The Legislature
of the
State of New Mexico

52nd Legislature, 1st Session

LAWS 2015

CHAPTER 112

SENATE BILL 227

Introduced by

SENATOR RICHARD C. MARTINEZ
CHAPTER 112

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

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

F. "local authority" means any municipality,
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. "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 in accordance with its
intended purpose;

H. "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 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;
C. "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 conditions for the bonds to be issued; and

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."

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

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

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

1. meet the requirements for financial capability set by the division to assure sufficient revenues to operate and maintain the wastewater facility for its useful life and to repay the financial assistance;

2. agree to operate and maintain the
wastewater facility so that the facility will function properly over its structural and material design life;

(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, that the local authority has or will acquire proper title, easements and rights of way to the property upon or through which the wastewater facility proposed for funding is to be constructed or extended;

(5) require the contractor of the wastewater facility construction 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;

(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 local authorities 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 local authority, any existing statute to the contrary notwithstanding, 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 project of the local authority and pay over the debt service to the account of the wastewater facility 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 local authority obligations; provided, however that, 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 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 project; or

(d) other revenue available to the local authority;

(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 local authority 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 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 local authority to aid it in the construction or acquisition of a wastewater facility 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 project for which the loan was made and shall be repaid in full no later than
thirty years after completion of the construction. 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; and

(2) the local authority's median household income is less than three-fourths of the statewide nonmetropolitan median household 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 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 local authority on any wastewater facility project constructed in fulfillment or partial fulfillment of requirements made of a subdivider under the provisions of the

SB 227
Page 8
Land Subdivision Act or the New Mexico Subdivision Act.

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

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 local authority, the commission may enforce its rights by suit or mandamus or may utilize all other available remedies under state law."
John A. Sanchez, President
Senate

Lenore M. Naranjo, Chief Clerk
Senate

Don L. Tripp, Speaker
House of Representatives

Denise Ramonas, Chief Clerk
House of Representatives

Approved by me this 9th day of April, 2015

Governor Susana Martinez
State of New Mexico