

SENATE BILL 40

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

INTRODUCED BY

Richard C. Martinez

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

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

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

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

"74-6A-2. PURPOSE.--The purpose of the Wastewater

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Facility Construction Loan Act is to provide state agencies, [~~and~~] local authorities, interstate agencies and other qualified borrowers in New Mexico with low-cost financial assistance in the construction of necessary wastewater facilities and other eligible projects through the creation of a self-sustaining program so as to improve and protect water quality and public health."

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

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

A. "account" means the wastewater suspense account;

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

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

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

E. "Clean Water Act" means the federal Clean Water

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Act of 1977 and its subsequent amendments or successor provisions;

[B-] F. "commission" means the water quality control commission;

[G-] G. "division" or "department" means the department of environment;

H. "eligible project" means a project or activity that is eligible for funding assistance under Section 603(c) of the Clean Water Act, Section 1383 of Title 33 of the United States Code HBIC→as of January 1, 2018←HBIC, including a wastewater facility project, a nonpoint source water pollution control project and a watershed project that meet the criteria of the Clean Water Act;

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

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

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

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through a contractor;

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

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

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

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

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

Q. "qualified borrower" means a creditworthy

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borrower with an identified and verifiable repayment source that is eligible to receive funding pursuant to the Clean Water Act HBIC→as of January 1, 2018←HBIC, including a state agency, an interstate agency and a local authority;

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

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

[H.] T. "wastewater facility" means a publicly owned system for treating or disposing of sewage or wastes either by surface or underground methods, including any equipment, plant, treatment works, structure, machinery, apparatus or land, in any combination, that is acquired, used, constructed or operated for the storage, collection, reduction, recycling, reclamation, disposal, separation or treatment of water or wastes or for the final disposal of residues resulting from the treatment of water or wastes, such as pumping and ventilating stations, facilities, plants and works, outfall sewers, interceptor sewers and collector sewers and other real or personal property and appurtenances incident to their use or operation. ["Wastewater facility" also includes a nonpoint

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~~source water pollution control project as eligible under the Clean Water Act;~~

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

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

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

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

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

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

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

~~P. "issuing resolution" means a formal statement adopted by the board to issue bonds pursuant to the Wastewater Facility Construction Loan Act, including any trust agreement, trust indenture or similar instrument providing terms and~~

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~~conditions for the bonds to be issued;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) to purchase, refund or refinance obligations incurred by local authorities in the state for

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~~[wastewater facilities]~~ eligible projects where the obligations were incurred and construction commenced after March 7, 1985;

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

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

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

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

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

D. Pursuant to regulations adopted by the commission, the division may impose and collect an

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administrative fee from each [~~local authority~~] qualified borrower that receives financial assistance from the fund, which fee shall not exceed five percent of the total loan amount and which shall be deposited in the clean water administrative fund.

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

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

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

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

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

A. The division shall establish a program to provide financial assistance to [~~local authorities~~] qualified borrowers, individually or jointly, for [~~acquisition, construction or modification of wastewater facilities~~] eligible projects. The division as agent of the commission is authorized to enter into contracts and other agreements to carry out the provisions of the Wastewater Facility [~~Loan~~] Construction Loan Act, including [~~but not limited to~~] contracts and agreements with federal agencies, local authorities and other parties.

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

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

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

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

(1) meet the requirements for financial capability set by the division to assure sufficient revenues to operate and maintain the [~~wastewater facility~~] eligible project

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for its useful life, if applicable, and to repay the financial assistance;

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

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

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

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

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

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

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

B. Loans shall be made only to ~~[state agencies and local authorities]~~ qualified borrowers that establish one or more dedicated sources of revenue to repay the money received from the commission and to provide for operation, maintenance and equipment replacement expenses. ~~[A state agency or local authority]~~ Notwithstanding any existing statute to the contrary, ~~[notwithstanding]~~ a qualified borrower may do any of the following:

(1) obligate itself to pay to the commission at periodic intervals a sum sufficient to provide all or any part of bond debt service with respect to the bonds recommended by the commission and issued by the board to fund the loan for the ~~[wastewater facility]~~ eligible project ~~[of the state agency or local authority]~~ and pay over the debt service to the account of the ~~[wastewater facility]~~ eligible project for deposit to the fund;

(2) fulfill any obligation to pay the commission by the issuance of bonds, notes or other obligations in accordance with the laws authorizing issuance of state or local authority obligations; provided, however, that,

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notwithstanding the provisions of Section 4-54-3 or 6-15-5 NMSA 1978 or other statute or law requiring the public sale of local authority obligations, [~~such~~] the obligations may be sold at private sale to the commission at the price and upon the terms and conditions the local authority shall determine;

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

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

(b) licenses, permits, taxes and fees;

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

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

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

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subsection; or

(5) enter into agreements, perform acts and delegate functions and duties as its governing body shall determine is necessary or desirable to enable the division as agent for the commission to fund a loan to the [~~state agency or local authority~~] qualified borrower to aid it [~~in the construction or acquisition of a wastewater facility project~~] with an eligible project.

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

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

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

(1) the local authority's average user cost is [~~at least fifteen dollars (\$15.00) per month or a higher amount as determined by the commission~~] greater than one and eighty-

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two hundredths percent of the local authority's per capita income; and

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

F. A local authority may use the proceeds from financial assistance received under the Wastewater Facility Construction Loan Act to provide a local match or any other nonfederal share of [~~a wastewater facility construction~~] an eligible project as allowed pursuant to the Clean Water Act.

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

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

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

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

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

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

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

(1) to provide financial assistance to ~~[state agencies or local authorities]~~ qualified borrowers to finance

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all or part of [~~a wastewater facility~~] an eligible project, including all forms of assistance for which the fund may be used pursuant to the Wastewater Facility Construction Loan Act;

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

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

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

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

(6) through its agent the division, to manage

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

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

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

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

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

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

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

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Loan Act.

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

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

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

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

A. The board, upon recommendation from the commission, may issue and sell bonds or other obligations recommended by the commission to provide funds for any purpose enumerated in the Wastewater Facility Construction Loan Act or for payment of obligations incurred or temporary loans made to accomplish any purpose of that act. As prescribed in the recommending resolution, bonds may be issued in one or more series; shall bear prescribed dates; shall be in the form provided in the Supplemental Public Securities Act; shall be issued in prescribed denominations; shall have terms and maturities that do not exceed twenty-five years from the date

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of issue of each series; shall bear interest at prescribed rates; shall be payable and evidenced in the manner and times as set by the board; may be redeemed with or without premiums prior to maturity; may be ranked or assigned priority status; and may contain provisions not inconsistent with this subsection.

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

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

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

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

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

C. The bonds and other obligations recommended by the commission and issued by the board may be sold at any time the commission and the board agree upon. The bonds may be sold at private or public sale at prices as provided in the Public

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Securities Act and in a manner agreed upon by the board and the commission. The commission may apply the proceeds of the sale of the bonds it recommends that have been issued by the board to:

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

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

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

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

D. In anticipation of the issuance of bonds, the board or the commission may borrow such sums as may be needed for any of the purposes enumerated in Subsection C of this section, obligate itself by certificate or promissory note,

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bearing interest at a rate to be specified by the commission and maturing within fifteen months from the date of the certificate or promissory note. The certificates or promissory notes shall be payable solely from the proceeds of the bonds recommended by the commission and issued by the board and from the funds from which commission-recommended bonds are payable. In the event that commission funds are not available for a loan for [~~a wastewater facility~~] an eligible project when application is made, in order to accelerate the completion of any [~~wastewater facility~~] eligible project, the local authority may, with the approval of the commission, obligate such local authority to provide local funds to pay that portion of the cost of the [~~wastewater facility~~] eligible project that the commission agrees to make available by loan, and the commission may refund the amount expended on its behalf by the local authority.

E. The commission may recommend that the board issue and sell refunding bonds for the purpose of paying, defeasing or refunding the principal of, interest on and any redemption premiums on any matured or unmatured outstanding bonds recommended by the commission and issued by the board or any matured or unmatured bonds of the state issued to finance [~~wastewater facility~~] eligible projects constructed pursuant to the Clean Water Act grant program. Refunding bonds issued by the board pursuant to a recommendation by the commission shall

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be subject to the provisions of the Wastewater Facility Construction Loan Act in the same manner and to the same extent as other bonds issued pursuant to that act. The holders of refunding bonds shall be subrogated and entitled to all priorities, rights and pledges to which the bonds refunded thereby were entitled.

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

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

H. Any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the payment of the interest or the principal of the bonds, or to

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both interest and principal, may be deposited in the account or in the fund and expended solely for the purposes of this subsection, may be used to refund bonds by deposit in escrow, trust or otherwise or may be used to defray any incidental costs appertaining to the refunding or any combination thereof, as the commission may determine.

I. An escrow or trust shall be limited to proceeds of refunding bonds.

J. A trust bank accounting for federal securities and other securities issued by the federal government in escrow or trust may place those securities for safekeeping wholly or in part in one or more trust banks within or without the state. Proceeds in escrow or trust may be invested or reinvested in federal securities and, in the case of an escrow or trust for the refunding of outstanding bonds or securities, in other securities issued by the federal government if the recommending and issuing resolutions expressly permit the investment or reinvestment in securities issued by the federal government other than federal securities.

K. A trust bank shall continuously secure, by a pledge of federal securities in an amount at all times at least equal to the total uninvested amount of the money, any money placed in escrow or trust in that trust bank, or by that trust bank in one or more trust banks within or without the state, and not invested or reinvested in federal securities and other

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securities issued by the federal government.

L. Proceeds and investments in escrow or trust, together with interest or gain to be derived from that investment, shall be in an amount at all times sufficient to pay principal, interest, prior redemption premiums due, charges of the escrow agent or trustee and other incidental expenses, except to the extent otherwise provided for, as [~~such~~] the obligations become due at their respective maturities or due at designated prior redemption dates in connection with which the commission has exercised or is obligated to exercise a prior redemption option.

M. The computations made in determining sufficiency shall be verified by a certified public accountant.

N. A purchaser of a refunding bond issued pursuant to this section shall not be responsible for the application of the proceeds by the commission or any of the officers, agents or employees of the commission.

O. The state treasurer may invest any idle or surplus money of the state in bonds recommended by the commission and issued by the board. The governing body of any public entity in the state may invest any idle or surplus money held in its treasury in bonds recommended by the commission and issued by the board. Bonds recommended by the commission and issued by the board shall be legal investments for executors, administrators, trustees and other fiduciaries, unless

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otherwise directed by the court having jurisdiction of the fiduciary relation or by the document that is the source of the fiduciary's authority, and for savings banks and insurance companies organized under the laws of the state.

P. Bonds or other obligations recommended by the commission and issued by the board and the interest applicable thereto and the income therefrom and all projects or parts thereof and all assets of the commission shall be exempt from taxation in the state.

Q. Bonds may be issued under the provisions of the Wastewater Facility Construction Loan Act only with the approval of the commission and the board pursuant to authority provided in that act.

R. Commission members or employees or board members or employees and any person executing bonds issued pursuant to the Wastewater Facility Construction Loan Act shall not be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance of the bonds.

S. All bonds recommended by the commission and issued by the board, while registered, are declared and shall be construed to be negotiable instruments.

T. All bonds, notes and certificates recommended by the commission and issued by the board shall be special obligations of the board, payable solely from the revenue,

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income, fees or charges that may, pursuant to the provisions of the Wastewater Facility Construction Loan Act, be pledged to the payment of such obligations, and the bonds, notes or certificates shall not create an obligation, debt or liability of the state. No breach of any pledge, obligation or agreement of the commission shall impose a pecuniary liability upon the state or a charge upon its general credit or taxing power.

U. Any recommending or issuing resolution shall provide that each bond recommended or authorized shall recite that it is issued by the board under recommendation of the commission. The recital shall clearly state that the bonds are in full compliance with all of the provisions of the Wastewater Facility Construction Loan Act, and all bonds issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value."

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

"74-6A-14. VALIDATION.--All outstanding securities of the state and of all [~~local authorities~~] qualified borrowers, all loan or other agreements entered into between the state or the division and any [~~local authority~~] qualified borrower, all regulations promulgated by the commission and all acts and proceedings taken by or on behalf of the state or any [~~local authority~~] qualified borrower with respect to the financing of [~~wastewater facilities~~] eligible projects are [~~hereby~~]

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validated, ratified, approved and confirmed. To the extent necessary to carry out its purposes, the commission shall treat any bonds, obligations or agreements of the state or the division that were entered into prior to [~~the effective date hereof~~] April 4, 1991 for the purpose of effecting the provisions of the Wastewater Facility Construction Loan Act or the Clean Water Act as if such bonds, obligations or agreements were those recommended by the commission and issued by the board."

- 29 -

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