

COPY

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION



No. WQCC 15-06(R)

IN THE MATTER OF PROPOSED REVISIONS TO:
20.7.5 NMAC – Wastewater Facility Construction Loans
and 20.7.6 NMAC – Wastewater Facility Construction Loan
Policies and Guidelines

AMENDED PETITION FOR REGULATORY CHANGE

The New Mexico Environment Department ("Department"), pursuant to the Guidelines for Water Quality Control Commission Regulation Hearings (as amended June 8, 1993), submits its amended petition to the Water Quality Control Commission ("Commission") to revise 20.7.5 NMAC – *Wastewater Facility Construction Loans*.

On June 2, 2015, the Department petitioned the Commission to revise 20.7.5 and 20.7.6 NMAC – *Wastewater Facility Construction Loan Policies and Guidelines*. The Commission administrator docketed the matter on June 5, 2015, and the Commission scheduled a hearing to consider the petition for October 13, 2015. However, upon further review, the Department determined that the Commission is the incorrect governing body to revise 20.7.6 NMAC. Specifically, 20.7.6.1 NMAC states that the issuing body is the Department. Additionally, the Department promulgated 20.7.6 NMAC partly pursuant to NMSA 1978, Section 9-7A-6(F). 20.7.6.3 NMAC. While there is no NMSA 1978, Section 9-7A-6(F), NMSA 1978, Section 9-7A-6(D) allows the Secretary to, "...make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions." Since these provisions of 20.7.6 NMAC indicate that the Department promulgated these regulations pursuant to the Department of Environment Act (NMSA 1978, Sections 9-7A-1 to -15), it would be improper for the Department to petition the Commission to revise 20.7.6

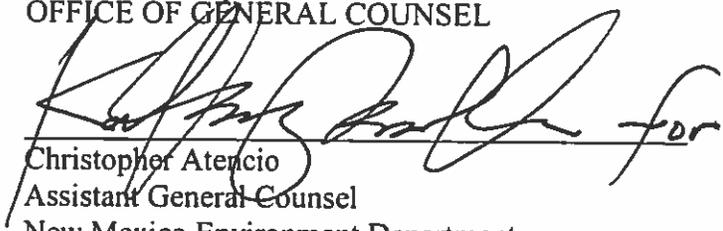
NMAC. Accordingly, the Department amends its petition to the Commission to limit its request for revisions to 20.7.5 NMAC only.

The statement of reasons in support of this petition follows below. The Commission is authorized to adopt these regulations by the Wastewater Facility Construction Loan Act, NMSA 1978, Section 74-6A-9(A)(10).

The Department further requests that the Commission maintain the current hearing scheduled for Tuesday, October 13, 2015. The public notice for the hearing included the request for revisions to 20.7.5 NMAC, and the public is not prejudiced in regard to notice of this hearing by removal of one of the items to be considered. The Department anticipates that its testimony regarding the proposed revisions will require less than one hour.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT
OFFICE OF GENERAL COUNSEL

A handwritten signature in black ink, appearing to read 'Christopher Atencio for', is written over a horizontal line.

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STATEMENT OF REASONS

The Wastewater Facility Construction Loan Act (“Act”) (NMSA 1978, Sections 74-6A-1 to -15 (1986)) provides for the creation of the Wastewater Facility Construction Loan Fund (“Fund”), which is also referred to as the Clean Water State Revolving Loan Fund. The purpose of the Fund is to provide low-cost financing for wastewater and storm water drainage projects that protect surface and ground water, including projects that control nonpoint source water pollution and projects involving solid waste and septic tank installations. The Fund is administered by the Construction Programs Bureau of the New Mexico Environment Department.

During the 2015 New Mexico Legislative Session, Senator Richard Martinez sponsored Senate Bill 227 (“SB 227”), which proposed amendments to the Act that would make mutual domestic water consumers associations eligible for funding under the Act and lengthen the maximum repayment period for borrowers from twenty (20) years to thirty (30) years. Specifically, SB 227 amended the Act in the following two ways:

1) SB 227 amended Section 74-6A-3(F) of the Act to add “mutual domestic water consumers association[s] as defined by the Sanitary Projects Act” to the definition of “local authorit[ies].” This amendment makes mutual domestics eligible for project funding under the Fund.

2) SB 227 amended Section 74-6A-8(C) of the Act to change the repayment period from “no later than twenty years after completion of [the] construction” to “no later than thirty years after completion of [the] construction.” This amendment brings the terms of the Fund in line with recent repayment amendments made to the federal Clean Water Act on October 1, 2014. Additionally, this amendment may lower the annual repayment amount for borrowers to increase debt capacity and more closely matches the term of the loan with the useful life of the system being funded.

On April 9, 2015, SB 227 was signed and enacted into law by Governor Susana Martinez. *See* Chapter 112, 52nd Legislature, 1st Session, Laws of New Mexico (2015). Accordingly, to satisfy and comply with the amendments signed into law, the Construction Programs Bureau proposes to the Water Quality Control Commission the following changes to the 20.7.5 NMAC – Wastewater Facility Construction Loans.

Below are excerpts of each proposed amendment to 20.7.5 NMAC, followed by a brief explanation (in *italics*) of the impetus for the amendments, attached hereto as Exhibit A. Following these excerpts and explanations, the entire texts of 20.7.5 NMAC proposed for amendment are presented in redline/strikeout format, attached hereto as Exhibit B. A copy of SB 227 is attached hereto as Exhibit C.

**TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 7 WASTEWATER AND WATER SUPPLY FACILITIES
PART 5 WASTEWATER FACILITY CONSTRUCTION LOANS**

20.7.5.7 DEFINITIONS: as used in this part.

L. "Local authority" means any municipality, county, water and sanitation district or any similar district, recognized Indian tribe, mutual domestic water consumers association as defined by the Sanitary Projects Act, or other issuing agency created pursuant to a joint powers agreement acting on behalf of any entity listed in this subsection.

[2-5-87; 10-25-88; 11-18-93; 11-30-95; 09-30-98; NMAC - Rn, 20 NMAC 7.5.108 & A, 7/16/2000; A, 11/15/2007; A. XX/XX/2015]

This amendment to 20.7.5.7.L NMAC adds mutual domestic water consumers associations to the definition of "local authority," making such entities eligible for funding under the Clean Water State Revolving Loan Fund. This amendment is necessary to comply with the amendment to NMSA 1978, Section 74-6A-3(F) of the Wastewater Facility Construction Loan Act, which was made during the 2015 New Mexico Legislative Session.

20.7.5.14 ADMINISTRATION OF THE LOAN PROGRAM AND FUND.

E. Repayment of the loan portion of the financial assistance shall begin no later than one year after completion of the project for which the loan was executed and shall be repaid in full no later than ~~twenty~~ thirty years after completion of the project. All principal and interest on loan payments shall be deposited in the fund.

[11-18-93; 11-30-95; 09-30-98; 20.7.5.14 NMAC - Rn, 20 NMAC 7.5.204 & N, 7/16/2000; & A, 7/16/2000; A, 11/15/2007; A. XX/XX/2015]

This amendment to 20.7.5.14.E NMAC extends the repayment period for loans made from the Clean Water State Revolving Loan Fund from twenty (20) years to thirty (30) years. This amendment is necessary to comply with the amendment to NMSA 1978, Section 74-6A-8(C) of the Wastewater Facility Construction Loan Act, which was made during the 2015 New Mexico Legislative Session.

Exhibit B – Entire text of 20.7.5 NMAC

1 **TITLE 20 ENVIRONMENTAL PROTECTION**
2 **CHAPTER 7 WASTEWATER AND WATER SUPPLY FACILITIES**
3 **PART 5 WASTEWATER FACILITY CONSTRUCTION LOANS**
4
5 **20.7.5.1 ISSUING AGENCY.** Water Quality Control Commission.
6 [11-30-95; 20.7.5.1 NMAC - Rn, 20 NMAC 7.5.100, 7/16/2000]
7
8 **20.7.5.2 SCOPE.** This part applies to financial assistance and actions pursuant to the Wastewater Facility
9 Construction Loan Act.
10 [2-5-87; 11-30-95; 20.7.5.2 NMAC - Rn, 20 NMAC 7.5.101, 7/16/2000]
11
12 **20.7.5.3 STATUTORY AUTHORITY.** Wastewater Facility Construction Loan Act, NMSA 1978,
13 Sections 74-6A-1 to 15 as amended.
14 [2-5-87; 11-30-95; 20.7.5.3 NMAC - Rn, 20 NMAC 7.5.102, 7/16/2000]
15
16 **20.7.5.4 DURATION.** Permanent.
17 [11-30-95; 20.7.5.4 NMAC - Rn, 20 NMAC 7.5.103, 7/16/2000]
18
19 **20.7.5.5 EFFECTIVE DATE.** July 16, 2000 This part amends and replaces 20 NMAC 7.5 filed October
20 25, 1995, amended September 17, 1998 entitled Wastewater Facility Construction Loan Act.
21 A. All references to 20 NMAC 7.5-7.7 or to the Wastewater Facility Construction Loan Act, in any
22 other rule shall be construed as a reference to this part.
23 B. The amendment and replacement of 20 NMAC 7.5-7.7 shall not affect any administrative or
24 judicial enforcement action pending on the effective date of such amendment nor the validity of any financial
25 assistance provided pursuant to 20.7.5 NMAC - 20.7.7 NMAC.
26 [11-30-95; 20.7.5.5 NMAC - Rn, 20 NMAC 7.5.104 & A, 7/16/2000]
27
28 **20.7.5.6 OBJECTIVE.** The objective of this part is to establish a program to provide financial assistance
29 to local authorities for the acquisition, construction or modification of wastewater facilities pursuant to the act.
30 [11-30-95; 20.7.5.6 NMAC - Rn, 20 NMAC 7.5.105, 7/16/2000]
31
32 **20.7.5.7 DEFINITIONS:** as used in this part.
33 A. "Act" means the Wastewater Facility Construction Loan Act.
34 B. "Administrative fee" means a fee assessed and collected by the department from the local
35 authority on each loan and expressed as a percentage per year on the outstanding principal amount of the loan,
36 payable by the borrower on the same date that principal and interest on the loan are due, for deposit in the clean
37 water administrative fund.
38 C. "Clean Water Act" means the federal Clean Water Act of 1977 and its subsequent amendments or
39 successor provisions.
40 D. "Clean water state revolving loan administrative fund" means a separate fund created outside the
41 wastewater facility construction loan fund/clean water state revolving fund designated solely for the costs of
42 administering the clean water state revolving loan fund, in accordance with the Clean Water Act. Money remaining
43 in the fund at the end of any fiscal year shall not revert to the general fund but shall accrue to the loan administrative
44 fund and shall be used explicitly for the purpose above.
45 E. "Commission" means the water quality control commission.
46 F. "Department" means the New Mexico environment department.
47 G. "Final loan agreement" means an agreement executed by the local authority and the department
48 upon completion of the project in order to evidence the permanent financing of the final loan amount.
49 H. "Final loan amount" means the aggregate amount of the principal disbursed by the department to
50 the local authority during the construction of the wastewater facility, together with accrued and unpaid interest on
51 the aggregate principal thereof.
52 I. "Financial assistance" means loans, combination loan/grants, the purchase or refinancing of
53 existing local political subdivision obligations, loan guarantees, credit enhancement techniques to reduce interest on
54 loans and bonds, bond insurance and bond guarantees or any combination of these purposes.
55 J. "Force account construction" means construction performed by the employees of a local authority
56 rather than through a contractor.

Exhibit B – Entire text of 20.7.5 NMAC

- 1 K. "Fund" means the wastewater facility construction loan fund established in Section 74-6A-4.
2 L. "Local authority" means any municipality, county, water and sanitation district or any similar
3 district, recognized Indian tribe, mutual domestic water consumers association as defined by the Sanitary Projects
4 Act, or other issuing agency created pursuant to a joint powers agreement acting on behalf of any entity listed in this
5 subsection.
6 M. "Payment" means a disbursement from the fund directly to the local authority.
7 N. "Priority list" means the list of eligible projects ranked according to the priority system pursuant to
8 the Wastewater Facility Construction Loan Act.
9 O. "Priority system" means the system approved by the commission for ranking eligible projects for
10 which financial assistance applications have been received pursuant to the act.
11 P. "Wastewater facility" means a publicly owned system for treating or disposing of sewage or
12 wastes either by surface or underground methods, including any equipment, plant, treatment works, structure,
13 machinery, apparatus or land in any combination, that is acquired, used, constructed or operated for the storage,
14 collection, reduction, recycling, reclamation, disposal, separation or treatment of water or wastes, or for the final
15 disposal of residues resulting from the treatment of water or wastes, such as pumping stations, facilities, plants and
16 works, outfall sewers, interceptor sewers and collector sewers and other real or personal property and appurtenances
17 incidental to their use or operation. "Wastewater facility" also includes a nonpoint source water pollution control or
18 Brownfield redevelopment project as eligible under the Clean Water Act.
19 Q. Other terms will retain their definition as given in the act.
20 [2-5-87; 10-25-88; 11-18-93; 11-30-95; 09-30-98; NMAC - Rn, 20 NMAC 7.5.108 & A, 7/16/2000; A, 11/15/2007;
21 A. XX/XX/2015]
22
23 **20.7.5.8 CONSTRUCTION.** This part shall be liberally construed to effectuate the purposes of the act. If
24 any provision or application of this part is held invalid, the remainder, or its application to other situations or
25 persons, shall not be affected.
26 [11-30-95; 20.7.5.8 NMAC - Rn, 20 NMAC 7.5.106, 7/16/2000]
27
28 **20.7.5.9 COMPLIANCE WITH OTHER REGULATIONS.** Compliance with this part does not relieve
29 a person from the obligation to comply with other applicable state and federal regulations.
30 [11-30-95; 20.7.5.9 NMAC - Rn, 20 NMAC 7.5.107, 7/16/2000]
31
32 **20.7.5.10 ELIGIBILITY REQUIREMENTS FOR FINANCIAL ASSISTANCE.**
33 A. Only local authorities will be eligible for financial assistance from the fund.
34 B. The project must appear on the current priority list at the time of the financial assistance award.
35 C. To be eligible for financial assistance from the fund, local authorities shall:
36 (1) meet the requirements of financial capability set by the department to assure sufficient
37 revenue to operate and maintain the facility for its useful life and to repay the financial assistance;
38 (2) agree to operate and maintain the wastewater facility so that the facility will function
39 properly over its structural and material design life;
40 (3) agree to maintain separate project accounts, to maintain project accounts properly in
41 accordance with generally accepted accounting principles and to conduct an audit of the project's financial records;
42 (4) provide a written assurance, signed by an attorney, that the local authority has or will
43 acquire proper title, easements and rights-of-way to the property upon or through which the wastewater facility
44 proposed for funding is to be constructed or extended;
45 (5) require the contractor of the construction project to post a performance and payment bond
46 in accordance with the requirements of NMSA 1978, Section 13-4-18 and its subsequent amendments and successor
47 provisions;
48 (6) provide a written notice of completion and start of operation of the wastewater facility;
49 and
50 (7) provide such information to the department as required by the commission in order to
51 comply with the provisions of the Clean Water Act and state law.
52 D. Financial assistance shall be made only to local authorities that establish one or more dedicated
53 sources of revenue to repay the money received from the commission and to provide for operation, maintenance and
54 equipment replacement expenses.
55 [2-5-87; 11-18-93; 11-30-95; 20.7.5.10 NMAC - Rn, 20 NMAC 7.5.200 & A, 7/16/2000]
56

Exhibit B – Entire text of 20.7.5 NMAC

1 **20.7.5.11 APPLICATION PROCEDURES FOR PRIORITY LIST PLACEMENT.**

2 A. Applications for financial assistance shall be made by the local authority on a form specified by
3 the department.

4 B. Applicants for financial assistance shall provide the department with:

5 (1) a description of the scope of work of the project;

6 (2) a cost estimate of the project; and

7 (3) a target date for initiation of construction.

8 C. The department will review the application for eligibility, and technical merits. The department
9 will notify the local authority of any inadequacies in the submittal. The local authority may correct any
10 inadequacies and resubmit the application.

11 D. Upon determination by the department that an application is complete, the application will be
12 ranked utilizing the priority system and will be placed on the priority list.

13 [2-5-87; 11-18-93; 20.7.5.11 NMAC - Rn, 20 NMAC 7.5.201 & A, 7/16/2000]

14
15 **20.7.5.12 PRIORITY SYSTEM AND PRIORITY LIST.**

16 A. Financial assistance shall only be made to local authorities on the project priority list developed in
17 accordance with the priority system as adopted by the commission.

18 B. The commission shall adopt a system for the ranking of projects for financial assistance.

19 C. The department shall prepare a priority list of applicants for financial assistance based on the
20 priority system approved by the commission.

21 [2-5-87; 11-18-93; 20.7.5.12 NMAC - Rn, 20 NMAC 7.5.202, 7/16/2000]

22
23 **20.7.5.13 ELIGIBLE AND INELIGIBLE FINANCIAL ASSISTANCE ITEMS.**

24 A. Eligible items include but are not limited to the costs of engineering feasibility reports, contracted
25 engineering design, inspection of construction, special engineering services, start-up services, contracted
26 construction, materials purchased or equipment leased for force account construction, land or acquisition of existing
27 facilities. For financial assistance made from federal funds, eligible items are those identified pursuant to the Clean
28 Water Act.

29 B. Financial assistance shall be made only to local authorities that employ or contract with a
30 registered professional engineer to provide and be responsible for engineering services on the project. Such services
31 include, but are not limited to an engineering report, construction contract documents, supervision of construction
32 and start-up services.

33 C. Ineligible items include:

34 (1) the costs of water rights;

35 (2) local administrative costs;

36 (3) fulfillment or partial fulfillment of requirements made of a subdivider by the provisions
37 of the Land Subdivision Act or the New Mexico Subdivision Act;

38 (4) force account construction; and

39 (5) administrative fee.

40 [2-5-87; 11-24-88; 11-18-93; 20.7.5.13 NMAC - Rn, 20 NMAC 7.5.203 & A, 7/16/2000; A, 11/15/2007]

41
42 **20.7.5.14 ADMINISTRATION OF THE LOAN PROGRAM AND FUND.**

43 A. The loan program and fund is administered by the department as agent for the commission.
44 Pursuant to Section 74-6A-9.A (10), the department shall develop new, and implement existing, policies, procedures
45 and guidelines necessary and appropriate to implement the provisions of the act and the Clean Water Act.

46 B. The necessary administrative expenses required of the board, the commission and the department
47 to implement the provisions of the act will be appropriated from the fund.

48 C. The department may impose and collect a fee from each local authority that receives financial
49 assistance from the fund, which fee shall be deposited into the clean water state revolving loan administrative fund,
50 and used solely for the costs of administering the fund as follows:

51 (1) an administrative fee may be assessed on all financial assistance provided after January 1,
52 1996, and will be assessed on the refinancing of financial assistance after October 1, 1993;

53 (2) if an administrative fee is assessed pursuant to Paragraph (1) of Subsection C of 20.7.5.14
54 NMAC above, the total administrative fee assessed shall not exceed five percent of the total loan amount. The fee
55 will be assessed on the outstanding principal balance of the loan payable. These fees are due on the same dates the
56 payment of principal and interest on the loans are due, and shall be charged to each borrower, unless waived from

Exhibit B – Entire text of 20.7.5 NMAC

1 the requirement by the department. The department may determine, establish and revise from time to time, the
2 precise amount of the administrative fee to be charged, based on the projected costs of administering the program
3 and other revenue available to pay such costs. The administrative fee payments must be deposited in the clean water
4 state revolving loan administrative fund as they are received. Interest on the clean water state revolving loan
5 administrative fund shall be transferred to the administrative fund as it is received; and

6 (3) an administrative fee of two-percent (2%) of the unpaid principal balance of the
7 refinanced loan will be assessed against the local authority and shall be paid into the clean water state revolving loan
8 administrative fund at the time of closing of the refinancing.

9 **D.** Financial assistance agreements will be prepared by the department and executed by the local
10 authority for the project which can be financed with available balances in the fund.

11 **E.** Repayment of the loan portion of the financial assistance shall begin no later than one year after
12 completion of the project for which the loan was executed and shall be repaid in full no later than ~~twenty~~ thirty years
13 after completion of the project. All principal and interest on loan payments shall be deposited in the fund.

14 **F.** The interest rate for the loan portion of the financial assistance shall be the rate in effect when the
15 final loan agreement is executed. The interest rate shall not change during the term of the financial assistance unless
16 refinanced in accordance with Subsection I of 20.7.5.14 NMAC. The interest rate shall be the base rate provided in
17 Subsection G of 20.7.5.14 NMAC unless the local authority qualifies for a hardship rate provided in Subsection H of
18 20.7.5.14 NMAC.

19 **G.** The base rate for the loan portion of the financial assistance shall not exceed three percent. At the
20 beginning of each state fiscal year, the commission may determine a base rate for the state fiscal year which is less
21 than or greater than the current base rate.

22 **H.** The following hardship rates shall be approved by the department when a local authority meets the
23 associated conditions at the time the financial assistance agreement is executed:

24 (1) An interest rate which shall not exceed two percent, when the local authority's median
25 household income is less than the statewide non-metropolitan median household income based on the most current
26 decennial U.S. bureau of census statistics.

27 (2) An interest rate which shall not exceed one percent when the local authority's median
28 household income is less than three-fourths of the statewide non-metropolitan median household income based upon
29 the most current decennial U.S. bureau of census statistics.

30 (3) A combination of loan and grant funds in those years when grant funding is available for
31 assistance to rural communities.

32 (4) An interest rate of zero percent when:

33 (a) the local authority's average user cost is at least fifteen dollars (\$15.00) per
34 month or a higher amount as determined by the commission. The calculation of average user cost shall be consistent
35 with a statewide methodology established by the department; and

36 (b) the local authority's median household income is less than three-fourths of the
37 statewide non-metropolitan median household income based upon the most current decennial U.S. bureau of census
38 statistics.

39 **I.** A local authority may refinance the loan portion of the financial assistance if the local authority
40 later qualifies for a reduced rate. The refinancing may only occur at or after the execution of a final loan agreement.

41 **J.** Financial assistance recipients shall comply with all applicable federal, state and local laws and
42 regulations, including but not limited to:

- 43 (1) procurement;
- 44 (2) record keeping;
- 45 (3) accounting;
- 46 (4) audit and inspection;
- 47 (5) occupational health and safety;
- 48 (6) environmental review; and
- 49 (7) nondiscrimination.

50 **K.** In the event of default by the local authority, the department as agent for the commission may
51 enforce its rights by suit or mandamus or may utilize all other available remedies under state law.

52 [11-18-93; 11-30-95; 09-30-98; 20.7.5.14 NMAC - Rn, 20 NMAC 7.5.204 & N, 7/16/2000; & A, 7/16/2000; A,
53 11/15/2007; A, XX/XX/2015]

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55
56 **HISTORY OF 20.7.5 NMAC:**

Exhibit B – Entire text of 20.7.5 NMAC

1 **Pre-NMAC History:** Material in the part was derived from that previously filed with the commission of public
2 records - state records center and archives:
3 WQC Rule 67-2, Regulations Governing Water Pollution Control in New Mexico, filed 12/5/67;
4 WQC Rule 72-1, Water Quality Control Commission Regulations, filed 8/4/72;
5 WQCC Rule 77-1, Amended Water Quality Control Commission Regulations, filed 1/18/77;
6 WQCC Rule 81-2, Water Quality Control Commission Regulations, filed 6/2/81;
7 WQCC Rule 82-1, Water Quality Control Commission Regulations, filed 8/19/82.

8
9 **OTHER HISTORY:**
10 That applicable portion of WQCC Rule 82-1, Water Quality Control Commission Regulations (filed 8/19/82) was
11 renumbered, reformatted and replaced by 20 NMAC 7.5, Wastewater and Water Supply Facilities - Wastewater
12 Facility Construction Loans, effective 11/30/95.
13 20 NMAC 7.5, Wastewater and Water Supply Facilities - Wastewater Facility Construction Loans (filed 10/25/95)
14 renumbered, reformatted, amended, and replaced by 20.7.5 NMAC, Wastewater and Water Supply Facilities -
15 Wastewater Facility Construction Loans, effective 7/16/2000.

See attached Senate Bill 227

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AN ACT
RELATING TO THE ENVIRONMENT; AMENDING THE WASTEWATER FACILITY
CONSTRUCTION LOAN ACT TO INCLUDE MUTUAL DOMESTIC WATER
CONSUMERS ASSOCIATION IN THE DEFINITION OF "LOCAL AUTHORITY";
EXTENDING THE LOAN REPAYMENT PERIOD.

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

SECTION 1. 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. "administrative fee" means a fee assessed and
collected by the department from a local authority 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;

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

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

D. "financial assistance" means loans, the
purchase or refinancing of existing local political
subdivision obligations, loan guarantees, credit enhancement

1 techniques to reduce interest on loans and bonds, bond
2 insurance and bond guarantees or any combination of these
3 purposes;

4 E. "fund" means the wastewater facility
5 construction loan fund;

6 F. "local authority" means any municipality,
7 county, incorporated county, mutual domestic water consumers
8 association as defined by the Sanitary Projects Act,
9 sanitation district, water and sanitation district or any
10 similar district, recognized Indian tribe or other issuing
11 agency created pursuant to a joint powers agreement acting on
12 behalf of any entity listed in this subsection;

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

18 H. "wastewater facility" means a publicly owned
19 system for treating or disposing of sewage or wastes either
20 by surface or underground methods, including any equipment,
21 plant, treatment works, structure, machinery, apparatus or
22 land, in any combination, that is acquired, used, constructed
23 or operated for the storage, collection, reduction,
24 recycling, reclamation, disposal, separation or treatment of
25 water or wastes or for the final disposal of residues

1 resulting from the treatment of water or wastes, such as
2 pumping and ventilating stations, facilities, plants and
3 works, outfall sewers, interceptor sewers and collector
4 sewers and other real or personal property and appurtenances
5 incident to their use or operation. "Wastewater facility"
6 also includes a nonpoint source water pollution control
7 project as eligible under the Clean Water Act;

8 I. "account" means the wastewater suspense
9 account;

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

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

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

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

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

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

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

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

16 SECTION 2. Section 74-6A-8 NMSA 1978 (being Laws 1991,
17 Chapter 172, Section 6) is amended to read:

18 "74-6A-8. FINANCIAL ASSISTANCE--CRITERIA.--

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

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

25 (2) agree to operate and maintain the

1 wastewater facility so that the facility will function
2 properly over its structural and material design life;

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

7 (4) provide a written assurance, signed by
8 an attorney, that the local authority has or will acquire
9 proper title, easements and rights of way to the property
10 upon or through which the wastewater facility proposed for
11 funding is to be constructed or extended;

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

17 (6) provide a written notice of completion
18 and start of operation of the wastewater facility;

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

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

24 B. Loans shall be made only to local authorities
25 that establish one or more dedicated sources of revenue to

1 repay the money received from the commission and to provide
2 for operation, maintenance and equipment replacement
3 expenses. A local authority, any existing statute to the
4 contrary notwithstanding, may do any of the following:

5 (1) obligate itself to pay to the commission
6 at periodic intervals a sum sufficient to provide all or any
7 part of bond debt service with respect to the bonds
8 recommended by the commission and issued by the board to fund
9 the loan for the wastewater facility project of the local
10 authority and pay over the debt service to the account of the
11 wastewater facility project for deposit to the fund;

12 (2) fulfill any obligation to pay the
13 commission by the issuance of bonds, notes or other
14 obligations in accordance with the laws authorizing issuance
15 of local authority obligations; provided, however that,
16 notwithstanding the provisions of Section 4-54-3 or 6-15-5
17 NMSA 1978 or other statute or law requiring the public sale
18 of local authority obligations, such obligations may be sold
19 at private sale to the commission at the price and upon the
20 terms and conditions the local authority shall determine;

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

25 (a) sewer or waste disposal service

1 fees or charges;

2 (b) licenses, permits, taxes and fees;

3 (c) special assessments on the property
4 served or benefited by the wastewater facility project; or

5 (d) other revenue available to the
6 local authority;

7 (4) undertake and obligate itself to pay its
8 contractual obligation to the commission solely from the
9 proceeds from any of the sources specified in Paragraph (3)
10 of this subsection or, in accordance with the laws
11 authorizing issuance of local authority obligations, impose
12 upon itself a general obligation pledge to the commission
13 additionally secured by a pledge of any of the sources
14 specified in Paragraph (3) of this subsection; or

15 (5) enter into agreements, perform acts and
16 delegate functions and duties as its governing body shall
17 determine is necessary or desirable to enable the division as
18 agent for the commission to fund a loan to the local
19 authority to aid it in the construction or acquisition of a
20 wastewater facility project.

21 C. Each loan made by the division as agent for the
22 commission shall provide that repayment of the loan shall
23 begin not later than one year after completion of
24 construction of the wastewater facility project for which the
25 loan was made and shall be repaid in full no later than

1 thirty years after completion of the construction. All
2 principal and interest on loan payments shall be deposited in
3 the fund.

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

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

10 (1) the local authority's average user cost
11 is at least fifteen dollars (\$15.00) per month or a higher
12 amount as determined by the commission; and

13 (2) the local authority's median household
14 income is less than three-fourths of the statewide
15 nonmetropolitan median household income.

16 F. A local authority may use the proceeds from
17 financial assistance received under the Wastewater Facility
18 Construction Loan Act to provide a local match or any other
19 nonfederal share of a wastewater facility construction
20 project as allowed pursuant to the Clean Water Act.

21 G. Financial assistance received pursuant to the
22 Wastewater Facility Construction Loan Act shall not be used
23 by a local authority on any wastewater facility project
24 constructed in fulfillment or partial fulfillment of
25 requirements made of a subdivider under the provisions of the

1 Land Subdivision Act or the New Mexico Subdivision Act.

2 H. Financial assistance shall be made only to
3 local authorities that employ or contract with a registered
4 professional engineer to provide and be responsible for
5 engineering services on the wastewater facility project.
6 Such services include but are not limited to an engineering
7 report, construction contract documents, supervision of
8 construction and start-up services.

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

21 J. In the event of default by the local authority,
22 the commission may enforce its rights by suit or mandamus
23 or may utilize all other available remedies under state
24 law."

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