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SENATE BILL 419

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

George K. Munoz

AN ACT

RELATING TO PUBLIC FINANCE; MOVING THE DRINKING WATER STATE  
REVOLVING LOAN FUND FROM THE NEW MEXICO FINANCE AUTHORITY TO  
THE DEPARTMENT OF ENVIRONMENT; PROVIDING POWERS AND DUTIES OF  
THE DEPARTMENT AND THE STATE BOARD OF FINANCE; MAKING AN  
APPROPRIATION.

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

SECTION 1. Section 6-21A-1 NMSA 1978 (being Laws 1997,  
Chapter 144, Section 1) is amended to read:

"6-21A-1. SHORT TITLE.--~~[Sections 1 through 9 of this  
act]~~ Chapter 6, Article 21A NMSA 1978 may be cited as the  
"Drinking Water State Revolving Loan Fund Act"."

SECTION 2. Section 6-21A-3 NMSA 1978 (being Laws 1997,  
Chapter 144, Section 3, as amended) is amended to read:

"6-21A-3. DEFINITIONS.--As used in the Drinking Water  
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1 State Revolving Loan Fund Act:

2 ~~[A. "authority" means the New Mexico finance~~  
3 ~~authority]~~

4 A. "administrative fund" means the drinking water  
5 administrative fund;

6 B. "board" means the state board of finance;

7 C. "bonds" means obligations issued by the board  
8 for the repayment of which specified revenue is pledged,  
9 whether designated as a bond, note or loan, and includes  
10 refunding obligations;

11 ~~[B.]~~ D. "department" means the department of  
12 environment;

13 ~~[G.]~~ E. "drinking water facility construction  
14 project" means the acquisition, design, construction,  
15 improvement, expansion, repair or rehabilitation of all or part  
16 of any structure, facility or equipment necessary for a  
17 drinking water system or water supply system;

18 ~~[D.]~~ F. "drinking water supply facility" means any  
19 structure, facility or equipment necessary for a drinking water  
20 system or water supply system;

21 ~~[E.]~~ G. "financial assistance" means ~~[loans, the~~  
22 ~~purchase or refinancing of debt obligation of a local authority~~  
23 ~~at an interest rate that is less than or equal to the market~~  
24 ~~interest rate in any case in which a debt obligation is~~  
25 ~~incurred after July 1, 1993, loan guarantees, bond insurance or~~

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1 ~~security for revenue bonds issued by the authority]~~ all forms  
2 of assistance for which the fund may be used pursuant to the  
3 Safe Drinking Water Act and state law;

4 H. "financial capacity" means a public water  
5 system's ability to acquire and manage sufficient financial  
6 resources to allow the system to achieve and maintain  
7 compliance with federal and state laws and rules applicable to  
8 public water systems;

9 ~~[F-]~~ I. "fund" means the drinking water state  
10 revolving loan fund;

11 J. "issuing resolution" means a resolution issued  
12 by the board containing the terms and conditions of bonds;

13 ~~[G-]~~ K. "local authority" means [any] a  
14 municipality, county, incorporated county, sanitation district,  
15 water and sanitation district or any similar district, public  
16 or private water cooperative or association or any similar  
17 organization, public or private community water system or  
18 nonprofit noncommunity water system or any other agency created  
19 pursuant to a joint powers agreement acting on behalf of any  
20 entity listed in this subsection with a publicly owned drinking  
21 water system or water supply system that qualifies as a  
22 community water system or nonprofit noncommunity system as  
23 defined by the Safe Drinking Water Act. "Local authority" does  
24 not include systems owned by federal agencies;

25 L. "managerial capacity" means a public water

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1 system's ability to conduct its affairs in a manner that  
2 enables it to achieve and maintain compliance with federal and  
3 state laws and rules applicable to public water systems;

4 ~~[H.]~~ M. "operate and maintain" means to perform all  
5 necessary activities, including the replacement of equipment or  
6 appurtenances, to assure the dependable and economical function  
7 of a drinking water supply facility in accordance with its  
8 intended purpose; ~~[and]~~

9 N. "recommending resolution" means a formal  
10 statement issued by the department to the board recommending  
11 that bonds be issued pursuant to the Drinking Water State  
12 Revolving Loan Fund Act;

13 ~~[I.]~~ O. "Safe Drinking Water Act" means the federal  
14 Safe Drinking Water Act as amended in 1996 and its subsequent  
15 amendments or successor provisions; and

16 P. "technical capacity" means the adequacy of  
17 operation and physical infrastructure of a public water system,  
18 including the water source, treatment, storage and distribution  
19 system, to allow the public water system to achieve and  
20 maintain compliance with federal and state laws and rules  
21 applicable to public water systems."

22 SECTION 3. Section 6-21A-4 NMSA 1978 (being Laws 1997,  
23 Chapter 144, Section 4, as amended) is amended to read:

24 "6-21A-4. FUND CREATED--ADMINISTRATION.--

25 A. ~~[There is created in the authority a revolving~~

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1 ~~loan fund to be known as~~] The "drinking water state revolving  
2 loan fund" ~~[which]~~ is created in the state treasury and shall  
3 be administered by the ~~[authority. The authority is authorized~~  
4 ~~to establish procedures required]~~ department and operated as a  
5 separate account and shall consist of such subaccounts as the  
6 department deems necessary; provided that the department shall  
7 create such subaccounts and keep such records as the board  
8 requires for bond proceeds. The department may adopt rules and  
9 establish procedures to administer the fund in accordance with  
10 the Safe Drinking Water Act and state laws. The ~~[authority and~~  
11 ~~the]~~ department shall, whenever possible, coordinate  
12 application procedures and funding cycles with the New Mexico  
13 Community Assistance Act. Any rule relating to the issuance of  
14 bonds and the expenditure of the proceeds of bonds shall be  
15 approved by the board. Disbursements from the fund shall be on  
16 warrant of the secretary of finance and administration pursuant  
17 to vouchers signed by the secretary of environment or the  
18 secretary of environment's authorized representative.

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

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

23 (2) funds as appropriated by the legislature  
24 to implement the provisions of the Drinking Water State  
25 Revolving Loan Fund Act or to provide state matching funds that

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1 are required by the terms of [~~any~~] a federal grant under the  
2 Safe Drinking Water Act;

3 (3) loan principal, interest and penalty  
4 payments if required by the terms of [~~any~~] a federal grant  
5 under the Safe Drinking Water Act;

6 (4) proceeds from bonds issued by the board  
7 pursuant to the Drinking Water State Revolving Loan Fund Act,  
8 except as may be required for refunding bonds in which the  
9 bonds may be directly repaid or a separate escrow account may  
10 be established at the direction of the board;

11 [~~(4)~~] (5) any other public or private money  
12 dedicated to the fund; and

13 [~~(5) revenue~~] (6) money transferred from  
14 other state revolving funds.

15 C. Money in the fund is appropriated for  
16 expenditure by the [~~authority~~] department in a manner  
17 consistent with the terms and conditions of the federal  
18 capitalization grants and the Safe Drinking Water Act and may  
19 be used:

20 (1) to provide [~~loans~~] funding for [~~the~~  
21 ~~construction or rehabilitation of~~] drinking water [~~facilities~~]  
22 facility construction projects;

23 (2) to buy or refinance the debt obligation of  
24 a local authority for drinking water obligations at an interest  
25 rate that is less than or equal to the market interest rate in

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1 any case in which a debt obligation is incurred after July 1,  
2 1993;

3 (3) to guarantee or purchase insurance for  
4 obligations of local authorities to improve credit market  
5 access or reduce interest rates;

6 (4) to provide loan guarantees for similar  
7 revolving funds established by local authorities; ~~and~~

8 (5) to provide a source of revenue or security  
9 for the repayment of principal and interest on bonds ~~[issued by~~  
10 ~~the authority]~~ if the proceeds of the bonds are deposited in  
11 the fund or if the proceeds of the bonds are used to make loans  
12 to local authorities to the extent provided in the terms of the  
13 federal grant;

14 (6) as allowed by federal law, to fund certain  
15 administrative expenses of the department, including servicing  
16 loans, to implement the provisions of the Drinking Water State  
17 Revolving Loan Fund Act;

18 (7) as allowed by federal law and by contract  
19 executed between the department and the board, to fund the  
20 administrative expenses of the board, including issuing bonds  
21 and related costs for start-up, financial management, legal  
22 consulting and support services; and

23 (8) to fund other programs for which the  
24 federal government authorizes the use of drinking water grants  
25 or to provide for other expenditures allowable under the Safe

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1 Drinking Water Act grant programs and state law consistent with  
2 the Drinking Water State Revolving Loan Fund Act.

3 D. If needed to cover additional administrative  
4 expenses, pursuant to procedures established by the [authority]  
5 department, the [authority] department may impose and collect a  
6 fee from each local authority that receives financial  
7 assistance from the fund, which fee shall be used solely for  
8 the costs of administering the fund and which fee shall be  
9 [~~kept outside~~] deposited in the administrative fund.

10 E. Money not currently needed for the operation of  
11 the fund or otherwise dedicated may be invested [~~pursuant to~~  
12 ~~the New Mexico Finance Authority Act~~] in accordance with  
13 Chapter 6, Article 10 NMSA 1978, and all interest earned on  
14 such investments shall be credited to the fund. Money  
15 remaining in the fund at the end of the fiscal year shall not  
16 revert to the general fund but shall accrue to the credit of  
17 the fund.

18 F. The [authority] department shall maintain full  
19 authority for the operation of the fund in accordance with  
20 applicable federal and state law. [~~including, in cooperation~~  
21 ~~with the department, ensuring the loan~~] The department shall  
22 ensure that financial assistance recipients are on the state  
23 priority list [~~or~~] and otherwise satisfy the Safe Drinking  
24 Water Act requirements.

25 G. The [authority] department shall establish

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1 fiscal controls and accounting procedures that are sufficient  
2 to assure proper accounting for fund payments, disbursements  
3 and balances and shall provide [~~in cooperation with the~~  
4 ~~department, a biannual~~] an annual report and an annual  
5 independent audit on the fund to the governor and to the United  
6 States environmental protection agency as required by the Safe  
7 Drinking Water Act."

8 SECTION 4. A new section of the Drinking Water State  
9 Revolving Loan Fund Act is enacted to read:

10 "[NEW MATERIAL] DRINKING WATER ADMINISTRATIVE FUND--  
11 CREATED--USE.--

12 A. The "drinking water administrative fund" is  
13 created as a dedicated nonreverting fund in the state treasury.  
14 The department shall administer the administrative fund, and it  
15 may create such subaccounts as it deems necessary. Money from  
16 investment of the administrative fund shall be credited to the  
17 administrative fund. Money in the administrative fund is  
18 appropriated to the department to administer the drinking water  
19 state revolving loan fund, including drinking water planning  
20 and any other expenses allowable by federal law for  
21 administrative purposes. Disbursements from the administrative  
22 fund shall be by warrant drawn by the secretary of finance and  
23 administration pursuant to vouchers signed by the secretary of  
24 environment or the secretary of environment's authorized  
25 representative.

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1           B. The administrative fund consists of money  
2 deposited from:

3                   (1) loan administration fees collected by the  
4 department after July 1, 2013 on loans made from the drinking  
5 water state revolving loan fund;

6                   (2) income from investment of the  
7 administrative fund;

8                   (3) grants from the federal government  
9 allotted to the state for the administrative fund;

10                   (4) money appropriated to the administrative  
11 fund; and

12                   (5) gifts, grants and donations from public or  
13 private sources for the administrative fund.

14           C. The department may adopt rules and establish  
15 procedures and set fees as required to administer the  
16 administrative fund in accordance with the Drinking Water State  
17 Revolving Loan Fund Act.

18           D. The department shall establish fiscal controls  
19 and accounting procedures that are sufficient to ensure proper  
20 accounting for administrative fund payments, disbursements and  
21 balances and shall provide an annual report and an annual  
22 independent audit on the administrative fund to the governor  
23 and the United States environmental protection agency as  
24 required by the Safe Drinking Water Act.

25           E. Money not currently needed for the operation of

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1 the administrative fund or otherwise dedicated may be invested  
2 in accordance with Chapter 6, Article 10 NMSA 1978, and all  
3 interest earned on such investments shall be credited to the  
4 administrative fund."

5 SECTION 5. Section 6-21A-5 NMSA 1978 (being Laws 1997,  
6 Chapter 144, Section 5) is amended to read:

7 "6-21A-5. LOAN PROGRAM--ADMINISTRATION.--

8 A. The [~~authority~~] department shall establish a  
9 program to provide financial assistance from the fund to local  
10 authorities, individually or jointly, for [~~acquisition,~~  
11 ~~construction or modification of~~] drinking water [~~facilities~~]  
12 facility construction projects. The [~~authority is authorized~~  
13 ~~to~~] department may enter into memoranda of understanding,  
14 contracts and other agreements to carry out the provisions of  
15 the Drinking Water State Revolving Loan Fund Act, including  
16 [~~but not limited to~~] memoranda of understanding, contracts and  
17 agreements with federal agencies, the [~~department~~] board, local  
18 authorities and other parties.

19 B. The department shall adopt, by [~~regulation~~]  
20 rule, a system for the ranking of drinking water facility  
21 construction projects requesting financial assistance and for  
22 the development of a priority list [~~which~~] that will be part of  
23 the annual intended use plan, as required by the Safe Drinking  
24 Water Act.

25 C. The department [~~shall~~] may adopt [~~regulations or~~

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1 ~~internal]~~ rules and establish procedures addressing the  
2 mechanism for the preparation of the annual intended use plan  
3 and the content of [~~such~~] the plan and shall prepare [~~such~~] the  
4 plan [~~with the assistance of the authority~~] as required by the  
5 Safe Drinking Water Act and the capitalization grant agreement.  
6 The department shall review all proposals for drinking water  
7 facility construction projects, including [~~but not limited to~~]  
8 project plans and specifications for compliance with the  
9 requirements of the Safe Drinking Water Act and the  
10 requirements of state laws and [~~regulations~~] rules governing  
11 the construction and operation of drinking water supply  
12 facilities. The department also shall determine whether a  
13 local authority has demonstrated adequate technical [~~and~~],  
14 managerial [~~capability~~] and financial capacity to operate the  
15 drinking water supply facility for its useful life in  
16 compliance with the requirements of the Safe Drinking Water Act  
17 and with the requirements of state laws and regulations  
18 governing the operation of drinking water supply facilities.

19 D. The department [~~and the authority shall enter~~  
20 ~~into an agreement for the purpose of describing and allocating~~  
21 ~~duties and responsibilities with respect to~~] is responsible for  
22 monitoring the construction of drinking water facility  
23 construction projects that have been provided financial  
24 assistance pursuant to the provisions of the Drinking Water  
25 State Revolving Loan Fund Act to ensure compliance with the

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1 requirements of the Safe Drinking Water Act and with the  
2 requirements of state laws and [~~regulations~~] rules governing  
3 construction and operation of drinking water supply facilities.

4 E. The department [~~shall~~] may adopt [~~regulations or~~  
5 ~~internal~~] rules and establish procedures establishing the  
6 criteria and method for the distribution of annual  
7 capitalization grant funds between the fund and the nonproject  
8 activities (set-asides) allowed by the Safe Drinking Water Act  
9 and for the description in the intended use plan and annual  
10 report of the financial programmatic status of the nonproject  
11 activities (set-asides) allowed by the Safe Drinking Water Act.

12 F. The [~~authority, with the assistance of the~~  
13 department [~~shall~~] may establish procedures to identify  
14 affordability criteria for a disadvantaged community and to  
15 extend a program to assist such communities.

16 G. The department shall set up separate accounts  
17 outside the fund to use for nonproject activities (set-asides)  
18 [~~activities~~] authorized under the Safe Drinking Water Act,  
19 Sections 1452 (g) and 1452 (k), and the [~~authority~~] department  
20 shall set up a separate account outside the fund for  
21 administration of the fund. The department shall also provide  
22 the additional match for Safe Drinking Water Act, Section 1452  
23 (g) (2) activities.

24 H. The department shall prepare and submit  
25 applications for capitalization grants to the United States

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1 environmental protection agency as required by the Safe  
2 Drinking Water Act."

3 SECTION 6. Section 6-21A-6 NMSA 1978 (being Laws 1997,  
4 Chapter 144, Section 6) is amended to read:

5 "6-21A-6. FINANCIAL ASSISTANCE--CRITERIA.--

6 A. Financial assistance shall be provided only to  
7 local authorities that:

8 (1) meet the requirements for financial  
9 [~~capability~~] ability to pay set by the [~~authority~~] department  
10 to assure sufficient revenues to operate and maintain the  
11 drinking water supply facility for its useful life and to repay  
12 the financial assistance as appropriate;

13 (2) appear on the priority list for the fund,  
14 developed and maintained by the department, regardless of rank  
15 on such list;

16 (3) are considered by the [~~authority and the~~]  
17 department ready to proceed with the drinking water facility  
18 construction project;

19 (4) demonstrate adequate technical [~~and~~],  
20 managerial [~~capability~~] and financial capacity to operate the  
21 drinking water supply facility for its useful life; [~~and~~]

22 (5) agree to maintain separate drinking water  
23 facility construction project accounts in accordance with  
24 generally accepted governmental accounting standards and to  
25 conduct an audit of the drinking water facility construction

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1 project's financial records;

2 (6) agree to provide a written assurance,  
3 signed by an attorney, that the local authority has or will  
4 acquire proper title, easement and right of way to or through  
5 which the drinking water facility construction project proposed  
6 for funding is to be constructed or extended;

7 (7) agree to require the contractor of the  
8 drinking water facility construction project to post a  
9 performance and payment bond in accordance with the  
10 requirements of Section 13-4-18 NMSA 1978;

11 (8) agree to provide written notice of the  
12 beginning and end of construction and the start of the  
13 operation of the drinking water facility construction project;

14 (9) provide information required by the  
15 department to comply with the provisions of the Safe Drinking  
16 Water Act and state law and any other information the  
17 department deems necessary to evaluate the local authority's  
18 financial ability to repay a loan; and

19 [~~5~~] (10) agree to meet other requirements  
20 established by [~~the authority~~] department rule and state laws,  
21 including [~~but not limited to~~] procurement, recordkeeping and  
22 accounting.

23 B. Loans from the fund shall be made by the  
24 [~~authority~~] department only to local authorities that establish  
25 one or more dedicated sources of revenue to repay the money

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1 received from the fund and to provide for operation,  
2 maintenance and equipment replacement expenses of the drinking  
3 water supply facility for which the drinking water facility  
4 construction project is proposed for funding.

5 C. The [~~authority, with assistance from the~~]  
6 department shall establish procedures addressing methods to  
7 provide financial assistance to local authorities in accordance  
8 with the criteria set forth in the Safe Drinking Water Act,  
9 Section 1452(a)(3).

10 D. Each loan made by the [~~authority~~] department  
11 shall provide that repayment of the loan shall begin not later  
12 than one year after completion of construction of the drinking  
13 water facility construction project for which the loan was made  
14 and shall be repaid in full no later than twenty years after  
15 completion of the construction, except in the case of a  
16 disadvantaged community [~~in which case~~]. The [~~authority~~]  
17 department may extend the term of the loan to a disadvantaged  
18 community, as long as the extended term:

19 (1) terminates not later than the date that is  
20 thirty years after the date of [~~project~~] completion of  
21 construction; and

22 (2) does not exceed the expected design life  
23 of the drinking water facility construction project.

24 E. Financial assistance may be made with an annual  
25 interest rate [~~which~~] that is less than a market rate as

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1 determined [~~by procedures established~~] by the [authority]  
2 department and reported annually in the intended use plan  
3 prepared by the department [~~with the assistance of the~~  
4 ~~authority~~] as allowed by law.

5 F. Financial assistance pursuant to the Drinking  
6 Water State Revolving Loan Fund Act shall not be given to a  
7 local authority if the [authority] department determines that  
8 the financial assistance is for a drinking water facility  
9 construction project to be constructed in fulfillment or  
10 partial fulfillment of requirements made of a subdivider under  
11 the provisions of the Land Subdivision Act or the New Mexico  
12 Subdivision Act.

13 G. Financial assistance [~~may~~] shall be made only to  
14 local authorities that employ or contract with a registered  
15 professional engineer to provide and be responsible for  
16 engineering services on the drinking water facility  
17 construction project. Such services, if the [authority]  
18 department determines such services are needed, may include  
19 [~~but are not limited to~~] an engineering report, facility plans,  
20 environmental evaluations, construction contract documents,  
21 supervision of construction, [~~and~~] start-up services and close-  
22 out documents.

23 H. Financial assistance shall be made only for  
24 eligible items as described by [authority] department  
25 procedures and as identified [~~pursuant to~~] in accordance with

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1 the Safe Drinking Water Act.

2 I. A local authority may use the proceeds from  
3 financial assistance received pursuant to the Drinking Water  
4 State Revolving Loan Fund Act to provide a local match or other  
5 nonfederal share of a drinking water facility construction  
6 project to the extent allowed by the Safe Drinking Water Act."

7 SECTION 7. Section 6-21A-7 NMSA 1978 (being Laws 1997,  
8 Chapter 144, Section 7) is amended to read:

9 "6-21A-7. DEPARTMENT DUTIES--POWERS.--

10 A. For the purpose of carrying out its  
11 responsibilities under the Drinking Water State Revolving Loan  
12 Fund Act, the department may:

13 (1) provide financial assistance to local  
14 authorities to finance all or part of a drinking water facility  
15 construction project;

16 (2) make recommendations to the board to issue  
17 bonds pursuant to the provisions of the Drinking Water State  
18 Revolving Loan Fund Act;

19 (3) after consultation with the board, pledge,  
20 transfer and assign as security for the payment of the  
21 principal and interest on bonds:

22 (a) obligations of each local authority,  
23 payable to the department;

24 (b) the security for the local authority  
25 obligations;

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1                   (c) grants, subsidies or contributions  
2 from the United States or any of its agencies or  
3 instrumentalities; or

4                   (d) income, revenue, funds or other  
5 money of the department from any other source appropriated or  
6 authorized for paying principal and interest on bonds issued  
7 pursuant to the provisions of the Drinking Water State  
8 Revolving Loan Fund Act;

9                   (4) acquire, construct, hold, improve, grant  
10 mortgages of, accept mortgages of, sell, lease, convey or  
11 dispose of real and personal property for its public purposes;

12                   (5) acquire, construct or improve real  
13 property, buildings and facilities for lease and to pledge  
14 rentals and other income received from such leases to the  
15 payment of bonds;

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

20                   (7) in the event of a default by a local  
21 authority, foreclose upon or attach any property or interest  
22 pledged, mortgaged or otherwise available as security for a  
23 drinking water facility construction project financed in whole  
24 or in part from the fund;

25                   (8) enforce its rights by suit or mandamus and

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1 use all other available remedies under state law in the event  
2 of default by a local authority, a violation of department  
3 rules promulgated pursuant to the Drinking Water State  
4 Revolving Loan Fund Act by the local authority or a breach of  
5 an agreement between the local authority and the department;

6 (9) manage the fund, grant and administer  
7 financial assistance to local authorities and apply for and  
8 accept grants, including capitalization grant awards made to  
9 the state in accordance with the Safe Drinking Water Act and  
10 the Drinking Water State Revolving Loan Fund Act;

11 (10) appoint and employ attorneys, financial  
12 advisors, underwriters and other experts and agents and  
13 employees as the business of the department and the board may  
14 require;

15 (11) prosecute and defend all actions, at law  
16 or in equity, in any court having jurisdiction over the subject  
17 matter and the parties to the matter;

18 (12) collect application, origination and  
19 administrative fees from the local authority, the total of  
20 which for any loan shall not exceed four percent of the value  
21 of the loan requested or authorized; and

22 (13) adopt rules necessary and appropriate to  
23 implement the provisions of the Drinking Water State Revolving  
24 Loan Fund Act.

25 ~~[A.]~~ B. The department, with the approval of the

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1 governor and as authorized by federal law and in the intended  
2 use plan, may transfer up to one-third of a wastewater facility  
3 construction loan fund capitalization grant to the drinking  
4 water state revolving loan fund [~~provided the Wastewater~~  
5 ~~Facility Construction Loan Act is amended to allow for such~~  
6 ~~transfer. This provision is available one year after the~~  
7 ~~receipt of the first full capitalization grant for the Drinking~~  
8 ~~Water State Revolving Loan Fund Act and will expire with the~~  
9 ~~capitalization grant of the year 2002] or may transfer up to  
10 one-third of a drinking water state revolving loan fund  
11 capitalization grant to the wastewater facility construction  
12 loan fund. Before the department makes the transfer, the  
13 department shall:~~

14 (1) outline the transfer in the applicable  
15 intended use plans for both the drinking water state revolving  
16 loan fund and the wastewater facility construction loan fund;  
17 and

18 (2) report the intended transfer to the  
19 legislature.

20 [B.] C. The department [~~in the annual intended use~~  
21 ~~plan]~~ shall certify annually to the United States environmental  
22 protection agency the progress made regarding operator  
23 certification and capacity development programs as they relate  
24 to the receipt of capitalization grants available from the  
25 environmental protection agency [~~under~~] pursuant to the Safe

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1 Drinking Water Act."

2 SECTION 8. A new section of the Drinking Water State  
3 Revolving Loan Fund Act is enacted to read:

4 "[NEW MATERIAL] BOARD POWERS AND DUTIES.--

5 A. The board, upon recommendation from the  
6 department, may issue and sell bonds recommended by the  
7 department for any purpose enumerated in the Drinking Water  
8 State Revolving Loan Fund Act or for payment of obligations  
9 incurred or temporary loans made to accomplish any purpose of  
10 that act. Bonds issued by the board:

- 11 (1) may be issued in one or more series;
- 12 (2) shall bear prescribed dates;
- 13 (3) shall be in the form provided in the  
14 Supplemental Public Securities Act;
- 15 (4) shall be issued in prescribed  
16 denominations;
- 17 (5) shall have terms and maturities that do  
18 not exceed twenty-five years from the date of issue of each  
19 series;
- 20 (6) shall bear interest at prescribed rates;
- 21 (7) shall be payable and evidenced in the  
22 manner and times as set by the board;
- 23 (8) may be redeemed with or without premiums  
24 prior to maturity;
- 25 (9) may be issued on parity or ranked or

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1 assigned priority status; and

2 (10) may contain provisions not inconsistent  
3 with this subsection.

4 B. The bonds issued by the board may be sold at any  
5 time the board determines. The bonds may be sold at private or  
6 public sale at prices as provided in the Public Securities Act  
7 and in a manner determined by the board. The board retains the  
8 power to fix the date of sale of the bonds and to take all  
9 actions necessary to sell and deliver the bonds. Bond proceeds  
10 may be used for:

11 (1) purposes of the Drinking Water State  
12 Revolving Loan Fund Act or the purposes for which the fund may  
13 be used;

14 (2) the payment of interest on bonds for a  
15 period not to exceed three years from the date of issuance of  
16 the bonds; and

17 (3) the payment of all expenses, including  
18 publication and printing charges, attorney fees, financial  
19 advisory and underwriter fees, and premiums or commissions that  
20 the board determines are necessary or advantageous in  
21 connection with the recommendation, advertisement, sale,  
22 creation and issuance of bonds.

23 C. The board may issue and sell refunding bonds for  
24 the purpose of paying, defeasing or refunding the principal of,  
25 interest on and any redemption premiums on any outstanding

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1 bonds. Refunding bonds issued by the board shall be subject to  
2 the provisions of the Drinking Water State Revolving Loan Fund  
3 Act. Except as otherwise provided in that act, the proceeds of  
4 refunding bonds shall be immediately applied to the retirement  
5 of the bonds to be refunded or be placed in escrow or trust in  
6 one or more trust banks within or without the state to be  
7 applied to the payment of the refunded bonds or the refunding  
8 bonds, or both in such priority and in the manner that the  
9 board may determine.

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

18 E. Any accrued interest and any premium  
19 appertaining to a sale of refunding bonds may be applied to the  
20 payment of the interest or the principal of the bonds, or to  
21 both interest and principal, may be deposited in an escrow or  
22 trust and expended solely for the purposes of this subsection  
23 or may be used to defray any incidental costs appertaining to  
24 the refunding or any combination thereof, as the board may  
25 require.

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

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

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

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1 obligations become due at their respective maturities or due at  
2 designated prior redemption dates in connection with which the  
3 board has exercised or is obligated to exercise a prior  
4 redemption option. The computations made in determining  
5 sufficiency shall be verified by a certified public accountant.

6 I. A purchaser of a refunding bond issued pursuant  
7 to this section shall not be responsible for the application of  
8 the proceeds by the department or any of the officers, agents,  
9 or employees of the department.

10 J. Bonds shall be legal investments in which all  
11 insurance companies, banks and savings and loan associations  
12 organized under the laws of the state, public officers and  
13 public bodies and all administrators, guardians, executors,  
14 trustees and other fiduciaries may properly and legally invest  
15 funds.

16 K. Bonds and the interest applicable to the bonds  
17 and the income from the bonds are exempt from taxation in the  
18 state.

19 L. Bonds may be issued under the provisions of the  
20 Drinking Water State Revolving Loan Fund Act only with the  
21 recommendation of the department and the approval of the board  
22 pursuant to authority provided in that act.

23 M. Department employees or board members or  
24 employees and any person executing bonds issued pursuant to the  
25 Drinking Water State Revolving Loan Fund Act shall not be

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1     liable personally on such bonds or be subject to any personal  
2     liability or accountability by reason of the issuance of the  
3     bonds.

4             N. All bonds recommended by the department and  
5     issued by the board, while registered, are declared and shall  
6     be construed to be negotiable instruments.

7             O. All bonds recommended by the department and  
8     issued by the board shall be special obligations of the board,  
9     payable solely from the revenue, income, fees or charges that  
10    may be pledged to the payment of the obligations pursuant to  
11    the provisions of the Drinking Water State Revolving Loan Fund  
12    Act and the bonds shall not create an obligation, debt or  
13    liability of the state. No breach of any pledge, obligation or  
14    agreement of the department or the board shall impose a  
15    pecuniary liability upon the state or a charge upon its general  
16    credit or taxing power.

17            P. An issuing resolution shall recite that each  
18    bond authorized is issued by the board under recommendation of  
19    the department. The recital shall clearly state that the bonds  
20    are in full compliance with all of the provisions of the  
21    Drinking Water State Revolving Loan Fund Act, and all bonds  
22    issued containing such recital shall be incontestable for any  
23    cause whatsoever after their delivery for value."

24            **SECTION 9.** Section 6-21A-9 NMSA 1978 (being Laws 1997,  
25    Chapter 144, Section 9) is amended to read:

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1           "6-21A-9. AGREEMENT OF THE STATE NOT TO LIMIT OR ALTER  
2 RIGHTS OF OBLIGEES.--The state [~~hereby~~] pledges to and agrees  
3 with the holders of any bonds or other obligations issued under  
4 the Drinking Water State Revolving Loan Fund Act and with those  
5 parties that enter into contracts or agreements with the  
6 department or with the [~~authority~~] board pursuant to the  
7 provisions of that act, that the state shall not limit, alter,  
8 restrict or impair any rights vested in the [~~authority~~]  
9 department or board to fulfill the terms of agreements made  
10 with the holders of bonds or other obligations issued pursuant  
11 to [~~the Drinking Water State Revolving Loan Fund~~] that act and  
12 with the parties who may enter into contracts with a local  
13 authority, the department or the [~~authority~~] board pursuant to  
14 [~~the Drinking Water State Revolving Loan Fund~~] that act, and  
15 that the state shall not limit, alter, restrict or impair the  
16 rights vested in a local authority or in the department or the  
17 [~~authority~~] board to fulfill the terms of contracts made with  
18 the department or the [~~authority~~] board and with parties who  
19 enter into contracts with [~~such~~] local authorities. The state  
20 further agrees that it shall not in any way impair the rights  
21 or remedies of the holders of such bonds or other obligations  
22 of such parties until [~~such~~] the bonds and other obligations,  
23 together with interest [~~thereon~~] on the bonds and other  
24 obligations, with interest on any unpaid installment of  
25 interest and all costs and expense in connection with any

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1 action or proceeding by or on behalf of such holders, are fully  
2 met and discharged and [~~such~~] the contracts are fully performed  
3 on the part of [~~the authority~~] the department, the board or the  
4 local authorities. Nothing in this subsection precludes [~~such~~]  
5 limitation or alteration if [~~and when~~] adequate provision is  
6 made by law for the protection of the holders of bonds or other  
7 obligations issued by the [~~authority~~] board or those entering  
8 into [~~such~~] contracts with the [~~authority, or the authority or~~  
9 ~~the~~] department or the board under any contract with a local  
10 authority. The [~~authority or the~~] department or the board may  
11 include this pledge and undertaking for the state in such bonds  
12 or other obligations and in such contracts. The department  
13 shall be the successor obligor to all obligations of the New  
14 Mexico finance authority that have arisen under Section 6-21A-9  
15 NMSA 1978 as of June 30, 2013 without limitation or  
16 enlargement."

17 SECTION 10. A new section of the Drinking Water State  
18 Revolving Fund Act is enacted to read:

19 "[NEW MATERIAL] DRINKING WATER BOND SERVICE FUND  
20 CREATED.--

21 A. The "drinking water bond service fund" is  
22 created in the state treasury and shall be administered by the  
23 state treasurer. The department shall transfer all repayments  
24 of principal and interest of pledged loans upon receipt to the  
25 drinking water bond service fund until such time that all

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1 interest and principal payments on bonds for which such loans  
2 were pledged are fully paid. The drinking water bond service  
3 fund shall be used solely to pay principal and interest due on  
4 bonds issued by the board.

5 B. Payments from the drinking water bond service  
6 fund shall be paid by the state treasurer, who shall keep a  
7 complete bond register showing drinking water state revolving  
8 loan fund bonds, coupons paid and outstanding on the bonds and  
9 such other records as the board shall require.

10 C. Upon full payment of all bond principal and  
11 interest due, the state treasurer shall return to the drinking  
12 water state revolving loan fund any repayments of principal and  
13 interest of pledged loans no longer needed for bond  
14 repayments."

15 SECTION 11. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,  
16 PROPERTY, CONTRACTS AND REFERENCES IN LAW.--

17 A. On the effective date of this act, all  
18 functions, appropriations, money, records, equipment, supplies  
19 and other property related to the New Mexico finance  
20 authority's administration of the Drinking Water State  
21 Revolving Loan Fund Act are transferred to the department of  
22 environment. It is the intent of the legislature that transfer  
23 of services and programs from the authority to the department  
24 shall be accomplished as quickly as practicable, without  
25 disruption in services to current or potential borrowers. The

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1 governor's office and the state budget division of the  
2 department of finance and administration shall assist in the  
3 identification of functions, money, appropriations, records,  
4 equipment, supplies and other property to be transferred and  
5 shall certify to the legislature that resources transferred  
6 from the authority to the department are sufficient to continue  
7 the same level of services. The secretary of environment shall  
8 provide periodic updates to the legislative finance committee  
9 and the New Mexico finance authority oversight committee on the  
10 progress of the transfer, which shall be completed no later  
11 than September 30, 2013. Money transferred from the New Mexico  
12 finance authority shall be placed in the appropriate funds in  
13 the state treasury created in this act so that there will be no  
14 disruption in loans, payments or other obligations pursuant to  
15 the Drinking Water State Revolving Loan Fund Act or federal  
16 requirements.

17 B. On the effective date of this act, all  
18 contractual obligations arising from the New Mexico finance  
19 authority's administration of the Drinking Water State  
20 Revolving Loan Fund Act shall be transferred to the department  
21 of environment.

22 C. On the effective date of this act, all  
23 references in law to the New Mexico finance authority's  
24 administration of the Drinking Water State Revolving Loan Fund  
25 Act shall be deemed to be references to the department of

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environment.

SECTION 12. REPEAL.--Section 6-21A-8 NMSA 1978 (being  
Laws 1997, Chapter 144, Section 8) is repealed.

SECTION 13. EFFECTIVE DATE.--The effective date of the  
provisions of this act is July 1, 2013.