

1 AN ACT

2 RELATING TO THE DRINKING WATER STATE REVOLVING LOAN FUND ACT;  
3 ALLOWING THE NEW MEXICO FINANCE AUTHORITY TO PROVIDE GRANTS  
4 FOR THE CONSTRUCTION OR REHABILITATION OF DRINKING WATER  
5 FACILITIES; REQUIRING THE NEW MEXICO FINANCE AUTHORITY, IN  
6 COOPERATION WITH THE DEPARTMENT OF ENVIRONMENT, TO PROVIDE  
7 ANNUAL REPORTS ON THE DRINKING WATER STATE REVOLVING LOAN  
8 FUND; REDISTRIBUTING DUTIES HELD BETWEEN THE NEW MEXICO  
9 FINANCE AUTHORITY AND THE DEPARTMENT OF ENVIRONMENT;  
10 EXTENDING REPAYMENT PERIOD REQUIREMENTS FOR LOANS MADE  
11 PURSUANT TO THE DRINKING WATER STATE REVOLVING LOAN FUND ACT;  
12 RENEWING THE AUTHORITY OF THE NEW MEXICO FINANCE AUTHORITY TO  
13 TRANSFER UP TO ONE-THIRD OF CERTAIN GRANTS TO THE DRINKING  
14 WATER STATE REVOLVING LOAN FUND AND TO THE WASTEWATER  
15 FACILITY CONSTRUCTION LOAN FUND.

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 6-21A-3 NMSA 1978 (being Laws 1997,  
19 Chapter 144, Section 3, as amended) is amended to read:

20 "6-21A-3. DEFINITIONS.--As used in the Drinking Water  
21 State Revolving Loan Fund Act:

22 A. "authority" means the New Mexico finance  
23 authority;

24 B. "department" means the department of  
25 environment;

1           C. "drinking water facility construction project"  
2 means the acquisition, design, construction, improvement,  
3 expansion, repair or rehabilitation of all or part of any  
4 structure, facility or equipment necessary for a drinking  
5 water system or water supply system;

6           D. "drinking water supply facility" means any  
7 structure, facility or equipment necessary for a drinking  
8 water system or water supply system;

9           E. "federal Safe Drinking Water Act" means the  
10 federal Safe Drinking Water Act as amended in 1996 and its  
11 subsequent amendments or successor provisions;

12           F. "financial assistance" means loans, the  
13 purchase or refinancing of debt obligation of a local  
14 authority at an interest rate that is less than or equal to  
15 the market interest rate in any case in which a debt  
16 obligation is incurred after July 1, 1993, loan guarantees,  
17 grants, bond insurance or security for revenue bonds issued  
18 by the authority;

19           G. "fund" means the drinking water state revolving  
20 loan fund;

21           H. "local authority" means any municipality,  
22 county, incorporated county, sanitation district, water and  
23 sanitation district or any similar district, public or  
24 private water cooperative or association or any similar  
25 organization, public or private community water system or

1 nonprofit noncommunity water system or any other agency  
2 created pursuant to a joint powers agreement acting on behalf  
3 of any entity listed in this subsection with a publicly owned  
4 drinking water system or water supply system that qualifies  
5 as a community water system or nonprofit noncommunity system  
6 as defined by the federal Safe Drinking Water Act. "Local  
7 authority" does not include systems owned by federal  
8 agencies; and

9 I. "operate and maintain" means to perform all  
10 necessary activities, including the replacement of equipment  
11 or appurtenances, to assure the dependable and economical  
12 function of a drinking water facility in accordance with its  
13 intended purpose."

14 SECTION 2. Section 6-21A-4 NMSA 1978 (being Laws 1997,  
15 Chapter 144, Section 4, as amended) is amended to read:

16 "6-21A-4. FUND CREATED--ADMINISTRATION.--

17 A. There is created in the authority a revolving  
18 loan fund to be known as the "drinking water state revolving  
19 loan fund", which shall be administered by the authority.  
20 The authority is authorized to establish procedures required  
21 to administer the fund in accordance with the federal Safe  
22 Drinking Water Act and state laws. The authority and the  
23 department shall, whenever possible, coordinate application  
24 procedures and funding cycles with the New Mexico Community  
25 Assistance Act.

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

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

6                   (2) funds as appropriated by the legislature  
7 to implement the provisions of the Drinking Water State  
8 Revolving Loan Fund Act or to provide state matching funds  
9 that are required by the terms of any federal grant under the  
10 federal Safe Drinking Water Act;

11                   (3) loan principal, interest and penalty  
12 payments if required by the terms of any federal grant under  
13 the federal Safe Drinking Water Act;

14                   (4) any other public or private money  
15 dedicated to the fund; and

16                   (5) revenue transferred from other state  
17 revolving funds.

18           C. Money in the fund is appropriated for  
19 expenditure by the authority in a manner consistent with the  
20 terms and conditions of the federal capitalization grants and  
21 the federal Safe Drinking Water Act and may be used:

22                   (1) to provide loans and grants for the  
23 construction or rehabilitation of drinking water facilities;

24                   (2) to buy or refinance the debt obligation  
25 of a local authority at an interest rate that is less than or

1 equal to the market interest rate in any case in which a debt  
2 obligation is incurred after July 1, 1993;

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

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

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

14 D. If needed to cover administrative expenses,  
15 pursuant to procedures established by the authority and to  
16 the extent permitted by federal regulations, the authority  
17 may impose and collect a fee from each local authority that  
18 receives financial assistance from the fund, which fee shall  
19 be used solely for the costs of administering the fund and  
20 which fee shall be kept outside the fund.

21 E. Money not currently needed for the operation of  
22 the fund or otherwise dedicated may be invested pursuant to  
23 the New Mexico Finance Authority Act and all interest earned  
24 on such investments shall be credited to the fund. Money  
25 remaining in the fund at the end of the fiscal year shall not

1 revert to the general fund but shall accrue to the credit of  
2 the fund.

3 F. The authority shall maintain full authority for  
4 the operation of the fund in accordance with applicable  
5 federal and state law, including, in cooperation with the  
6 department, ensuring the loan recipients are on the state  
7 priority list or otherwise satisfy the federal Safe Drinking  
8 Water Act requirements.

9 G. The authority shall establish fiscal controls  
10 and accounting procedures that are sufficient to assure  
11 proper accounting for fund payments, disbursements and  
12 balances and shall provide, in cooperation with the  
13 department, an annual report and an annual independent audit  
14 on the fund to the governor and to the United States  
15 environmental protection agency as required by the federal  
16 Safe Drinking Water Act."

17 SECTION 3. Section 6-21A-5 NMSA 1978 (being Laws 1997,  
18 Chapter 144, Section 5) is amended to read:

19 "6-21A-5. LOAN PROGRAM--ADMINISTRATION.--

20 A. The authority shall establish a program to  
21 provide financial assistance from the fund to local  
22 authorities, individually or jointly, for acquisition,  
23 construction or modification of drinking water facilities.

24 The authority is authorized to enter into memoranda of  
25 understanding, contracts and other agreements to carry out

1 the provisions of the Drinking Water State Revolving Loan  
2 Fund Act, including memoranda of understanding, contracts and  
3 agreements with federal agencies, the department, local  
4 authorities and other parties.

5 B. The department shall adopt, by rule, a system  
6 for the ranking of drinking water facility construction  
7 projects requesting financial assistance and for the  
8 development of a priority list that will be part of the  
9 annual intended use plan, as required by the federal Safe  
10 Drinking Water Act.

11 C. The department shall adopt rules or internal  
12 procedures addressing the mechanism for the preparation of  
13 the annual intended use plan and the content of the plan and  
14 shall prepare the plan, with the assistance of the authority,  
15 as required by the federal Safe Drinking Water Act and the  
16 federal capitalization grant agreement. The department shall  
17 review all proposals for drinking water facility construction  
18 projects, including project plans and specifications for  
19 compliance with the requirements of the federal Safe Drinking  
20 Water Act and the requirements of state laws and rules  
21 governing the construction and operation of drinking water  
22 supply facilities. The department also shall determine  
23 whether a local authority has demonstrated adequate technical  
24 and managerial capability to operate the drinking water  
25 supply facility for its useful life in compliance with the

1 requirements of the federal Safe Drinking Water Act and with  
2 the requirements of state laws and rules governing the  
3 operation of drinking water supply facilities.

4 D. The department and the authority shall enter  
5 into an agreement for the purpose of describing and  
6 allocating duties and responsibilities with respect to  
7 monitoring the construction of drinking water facility  
8 construction projects that have been provided financial  
9 assistance pursuant to the provisions of the Drinking Water  
10 State Revolving Loan Fund Act to ensure compliance with the  
11 requirements of the federal Safe Drinking Water Act and with  
12 the requirements of state laws and rules governing  
13 construction and operation of drinking water supply  
14 facilities.

15 E. The department shall adopt rules or internal  
16 procedures establishing the criteria and method for the  
17 distribution of federal annual capitalization grant funds  
18 between the fund and the nonproject activities, also known as  
19 set-asides, allowed by the federal Safe Drinking Water Act  
20 and for the description in the intended use plan and annual  
21 report of the financial programmatic status of the nonproject  
22 activities, also known as set-asides, allowed by the federal  
23 Safe Drinking Water Act.

24 F. The authority, with the assistance of the  
25 department, shall establish procedures to identify

1 affordability criteria for a disadvantaged community and to  
2 extend a program to assist such communities.

3 G. The department shall set up separate accounts  
4 outside the fund to use for nonproject activities, also known  
5 as set-asides, authorized under the federal Safe Drinking  
6 Water Act, Sections 1452(g) and 1452(k), and the authority  
7 shall set up a separate account outside the fund for  
8 administration of the fund. The department shall also  
9 provide the additional match for federal Safe Drinking Water  
10 Act, Section 1452(g)(2) activities.

11 H. The authority shall prepare and submit  
12 applications for federal capitalization grants to the United  
13 States environmental protection agency as required by the  
14 federal Safe Drinking Water Act."

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

17 "6-21A-6. FINANCIAL ASSISTANCE--CRITERIA.--

18 A. Financial assistance shall be provided only to  
19 local authorities that:

20 (1) meet the requirements for financial  
21 capability set by the authority to assure sufficient revenues  
22 to operate and maintain the drinking water facility for its  
23 useful life and to repay the financial assistance;

24 (2) appear on the priority list for the  
25 fund, developed and maintained by the department, regardless

1 of rank on such list;

2 (3) are considered by the authority and the  
3 department ready to proceed with the project;

4 (4) demonstrate adequate technical and  
5 managerial capability to operate the drinking water facility  
6 for its useful life; and

7 (5) meet other requirements established by  
8 the authority and state laws, including procurement,  
9 recordkeeping and accounting.

10 B. Loans from the fund shall be made by the  
11 authority only to local authorities that establish one or  
12 more dedicated sources of revenue to repay the money received  
13 from the fund and to provide for operation, maintenance and  
14 equipment replacement expenses of the drinking water facility  
15 proposed for funding.

16 C. The authority, with assistance from the  
17 department, shall establish procedures addressing methods to  
18 provide financial assistance to local authorities in  
19 accordance with the criteria set forth in the federal Safe  
20 Drinking Water Act, Section 1452(a)(3).

21 D. Each loan made by the authority shall provide  
22 that repayment of the loan shall begin not later than  
23 eighteen months after completion of construction of the  
24 drinking water facility for which the loan was made and shall  
25 be repaid in full no later than thirty years after completion

1 of the construction, except in the case of a disadvantaged  
2 community. The authority may extend the term of the loan to  
3 a disadvantaged community, as long as the extended term:

4 (1) terminates not later than the date that  
5 is forty years after the date of project completion; and

6 (2) does not exceed the expected design life  
7 of the project.

8 E. Financial assistance may be made with an annual  
9 interest rate that is less than a market rate as determined  
10 by procedures established by the authority and reported  
11 annually in the intended use plan prepared by the department,  
12 with the assistance of the authority.

13 F. Financial assistance pursuant to the Drinking  
14 Water State Revolving Loan Fund Act shall not be given to a  
15 local authority if the authority determines that the  
16 financial assistance is for a drinking water facility to be  
17 constructed in fulfillment or partial fulfillment of  
18 requirements made of a subdivider under the provisions of the  
19 Land Subdivision Act or the New Mexico Subdivision Act.

20 G. Financial assistance may be made to local  
21 authorities that employ or contract with a registered  
22 professional engineer to provide and be responsible for  
23 engineering services on the drinking water facility. Such  
24 services, if the authority determines the services are  
25 needed, may include an engineering report, facility plans,

1 environmental evaluations, construction contract documents,  
2 supervision of construction and start-up services.

3 H. Financial assistance shall be made only for  
4 eligible items as described by authority procedures and as  
5 identified pursuant to the federal Safe Drinking Water Act."

6 SECTION 5. Section 6-21A-7 NMSA 1978 (being Laws 1997,  
7 Chapter 144, Section 7) is amended to read:

8 "6-21A-7. DEPARTMENT DUTIES--POWERS.--

9 A. The department with the approval of the  
10 governor and as authorized in the intended use plan may  
11 transfer up to one-third of a federal wastewater facility  
12 construction loan fund capitalization grant to the drinking  
13 water state revolving loan fund; provided the Wastewater  
14 Facility Construction Loan Act is amended to allow for such  
15 transfer. Before the department makes the transfer, the  
16 department shall:

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

21 (2) report the intended transfer to the  
22 legislature.

23 B. The department in the annual intended use plan  
24 shall certify to the United States environmental protection  
25 agency the progress made regarding operator certification and

1 capacity development programs as they relate to the receipt  
2 of capitalization grants available from the environmental  
3 protection agency under the federal Safe Drinking Water Act."

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

6 "6-21A-8. AUTHORITY DUTIES--POWERS.--

7 A. The authority with the approval of the governor  
8 and as authorized in the intended use plan may transfer up to  
9 one-third of a federal drinking water state revolving loan  
10 fund capitalization grant to the wastewater facility  
11 construction loan fund. Before the authority makes the  
12 transfer, the authority shall:

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

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

19 B. The authority has the power:

20 (1) to foreclose upon or attach any drinking  
21 water facility, property or interest in the facility pledged,  
22 mortgaged or otherwise available as security for a project  
23 financed in whole or in part pursuant to the Drinking Water  
24 State Revolving Loan Fund Act in the event of a default by a  
25 local authority;

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

5                   (3) to enforce its rights by suit or  
6 mandamus or may use all other available remedies under state  
7 law in the event of default by a local authority.

8                   C. The authority has the power to issue bonds or  
9 refunding bonds pursuant to the New Mexico Finance Authority  
10 Act and the Drinking Water State Revolving Loan Fund Act when  
11 the authority determines that a bond issue is required or  
12 desirable to implement the provisions of the Drinking Water  
13 State Revolving Loan Fund Act.

14                   D. As security for the payment of the principal  
15 and interest on bonds issued by the authority, the authority  
16 is authorized to pledge, transfer and assign:

17                   (1) any obligations of each local authority,  
18 payable to the authority;

19                   (2) the security for the local authority  
20 obligations;

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

24                   (4) any income, revenues, funds or other  
25 money of the authority from any other source appropriated or

1 authorized for use for the purpose of implementing the  
2 provisions of the Drinking Water State Revolving Loan Fund  
3 Act, including the fund.

4 E. The bonds and other obligations issued by the  
5 authority shall be issued and delivered in accordance with  
6 the provisions of the New Mexico Finance Authority Act and  
7 may be sold at any time the authority determines appropriate.  
8 The authority may apply the proceeds of the sale of the bonds  
9 to:

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

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

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

22 F. In the event that money is not available for a  
23 loan for a drinking water facility project when application  
24 is made, in order to accelerate the completion of any  
25 drinking water facility project, the local authority may,

1 with the approval of the authority, obligate itself to  
2 provide local funds to pay that portion of the cost of the  
3 drinking water facility project that the authority agrees to  
4 make available by loan, and the authority may reimburse the  
5 amount expended on its behalf by the local authority.

6 G. Authority members or employees and any person  
7 executing bonds issued pursuant to the New Mexico Finance  
8 Authority Act and Drinking Water State Revolving Loan Fund  
9 Act shall not be liable personally on the bonds or be subject  
10 to personal liability or accountability by reason of the  
11 issuance of the bonds.

12 H. All bonds, notes and certificates issued by the  
13 authority shall be special obligations of the authority,  
14 payable solely from the revenue, income, fees or charges that  
15 may, pursuant to the provisions of the New Mexico Finance  
16 Authority Act and the Drinking Water State Revolving Loan Fund  
17 Act, be pledged to the payment of such obligations, and the  
18 bonds, notes or certificates shall not create an obligation,  
19 debt or liability of the state. No breach of any pledge,  
20 obligation or agreement of the authority shall impose a  
21 pecuniary liability upon the state or a charge upon its  
22 general credit or taxing power." \_\_\_\_\_

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