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HOUSE BILL 16

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Roberto "Bobby" J. Gonzales

ENDORSED BY THE NEW MEXICO

FINANCE AUTHORITY OVERSIGHT COMMITTEE

AN ACT

RELATING TO WATER PROJECT FINANCE; AMENDING DEFINITIONS IN THE  
WATER PROJECT FINANCE ACT TO INCREASE ELIGIBILITY FOR FUNDING;  
RECONCILING MULTIPLE AMENDMENTS TO SECTIONS OF LAW IN LAWS  
2003.

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

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

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

**SECTION 2.** Section 72-4A-3 NMSA 1978 (being Laws 2001,  
Chapter 164, Section 3, as amended) is amended to read:

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

A. "authority" means the New Mexico finance

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1 authority;

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

3 C. "political subdivision" means a municipality,  
4 county, regional or local public water utility authority  
5 created by statute, irrigation district, conservancy district,  
6 special district, acequia, soil and water conservation  
7 district, water and sanitation district or an association  
8 organized and existing pursuant to the Sanitary Projects Act;

9 D. "qualifying water project" means a water project  
10 recommended by the board for funding by the legislature; and

11 E. "qualifying entity" means a state agency,  
12 a political subdivision of the state, ~~[or]~~ an intercommunity  
13 water or natural gas supply association or corporation  
14 organized under Chapter 3, Article 28 NMSA 1978, a recognized  
15 Indian nation, tribe or pueblo, the boundaries of which are  
16 located wholly or partially in New Mexico or an association of  
17 such entities created pursuant to the Joint Powers Agreements  
18 Act or other authorizing legislation for the exercise of their  
19 common powers."

20 SECTION 3. Section 72-4A-5 NMSA 1978 (being Laws 2001,  
21 Chapter 164, Section 5, as amended by Laws 2003, Chapter 139,  
22 Section 3 and by Laws 2003, Chapter 365, Section 1) is amended  
23 to read:

24 "72-4A-5. BOARD--DUTIES.--The board shall:

25 A. adopt rules governing terms and conditions of

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1 grants or loans recommended by the board for appropriation by  
2 the legislature from the water project fund, giving priority to  
3 projects that have been identified as being urgent to meet the  
4 needs of a regional water planning area that has [~~had~~] a  
5 completed regional water plan that [~~is~~] has been accepted by  
6 the interstate stream commission [~~and~~]; that have matching  
7 contributions from federal or local funding sources available;  
8 and that [~~has~~] have obtained all requisite state and federal  
9 permits and authorizations necessary to initiate the project;  
10 [~~and~~]

11 B. authorize qualifying water projects to the  
12 authority that are for:

13 (1) storage, conveyance or delivery of water  
14 to end users;

15 (2) implementation of federal Endangered  
16 Species Act of 1973 collaborative programs;

17 (3) restoration and management of watersheds;

18 (4) flood prevention; or

19 (5) water conservation or recycling,  
20 treatment or reuse of water as provided by law; and

21 C. create a drought strike team to coordinate  
22 responses to emergency water shortages caused by drought  
23 conditions."

24 SECTION 4. Section 72-4A-7 NMSA 1978 (being Laws 2001,  
25 Chapter 164, Section 7, as amended by Laws 2003, Chapter 138,  
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1 Section 5 and by Laws 2003, Chapter 139, Section 5 and also by  
2 Laws 2003, Chapter 365, Section 2) is amended to read:

3 "72-4A-7. CONDITIONS FOR GRANTS AND LOANS.--

4 A. Grants and loans shall be made only to  
5 qualifying entities that:

6 (1) agree to operate and maintain [~~the~~] a  
7 water project so that it will function properly over the  
8 structural and material design life, which shall not be less  
9 than twenty years;

10 (2) require the contractor of [~~the~~] a  
11 construction project to post a performance and payment bond in  
12 accordance with the requirements of Section 13-4-18 NMSA 1978;

13 (3) provide written assurance signed by an  
14 attorney or provide a title insurance policy that the  
15 qualifying entity has proper title, easements and rights of way  
16 to the property upon or through which [~~the~~] a water project  
17 proposed for funding is to be constructed or extended;

18 (4) meet the requirements of the financial  
19 capability set by the board to ensure sufficient revenues to  
20 operate and maintain [~~the~~] a water project for its useful life  
21 and to repay the loan;

22 (5) agree to properly maintain financial  
23 records and to conduct an audit of [~~the~~] a project's financial  
24 records;

25 (6) agree to pay costs of originating grants

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1 and loans as determined by rules adopted by the board; and  
2 (7) except in the case of an emergency,  
3 submit a water conservation plan with its application if  
4 required to do so and one is not on file with the state  
5 engineer, pursuant to Section [~~3 of this 2003 act~~] 72-14-3.2  
6 NMSA 1978.

7 B. Plans and specifications for a water project  
8 shall be approved by the authority, after review and upon the  
9 recommendation of the state engineer and the department of  
10 environment, before grant or loan disbursements to pay for  
11 construction costs are made to a qualifying entity. Plans and  
12 specifications for a water project shall incorporate available  
13 technologies and operational design for water use efficiency.

14 C. Grants and loans shall be made only for eligible  
15 items, which include:

- 16 (1) to match federal and local cost shares;
- 17 (2) engineering feasibility reports;
- 18 (3) contracted engineering design;
- 19 (4) inspection of construction;
- 20 (5) special engineering services;
- 21 (6) environmental or archaeological surveys;
- 22 (7) construction;
- 23 (8) land acquisition;
- 24 (9) easements and rights of way; and
- 25 (10) legal costs and fiscal agent fees."