

6-21A-1. Short title.

Sections 1 through 9 [6-21A-1 to 6-21A-9 NMSA 1978] of this act may be cited as the "Drinking Water State Revolving Loan Fund Act".

History: Laws 1997, ch. 144, § 1.

Cross references. — For state supplemental land and water conservation fund, see 16-1-2 NMSA 1978.

For compliance with federal Safe Drinking Water Act, see 74-1-12 NMSA 1978.

6-21A-2. Purpose.

The purpose of the Drinking Water State Revolving Loan Fund Act [6-21A-1 to 6-21A-9 NMSA 1978] is to provide local authorities in New Mexico with low-cost financial assistance in the construction and rehabilitation of necessary drinking water facilities through the creation of a self-sustaining revolving loan program so as to improve and protect drinking water quality and public health.

History: Laws 1997, ch. 144, § 2.

6-21A-3. Definitions.

As used in the Drinking Water State Revolving Loan Fund Act [6-21A-1 to 6-21A-9 NMSA 1978]:

- A. "authority" means the New Mexico finance authority;
- B. "department" means the department of environment;
- C. "drinking water facility construction project" means the acquisition, design, construction, improvement, expansion, repair or rehabilitation of all or part of any structure, facility or equipment necessary for a drinking water system or water supply system;
- D. "drinking water supply facility" means any structure, facility or equipment necessary for a drinking water system or water supply system;
- E. "financial assistance" means loans, the purchase or refinancing of debt obligation of a local authority at an interest rate that is less than or equal to the market interest rate in any case in which a debt obligation is incurred after July 1, 1993, loan guarantees, bond insurance or security for revenue bonds issued by the authority;
- F. "fund" means the drinking water state revolving loan fund;
- G. "local authority" means any municipality, county, incorporated county, sanitation district, water and sanitation district or any similar district, public or private water cooperative or association or any similar organization, public or private community water system or nonprofit noncommunity water system or any other agency created pursuant to a joint powers agreement

acting on behalf of any entity listed in this subsection with a publicly owned drinking water system or water supply system that qualifies as a community water system or nonprofit noncommunity system as defined by the Safe Drinking Water Act. "Local authority" does not include systems owned by federal agencies;

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

I. "Safe Drinking Water Act" means the federal Safe Drinking Water Act as amended in 1996 and its subsequent amendments or successor provisions.

History: Laws 1997, ch. 144, § 3; 2001, ch. 116, § 1.

The 2001 amendment, effective April 2, 2001, substituted "system" for "systems" at the end of Subsection C; in Subsection G, inserted "public or private" preceding "water cooperative" and inserted "public or private community water system or nonprofit noncommunity water system".

Safe Drinking Water Act. — The federal Safe Drinking Water Act, referred to in Subsections G and I, is codified, generally, as 42 U.S.C.S. 300f et seq.

6-21A-4. Fund created; administration.

A. There is created in the authority a revolving loan fund to be known as the "drinking water state revolving loan fund", which shall be administered by the authority. The authority is authorized to establish procedures required to administer the fund in accordance with the Safe Drinking Water Act and state laws. The authority and the department shall, whenever possible, coordinate application procedures and funding cycles with the New Mexico Community Assistance Act [11-6-1 NMSA 1978].

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

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

(2) funds as appropriated by the legislature to implement the provisions of the Drinking Water State Revolving Loan Fund Act [6-21A-1 to 6-21A-9 NMSA 1978] or to provide state matching funds that are required by the terms of any federal grant under the Safe Drinking Water Act;

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

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

(5) revenue transferred from other state revolving funds.

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

- (1) to provide loans for the construction or rehabilitation of drinking water facilities;
- (2) to buy or refinance the debt obligation of a local authority at an interest rate that is less than or equal to the market interest rate in any case in which a debt obligation is incurred after July 1, 1993;
- (3) to guarantee or purchase insurance for obligations of local authorities to improve credit market access or reduce interest rates;
- (4) to provide loan guarantees for similar revolving funds established by local authorities; and
- (5) to provide a source of revenue or security for the repayment of principal and interest on bonds issued by the authority if the proceeds of the bonds are deposited in the fund or if the proceeds of the bonds are used to make loans to local authorities to the extent provided in the terms of the federal grant.

D. If needed to cover administrative expenses, pursuant to procedures established by the authority, the authority may impose and collect a fee from each local authority that receives financial assistance from the fund, which fee shall be used solely for the costs of administering the fund and which fee shall be kept outside the fund.

E. Money not currently needed for the operation of the fund or otherwise dedicated may be invested pursuant to the New Mexico Finance Authority Act [Chapter 6, Article 21 NMSA 1978] and all interest earned on such investments shall be credited to the fund. Money remaining in the fund at the end of the fiscal year shall not revert to the general fund but shall accrue to the credit of the fund.

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

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

History: Laws 1997, ch. 144, § 4; 2001, ch. 116, § 2.

The 2001 amendment, effective April 2, 2001, deleted "if combined with a new project" following "local authority" in Paragraph C(2).

Appropriations. — Laws 2002, ch. 33, § 1, effective March 4, 2002, appropriates \$1,557,820 from the public project revolving fund to the drinking water state revolving loan fund for expenditure in fiscal year 2002 and subsequent fiscal years to carry out the purposes of the Drinking Water State Revolving Loan Fund Act. Any unexpended or unencumbered balance remaining at the end of a fiscal year does not revert to the public project revolving fund.

Laws 2003, ch. 105, § 1, effective April 2, 2003, provides that one million six hundred ten thousand five hundred dollars (\$1,610,500) is appropriated from the public project revolving fund to the drinking water state revolving loan fund for expenditure in fiscal year 2003 and subsequent fiscal years to carry out the purposes of the Drinking Water State Revolving Loan Fund Act. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the public project revolving fund.

Laws 2004, ch. 91, § 1 appropriates \$1,600,820 from the public project revolving fund to the drinking water state revolving loan fund for expenditure in fiscal year 2004 and subsequent fiscal years.

Laws 2005, ch. 70, § 1, effective April 4, 2005, appropriates \$2,000,000 from the public project revolving fund to the drinking water state revolving loan fund for expenditure in fiscal year 2005 and subsequent fiscal years to provide state matching funds for federal Safe Drinking Water Act projects and to carry out the purposes of the Drinking Water State Revolving Loan Fund Act [6-21A-1 NMSA 1978].

Safe Drinking Water Act. — The federal Safe Drinking Water Act, referred to in this section, is codified, generally, as 42 U.S.C.S. 300f et seq.

6-21A-5. Loan program; administration.

A. The authority shall establish a program to provide financial assistance from the fund to local authorities, individually or jointly, for acquisition, construction or modification of drinking water facilities. The authority is authorized to enter into memoranda of understanding, contracts and other agreements to carry out the provisions of the Drinking Water State Revolving Loan Fund Act [6-21A-1 to 6-21A-9 NMSA 1978], including but not limited to memoranda of understanding, contracts and agreements with federal agencies, the department, local authorities and other parties.

B. The department shall adopt, by regulation, a system for the ranking of drinking water facility construction projects requesting financial assistance and for the development of a priority list which will be part of the annual intended use plan, as required by the Safe Drinking Water Act.

C. The department shall adopt regulations or internal procedures addressing the mechanism for the preparation of the annual intended use plan and the content of such plan and shall prepare such plan, with the assistance of the authority, as required by the Safe Drinking Water Act and the capitalization grant agreement. The department shall review all proposals for drinking water facility construction projects, including, but not limited to, project plans and specifications for compliance with the requirements of the Safe Drinking Water Act and the requirements of state laws and regulations governing the construction and operation of drinking water supply facilities. The department also shall determine whether a local authority has demonstrated adequate technical and managerial capability to operate the drinking water supply facility for its useful life in compliance with the requirements of the Safe Drinking Water Act and with the requirements of state laws and regulations governing the operation of drinking water supply facilities.

D. The department and the authority shall enter into an agreement for the purpose of describing and allocating duties and responsibilities with respect to monitoring the construction of drinking water facility construction projects that have been provided financial assistance

pursuant to the provisions of the Drinking Water State Revolving Loan Fund Act [6-21A-1 to 6-21A-9 NMSA 1978] to ensure compliance with the requirements of the Safe Drinking Water Act and with the requirements of state laws and regulations governing construction and operation of drinking water supply facilities.

E. The department shall adopt regulations or internal procedures establishing the criteria and method for the distribution of annual capitalization grant funds between the fund and the nonproject activities (set-asides) allowed by the Safe Drinking Water Act and for the description in the intended use plan and annual report of the financial programmatic status of the nonproject activities (set-asides) allowed by the Safe Drinking Water Act.

F. The authority, with the assistance of the department, shall establish procedures to identify affordability criteria for a disadvantaged community and to extend a program to assist such communities.

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

H. The department shall prepare and submit applications for capitalization grants to the United States environmental protection agency as required by the Safe Drinking Water Act.

History: Laws 1997, ch. 144, § 5.

Safe Drinking Water Act. — The federal Safe Drinking Water Act, referred to throughout this section, is codified, generally, as 42 U.S.C.S. 300f et seq. Section 1452 of that act, referred to in Subsection G, appears as 42 U.S.C.S. § 300j-12.

6-21A-6. Financial assistance; criteria.

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

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

(2) appear on the priority list for the fund, developed and maintained by the department, regardless of rank on such list;

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

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

(5) meet other requirements established by the authority and state laws, including, but not limited to, procurement, recordkeeping and accounting.

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

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

D. Each loan made by the authority shall provide that repayment of the loan shall begin not later than one year after completion of construction of the drinking water facility for which the loan was made and shall be repaid in full no later than twenty years after completion of the construction, except in the case of a disadvantaged community in which case the authority may extend the term of the loan, as long as the extended term:

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

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

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

F. Financial assistance pursuant to the Drinking Water State Revolving Loan Fund Act [6-21A-1 to 6-21A-9 NMSA 1978] shall not be given to a local authority, if the authority determines that the financial assistance is for a drinking water facility to be constructed in fulfillment or partial fulfillment of requirements made of a subdivider under the provisions of the Land Subdivision Act [47-5-1 to 47-5-8 NMSA 1978] or the New Mexico Subdivision Act [Chapter 47, Article 6 NMSA 1978].

G. Financial assistance may be made to local authorities that employ or contract with a registered professional engineer to provide and be responsible for engineering services on the drinking water facility. Such services, if the authority determines such services are needed, may include, but are not limited to, an engineering report, facility plans, environmental evaluations, construction contract documents, supervision of construction and start-up services.

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

History: Laws 1997, ch. 144, § 6.

Safe Drinking Water Act. — The federal Safe Drinking Water Act, referred to throughout this section, is codified, generally, as 42 U.S.C.S. 300f et seq. Section 1452(a)(3) of that act, referred to in Subsection C, appears as 42 U.S.C.S. § 300j-12(a)(3).

6-21A-7. Department duties; powers.

A. The department with the approval of the governor and as authorized in the intended use

plan may transfer up to one-third of a wastewater facility construction loan fund capitalization grant to the drinking water state revolving loan fund; provided the Wastewater Facility Construction Loan Act [Chapter 74, Article 6A NMSA 1978] is amended to allow for such transfer. This provision is available one year after the receipt of the first full capitalization grant for the Drinking Water State Revolving Loan Fund Act [6-21A-1 to 6-21A-9 NMSA 1978] and will expire with the capitalization grant of the year 2002. Before the department makes the transfer, the department shall:

- (1) outline the transfer in the applicable intended use plans for both the drinking water state revolving loan fund and the wastewater facility construction loan fund; and
- (2) report the intended transfer to the legislature.

B. The department in the annual intended use plan shall certify to the United States environmental protection agency the progress made regarding operator certification and capacity development programs as they relate to the receipt of capitalization grants available from the environmental protection agency under the Safe Drinking Water Act.

History: Laws 1997, ch. 144, § 7.

Safe Drinking Water Act. — The federal Safe Drinking Water Act, referred to in Subsection B, is codified, generally, as 42 U.S.C.S. 300f et seq.

6-21A-8. Authority duties; powers.

A. The authority with the approval of the governor and as authorized in the intended use plan may transfer up to one-third of a drinking water state revolving loan fund capitalization grant to the wastewater facility construction loan fund. This provision is available one year after the receipt of the first full capitalization grant and will expire with the capitalization grant of the year 2002. Before the authority makes the transfer, the authority shall:

- (1) outline the transfer in the applicable intended use plans for both the drinking water state revolving loan fund and the wastewater facility construction loan fund; and
- (2) report the intended transfer to the legislature.

B. The authority will have the power:

- (1) to foreclose upon or attach any drinking water facility, property or interest in the facility pledged, mortgaged or otherwise available as security for a project financed in whole or in part pursuant to the Drinking Water State Revolving Loan Fund Act [6-21A-1 to 6-21A-9 NMSA 1978] in the event of a default by a local authority;
- (2) to acquire and hold title to or leasehold interest in real and personal property and to sell, convey or lease that property for the purpose of satisfying a default or enforcing the provisions of a loan agreement; and
- (3) to enforce its rights by suit or mandamus or may utilize all other available remedies under state law in the event of default by a local authority.

C. The authority will have the power to issue bonds or refunding bonds pursuant to the New Mexico Finance Authority Act [Chapter 6, Article 21 NMSA 1978] and the Drinking Water State Revolving Loan Fund Act when the authority determines that a bond issue is required or desirable to implement the provisions of the Drinking Water State Revolving Loan Fund Act.

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

- (1) any obligations of each local authority, payable to the authority;
- (2) the security for the local authority obligations;
- (3) any grant, subsidy or contribution from the United States or any of its agencies or instrumentalities; or
- (4) any income, revenues, funds or other money of the authority from any other source appropriated or authorized for use for the purpose of implementing the provisions of the Drinking Water State Revolving Loan Fund Act, including the fund.

E. The bonds and other obligations issued by the authority shall be issued and delivered in accordance with the provisions of the New Mexico Finance Authority Act [Chapter 6, Article 21 NMSA 1978] and may be sold at any time the authority determines appropriate. The authority may apply the proceeds of the sale of the bonds to:

- (1) the purposes of the Drinking Water State Revolving Loan Fund Act [6-21A-1 to 6-21A-9 NMSA 1978] or the purposes for which the fund may be used;
- (2) the payment of interest on bonds issued by the authority for a period not to exceed three years from the date of issuance of the bonds; and
- (3) the payment of all expenses, including publication and printing charges, attorney fees, financial advisory and underwriter fees and premiums or commissions that the authority determines are necessary or advantageous in connection with the recommendation, advertisement, sale, creation and issuance of bonds.

F. In the event that funds are not available for a loan for a drinking water facility project when application is made, in order to accelerate the completion of any drinking water facility project, the local authority may, with the approval of the authority, obligate such local authority to provide local funds to pay that portion of the cost of the drinking water facility project that the authority agrees to make available by loan, and the authority may reimburse the amount expended on its behalf by the local authority.

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

H. All bonds, notes and certificates issued by the authority shall be special obligations of the authority, payable solely from the revenue, income, fees or charges that may, pursuant to the provisions of the New Mexico Finance Authority Act and the Drinking Water State Revolving

Loan Fund Act, be pledged to the payment of such obligations, and the bonds, notes or certificates shall not create an obligation, debt or liability of the state. No breach of any pledge, obligation or agreement of the authority shall impose a pecuniary liability upon the state or a charge upon its general credit or taxing power.

History: Laws 1997, ch. 144, § 8.

6-21A-9. Agreement of the state not to limit or alter rights of obligees.

The state hereby pledges to and agrees with the holders of any bonds or other obligations issued under the Drinking Water State Revolving Loan Fund Act [6-21A-1 to 6-21A-9 NMSA 1978] and with those parties that enter into contracts or agreements with the department or with the authority pursuant to the provisions of that act, that the state shall not limit, alter, restrict or impair any rights vested in the authority to fulfill the terms of agreements made with the holders of bonds or other obligations issued pursuant to the Drinking Water State Revolving Loan Fund Act and with the parties who may enter into contracts with a local authority, the department or the authority pursuant to the Drinking Water State Revolving Loan Fund Act, and that the state shall not limit, alter, restrict or impair the rights vested in a local authority or in the department or the authority to fulfill the terms of contracts made with the department or the authority and with parties who enter into contracts with such local authorities. The state further agrees that it shall not in any way impair the rights or remedies of the holders of such bonds or other obligations of such parties until such bonds and other obligations, together with interest thereon, with interest on any unpaid installment of interest and all costs and expense in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged and such contracts are fully performed on the part of the authority, the department or the local authorities. Nothing in this subsection precludes such limitation or alteration if and when adequate provision is made by law for the protection of the holders of bonds or other obligations issued by the authority or those entering into such contracts with the authority, or the authority or the department under any contract with a local authority. The authority or the department may include this pledge and undertaking for the state in such bonds or other obligations and in such contracts.

History: Laws 1997, ch. 144, § 9.

6-21A-10. County or municipal authority regarding the environment.

Nothing in the Drinking Water State Revolving Loan Fund Act [6-21A-1 to 6-21A-9 NMSA 1978] limits or is intended to limit any state, county or municipal statute, ordinance or regulation regarding the environment or the protection of health and safety.

History: Laws 1997, ch. 144, § 10.