

1 SENATE BILL 40

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

4 Richard C. Martinez

10 AN ACT

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

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

20 "74-6A-2. PURPOSE.--The purpose of the Wastewater
21 Facility Construction Loan Act is to provide state agencies,
22 [and] local authorities, interstate agencies and other
23 qualified borrowers in New Mexico with low-cost financial
24 assistance in the construction of necessary wastewater
25 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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1 department of environment;

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

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

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

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

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

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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

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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

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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

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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

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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

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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

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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,

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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;

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

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

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

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

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

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

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

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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

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

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

(b) licenses, permits, taxes and fees;

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

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

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

(5) enter into agreements, perform acts and delegate functions and duties as its governing body shall determine is necessary or desirable to enable the division as agent for the commission to fund a loan to the ~~state agency or 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

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

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

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

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

(7) to appoint and employ attorneys, financial

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) the purposes of the Wastewater Facility

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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.

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

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

H. Any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the payment of the interest or the principal of the bonds, or to both interest and principal, may be deposited in the account or in the fund and expended solely for the purposes of this subsection, may be used to refund bonds by deposit in escrow, trust or otherwise or may be used to defray any incidental costs appertaining to the refunding or any combination thereof, 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,

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

.209191.1

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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underscored material = new
[bracketed material] = delete