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AN ACT
RELATING TO PUBLIC FINANCE; CREATING A SEPARATE
ADMINISTRATIVE FUND FOR THE WASTEWATER FACILITY CONSTRUCTION
LOAN ACT; DEFINING TERMS; MAKING AN APPROPRIATION.

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

Section 1. A new section of the Wastewater Facility
Construction Loan Act is enacted to read:

"CLEAN WATER ADMINISTRATIVE FUND--CREATED--USE.--

A. The "clean water administrative fund" is
created in the state treasury and shall be administered by
the department as agent for the commission. The clean water
administrative fund shall be a dedicated fund, and all money
in the clean water administrative fund is appropriated to the
department to be used solely to administer the wastewater
facility construction loan fund, which may include water
quality planning and water quality analysis and protection
studies if authorized by the department and, if necessary,
the United States environmental protection agency. The
commission may establish procedures, adopt regulations and
set fees as required to administer the clean water
administrative fund in accordance with the Clean Water Act
and state law. The clean water administrative fund shall
consist of money deposited from:

- (1) loan administration fees collected by

1 the department after the effective date of this section on
2 loans made from the wastewater facility construction loan
3 fund;

4 (2) interest earned on investment of the
5 clean water administrative fund;

6 (3) grants from the federal government
7 allotted to the state for the clean water administrative
8 fund;

9 (4) funds as appropriated by the legislature
10 for administration to implement the provisions of the Clean
11 Water Act; and

12 (5) any other public or private money
13 dedicated to the clean water administrative fund.

14 B. Money in the clean water administrative fund
15 not currently needed for the operation of the fund or
16 otherwise dedicated may be invested according to the
17 provisions of Chapter 6, Article 10 NMSA 1978, and all
18 interest earned on such investments shall be credited to the
19 clean water administrative fund. Money remaining in the
20 clean water administrative fund at the end of any fiscal year
21 shall not revert to the general fund but shall accrue to the
22 credit of the clean water administrative fund.

23 C. The department shall establish fiscal controls
24 and accounting procedures that are sufficient to ensure
25 proper accounting for clean water administrative fund

1 payments, disbursements and balances and shall provide an
2 annual report and an annual independent audit on the clean
3 water administrative fund to the governor and to the United
4 States environmental protection agency as required by the
5 Clean Water Act."

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

8 "74-6A-3. DEFINITIONS.--As used in the Wastewater
9 Facility Construction Loan Act:

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

17 B. "commission" means the water quality control
18 commission;

19 C. "division" or "department" means the department
20 of environment;

21 D. "financial assistance" means loans, the
22 purchase or refinancing of existing local political
23 subdivision obligations, loan guarantees, credit enhancement
24 techniques to reduce interest on loans and bonds, bond
25 insurance and bond guarantees or any combination of these

1 purposes;

2 E. "fund" means the wastewater facility
3 construction loan fund;

4 F. "local authority" means any municipality,
5 county, incorporated county, sanitation district, water and
6 sanitation district or any similar district, recognized
7 Indian tribe or other issuing agency created pursuant to a
8 joint powers agreement acting on behalf of any entity listed
9 in this subsection;

10 G. "operate and maintain" means to perform all
11 necessary activities, including replacement of equipment or
12 appurtenances, to ensure the dependable and economical
13 function of a wastewater facility in accordance with its
14 intended purpose;

15 H. "wastewater facility" means a publicly owned
16 system for treating or disposing of sewage or wastes either
17 by surface or underground methods, including any equipment,
18 plant, treatment works, structure, machinery, apparatus or
19 land, in any combination, that is acquired, used, constructed
20 or operated for the storage, collection, reduction,
21 recycling, reclamation, disposal, separation or treatment of
22 water or wastes or for the final disposal of residues
23 resulting from the treatment of water or wastes, such as
24 pumping and ventilating stations, facilities, plants and
25 works, outfall sewers, interceptor sewers and collector

1 sewers and other real or personal property and appurtenances
2 incident to their use or operation. "Wastewater facility"
3 also includes a nonpoint source water pollution control
4 project as eligible under the Clean Water Act;

5 I. "account" means the wastewater suspense
6 account;

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

8 K. "bonds" means wastewater bonds or other
9 obligations authorized by the commission to be issued by the
10 board pursuant to the Wastewater Facility Construction Loan
11 Act;

12 L. "Clean Water Act" means the federal Clean Water
13 Act of 1977 and its subsequent amendments or successor
14 provisions;

15 M. "federal securities" means direct obligations
16 of the United States, or obligations the principal and
17 interest of which are unconditionally guaranteed by the
18 United States, or an ownership interest in either of the
19 foregoing;

20 N. "force account construction" means construction
21 performed by the employees of a local authority rather than
22 through a contractor;

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

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

7 Q. "recommending resolution" means a formal
8 statement adopted by the commission recommending to the board
9 that bonds be issued pursuant to the Wastewater Facility
10 Construction Loan Act, including any trust agreement, trust
11 indenture or similar instrument providing the terms and
12 conditions for the bonds that are issued."

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

15 "74-6A-4. FUND CREATED--ADMINISTRATION.--

16 A. There is created in the state treasury a
17 revolving loan fund to be known as the "wastewater facility
18 construction loan fund", which shall be administered by the
19 division as agent for the commission and operated as a
20 separate account. The commission is authorized to establish
21 procedures and adopt regulations as required to administer
22 the fund in accordance with the Clean Water Act and state
23 law. Any regulations relating to the issuance of bonds and
24 the expenditure of proceeds of bond issues shall be approved
25 by the board. The commission shall, whenever possible,

1 coordinate application procedures and funding cycles with the
2 New Mexico Community Assistance Act.

3 B. The following shall be deposited directly in
4 the fund:

5 (1) grants from the federal government or
6 its agencies allotted to the state for capitalization of the
7 fund;

8 (2) funds as appropriated by the legislature
9 to implement the provisions of the Wastewater Facility
10 Construction Loan Act or to provide state matching funds that
11 are required by the terms of any federal grant under the
12 Clean Water Act;

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

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

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

20 C. Money in the fund is appropriated for
21 expenditure by the commission in a manner consistent with the
22 terms and conditions of the federal capitalization grants and
23 the Clean Water Act and may be used:

24 (1) to provide loans for the construction or
25 rehabilitation of wastewater facilities;

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

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

8 (4) to provide a source of revenue or
9 security for the payments of principal and interest on bonds
10 recommended by the commission and issued by the board if the
11 proceeds of the bonds are deposited in the fund to the extent
12 provided in the terms of the federal grant;

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

15 (6) to fund the administrative expenses of
16 the board, the commission and the division necessary to
17 implement the provisions of the Wastewater Facility
18 Construction Loan Act, including but not limited to costs of
19 servicing loans and issuing bonds, fund start-up costs,
20 financial management and legal consulting fees and
21 reimbursement costs for support services from other state
22 agencies; and

23 (7) to fund other programs for which the
24 federal government authorizes use of wastewater grants or to
25 provide for any other expenditure consistent with the Clean

1 Water Act grant program and state law.

2 D. Pursuant to regulations adopted by the
3 commission, the division may impose and collect an
4 administrative fee from each local authority that receives
5 financial assistance from the fund, which fee shall not
6 exceed five percent of the total loan amount and which shall
7 be deposited in the clean water administrative fund.

8 E. Money not currently needed for the operation of
9 the fund or otherwise dedicated may be invested according to
10 the provisions of Chapter 6, Article 10 NMSA 1978, and all
11 interest earned on such investments shall be credited to the
12 fund. Money remaining in the fund at the end of any fiscal
13 year shall not revert to the general fund but shall accrue to
14 the credit of the fund.

15 F. Acting as agent for the commission, the
16 division shall maintain full authority for the operation of
17 the fund in accordance with applicable federal and state law,
18 including but not limited to preparing the annual intended
19 use plan and ensuring that loan recipients are on the state
20 priority list or otherwise satisfy Clean Water Act
21 requirements.

22 G. The division shall establish fiscal controls
23 and accounting procedures that are sufficient to ensure
24 proper accounting for fund payments, disbursements and
25 balances and shall provide an annual report and an annual

