

SENATE FLOOR SUBSTITUTE FOR
SENATE BILL 40

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

AN ACT

RELATING TO THE WASTEWATER FACILITY CONSTRUCTION LOAN ACT;
CLARIFYING THAT FUNDING ASSISTANCE IS AVAILABLE FOR CERTAIN
PRIVATELY OWNED AND OPERATED WASTEWATER FACILITIES; 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
Facility Construction Loan Act is to provide state agencies,
[and] local authorities, interstate agencies and privately
owned and operated wastewater facilities operated by a private
owner as of January 1, 2018 in New Mexico with low-cost
financial assistance in the construction of necessary
wastewater facilities through the creation of a self-sustaining

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1 program so as to improve and protect water quality and public
2 health."

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

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

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

14 B. "commission" means the water quality control
15 commission;

16 C. "division" or "department" means the department
17 of environment;

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

24 E. "fund" means the wastewater facility
25 construction loan fund;

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1 F. "local authority" means any municipality,
2 county, incorporated county, mutual domestic water consumers
3 association as defined by the Sanitary Projects Act, sanitation
4 district, water and sanitation district or any similar
5 district, recognized Indian tribe or other issuing agency
6 created pursuant to a joint powers agreement acting on behalf
7 of any entity listed in this subsection and includes a
8 privately owned and operated wastewater facility operated by a
9 private owner as of January 1, 2018;

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 function
13 of a wastewater facility in accordance with its intended
14 purpose;

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

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

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

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

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

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

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

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

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

24 P. "issuing resolution" means a formal statement
25 adopted by the board to issue bonds pursuant to the Wastewater

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1 Facility Construction Loan Act, including any trust agreement,
2 trust indenture or similar instrument providing terms and
3 conditions for the bonds to be issued;

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

10 R. "state agency" means an agency or department of
11 the executive branch of government."

12 SECTION 3. A new section of the Wastewater Facility
13 Construction Loan Act is enacted to read:

14 "[NEW MATERIAL] OPEN MEETINGS--INSPECTION OF PUBLIC
15 RECORDS--PRIVATELY OWNED WASTEWATER FACILITIES.--A privately
16 owned and operated wastewater facility receiving a loan through
17 the fund shall be subject to the Open Meetings Act and the
18 Inspection of Public Records Act with respect to any activity
19 related to the loan."

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