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HOUSE BILL 781

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Ray Begaye

AN ACT

RELATING TO WATER; CREATING THE OFFICE OF WATER INFRASTRUCTURE DEVELOPMENT; TRANSFERRING FUNCTIONS OF THE CONSTRUCTION PROGRAMS BUREAU OF THE DEPARTMENT OF ENVIRONMENT TO THE OFFICE OF WATER INFRASTRUCTURE DEVELOPMENT; AMENDING THE WATER PROJECT FINANCE ACT, THE WASTEWATER FACILITY CONSTRUCTION LOAN ACT AND THE RURAL INFRASTRUCTURE ACT.

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

Section 1. A new section of Chapter 72 NMSA 1978 is enacted to read:

"NEW MATERIAL OFFICE OF WATER INFRASTRUCTURE DEVELOPMENT--POWERS AND DUTIES--TRANSFER OF CONSTRUCTION PROGRAMS BUREAU.--

A. The "office of water infrastructure development" is created. The office is administratively attached to the

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1 department of finance and administration.

2 B. The office shall:

3 (1) provide staff support to and implement
4 policy decisions of the water trust board pursuant to the Water
5 Project Finance Act;

6 (2) analyze the development of water projects;

7 (3) monitor the implementation of water
8 projects;

9 (4) develop and administer a uniform
10 application for water project financing, including from the
11 water project fund;

12 (5) make loans or grants to qualifying
13 entities for water projects; provided that the service area for
14 the project is wholly within the boundaries of the state or the
15 project is an interstate project that directly and
16 substantially benefits New Mexico and its citizens;

17 (6) coordinate financing of water projects
18 from all sources and develop qualifying conditions for funding;

19 (7) administer technical assistance to water
20 and wastewater systems and acequias;

21 (8) coordinate reviews of all sanitary surveys
22 and water system inspection reports with the drinking water
23 bureau of the department of environment;

24 (9) coordinate review of water projects with
25 the water rights division of the office of the state engineer;

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1 and

2 (10) coordinate review of fiscal capacity and
3 budgets of entities applying for funding of water projects with
4 the department of finance and administration and the New Mexico
5 finance authority.

6 C. As used in this section, "water project"
7 includes qualifying water projects pursuant to the Water
8 Project Finance Act, wastewater facilities pursuant to the
9 Wastewater Facility Construction Loan Act and wastewater and
10 water supply facilities pursuant to the Rural Infrastructure
11 Act."

12 Section 2. Section 72-4A-1 NMSA 1978 (being Laws 2001,
13 Chapter 164, Section 1) is amended to read:

14 "72-4A-1. SHORT TITLE.--~~[This act]~~ Chapter 72, Article 4A
15 NMSA 1978 may be cited as the "Water Project Finance Act"."

16 Section 3. Section 72-4A-3 NMSA 1978 (being Laws 2001,
17 Chapter 164, Section 3, as amended) is amended to read:

18 "72-4A-3. DEFINITIONS.--As used in the Water Project
19 Finance Act:

20 A. "authority" means the New Mexico finance
21 authority;

22 B. "board" means the water trust board;

23 C. "office" means the office of water
24 infrastructure development;

25 [~~E.~~] D. "political subdivision" means a

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1 municipality, county, irrigation district, conservancy
2 district, special district, acequia, soil and water
3 conservation district, water and sanitation district or an
4 association organized and existing pursuant to the Sanitary
5 Projects Act;

6 ~~[D. "qualifying water project" means a project~~
7 ~~recommended by the board for funding by the legislature; and]~~

8 E. "qualifying entity" means a state agency,
9 a political subdivision of the state or a recognized Indian
10 nation, tribe or pueblo, the boundaries of which are located
11 wholly or partially in New Mexico; and

12 F. "qualifying water project" means a project
13 recommended by the board for funding by the legislature."

14 Section 4. Section 72-4A-9 NMSA 1978 (being Laws 2001,
15 Chapter 164, Section 9, as amended) is amended to read:

16 "72-4A-9. WATER PROJECT FUND--CREATED--PURPOSE.--

17 A. The "water project fund" is created in the [~~New~~
18 ~~Mexico finance authority~~] state treasury and shall consist of
19 distributions made to the fund from the water trust fund and
20 payments by the office of principal of and interest on loans
21 for approved water projects. The fund shall also consist of
22 any other money appropriated, distributed or otherwise
23 allocated to the fund for the purpose of supporting water
24 projects pursuant to provisions of the Water Project Finance
25 Act. The fund shall be administered by the [~~authority~~] office.

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1 Income from investment of the water project fund shall be
2 credited to the fund. Balances in the fund at the end of any
3 fiscal year shall not revert to the general fund. The water
4 project fund may consist of such subaccounts as the ~~[authority]~~
5 office deems necessary to carry out the purposes of the fund.
6 The ~~[authority]~~ office may establish procedures and adopt rules
7 as required to administer the fund and to recover from the fund
8 costs of administering the fund and originating grants and
9 loans. Ten percent of all water project funds shall be
10 dedicated to the state engineer for water rights adjudications,
11 and twenty percent of the money dedicated for water rights
12 adjudications shall be allocated to the administrative office
13 of the courts for the courts' costs associated with those
14 adjudications.

15 B. Money in the water project fund may be used to
16 make loans or grants to qualified entities for any project
17 approved by the legislature and for water rights adjudications.

18 C. The authority is authorized to issue revenue
19 bonds payable from the proceeds of loan repayments made into
20 the water project fund upon a determination by the authority
21 that issuance of the bonds is necessary to replenish the
22 principal balance of the fund. The net proceeds from the sale
23 of the bonds shall be deposited in the water project fund. The
24 bonds shall be authorized and issued by the authority in
25 accordance with the provisions of the New Mexico Finance

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1 Authority Act."

2 Section 5. Section 74-6A-3 NMSA 1978 (being Laws 1986,
3 Chapter 72, Section 3, as amended) is amended to read:

4 "74-6A-3. DEFINITIONS.--As used in the Wastewater
5 Facility Construction Loan Act:

6 A. "commission" means the water quality control
7 commission;

8 ~~[B. "division" means the environmental improvement
9 division of the health and environment department;~~

10 ~~G.]~~ B. "financial assistance" means loans, the
11 purchase or refinancing of existing local political subdivision
12 obligations, loan guarantees, credit enhancement techniques to
13 reduce interest on loans and bonds, bond insurance and bond
14 guarantees or any combination of these purposes;

15 ~~[D.]~~ C. "fund" means the wastewater facility
16 construction loan fund;

17 ~~[E.]~~ D. "local authority" means any municipality,
18 county, incorporated county, sanitation district, water and
19 sanitation district or any similar district, recognized Indian
20 tribe or other issuing agency created pursuant to a joint
21 powers agreement acting on behalf of any entity listed in this
22 subsection;

23 E. "office" means the office of water
24 infrastructure development;

25 F. "operate and maintain" means to perform all

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1 necessary activities, including replacement of equipment or
2 appurtenances, to assure the dependable and economical function
3 of a wastewater facility in accordance with its intended
4 purpose;

5 G. "wastewater facility" means a publicly owned
6 system for treating or disposing of sewage or wastes either by
7 surface or underground methods, including any equipment, plant,
8 treatment works, structure, machinery, apparatus or land, in
9 any combination, that is acquired, used, constructed or
10 operated for the storage, collection, reduction, recycling,
11 reclamation, disposal, separation or treatment of water or
12 wastes or for the final disposal of residues resulting from the
13 treatment of water or wastes, such as pumping and ventilating
14 stations, facilities, plants and works, outfall sewers,
15 interceptor sewers and collector sewers and other real or
16 personal property and appurtenances incident to their use or
17 operation. "Wastewater facility" also includes a nonpoint
18 source water pollution control project as eligible under the
19 [federal] Clean Water Act [~~of 1977~~];

20 H. "account" means the wastewater suspense account;

21 I. "board" means the state board of finance;

22 J. "bonds" means wastewater bonds or other
23 obligations authorized by the commission to be issued by the
24 board pursuant to the Wastewater Facility Construction Loan
25 Act;

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1 K. "Clean Water Act" means the federal Clean Water
2 Act of 1977 and its subsequent amendments or successor
3 provisions;

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

8 M. "force account construction" means construction
9 performed by the employees of a local authority rather than
10 through a contractor;

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

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

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

25 Section 6. Section 74-6A-4 NMSA 1978 (being Laws 1991,

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1 Chapter 172, Section 4) is amended to read:

2 "74-6A-4. FUND CREATED--ADMINISTRATION.--

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

15 B. The following shall be deposited directly in the
16 fund:

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

19 (2) funds [~~as~~] appropriated by the legislature
20 to implement the provisions of the Wastewater Facility
21 Construction Loan Act or to provide state matching funds that
22 are required by the terms of any federal grant under the Clean
23 Water Act;

24 (3) loan principal, interest and penalty
25 payments if required by the terms of any federal grant under

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1 the Clean Water Act;

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

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

6 C. Money in the fund is appropriated for
7 expenditure by the commission or office as agent of the
8 commission in a manner consistent with the terms and conditions
9 of the federal capitalization grants and the Clean Water Act
10 and may be used:

11 (1) to provide loans for the construction or
12 rehabilitation of wastewater facilities;

13 (2) to purchase, refund or refinance
14 obligations incurred by local authorities in the state for
15 wastewater facilities where the obligations were incurred and
16 construction commenced after March 7, 1985;

17 (3) to guarantee, or purchase insurance for,
18 obligations of local authorities to improve credit market
19 access or reduce interest rates;

20 (4) to provide a source of revenue or security
21 for the payments of principal and interest on bonds recommended
22 by the commission and issued by the board if the proceeds of
23 the bonds are deposited in the fund to the extent provided in
24 the terms of the federal grant;

25 (5) to provide loan guarantees for similar

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1 revolving funds established by local authorities;

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

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

14 D. Pursuant to regulations adopted by the
15 commission, the [~~division~~] office may impose and collect a fee
16 from each local authority that receives financial assistance
17 from the fund, which fee shall be used solely for the costs of
18 administering the fund.

19 E. Money not currently needed for the operation of
20 the fund or otherwise dedicated may be invested according to
21 the provisions of Chapter 6, Article 10 NMSA 1978, and all
22 interest earned on such investments shall be credited to the
23 fund. Money remaining in the fund at the end of any fiscal
24 year shall not revert to the general fund but shall accrue to
25 the credit of the fund.

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

8 G. The [~~division~~] office shall establish fiscal
9 controls and accounting procedures that are sufficient to
10 assure proper accounting for fund payments, disbursements and
11 balances and shall provide an annual report and an annual
12 independent audit on the fund to the governor and to the United
13 States environmental protection agency as required by the Clean
14 Water Act."

15 Section 7. Section 74-6A-7 NMSA 1978 (being Laws 1991,
16 Chapter 172, Section 5) is amended to read:

17 "74-6A-7. LOAN PROGRAM--ADMINISTRATION.--

18 A. The [~~division~~] office shall establish a program
19 to provide financial assistance to local authorities,
20 individually or jointly, for acquisition, construction or
21 modification of wastewater facilities. The [~~division~~] office
22 as agent of the commission is authorized to enter into
23 contracts and other agreements to carry out the provisions of
24 the Wastewater Facility Loan Construction Act, including but
25 not limited to contracts and agreements with federal agencies,

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1 local authorities and other parties.

2 B. The [~~commission~~] office as agent of the
3 commission shall adopt a system for the ranking of wastewater
4 facility construction projects for financial assistance."

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

7 "74-6A-8. FINANCIAL ASSISTANCE--CRITERIA.--

8 A. Financial assistance shall be provided only to
9 local authorities that:

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

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

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

21 (4) provide a written assurance, signed by an
22 attorney, that the local authority has or will acquire proper
23 title, easements and rights of way to the property upon or
24 through which the wastewater facility proposed for funding is
25 to be constructed or extended;

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

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

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

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

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

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

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1 the wastewater facility project for deposit to the fund;

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

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

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

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

19 (c) special assessments on the property
20 served or benefited by the wastewater facility project; [~~and~~]
21 or

22 (d) other revenue available to the local
23 authority;

24 (4) undertake and obligate itself to pay its
25 contractual obligation to the office as agent of the commission

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1 solely from the proceeds from any of the sources specified in
2 Paragraph (3) of this subsection or, in accordance with the
3 laws authorizing issuance of local authority obligations,
4 impose upon itself a general obligation pledge to the office as
5 agent of the commission additionally secured by a pledge of any
6 of the sources specified in Paragraph (3) of this subsection;
7 [~~and~~] or

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

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

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

24 E. A zero-percent interest rate may be approved by
25 the division when the following conditions have been met by the

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1 local authority:

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

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

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

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

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

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

13 J. In the event of default by the local authority,
14 the [~~commission~~] office may enforce its rights by suit or
15 mandamus or may utilize all other available remedies under
16 state law."

17 Section 9. Section 74-6A-9 NMSA 1978 (being Laws 1991,
18 Chapter 172, Section 7) is amended to read:

19 "74-6A-9. COMMISSION--POWERS.--

20 A. In administering the Wastewater Facility
21 Construction Loan Act, the commission shall have the following
22 powers [~~which~~] that may be implemented by the [~~division~~] office
23 in addition to those specified in the Water Quality Act:

24 (1) to provide financial assistance to local
25 authorities to finance all or part of a wastewater facility,

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1 including all forms of assistance for which the fund may be
2 used pursuant to the Wastewater Facility Construction Loan Act;

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

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

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

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

23 (6) through its agent the [~~division~~] office,
24 to manage the fund, to grant and administer financial
25 assistance to local authorities and to apply for and accept

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1 grants, including but not limited to capitalization grant
2 awards made to the state in accordance with the Clean Water Act
3 and the Wastewater Facility Construction Loan Act;

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

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

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

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

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

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

25 C. The office as agent of the commission shall use

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1 accounting, audit and fiscal procedures conforming to generally
2 accepted government accounting standards and shall otherwise
3 prepare audits and budgets in accordance with state law. The
4 fiscal year of the office and the commission shall coincide
5 with the fiscal year of the state.

6 D. The office as agent of the commission shall
7 deliver an annual report during the first week of each regular
8 session of the legislature on the status of the wastewater
9 facility construction loan program and the fund to the governor
10 and legislature."

11 Section 10. Section 74-6A-11 NMSA 1978 (being Laws 1991,
12 Chapter 172, Section 9) is amended to read:

13 "74-6A-11. WASTEWATER SUSPENSE ACCOUNT CREATED.--

14 A. There is created in the state treasury a fund to
15 be known as the "wastewater suspense account". The proceeds of
16 bonds recommended by the commission and issued and sold by the
17 board pursuant to provisions of the Wastewater Facility
18 Construction Loan Act shall be deposited in the account. The
19 office as agent of the commission shall be the administrator of
20 the account. All expenditures or transfers from the account
21 shall be approved by the office as agent of the commission.
22 Money in the account shall be withdrawn, expended or
23 transferred as necessary to comply with the provisions of the
24 recommending and issuing resolutions for [~~the~~] bonds, the
25 proceeds of which have been deposited in the account, and to

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1 fund the provisions of the Wastewater Facility Construction
2 Loan Act and the Clean Water Act.

3 B. Money in the account may be invested according
4 to provisions of Chapter 6, Article 10 NMSA 1978. All interest
5 earned on the investments shall be credited to the account.

6 C. Money in the account shall not revert to the
7 general fund but accrue to the credit of the account."

8 Section 11. Section 74-6A-13 NMSA 1978 (being Laws 1991,
9 Chapter 172, Section 11) is amended to read:

10 "74-6A-13. AGREEMENT OF THE STATE NOT TO LIMIT OR ALTER
11 RIGHTS OF OBLIGEEES.--The state [~~hereby~~] pledges to and agrees
12 with the holders of any bonds or other obligations issued under
13 the Wastewater Facility Construction Loan Act and with those
14 parties who enter into contracts with the commission or [~~with~~
15 ~~the division~~] the office pursuant to the provisions of the
16 Wastewater Facility Construction Loan Act that the state shall
17 not limit, alter, restrict or impair the rights vested in the
18 commission or the office to fulfill the terms of agreements
19 made with the holders of bonds or other obligations recommended
20 and issued pursuant to the Wastewater Facility Construction
21 Loan Act and with the parties who may enter into contracts with
22 the commission or the office pursuant to the Wastewater
23 Facility Construction Loan Act and that the state shall not
24 limit, alter, restrict or impair the rights vested in a local
25 authority or in the commission, the office or the board [~~or the~~

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1 ~~division]~~ to fulfill the terms of contracts made with the
2 commission, the office or the board and with parties who enter
3 into contracts with such local authorities or with the
4 [~~division acting as agent of the~~] commission or the office
5 pursuant to the Wastewater Facility Construction Loan Act. The
6 state further agrees that it shall not in any way impair the
7 rights or remedies of the holders of such bonds or other
8 obligations of such parties until such bonds and other
9 obligations, together with interest thereon, with interest on
10 any unpaid installment of interest and all costs and expenses
11 in connection with any action or proceeding by or on behalf of
12 such holders, are fully met and discharged and such contracts
13 are fully performed on the part of the commission, the office
14 as agent of the commission, the board or the local authorities
15 [~~or the division acting as agent of the commission~~]. Nothing
16 in this [~~subsection~~] section precludes such limitation or
17 alteration if and when adequate provision is made by law for
18 the protection of the holders of bonds or other obligations
19 recommended by the commission and issued by the board or those
20 entering into such contracts with the commission, or the
21 commission under any contract with a local authority or with
22 the [~~division~~] office acting as agent for the commission. The
23 commission or the board may include this pledge and undertaking
24 for the state in such bonds or other obligations and in such
25 contracts."

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1 Section 12. Section 74-6A-14 NMSA 1978 (being Laws 1991,
2 Chapter 172, Section 12) is amended to read:

3 "74-6A-14. VALIDATION.--All outstanding securities of the
4 state and of all local authorities, all loan or other
5 agreements entered into between the state or the [~~division~~]
6 office and any local authority, all regulations promulgated by
7 the commission or the office and all acts and proceedings taken
8 by or on behalf of the state or any local authority with
9 respect to the financing of wastewater facilities are hereby
10 validated, ratified, approved and confirmed. To the extent
11 necessary to carry out its purposes, the commission or the
12 office shall treat any bonds, obligations or agreements of the
13 state or [~~the division~~] any state agency that were entered into
14 prior to [~~the effective date hereof~~] April 4, 1991 for the
15 purpose of effecting the provisions of the Wastewater Facility
16 Construction Loan Act or the Clean Water Act as if such bonds,
17 obligations or agreements were those recommended by the
18 commission or the office and issued by the board."

19 Section 13. Section 75-1-2 NMSA 1978 (being Laws 1973,
20 Chapter 333, Section 2, as amended by Laws 2001, Chapter 250,
21 Section 1 and by Laws 2001, Chapter 265, Section 1) is amended
22 to read:

23 "75-1-2. DEFINITIONS.--As used in the Rural
24 Infrastructure Act:

25 [A. ~~"department" means the department of~~

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1 ~~environment;~~

2 ~~B.]~~ A. "fund" means the rural infrastructure
3 revolving loan fund;

4 ~~[G.]~~ B. "local authority" means any incorporated
5 city, town or village, county, mutual domestic association,
6 public water cooperative association or sanitation district
7 whose water supply facility serves a population of less than
8 ten thousand;

9 C. "office" means the office of water
10 infrastructure development;

11 D. "operate and maintain" means all necessary
12 activities, including but not limited to replacement of
13 equipment or appurtenances to assure the dependable and
14 economical function of a water supply facility in accordance
15 with its intended purpose;

16 ~~[E. "secretary" means the secretary of environment;~~

17 ~~F.]~~ E. "wastewater facility" includes but is not
18 limited to collection lines, pumping equipment, treatment works
19 and disposal piping or process units; and

20 ~~[G.]~~ F. "water supply facility" includes but is not
21 limited to the source of supply of water, pumping equipment,
22 storage facilities, transmission lines, treatment works and
23 distribution systems."

24 Section 14. Section 75-1-3 NMSA 1978 (being Laws 1973,
25 Chapter 333, Section 3, as amended by Laws 2001, Chapter 250,
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[bracketed material] = delete

1 Section 3 and by Laws 2001, Chapter 265, Section 3) is amended
2 to read:

3 "75-1-3. FUND CREATED--ADMINISTRATION--EMERGENCY FUND.--

4 A. A special fund is created to be known as the
5 "rural infrastructure revolving loan fund". Money appropriated
6 to the fund or to the [~~department~~] office to carry out the
7 provisions of the Rural Infrastructure Act may be used to make
8 loans and grants to local authorities, individually or jointly,
9 for water supply or wastewater facilities. Appropriations made
10 to the fund but not expended at the end of the fiscal year for
11 which appropriated shall not revert to the general fund but
12 shall accrue to the credit of the fund. Earnings on the
13 balance in the fund shall be credited to the fund. In
14 addition, when the proceeds from the issuance of severance tax
15 bonds appropriated to the fund are deposited in the state
16 treasury, interest earned on that money during the period from
17 deposit in the state treasury until the actual transfer of the
18 money to the fund shall be credited to the fund.

19 B. Ten percent of any appropriation to the fund or
20 to the [~~department~~] office to carry out the provisions of the
21 Rural Infrastructure Act shall be set aside for emergency
22 grants and loans pursuant to Section 75-1-5 NMSA 1978.

23 C. All water supply and wastewater facilities shall
24 be designed in compliance with the engineering requirements
25 established by the [~~secretary~~] office after consulting with and

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1 considering the recommendations of the professional engineering
2 societies operating in New Mexico. The [~~secretary~~] office
3 shall also establish, by [~~regulations~~] regulation, guidelines
4 for the ranking of projects for top priority based on public
5 health needs.

6 D. The [~~department~~] office shall administer the
7 fund and shall make grant and loan disbursements in accordance
8 with the Rural Infrastructure Act. The [~~secretary~~] office
9 shall adopt regulations to govern the application procedure and
10 requirements for disbursing grants and loans under the Rural
11 Infrastructure Act, including requirements consistent with the
12 purpose of the act for determining the eligibility and priority
13 of local authorities for such grants and loans.

14 E. Receipts from the repayment of loans, including
15 loans approved by the state board of finance pursuant to
16 Section 75-1-5 NMSA 1978, shall be deposited in the fund by the
17 [~~department~~] office, including receipts from the repayment of
18 loans made pursuant to appropriations to carry out the purposes
19 of the Water Supply Construction Act made prior to the
20 effective date of the Rural Infrastructure Act.

21 F. Loans and grants made pursuant to the provisions
22 of the Rural Infrastructure Act shall not be used by the local
23 authority on any project constructed in fulfillment or partial
24 fulfillment of requirements made of a subdivider by the
25 provisions of the Land Subdivision Act or the New Mexico

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1 Subdivision Act."

2 Section 15. Section 75-1-4 NMSA 1978 (being Laws 1973,
3 Chapter 333, Section 4, as amended by Laws 2001, Chapter 250,
4 Section 4 and by Laws 2001, Chapter 265, Section 4) is amended
5 to read:

6 "75-1-4. CONDITIONS FOR GRANTS AND LOANS.--

7 A. Grants and loans shall be made only to local
8 authorities that:

9 (1) agree to operate and maintain the water
10 supply and wastewater facilities so that the facilities will
11 function properly over the structural and material design life,
12 which shall not be less than twenty years;

13 (2) require the contractor of the construction
14 project to post a performance and payment bond in accordance
15 with the requirements of Section 13-4-18 NMSA 1978;

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

21 (4) meet the requirements of the financial
22 capability set by the [~~department~~] office to assure sufficient
23 revenues to operate and maintain the facility for its useful
24 life and to repay the loan;

25 (5) pledge sufficient revenues for repayment

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1 of the loan, provided that such revenues may by law be pledged
2 for that purpose; and

3 (6) agree to properly maintain financial
4 records and to conduct an audit of the project's financial
5 records.

6 B. Except as otherwise provided in the Rural
7 Infrastructure Act, a loan shall be for a period of time not to
8 exceed twenty years. Loans may be interest free or bear an
9 annual interest rate set by the [~~secretary~~] office that is at
10 or below market interest rates. The repayment of loans shall
11 be in annual installments beginning one year after completion
12 of the project. The repayment of the interest on the loan
13 accumulated during the design and construction of a project may
14 be included in the final loan amount, but it shall not be
15 counted in determining the maximum loan amount.

16 C. No loan recipient eligible to receive a grant
17 under the Rural Infrastructure Act shall receive grants in any
18 one year totaling more than two hundred thousand dollars
19 (\$200,000).

20 D. The maximum assistance, including both loans and
21 grants, [~~which~~] that a local authority may receive under the
22 Rural Infrastructure Act in any one year is five hundred
23 thousand dollars (\$500,000).

24 E. Plans and specifications for a water supply or
25 wastewater facility construction project shall be approved by

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1 the [~~department~~] office before grant or loan disbursements to
2 pay for construction costs are made to a local authority.
3 Interim loan disbursements to pay for engineering and other
4 professional services may be made by the [~~department~~] office
5 prior to the approval of the plans and specifications.

6 F. Privately owned water supply or wastewater
7 facilities are not eligible for assistance under the Rural
8 Infrastructure Act.

9 G. Grants and loans shall be made only for eligible
10 items. Eligible items include but are not limited to the costs
11 of engineering feasibility reports, contracted engineering
12 design, inspection of construction, special engineering
13 services, archaeological surveys and contracted construction.
14 The costs of water rights, land, system acquisition, easements
15 and rights of way, refinancing of program loans, legal costs
16 and fiscal agents' fees are eligible items only for loan funds.
17 Local authority administrative costs shall not be included as
18 eligible items.

19 H. In the event the local authority fails to make
20 the prescribed loan repayment, the [~~department~~] office is
21 authorized to set water or wastewater user rates in the area of
22 the local authority's jurisdiction in order to provide
23 sufficient money for repayment of this loan and proper
24 operation and maintenance."

25 Section 16. Section 75-1-5 NMSA 1978 (being Laws 1987,
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[bracketed material] = delete

1 Chapter 175, Section 4, as amended by Laws 2001, Chapter 250,
2 Section 5 and by Laws 2001, Chapter 265, Section 5) is amended
3 to read:

4 "75-1-5. EMERGENCY LOANS AND GRANTS.--Ten percent of the
5 proceeds of each severance tax bond issuance or other
6 appropriation for the purpose of carrying out the provisions of
7 the Rural Infrastructure Act shall be reserved for emergencies
8 and shall be allocated by the [~~department~~] office only upon
9 approval of the state board of finance. This amount shall not
10 be deposited in the fund and shall be allocated only for
11 emergency loans and grants. Emergency loans and grants shall
12 be made in accordance with the applicable provisions for loans
13 pursuant to the Rural Infrastructure Act; provided that a grant
14 shall not exceed two hundred thousand dollars (\$200,000). At
15 the end of the third quarter of each fiscal year, the
16 unexpended balance of the reserved amount may be transferred by
17 the [~~department~~] office to the fund for use in accordance with
18 the Rural Infrastructure Act."

19 Section 17. Section 75-1-6 NMSA 1978 (being Laws 1988,
20 Chapter 28, Section 7, as amended by Laws 2001, Chapter 250,
21 Section 6 and by Laws 2001, Chapter 265, Section 6) is amended
22 to read:

23 "75-1-6. AVERAGE RESIDENTIAL USER COST REDUCTION GRANTS
24 AND ZERO PERCENT LOANS.--

25 A. No more than twenty-five percent of the proceeds

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1 of each severance tax bond issuance or other appropriation for
2 the purpose of carrying out the provisions of the Rural
3 Infrastructure Act shall be reserved for average residential
4 user cost reduction grants or zero percent loans to reduce
5 average residential user cost to a reasonable level for
6 eligible financially needy loan recipients whose water supply
7 or wastewater facilities serve less than three thousand
8 persons.

9 B. Average residential user cost reduction grants
10 and zero percent loans shall be allocated by the [~~department~~]
11 office in accordance with the provisions for grants and loans
12 pursuant to the Rural Infrastructure Act, provided that an
13 average residential user cost reduction grant or zero percent
14 loan shall not exceed two hundred thousand dollars (\$200,000).
15 Such grants and loans shall reduce only the principal and
16 interest portion of the average residential user cost to a
17 reasonable cost as determined by the [~~department~~] office.

18 C. A zero percent loan or average residential user
19 cost reduction grant shall be approved by the [~~department~~]
20 office when, after construction bids have been received, the
21 following conditions have been met by the local authority whose
22 average residential user costs are in need of reduction:

23 (1) the construction project is designed using
24 the most cost-effective and dependable option;

25 (2) the system is designed with adequate

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1 built-in expansion capacity;

2 (3) other sources of grant funds have been
3 sought and are not available in a timely manner;

4 (4) the project cannot feasibly be reduced in
5 scope or phased so as to bring it within available loan funds
6 and within reasonable user cost; and

7 (5) the local authority's median household
8 income is less than ninety percent of the statewide
9 nonmetropolitan median household income based on the most
10 current federal decennial census."

11 Section 18. TEMPORARY PROVISION--TRANSFER OF CONSTRUCTION
12 PROGRAMS BUREAU DUTIES--OFFICE OF WATER INFRASTRUCTURE
13 DEVELOPMENT.--On July 1, 2007, all powers and duties conferred
14 by law upon the construction programs bureau of the department
15 of environment shall be exercised by the office of water
16 infrastructure development. On July 1, 2007, all references in
17 law to the construction programs bureau of the department of
18 environment shall be construed to be references to the office
19 of water infrastructure development.

20 Section 19. TEMPORARY PROVISION--TRANSFER OF PERSONNEL,
21 PROPERTY, MONEY AND CONTRACTS.--On July 1, 2007, all money,
22 personnel, appropriations, records, equipment, supplies and
23 other property of the construction programs bureau of the
24 department of environment shall be transferred to the office of
25 water infrastructure development, and all memoranda of

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1 understanding, joint powers agreements and contracts of the
2 construction programs bureau shall be binding and effective on
3 the office of water infrastructure development.

4 Section 20. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2007.

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