

AN ACT

RELATING TO PUBLIC FINANCE; MAKING STATE AGENCIES ELIGIBLE FOR
FUNDING FOR WASTEWATER PROJECTS PURSUANT TO THE WASTEWATER
FACILITY CONSTRUCTION LOAN ACT.

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

SECTION 1. Section 74-6A-2 NMSA 1978 (being Laws 1986,
Chapter 72, Section 2, as amended) is amended to read:

"74-6A-2. PURPOSE.--The purpose of the Wastewater
Facility Construction Loan Act is to provide state agencies and
local authorities in New Mexico with low-cost financial
assistance in the construction of necessary wastewater
facilities through the creation of a self-sustaining program so
as to improve and protect water quality and public health."

SECTION 2. Section 74-6A-3 NMSA 1978 (being Laws 1986,
Chapter 72, Section 3, as amended) is amended to read:

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1 "74-6A-3. DEFINITIONS.--As used in the Wastewater
2 Facility Construction Loan Act:

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

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

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

14 D. "financial assistance" means loans, the purchase
15 or refinancing of existing state agency or local political
16 subdivision obligations, loan guarantees, credit enhancement
17 techniques to reduce interest on loans and bonds, bond
18 insurance and bond guarantees or any combination of these
19 purposes;

20 E. "fund" means the wastewater facility
21 construction loan fund;

22 F. "local authority" means any municipality,
23 county, incorporated county, mutual domestic water consumers
24 association as defined by the Sanitary Projects Act, sanitation
25 district, water and sanitation district or any similar

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1 district, recognized Indian tribe or other issuing agency
2 created pursuant to a joint powers agreement acting on behalf
3 of any entity listed in this subsection;

4 G. "operate and maintain" means to perform all
5 necessary activities, including replacement of equipment or
6 appurtenances, to ensure the dependable and economical function
7 of a wastewater facility in accordance with its intended
8 purpose;

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

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

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

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1 K. "bonds" means wastewater bonds or other
2 obligations authorized by the commission to be issued by the
3 board pursuant to the Wastewater Facility Construction Loan
4 Act;

5 L. "Clean Water Act" means the federal Clean Water
6 Act of 1977 and its subsequent amendments or successor
7 provisions;

8 M. "federal securities" means direct obligations of
9 the United States, or obligations the principal and interest of
10 which are unconditionally guaranteed by the United States, or
11 an ownership interest in either of the foregoing;

12 N. "force account construction" means construction
13 performed by the employees of a local authority rather than
14 through a contractor;

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

18 P. "issuing resolution" means a formal statement
19 adopted by the board to issue bonds pursuant to the Wastewater
20 Facility Construction Loan Act, including any trust agreement,
21 trust indenture or similar instrument providing terms and
22 conditions for the bonds to be issued; ~~[and]~~

23 Q. "recommending resolution" means a formal
24 statement adopted by the commission recommending to the board
25 that bonds be issued pursuant to the Wastewater Facility

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1 Construction Loan Act, including any trust agreement, trust
2 indenture or similar instrument providing the terms and
3 conditions for the bonds that are issued; and

4 R. "state agency" means an agency or department of
5 the executive branch of government."

6 SECTION 3. Section 74-6A-8 NMSA 1978 (being Laws 1991,
7 Chapter 172, Section 6, as amended) is amended to read:

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

9 A. Financial assistance shall be provided only to
10 state agencies and local authorities that:

11 (1) meet the requirements for financial
12 capability set by the division to assure sufficient revenues to
13 operate and maintain the wastewater facility for its useful
14 life and to repay the financial assistance;

15 (2) agree to operate and maintain the
16 wastewater facility so that the facility will function properly
17 over its structural and material design life;

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

22 (4) provide a written assurance, signed by an
23 attorney, that the state agency or local authority has or will
24 acquire proper title, easements and rights of way to the
25 property upon or through which the wastewater facility proposed

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1 for funding is to be constructed or extended;

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

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

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

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

14 B. Loans shall be made only to state agencies and
15 local authorities that establish one or more dedicated sources
16 of revenue to repay the money received from the commission and
17 to provide for operation, maintenance and equipment replacement
18 expenses. A state agency or local authority, any existing
19 statute to the contrary notwithstanding, may do any of the
20 following:

21 (1) obligate itself to pay to the commission
22 at periodic intervals a sum sufficient to provide all or any
23 part of bond debt service with respect to the bonds recommended
24 by the commission and issued by the board to fund the loan for
25 the wastewater facility project of the state agency or local

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1 authority and pay over the debt service to the account of the
2 wastewater facility project for deposit to the fund;

3 (2) fulfill any obligation to pay the
4 commission by the issuance of bonds, notes or other obligations
5 in accordance with the laws authorizing issuance of state or
6 local authority obligations; provided, however, that,
7 notwithstanding the provisions of Section 4-54-3 or 6-15-5 NMSA
8 1978 or other statute or law requiring the public sale of local
9 authority obligations, such obligations may be sold at private
10 sale to the commission at the price and upon the terms and
11 conditions the local authority shall determine;

12 (3) levy, collect and pay over to the
13 commission and obligate itself to continue to levy, collect and
14 pay over to the commission the proceeds of one or more of the
15 following:

16 (a) sewer or waste disposal service fees
17 or charges;

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

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

21 (d) other revenue available to the state
22 agency or local authority;

23 (4) undertake and obligate itself to pay its
24 contractual obligation to the commission solely from the
25 proceeds from any of the sources specified in Paragraph (3) of

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1 this subsection or, in accordance with the laws authorizing
2 issuance of state agency or local authority obligations, impose
3 upon itself a general obligation pledge to the commission
4 additionally secured by a pledge of any of the sources
5 specified in Paragraph (3) of this subsection; or

6 (5) enter into agreements, perform acts and
7 delegate functions and duties as its governing body shall
8 determine is necessary or desirable to enable the division as
9 agent for the commission to fund a loan to the state agency or
10 local authority to aid it in the construction or acquisition of
11 a wastewater facility project.

12 C. Each loan made by the division as agent for the
13 commission shall provide that repayment of the loan shall begin
14 not later than one year after completion of construction of the
15 wastewater facility project for which the loan was made and
16 shall be repaid in full no later than thirty years after
17 completion of the construction. All principal and interest on
18 loan payments shall be deposited in the fund.

19 D. Financial assistance shall be made with an
20 annual interest rate to be five percent or less as determined
21 by the commission.

22 E. A zero-percent interest rate may be approved by
23 the division when the following conditions have been met by the
24 local authority:

25 (1) the local authority's average user cost is

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1 at least fifteen dollars (\$15.00) per month or a higher amount
2 as determined by the commission; and

3 (2) the local authority's median household
4 income is less than three-fourths of the statewide
5 nonmetropolitan median household income.

6 F. A local authority may use the proceeds from
7 financial assistance received under the Wastewater Facility
8 Construction Loan Act to provide a local match or any other
9 nonfederal share of a wastewater facility construction project
10 as allowed pursuant to the Clean Water Act.

11 G. Financial assistance received pursuant to the
12 Wastewater Facility Construction Loan Act shall not be used by
13 a state agency or local authority on any wastewater facility
14 project constructed in fulfillment or partial fulfillment of
15 requirements made of a subdivider under the provisions of the
16 Land Subdivision Act or the New Mexico Subdivision Act.

17 H. Financial assistance shall be made only to state
18 agencies and local authorities that employ or contract with a
19 [~~registered~~] professional engineer to provide and be
20 responsible for engineering services on the wastewater facility
21 project. Such services include but are not limited to an
22 engineering report, construction contract documents,
23 supervision of construction and start-up services.

24 I. Financial assistance shall be made only for
25 eligible items. For financial assistance composed entirely of

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1 state funds, eligible items include but are not limited to the
2 costs of engineering feasibility reports, contracted
3 engineering design, inspection of construction, special
4 engineering services, start-up services, contracted
5 construction, materials purchased or equipment leased for force
6 account construction, land or acquisition of existing
7 facilities, but eligible items do not include the costs of
8 water rights and local authority administrative costs. For
9 financial assistance made from federal funds, eligible items
10 are those identified pursuant to the Clean Water Act.

11 J. In the event of default by the state agency or
12 local authority, the commission may enforce its rights by suit
13 or mandamus or may utilize all other available remedies under
14 state law."

15 SECTION 4. Section 74-6A-9 NMSA 1978 (being Laws 1991,
16 Chapter 172, Section 7) is amended to read:

17 "74-6A-9. COMMISSION--POWERS.--

18 A. In administering the Wastewater Facility
19 Construction Loan Act, the commission shall have the following
20 powers, which may be implemented by the division, in addition
21 to those specified in the Water Quality Act:

22 (1) to provide financial assistance to state
23 agencies or local authorities to finance all or part of a
24 wastewater facility, including all forms of assistance for
25 which the fund may be used pursuant to the Wastewater Facility

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1 Construction Loan Act;

2 (2) to adopt [~~recommending~~] resolutions
3 recommending that the board issue bonds or refunding bonds
4 pursuant to the provisions of the Wastewater Facility

5 Construction Loan Act;

6 (3) to execute agreements concerning state
7 contributions to the fund made pursuant to the Clean Water Act,
8 including obligating the commission to pay a portion of the
9 estimated reasonable cost of a wastewater facility of a local
10 authority as may be required to meet the water quality goals of
11 the Clean Water Act and the state;

12 (4) to foreclose upon, attach or condemn any
13 wastewater facility, property or interest in the facility
14 pledged, mortgaged or otherwise available as security for a
15 project financed in whole or in part pursuant to the Wastewater
16 Facility Construction Loan Act in the event of a default by a
17 state agency or local authority;

18 (5) to acquire and hold title to or leasehold
19 interest in real and personal property and to sell, convey or
20 lease that property for the purpose of satisfying a default or
21 enforcing the provisions of a loan agreement;

22 (6) through its agent the division, to manage
23 the fund, to grant and administer financial assistance to local
24 authorities and to apply for and accept grants, including but
25 not limited to capitalization grant awards made to the state in

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1 accordance with the Clean Water Act and the Wastewater Facility
2 Construction Loan Act;

3 (7) to appoint and employ attorneys, financial
4 advisors, underwriters and other experts and agents and
5 employees as the business of the commission may require;

6 (8) to sue or be sued and to prosecute and
7 defend, at law or in equity, in any court having jurisdiction
8 over the subject matter and the parties to the matter;

9 (9) to collect application, origination and
10 administrative fees from the state agency or local authority,
11 the total of which for any loan shall not exceed four percent
12 of the value of the loan requested or authorized;

13 (10) to adopt regulations necessary and
14 appropriate to implement the provisions of the Wastewater
15 Facility Construction Loan Act; and

16 (11) to have and exercise all the rights and
17 powers necessary, incidental to or implied from the specific
18 powers enumerated in this section.

19 B. Specific powers enumerated in this section shall
20 not limit any power necessary or appropriate to carry out the
21 purposes and intent of the Wastewater Facility Construction
22 Loan Act.

23 C. The commission shall use accounting, audit and
24 fiscal procedures conforming to generally accepted government
25 accounting standards and shall otherwise prepare audits and

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1 budgets in accordance with state law. The fiscal year of the
2 commission shall coincide with the fiscal year of the state.

3 D. The commission shall deliver an annual report
4 during the first week of each regular session of the
5 legislature on the status of the wastewater facility
6 construction loan program and the fund to the governor and
7 legislature."

8 SECTION 5. Section 74-6A-12 NMSA 1978 (being Laws 1991,
9 Chapter 172, Section 10) is amended to read:

10 "74-6A-12. COMMISSION BONDS.--

11 A. The board, upon recommendation from the
12 commission, may issue and sell bonds or other obligations
13 recommended by the commission to provide funds for any purpose
14 enumerated in the Wastewater Facility Construction Loan Act or
15 for payment of obligations incurred or temporary loans made to
16 accomplish any purpose of that act. As prescribed in the
17 recommending resolution, bonds may be issued in one or more
18 series; shall bear prescribed dates; shall be in the form
19 provided in the Supplemental Public Securities Act; shall be
20 issued in prescribed denominations; shall have terms and
21 maturities that do not exceed twenty-five years from the date
22 of issue of each series; shall bear interest at prescribed
23 rates; shall be payable and evidenced in the manner and times
24 as set by the board; may be redeemed with or without premiums
25 prior to maturity; may be ranked or assigned priority status;

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1 and may contain provisions not inconsistent with this
2 subsection.

3 B. As security for the payment of the principal and
4 interest on bonds recommended by the commission and issued by
5 the board, the commission is authorized to pledge, transfer and
6 assign after consultation with the board:

7 (1) any obligations of each state agency or
8 local authority, payable to the commission;

9 (2) the security for the state agency or local
10 authority obligations;

11 (3) any grant, subsidy or contribution from
12 the United States or any of its agencies or instrumentalities;
13 or

14 (4) any income, revenues, funds or other money
15 of the commission from any other source appropriated or
16 authorized for use for the purpose of implementing the
17 provisions of the Wastewater Facility Construction Loan Act.

18 C. The bonds and other obligations recommended by
19 the commission and issued by the board may be sold at any time
20 the commission and the board agree upon. The bonds may be sold
21 at private or public sale at prices as provided in the Public
22 Securities Act and in a manner agreed upon by the board and the
23 commission. The commission may apply the proceeds of the sale
24 of the bonds it recommends that have been issued by the board
25 to:

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1 (1) the purposes of the Wastewater Facility
2 Construction Loan Act or the purposes for which the fund may be
3 used;

4 (2) the payment of interest on bonds
5 recommended by the commission and issued by the board for a
6 period not to exceed three years from the date of issuance of
7 the bonds; and

8 (3) the payment of all expenses, including
9 publication and printing charges, [~~attorneys~~] attorney fees,
10 financial advisory and underwriter fees, and premiums or
11 commissions that the commission or the board [~~determine~~]
12 determines are necessary or advantageous in connection with the
13 recommendation, advertisement, sale, creation and issuance of
14 commission-recommended obligations.

15 The board retains the power to fix the date of sale of the
16 bonds and to take all actions necessary to sell and deliver the
17 bonds.

18 D. In anticipation of the issuance of bonds, the
19 board or the commission may borrow such sums as may be needed
20 for any of the purposes enumerated in Subsection C of this
21 section, obligate itself by certificate or promissory note,
22 bearing interest at a rate to be specified by the commission
23 and maturing within fifteen months from the date of the
24 certificate or promissory note. The certificates or promissory
25 notes shall be payable solely from the proceeds of the bonds

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1 recommended by the commission and issued by the board and from
2 the funds from which commission-recommended bonds are payable.
3 In the event that commission funds are not available for a loan
4 for a wastewater facility project when application is made, in
5 order to accelerate the completion of any wastewater facility
6 project, the local authority may, with the approval of the
7 commission, obligate such local authority to provide local
8 funds to pay that portion of the cost of the wastewater
9 facility project that the commission agrees to make available
10 by loan, and the commission may refund the amount expended on
11 its behalf by the local authority.

12 E. The commission may recommend that the board
13 issue and sell refunding bonds for the purpose of paying,
14 defeasing or refunding the principal of, interest on and any
15 redemption premiums on any matured or unmatured outstanding
16 bonds recommended by the commission and issued by the board or
17 any matured or unmatured bonds of the state issued to finance
18 wastewater facility projects constructed pursuant to the Clean
19 Water Act grant program. Refunding bonds issued by the board
20 pursuant to a recommendation by the commission shall be subject
21 to the provisions of the Wastewater Facility Construction Loan
22 Act in the same manner and to the same extent as other bonds
23 issued pursuant to that act. The holders of refunding bonds
24 shall be subrogated and entitled to all priorities, rights and
25 pledges to which the bonds refunded thereby were entitled.

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1 F. Except as otherwise provided in the Wastewater
2 Facility Construction Loan Act, the proceeds of refunding bonds
3 shall be immediately applied to the retirement of the bonds to
4 be refunded or be placed in escrow or trust in one or more
5 trust banks within or without the state to be applied to the
6 payment of the refunded bonds or the refunding bonds, or both,
7 in such priority and in the manner that the commission and the
8 board may determine.

9 G. The incidental costs of refunding bonds may be
10 paid by the purchaser of the refunding bonds or be defrayed
11 from other available revenues of the commission, from the
12 proceeds of the refunding bonds, from the interest or other
13 yield derived from the investment of any refunding bond
14 proceeds or other money in escrow or trust, from any other
15 sources legally available for that purpose or from any
16 combination of sources as the commission may determine.

17 H. Any accrued interest and any premium
18 appertaining to a sale of refunding bonds may be applied to the
19 payment of the interest or the principal of the bonds, or to
20 both interest and principal, may be deposited in the account or
21 in the fund and expended solely for the purposes of this
22 subsection, may be used to refund bonds by deposit in escrow,
23 trust or otherwise or may be used to defray any incidental
24 costs appertaining to the refunding or any combination thereof,
25 as the commission may determine.

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1 I. An escrow or trust shall be limited to proceeds
2 of refunding bonds.

3 J. A trust bank accounting for federal securities
4 and other securities issued by the federal government in escrow
5 or trust may place those securities for safekeeping wholly or
6 in part in one or more trust banks within or without the state.
7 Proceeds in escrow or trust may be invested or reinvested in
8 federal securities and, in the case of an escrow or trust for
9 the refunding of outstanding bonds or securities, in other
10 securities issued by the federal government if the recommending
11 and issuing resolutions expressly permit the investment or
12 reinvestment in securities issued by the federal government
13 other than federal securities.

14 K. A trust bank shall continuously secure, by a
15 pledge of federal securities in an amount at all times at least
16 equal to the total uninvested amount of the money, any money
17 placed in escrow or trust in that trust bank, or by that trust
18 bank in one or more trust banks within or without the state,
19 and not invested or reinvested in federal securities and other
20 securities issued by the federal government.

21 L. Proceeds and investments in escrow or trust,
22 together with interest or gain to be derived from that
23 investment, shall be in an amount at all times sufficient to
24 pay principal, interest, prior redemption premiums due, charges
25 of the escrow agent or trustee and other incidental expenses,

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1 except to the extent otherwise provided for, as such
2 obligations become due at their respective maturities or due at
3 designated prior redemption dates in connection with which the
4 commission has exercised or is obligated to exercise a prior
5 redemption option.

6 M. The computations made in determining sufficiency
7 shall be verified by a certified public accountant.

8 N. A purchaser of a refunding bond issued pursuant
9 to this [~~subsection~~] section shall not be responsible for the
10 application of the proceeds by the commission or any of the
11 officers, agents or employees of the commission.

12 O. The state treasurer may invest any idle or
13 surplus money of the state in bonds recommended by the
14 commission and issued by the board. The governing body of any
15 public entity in the state may invest any idle or surplus money
16 held in its treasury in bonds recommended by the commission and
17 issued by the board. Bonds recommended by the commission and
18 issued by the board shall be legal investments for executors,
19 administrators, trustees and other fiduciaries, unless
20 otherwise directed by the court having jurisdiction of the
21 fiduciary relation or by the document that is the source of the
22 fiduciary's authority, and for savings banks and insurance
23 companies organized under the laws of the state.

24 P. Bonds or other obligations recommended by the
25 commission and issued by the board and the interest applicable

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1 thereto and the income therefrom and all projects or parts
2 thereof and all assets of the commission shall be exempt from
3 taxation in the state.

4 Q. Bonds may be issued under the provisions of the
5 Wastewater Facility Construction Loan Act only with the
6 approval of the commission and the board pursuant to authority
7 provided in that act.

8 R. Commission members or employees or board members
9 or employees and any person executing bonds issued pursuant to
10 the Wastewater Facility Construction Loan Act shall not be
11 liable personally on [~~such~~] the bonds or be subject to any
12 personal liability or accountability by reason of the issuance
13 [~~thereof~~] of the bonds.

14 S. All bonds recommended by the commission and
15 issued by the board, while registered, are [~~hereby~~] declared
16 and shall be construed to be negotiable instruments.

17 T. All bonds, notes and certificates recommended by
18 the commission and issued by the board shall be special
19 obligations of the board, payable solely from the revenue,
20 income, fees or charges that may, pursuant to the provisions of
21 the Wastewater Facility Construction Loan Act, be pledged to
22 the payment of such obligations, and the bonds, notes or
23 certificates shall not create an obligation, debt or liability
24 of the state. No breach of any pledge, obligation or agreement
25 of the commission shall impose a pecuniary liability upon the

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1 state or a charge upon its general credit or taxing power.
2 U. Any recommending or issuing resolution shall
3 provide that each bond [~~therein~~] recommended or authorized
4 shall recite that it is issued by the board under
5 recommendation of the commission. The recital shall clearly
6 state that the bonds are in full compliance with all of the
7 provisions of the Wastewater Facility Construction Loan Act,
8 and all bonds issued containing such recital shall be
9 incontestable for any cause whatsoever after their delivery for
10 value."

11 SECTION 6. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2017.