

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

5
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

9 "74-6A-2. PURPOSE.--The purpose of the Wastewater
10 Facility Construction Loan Act is to provide state agencies
11 and local authorities in New Mexico with low-cost financial
12 assistance in the construction of necessary wastewater
13 facilities through the creation of a self-sustaining program
14 so as to improve and protect water quality and public
15 health."

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

18 "74-6A-3. DEFINITIONS.--As used in the Wastewater
19 Facility Construction Loan Act:

20 A. "administrative fee" means a fee assessed and
21 collected by the department from a state agency or local
22 authority on each loan and expressed as a percentage per year
23 on the outstanding principal amount of the loan, payable by
24 the borrower on the same date that principal and interest on
25 the loan are due, for deposit in the clean water

1 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
7 purchase or refinancing of existing state agency or local
8 political subdivision obligations, loan guarantees, credit
9 enhancement techniques to reduce interest on loans and bonds,
10 bond insurance and bond guarantees or any combination of
11 these purposes;

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

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

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

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

16 I. "account" means the wastewater suspense
17 account;

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

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

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

1 M. "federal securities" means direct obligations
2 of the United States, or obligations the principal and
3 interest of which are unconditionally guaranteed by the
4 United States, or an ownership interest in either of the
5 foregoing;

6 N. "force account construction" means construction
7 performed by the employees of a local authority rather than
8 through a contractor;

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

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

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

23 R. "state agency" means an agency or department of
24 the executive branch of government."

25 SECTION 3. Section 74-6A-8 NMSA 1978 (being Laws 1991,

1 Chapter 172, Section 6, as amended) is amended to read:

2 "74-6A-8. FINANCIAL ASSISTANCE--CRITERIA.--

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

5 (1) meet the requirements for financial
6 capability set by the division to assure sufficient revenues
7 to operate and maintain the wastewater facility for its
8 useful life and to repay the financial assistance;

9 (2) agree to operate and maintain the
10 wastewater facility so that the facility will function
11 properly over its structural and material design life;

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

16 (4) provide a written assurance, signed by
17 an attorney, that the state agency or local authority has or
18 will acquire proper title, easements and rights of way to the
19 property upon or through which the wastewater facility
20 proposed for funding is to be constructed or extended;

21 (5) require the contractor of the wastewater
22 facility construction project to post a performance and
23 payment bond in accordance with the requirements of Section
24 13-4-18 NMSA 1978 and its subsequent amendments and successor
25 provisions;

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

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

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

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

15 (1) obligate itself to pay to the commission
16 at periodic intervals a sum sufficient to provide all or any
17 part of bond debt service with respect to the bonds
18 recommended by the commission and issued by the board to fund
19 the loan for the wastewater facility project of the state
20 agency or local authority and pay over the debt service to
21 the account of the wastewater facility project for deposit to
22 the fund;

23 (2) fulfill any obligation to pay the
24 commission by the issuance of bonds, notes or other
25 obligations in accordance with the laws authorizing issuance

1 of state or local authority obligations; provided, however,
2 that, notwithstanding the provisions of Section 4-54-3 or
3 6-15-5 NMSA 1978 or other statute or law requiring the
4 public sale of local authority obligations, such obligations
5 may be sold at private sale to the commission at the price
6 and upon the terms and conditions the local authority shall
7 determine;

8 (3) levy, collect and pay over to the
9 commission and obligate itself to continue to levy, collect
10 and pay over to the commission the proceeds of one or more of
11 the following:

12 (a) sewer or waste disposal service
13 fees or charges;

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

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

17 (d) other revenue available to the
18 state agency or local authority;

19 (4) undertake and obligate itself to pay its
20 contractual obligation to the commission solely from the
21 proceeds from any of the sources specified in Paragraph (3)
22 of this subsection or, in accordance with the laws
23 authorizing issuance of state agency or local authority
24 obligations, impose upon itself a general obligation pledge
25 to the commission additionally secured by a pledge of any of

1 the sources specified in Paragraph (3) of this subsection; or

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

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

16 D. Financial assistance shall be made with an
17 annual interest rate to be five percent or less as determined
18 by the commission.

19 E. A zero-percent interest rate may be approved by
20 the division when the following conditions have been met by
21 the local authority:

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

25 (2) the local authority's median household

1 income is less than three-fourths of the statewide
2 nonmetropolitan median household income.

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

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

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

22 I. Financial assistance shall be made only for
23 eligible items. For financial assistance composed entirely
24 of state funds, eligible items include but are not limited to
25 the costs of engineering feasibility reports, contracted

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

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

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

15 "74-6A-9. COMMISSION--POWERS.--

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

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

25 (2) to adopt resolutions recommending that

1 the board issue bonds or refunding bonds pursuant to the
2 provisions of the Wastewater Facility Construction Loan Act;

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

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

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

19 (6) through its agent the division, to
20 manage the fund, to grant and administer financial assistance
21 to local authorities and to apply for and accept grants,
22 including but not limited to capitalization grant awards made
23 to the state in accordance with the Clean Water Act and the
24 Wastewater Facility Construction Loan Act;

25 (7) to appoint and employ attorneys,

1 financial advisors, underwriters and other experts and agents
2 and employees as the business of the commission may require;

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

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

10 (10) to adopt regulations necessary and
11 appropriate to implement the provisions of the Wastewater
12 Facility Construction Loan Act; and

13 (11) to have and exercise all the rights and
14 powers necessary, incidental to or implied from the specific
15 powers enumerated in this section.

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

20 C. The commission shall use accounting, audit and
21 fiscal procedures conforming to generally accepted government
22 accounting standards and shall otherwise prepare audits and
23 budgets in accordance with state law. The fiscal year of the
24 commission shall coincide with the fiscal year of the state.

25 D. The commission shall deliver an annual report

1 during the first week of each regular session of the
2 legislature on the status of the wastewater facility
3 construction loan program and the fund to the governor and
4 legislature."

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

7 "74-6A-12. COMMISSION BONDS.--

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

25 B. As security for the payment of the principal

1 and interest on bonds recommended by the commission and
2 issued by the board, the commission is authorized to pledge,
3 transfer and assign after consultation with the board:

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

6 (2) the security for the state agency or
7 local authority obligations;

8 (3) any grant, subsidy or contribution from
9 the United States or any of its agencies or
10 instrumentalities; or

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

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

23 (1) the purposes of the Wastewater Facility
24 Construction Loan Act or the purposes for which the fund may
25 be used;

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

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

12 The board retains the power to fix the date of sale of
13 the bonds and to take all actions necessary to sell and
14 deliver the bonds.

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

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

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

25 F. Except as otherwise provided in the Wastewater

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

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

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

25 I. An escrow or trust shall be limited to proceeds HB 415
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1 of refunding bonds.

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

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

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

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

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

10 N. A purchaser of a refunding bond issued pursuant
11 to this section shall not be responsible for the application
12 of the proceeds by the commission or any of the officers,
13 agents or employees of the commission.

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

1 laws of the state.

2 P. Bonds or other obligations recommended by the
3 commission and issued by the board and the interest
4 applicable thereto and the income therefrom and all projects
5 or parts thereof and all assets of the commission shall be
6 exempt from taxation in the state.

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

11 R. Commission members or employees or board
12 members or employees and any person executing bonds issued
13 pursuant to the Wastewater Facility Construction Loan Act
14 shall not be liable personally on the bonds or be subject to
15 any personal liability or accountability by reason of the
16 issuance of the bonds.

17 S. All bonds recommended by the commission and
18 issued by the board, while registered, are declared and shall
19 be construed to be negotiable instruments.

20 T. All bonds, notes and certificates recommended
21 by the commission and issued by the board shall be special
22 obligations of the board, payable solely from the revenue,
23 income, fees or charges that may, pursuant to the provisions
24 of the Wastewater Facility Construction Loan Act, be pledged
25 to the payment of such obligations, and the bonds, notes or

1 certificates shall not create an obligation, debt or
2 liability of the state. No breach of any pledge, obligation
3 or agreement of the commission shall impose a pecuniary
4 liability upon the state or a charge upon its general credit
5 or taxing power.

6 U. Any recommending or issuing resolution shall
7 provide that each bond recommended or authorized shall recite
8 that it is issued by the board under recommendation of the
9 commission. The recital shall clearly state that the bonds
10 are in full compliance with all of the provisions of the
11 Wastewater Facility Construction Loan Act, and all bonds
12 issued containing such recital shall be incontestable for any
13 cause whatsoever after their delivery for value."

14 SECTION 6. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 2017. _____

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