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SENATE BILL 40

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

Richard C. Martinez

AN ACT

RELATING TO THE WASTEWATER FACILITY CONSTRUCTION LOAN ACT;  
CLARIFYING THAT FUNDING ASSISTANCE IS AVAILABLE FOR ELIGIBLE  
PROJECTS AS PROVIDED BY THE FEDERAL CLEAN WATER ACT;  
ALPHABETIZING DEFINITIONS AND ADDING DEFINITIONS FOR "ELIGIBLE  
PROJECT" AND "QUALIFIED BORROWER"; MAKING CONFORMING CHANGES.

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, interstate agencies and other  
qualified borrowers in New Mexico with low-cost financial  
assistance in the construction of necessary wastewater  
facilities and other eligible projects through the creation of

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1 a self-sustaining program so as to improve and protect water  
2 quality and public health."

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

5 "74-6A-3. DEFINITIONS.--As used in the Wastewater  
6 Facility Construction Loan Act:

7 A. "account" means the wastewater suspense account;

8 ~~[A.]~~ B. "administrative fee" means a fee assessed  
9 and collected by the department from a [state agency or local  
10 authority] qualified borrower on each loan and expressed as a  
11 percentage per year on the outstanding principal amount of the  
12 loan, payable by the borrower on the same date that principal  
13 and interest on the loan are due, for deposit in the clean  
14 water administrative fund;

15 C. "board" means the state board of finance;

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

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

23 ~~[B.]~~ F. "commission" means the water quality  
24 control commission;

25 ~~[G.]~~ G. "division" or "department" means the

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department of environment;

H. "eligible project" means a project or activity that is eligible for funding assistance under Section 603(c) of the Clean Water Act, Section 1383 of Title 33 of the United States Code, including a wastewater facility project, a nonpoint source water pollution control project and a watershed project that meet the criteria of the Clean Water Act;

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

~~[D.]~~ J. "financial assistance" means loans, the purchase or refinancing of existing state agency or local political subdivision obligations, loan guarantees, credit enhancement techniques to reduce interest on loans and bonds, bond insurance and bond guarantees or any combination of these purposes;

K. "force account construction" means construction performed by the employees of a local authority rather than through a contractor;

~~[E.]~~ L. "fund" means the wastewater facility construction loan fund;

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

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

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

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

19          Q. "qualified borrower" means a creditworthy  
20          borrower with an identified and verifiable repayment source  
21          that is eligible to receive funding pursuant to the Clean Water  
22          Act, including a state agency, an interstate agency and a local  
23          authority;

24          R. "recommending resolution" means a formal  
25          statement adopted by the commission recommending to the board

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

5 S. "state agency" means an agency or department of  
6 the executive branch of government; and

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

22 ~~I. "account" means the wastewater suspense account;~~

23 ~~J. "board" means the state board of finance;~~

24 ~~K. "bonds" means wastewater bonds or other~~  
25 ~~obligations authorized by the commission to be issued by the~~

1 ~~board pursuant to the Wastewater Facility Construction Loan~~  
2 ~~Act;~~

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

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

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

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

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

21 ~~Q. "recommending resolution" means a formal~~  
22 ~~statement adopted by the commission recommending to the board~~  
23 ~~that bonds be issued pursuant to the Wastewater Facility~~  
24 ~~Construction Loan Act, including any trust agreement, trust~~  
25 ~~indenture or similar instrument providing the terms and~~

1 ~~conditions for the bonds that are issued; and~~

2 ~~R. "state agency" means an agency or department of~~  
3 ~~the executive branch of government.]"~~

4 SECTION 3. Section 74-6A-4 NMSA 1978 (being Laws 1991,  
5 Chapter 172, Section 4, as amended) is amended to read:

6 "74-6A-4. WASTEWATER FACILITY CONSTRUCTION LOAN FUND  
7 CREATED--ADMINISTRATION.--

8 A. There is created in the state treasury a  
9 revolving loan fund to be known as the "wastewater facility  
10 construction loan fund", which shall be administered by the  
11 division as agent for the commission and operated as a separate  
12 account. The commission is authorized to establish procedures  
13 and adopt regulations as required to administer the fund in  
14 accordance with the Clean Water Act and state law. Any  
15 regulations relating to the issuance of bonds and the  
16 expenditure of proceeds of bond issues shall be approved by the  
17 board. The commission shall, whenever possible, coordinate  
18 application procedures and funding cycles with the New Mexico  
19 Community Assistance Act.

20 B. The following shall be deposited directly in the  
21 fund:

22 (1) grants from the federal government or its  
23 agencies allotted to the state for capitalization of the fund;

24 (2) funds as appropriated by the legislature  
25 to implement the provisions of the Wastewater Facility

1 Construction Loan Act or to provide state matching funds that  
2 are required by the terms of any federal grant under the Clean  
3 Water Act;

4 (3) loan principal, interest and penalty  
5 payments if required by the terms of any federal grant under  
6 the Clean Water Act;

7 (4) money transferred from the account as  
8 needed to fulfill requirements of the Clean Water Act; and

9 (5) any other public or private money  
10 dedicated to the fund.

11 C. Money in the fund is appropriated for  
12 expenditure by the commission in a manner consistent with the  
13 terms and conditions of the federal capitalization grants and  
14 the Clean Water Act and may be used:

15 (1) to provide [~~loans~~] funding for [~~the~~  
16 ~~construction or rehabilitation of wastewater facilities~~]  
17 eligible projects;

18 (2) to purchase, refund or refinance  
19 obligations incurred by local authorities in the state for  
20 [~~wastewater facilities~~] eligible projects where the obligations  
21 were incurred and construction commenced after March 7, 1985;

22 (3) to guarantee, or purchase insurance for,  
23 obligations of local authorities to improve credit market  
24 access or reduce interest rates;

25 (4) to provide a source of revenue or security



1 for the payments of principal and interest on bonds recommended  
2 by the commission and issued by the board if the proceeds of  
3 the bonds are deposited in the fund to the extent provided in  
4 the terms of the federal grant;

5 (5) to provide loan guarantees for similar  
6 revolving funds established by local authorities;

7 (6) to fund the administrative expenses of the  
8 board, the commission and the division necessary to implement  
9 the provisions of the Wastewater Facility Construction Loan  
10 Act, including ~~[but not limited to]~~ costs of servicing loans  
11 and issuing bonds, fund start-up costs, financial management  
12 and legal consulting fees and reimbursement costs for support  
13 services from other state agencies; and

14 (7) to fund other programs for which the  
15 federal government authorizes use of wastewater grants or to  
16 provide for any other expenditure consistent with the Clean  
17 Water Act grant program and state law.

18 D. Pursuant to regulations adopted by the  
19 commission, the division may impose and collect an  
20 administrative fee from each ~~[local authority]~~ qualified  
21 borrower that receives financial assistance from the fund,  
22 which fee shall not exceed five percent of the total loan  
23 amount and which shall be deposited in the clean water  
24 administrative fund.

25 E. Money not currently needed for the operation of

1 the fund or otherwise dedicated may be invested according to  
2 the provisions of Chapter 6, Article 10 NMSA 1978, and all  
3 interest earned on such investments shall be credited to the  
4 fund. Money remaining in the fund at the end of any fiscal  
5 year shall not revert to the general fund but shall accrue to  
6 the credit of the fund.

7 F. Acting as agent for the commission, the division  
8 shall maintain full authority for the operation of the fund in  
9 accordance with applicable federal and state law, including  
10 ~~[but not limited to]~~ preparing the annual intended use plan and  
11 ensuring that loan recipients are on the state priority list or  
12 otherwise satisfy Clean Water Act requirements.

13 G. The division shall establish fiscal controls and  
14 accounting procedures that are sufficient to ensure proper  
15 accounting for fund payments, disbursements and balances and  
16 shall provide an annual report and an annual independent audit  
17 on the fund to the governor and to the United States  
18 environmental protection agency as required by the Clean Water  
19 Act."

20 SECTION 4. Section 74-6A-7 NMSA 1978 (being Laws 1991,  
21 Chapter 172, Section 5) is amended to read:

22 "74-6A-7. LOAN PROGRAM--ADMINISTRATION.--

23 A. The division shall establish a program to  
24 provide financial assistance to ~~[local authorities]~~ qualified  
25 borrowers, individually or jointly, for ~~[acquisition,~~

1 ~~construction or modification of wastewater facilities]~~ eligible  
2 projects. The division as agent of the commission is  
3 authorized to enter into contracts and other agreements to  
4 carry out the provisions of the Wastewater Facility ~~[Loan]~~  
5 Construction Loan Act, including ~~[but not limited to]~~ contracts  
6 and agreements with federal agencies, local authorities and  
7 other parties.

8 B. The commission shall adopt a system for the  
9 ranking of ~~[wastewater facility construction]~~ eligible projects  
10 for financial assistance."

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

13 "74-6A-8. FINANCIAL ASSISTANCE--CRITERIA.--

14 A. Financial assistance shall be provided only to  
15 ~~[state agencies and local authorities]~~ qualified borrowers  
16 that:

17 (1) meet the requirements for financial  
18 capability set by the division to assure sufficient revenues to  
19 operate and maintain the ~~[wastewater facility]~~ eligible project  
20 for its useful life, if applicable, and to repay the financial  
21 assistance;

22 (2) agree to operate and maintain the  
23 ~~[wastewater]~~ eligible project facility so that the project  
24 facility will function properly over its structural and  
25 material design life, if applicable;

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

5 (4) provide a written assurance, signed by an  
6 attorney or other authorized representative, that the [~~state~~  
7 ~~agency or local authority~~] qualified borrower has or will  
8 acquire proper title, easements and rights of way to the  
9 property upon or through which the [~~wastewater~~] eligible  
10 project facility proposed for funding is to be constructed or  
11 extended;

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

17 (6) provide a written notice of completion  
18 [~~and start of operation of the wastewater facility~~] of the  
19 eligible project;

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

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

25 B. Loans shall be made only to [~~state agencies and~~

1 ~~local authorities~~ qualified borrowers that establish one or  
2 more dedicated sources of revenue to repay the money received  
3 from the commission and to provide for operation, maintenance  
4 and equipment replacement expenses. ~~[A state agency or local~~  
5 ~~authority]~~ Notwithstanding any existing statute to the  
6 contrary, ~~[notwithstanding]~~ a qualified borrower may do any of  
7 the following:

8 (1) obligate itself to pay to the commission  
9 at periodic intervals a sum sufficient to provide all or any  
10 part of bond debt service with respect to the bonds recommended  
11 by the commission and issued by the board to fund the loan for  
12 the ~~[wastewater facility]~~ eligible project ~~[of the state agency~~  
13 ~~or local authority]~~ and pay over the debt service to the  
14 account of the ~~[wastewater facility]~~ eligible project for  
15 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 state or  
19 local authority obligations; provided, however, that,  
20 notwithstanding the provisions of Section 4-54-3 or 6-15-5 NMSA  
21 1978 or other statute or law requiring the public sale of local  
22 authority obligations, ~~[such]~~ the obligations may be sold at  
23 private sale to the commission at the price and upon the terms  
24 and conditions the local authority shall determine;

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

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]~~ eligible  
9 project; or

10 (d) other revenue available to the  
11 ~~[state agency or local authority]~~ qualified borrower;

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 ~~[state agency or local authority]~~ qualified  
17 borrower obligations, impose upon itself a general obligation  
18 pledge to the commission additionally secured by a pledge of  
19 any of the sources specified in Paragraph (3) of this  
20 subsection; or

21 (5) enter into agreements, perform acts and  
22 delegate functions and duties as its governing body shall  
23 determine is necessary or desirable to enable the division as  
24 agent for the commission to fund a loan to the ~~[state agency or~~  
25 ~~local authority]~~ qualified borrower to aid it ~~[in the~~

1 ~~construction or acquisition of a wastewater facility project]~~  
2 with an eligible project.

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

11 D. Financial assistance shall be made with an  
12 annual interest rate to be five percent or less as determined  
13 by the commission.

14 E. A zero-percent interest rate may be approved by  
15 the division when the following conditions have been met by the  
16 local authority:

17 (1) the local authority's average user cost is  
18 ~~[at least fifteen dollars (\$15.00) per month or a higher amount~~  
19 ~~as determined by the commission]~~ greater than one and eighty-  
20 two hundredths percent of the local authority's per capita  
21 income; and

22 (2) the local authority's ~~[median household]~~  
23 per capita income is less than three-fourths of the statewide  
24 ~~[nonmetropolitan median household]~~ per capita income.

25 F. A local authority may use the proceeds from

1 financial assistance received under the Wastewater Facility  
2 Construction Loan Act to provide a local match or any other  
3 nonfederal share of [~~a wastewater facility construction~~] an  
4 eligible project as allowed pursuant to the Clean Water Act.

5 G. Financial assistance received pursuant to the  
6 Wastewater Facility Construction Loan Act shall not be used by  
7 a [~~state agency or local authority~~] qualified borrower on any  
8 [~~wastewater facility~~] eligible project constructed in  
9 fulfillment or partial fulfillment of requirements made of a  
10 subdivider under the provisions of the Land Subdivision Act or  
11 the New Mexico Subdivision Act.

12 H. Financial assistance shall be made only to  
13 [~~state agencies and local authorities~~] qualified borrowers that  
14 employ or contract with a New Mexico licensed professional  
15 engineer to provide and be responsible for engineering services  
16 on the [~~wastewater facility~~] eligible project. Such services  
17 include [~~but are not limited to~~] an engineering report,  
18 construction contract documents, supervision of construction  
19 and start-up services.

20 I. Financial assistance shall be made only for  
21 eligible items. For financial assistance composed entirely of  
22 state funds, eligible items include [~~but are not limited to~~]  
23 the costs of engineering [~~feasibility~~] reports, contracted  
24 engineering design, inspection of construction, special  
25 engineering services, start-up services, contracted



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

7 J. In the event of default by the [~~state agency or~~  
8 ~~local authority~~] qualified borrower, the commission may enforce  
9 its rights by suit or mandamus or may utilize all other  
10 available remedies under state law."

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

13 "74-6A-9. COMMISSION--POWERS.--

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

18 (1) to provide financial assistance to [~~state~~  
19 ~~agencies or local authorities~~] qualified borrowers to finance  
20 all or part of [~~a wastewater facility~~] an eligible project,  
21 including all forms of assistance for which the fund may be  
22 used pursuant to the Wastewater Facility Construction Loan Act;

23 (2) to adopt resolutions recommending that the  
24 board issue bonds or refunding bonds pursuant to the provisions  
25 of the Wastewater Facility Construction Loan Act;

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

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

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

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

25 (7) to appoint and employ attorneys, financial

1 advisors, underwriters and other experts and agents and  
2 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 qualified borrowers, the total of which for any loan shall not  
9 exceed four percent of the value of the loan requested or  
10 authorized;

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

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

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

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

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

6           **SECTION 7.** Section 74-6A-12 NMSA 1978 (being Laws 1991,  
7 Chapter 172, Section 10, as amended) is amended to read:

8           "74-6A-12. COMMISSION BONDS.--

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

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

5                   (1) any obligations of each [~~state agency or~~  
6 ~~local authority~~] qualified borrower, payable to the commission;

7                   (2) the security for the [~~state agency or~~  
8 ~~local authority~~] qualified borrower obligations;

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

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

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

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

1 used;

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

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

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

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

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

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

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.



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]~~ the  
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 section shall not be responsible for the application of  
10 the proceeds by the commission or any of the officers, agents  
11 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

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 the bonds or be subject to any personal  
12 liability or accountability by reason of the issuance of the  
13 bonds.

14 S. All bonds recommended by the commission and  
15 issued by the board, while registered, are declared and shall  
16 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

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 recommended or authorized shall recite  
4 that it is issued by the board under recommendation of the  
5 commission. The recital shall clearly state that the bonds are  
6 in full compliance with all of the provisions of the Wastewater  
7 Facility Construction Loan Act, and all bonds issued containing  
8 such recital shall be incontestable for any cause whatsoever  
9 after their delivery for value."

10 SECTION 8. Section 74-6A-14 NMSA 1978 (being Laws 1991,  
11 Chapter 172, Section 12) is amended to read:

12 "74-6A-14. VALIDATION.--All outstanding securities of the  
13 state and of all [~~local authorities~~] qualified borrowers, all  
14 loan or other agreements entered into between the state or the  
15 division and any [~~local authority~~] qualified borrower, all  
16 regulations promulgated by the commission and all acts and  
17 proceedings taken by or on behalf of the state or any [~~local~~  
18 ~~authority~~] qualified borrower with respect to the financing of  
19 [~~wastewater facilities~~] eligible projects are [~~hereby~~]  
20 validated, ratified, approved and confirmed. To the extent  
21 necessary to carry out its purposes, the commission shall treat  
22 any bonds, obligations or agreements of the state or the  
23 division that were entered into prior to [~~the effective date~~  
24 ~~hereof~~] April 4, 1991 for the purpose of effecting the  
25 provisions of the Wastewater Facility Construction Loan Act or

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underscored material = new  
[bracketed material] = delete

1 the Clean Water Act as if such bonds, obligations or agreements  
2 were those recommended by the commission and issued by the  
3 board."

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