# CHAPTER 6
# Public Finances

## ARTICLE 1
## State Board of Finance

### 6-1-1. Membership of state board of finance; powers and duties; establishment in connection with the board of finance division of the department of finance and administration.

A. The state board of finance shall consist of seven members:

(1) the governor;

(2) the lieutenant governor;

(3) the state treasurer; and

(4) four members appointed by the governor with the advice and consent of the senate, no more than two of these members to be from the same political party.

B. The terms of office for members appointed by the governor shall be two years. The term of each remaining member shall be coextensive with his term of office. If the office of lieutenant governor becomes vacant, his position on the state board of finance shall remain vacant until the election and qualification of a new lieutenant governor.

C. Members of the state board of finance, other than the governor and the state treasurer, shall be reimbursed for attending meetings of the board as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

D. The governor shall be president of the state board of finance, and the board shall annually elect a secretary from its membership. Meetings of the board shall be held at the state capitol at times determined by the governor. Four voting members of the board constitute a quorum for the transaction of business. Minutes of all proceedings and transactions of the board shall be kept in the offices of the department of finance and administration.

E. The state board of finance, in addition to other powers and duties provided by law, has general supervision of the fiscal affairs of the state and of the safekeeping and depositing of all money and securities belonging to or in the custody of the state, and it may make rules and regulations for carrying out the provisions of Sections 6-1-1, 6-10-2, 6-10-3, 6-10-20, 6-10-29, 6-10-37 through 6-10-44, 6-10-46, 6-10-47, 6-10-50, 6-10-52 through 6-10-54, 6-10-58 and 6-10-61 NMSA 1978. The board shall have access to

all reports and correspondence relating to the condition of banks, and savings and loan associations whose deposits are insured by an agency of the United States, in this state which are in the financial institutions division or any department or agency of the state. If the board deems action necessary to enable it to perform its duties, it may require the director of the financial institutions division to make a special examination of any state bank or trust company or any state savings and loan association whose deposits are insured by an agency of the United States.

F. The state board of finance may make investigations it deems necessary to enable it to perform the duties imposed on it by law and may instruct the director of the board of finance division to employ experts, auditors, accountants and attorneys as it may, from time to time, deem necessary and prescribe their duties and fix their compensation within the appropriations made for that purpose by the legislature for use by the board.

G. The state board of finance is established in connection with the board of finance division of the department of finance and administration. The secretary of finance and administration, with the approval of the board, shall appoint a director of the division. This subsection shall not be construed to affect the exercise of any board power or duty nor shall it be construed as placing the board under the provisions of the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978] or the provisions of Section 9-6-5 NMSA 1978.

**History:** Laws 1923, ch. 76, § 3; 1925, ch. 85, § 1; C.S. 1929, § 112-103; 1941 Comp., § 7-101; Laws 1953, ch. 161, § [1]; 1953 Comp., § 11-1-1; Laws 1957, ch. 47, § 1; 1959, ch. 8, § 1; 1968, ch. 18, § 1; 1969, ch. 56, § 1; 1970, ch. 37, § 1; 1971, ch. 6, § 1; 1977, ch. 247, § 93; 1980, ch. 151, § 3; 1989, ch. 108, § 1.

**ANNOTATIONS**

**Cross references.** — For the State Rules Act, *see* Chapter 14, Article 4 NMSA 1978.

**Single bond propositions required.** — Section 8 of N.M. Const., Art. IX requires the legislature to submit individual or interrelated bond propositions to the voters. Thus, the bond propositions contained in the 1992 General Obligation Bond Act could not be lumped together on one ballot but had to be on separate ballots, since the capital outlay projects varied and had no commonality beyond public welfare. *Ryan v. Gonzales*, 1992-NMSC-052, 114 N.M. 346, 838 P.2d 963.

**State board of finance is an executive agency.** The state board of finance does not exert legislative power; it makes no appropriations; the emergency appropriation provision states the object thereof in compliance with constitutional requirements. 1959 Op. Att'y Gen. No. 59-79.

**Authority to require additional security.** — The state board of finance may exercise its authority under Section 6-10-20 NMSA 1978 to require additional security for

deposits made by the state treasurer from the severance tax permanent fund. 1980 Op. Att'y Gen. No. 80-11.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 81A C.J.S. States §§ 133, 134.

## 6-1-2. State board of finance; loans and grants of emergency funds.

If the state board of finance determines that an emergency exists that warrants such action, it may lend or grant to any state agency, board, commission, municipal corporation or other political subdivision organized under the laws of the state or any Indian nation, tribe or pueblo located in whole or in part in New Mexico that sum of money the board determines reasonable and appropriate from any funds appropriated to the board for use in meeting emergencies. As used in this section, "emergency" means an unforeseen occurrence or circumstance severely affecting the quality of government services and requiring the immediate expenditure of money that:

A. is not within the available resources of the state agency, board, commission, municipal corporation or other political subdivision or the Indian nation, tribe or pueblo located in whole or in part in New Mexico as determined by the state board of finance; and

B. if subject to appropriation, cannot reasonably await appropriation by the next regular session of the legislature.

**History:** 1953 Comp., § 11-1-1.1, enacted by Laws 1959, ch. 139, § 1; 1973, ch. 92, § 1; 1997, ch. 5, § 1; 2005, ch. 48, § 1.

**ANNOTATIONS**

**The 2005 amendment,** effective July 1, 2005, permitted the state board of finance in emergencies to loan or grant funds to any Indian nation, tribe or pueblo that is located in whole or in part in New Mexico.

**The 1997 amendment,** effective March 10, 1997, added the definition of "emergency".

## 6-1-3. Loans of emergency funds; terms and conditions for repayment; security and interest.

The state board of finance may prescribe those terms and conditions it deems proper with respect to the repayment of any loan and the application of the proceeds of the loan, and it may require or waive security by way of the pledge of revenues or otherwise and may require or waive interest, as the board determines proper under the circumstances.

**History:** 1953 Comp., § 11-1-1.2, enacted by Laws 1959, ch. 139, § 2; 1973, ch. 92, § 2.

## 6-1-4. Loans or grants obtained by political subdivisions; application of proceeds.

Any municipal corporation or other political subdivision obtaining a loan or grant shall apply the proceeds thereof only for the purposes stated by the state board of finance in its action approving the loan or grant.

**History:** 1953 Comp., § 11-1-1.3, enacted by Laws 1959, ch. 139, § 3; 1973, ch. 92, § 3.

## 6-1-5. Repayment of loans; disposition of receipts; crediting emergency fund; deposit in general fund.

Any amount received by the state board of finance in repayment of any emergency loan shall be deposited by the board to the credit of the state board of finance emergency fund if the payment is received during the same fiscal year in which the loan was made. All payments made in any period subsequent to the close of the fiscal year in which the loan was made shall be deposited by the board in the general fund.

**History:** 1953 Comp., § 11-1-1.4, enacted by Laws 1959, ch. 139, § 4; 1973, ch. 92, § 4.

## 6-1-6. [Separate accounts.]

Separate accounts shall be kept for every appropriation or fund, showing the date and manner of each payment made out of the funds provided by such appropriation, the name and address of each person, organization, corporation or association, to whom, and for what purpose paid.

**History:** Laws 1923, ch. 48, § 3; C.S. 1929, § 134-503; 1941 Comp., § 7-105; 1953 Comp., § 11-1-6.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 81A C.J.S. States § 229.

## 6-1-7. Repealed.

**History:** Laws 1935, ch. 27, § 2; 1941 Comp., § 7-121; 1953 Comp., § 11-1-22; 1978 Comp., § 6-1-7, repealed by Laws 2004, ch. 73, § 1.

**ANNOTATIONS**

**Repeals.** — Laws 2004, ch. 73, § 1 repealed 6-1-7 NMSA 1978, as enacted by Laws 1935, ch. 27, § 2, relating to standards for and transfer of supplies and equipment, effective May 19, 2004. For provisions of former section, *see* the 2003 NMSA 1978 on *NMOneSource.com.*

## 6-1-8 to 6-1-12. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 339, § 1 repealed 6-1-8 to 6-1-10, 6-1-10.1, 6-1-10.2, 6-1-11, and 6-1-12 NMSA 1978, as enacted by Laws 1981, ch. 265, §§ 1, 2, 4, 5 and as amended by Laws 1983, ch. 26, §§ 1 to 3, relating to the state cash manager, effective July 1, 1987. For present comparable provisions, *see* 6-1-1 to 6-1-7, 6-1-13 NMSA 1978.

## 6-1-13. Deposit accounts by state agencies; authorization by state treasurer.

A. A state agency may not open a new deposit account or deposit money in an existing deposit account unless it has submitted a request to the state treasurer in writing on forms prescribed by the state treasurer and received written authorization from the state treasurer for each such account. This section shall not constitute authority for agencies to open demand deposit accounts and shall not apply to deposits made pursuant to Section 6-10-35 NMSA 1978. On the effective date of this act, agency deposit accounts previously authorized shall be governed by the terms of this section.

B. The state treasurer shall establish for each account those conditions and reports appropriate to that account including, without limitation, the period for which the account may be authorized. The provisions of this section shall not apply to investments made by the state treasurer or the state investment council. The state treasurer shall submit to the state board of finance on a quarterly basis a list of all accounts established pursuant to this section.

C. As used in this section, "state agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities, or institutions other than state educational institutions designated by Article 12, Section 11 of the constitution of New Mexico.

**History:** 1978 Comp., § 6-1-13, enacted by Laws 1987, ch. 339, § 2.

**ANNOTATIONS**

**The public school insurance authority** is a state agency for purposes of complying with the reporting requirements under Subsection B. 1990 Op. Att'y Gen. No. 90-23.

**Retiree health care authority** is a state agency for purposes of receiving authorization for the opening of a new deposit account under Subsection A. 1991 Op. Att'y Gen. No. 91-06.

# ARTICLE 2
# Settling Accounts

## 6-2-1. Examination of parties; oath; compelling testimony.

The secretary of finance and administration or the director of the financial control division, whenever he may think it necessary to the proper settlement of any account, may examine the parties, witnesses and others on oath or affirmation, touching any matter material to be known in the settlement of such account, and for that purpose he may issue subpoenas and compel witnesses to attend before him and give evidence in the same manner as courts of law may do, and he is hereby authorized to administer all such oaths or affirmations.

**History:** Laws 1851-1852, p. 170; C.L. 1865, ch. 102, § 13; C.L. 1884, § 1762; C.L. 1897, § 2592; Code 1915, § 5334; C.S. 1929, § 134-602; 1941 Comp., § 3-203; 1953 Comp., § 4-4-3; Laws 1957, ch. 252, § 9; 1983, ch. 301, § 9.

**ANNOTATIONS**

**Authority to compel production of certain affidavits.** — Under this section, the state auditor (as this section is now amended, the secretary of finance and administration or the director of the financial control division) has the power to compel the heads of departments to produce the affidavit required under Section 10-1-6 NMSA 1978 before making payment to any person or persons employed who have not been residents of New Mexico for one year prior to their employment as state employees. 1951 Op. Att'y Gen. No. 51-5388.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 81A C.J.S. States § 121.

# ARTICLE 3
# State Budgets

## 6-3-1. State agency defined.

"State agency" means any department, institution, board, bureau, commission, district or committee of government of the state of New Mexico and means every office or officer of any of the above.

**History:** 1953 Comp., § 11-4-1.1, enacted by Laws 1957, ch. 253, § 1.

**ANNOTATIONS**

**Eleventh amendment immunity.** — The university of New Mexico board of regents, medical school, medical school's admissions committee and two officials of that committee fell within the state's definition of agency for purposes of eleventh amendment immunity from plaintiff's claims for failure to admit her to the medical school. *Buchwald v. Univ. of N.M. Sch. of Med.*, 159 F.3d 487 (10th Cir. N.M. 1998).

**New Mexico beef council.** — The New Mexico beef council, created under Section 77-2A-3 NMSA 1978, is a commission or committee of government and falls within this definition of "state agency"; it, thus, is subject to the requirements of this article. 1987 Op. Att'y Gen. No. 87-44.

**The public school insurance authority** is a state agency for purposes of the state budget laws. 1990 Op. Att'y Gen. No. 90-23.

## 6-3-2. Director of state budget division; qualifications.

The director of the state budget division shall be skilled in accountancy and auditing, familiar with the operation of educational and other state institutions, budgets and finances. The director shall be appointed by the secretary of finance and administration with the governor's consent.

**History:** 1953 Comp., § 11-4-1.3, enacted by Laws 1957, ch. 253, § 3; 1977, ch. 247, § 123.

**ANNOTATIONS**

**Cross references.** — For appointment of director, *see* 9-6-5 NMSA 1978.

## 6-3-3. State budget division; cooperation between state budget division and state agencies; assistance to state agencies.

There shall be full cooperation between the various state agencies and the state budget division. State agencies will give complete access to the division of their books and records if so requested. The budget division will lend assistance to any state agency in the preparation of its budget estimates.

**History:** 1953 Comp., § 11-4-1.4, enacted by Laws 1957, ch. 253, § 4.

## 6-3-4. State budget division; cooperation with legislature and committees; to supply information to legislature and committees.

The state budget division shall cooperate fully with the legislature and legislative committees, and shall supply them with information relating to the budget requirements of all state departments and institutions.

**History:** 1953 Comp., § 11-4-1.5, enacted by Laws 1957, ch. 253, § 5.

## 6-3-5. State budget division; research; surveys; reports.

The state budget division is hereby authorized to engage in research and to make administrative and organizational surveys of the executive or administrative departments, boards, institutions, commissions or agencies of the state government to determine whether the activities thereof are essential to good government and are being carried on in an economical and efficient manner and without duplication, for the purpose of determining the feasibility of improving the administration of the state government. Reports concerning the results of such research and surveys, together with recommendations, shall be made to the governor and the legislature.

**History:** 1953 Comp., § 11-4-1.6, enacted by Laws 1957, ch. 253, § 6.

**ANNOTATIONS**

**Reduction of budgets not authorized.** — This section, which authorizes the budget division to engage in research and to make surveys and provides that reports on the results of the research and surveys conducted by it, together with recommendations, shall be made to the governor and the legislature, gives no authority to reduce budgets. *State ex rel. Lee v. Hartman*, 1961-NMSC-171, 69 N.M. 419, 367 P.2d 918.

## 6-3-6. State budget division; periodic allotments.

A. The state budget division, subject to the approval of the secretary of finance and administration, is authorized to provide rules for the periodic allotment of funds that may be expended by any state agency.

B. The expenditures of any state agency as defined in Section 6-3-1 NMSA 1978, for the first six-month period of each odd-numbered fiscal year shall be limited to one-half of the appropriation or approved budget, whichever is less, for that fiscal year. This restriction does not apply to those agencies whose operations are more efficiently measured by periods other than a fiscal year, including but not limited to the New Mexico legislative council, legislative committees, the intertribal ceremonial and the New Mexico state fair. Expenditures of the intertribal ceremonial office [intertribal Indian ceremonial association] and the New Mexico state fair shall be governed by regulation of the department of finance and administration. The department of finance and administration may also allow expenditure of more than one-half of the appropriation or approved budget for those agencies planning major expenditures for capital outlay in the first six months of the fiscal year, which would result in over-expenditure of the first six-month allocation.

C. Upon the direction of the secretary of finance and administration pursuant to Section 9-6-5.2 NMSA 1978, the state budget division shall temporarily withhold an allotment to a state agency or state institution that has failed to submit an audit report required by the Audit Act [12-6-1 to 12-6-14 NMSA 1978]. The amount withheld and the number of periodic allotments subject to the withholding shall be as directed by the secretary.

**History:** 1953 Comp., § 11-4-1.7, enacted by Laws 1957, ch. 253, § 7; 1963, ch. 38, § 1; 1977, ch. 247, § 124; 2011, ch. 106, § 1.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 144, § 6 effective July 1, 2023, provided that all references in law to the intertribal ceremonial office of the tourism department shall be deemed to be references to the intertribal Indian ceremonial association of the local government division of the department of finance and administration.

**Cross references.** — For penalty for violation of expenditure restrictions, *see* 6-3-8 NMSA 1978.

**The 2011 amendment,** effective July 1, 2012, authorized the secretary of finance and administration to withhold allotments to state agencies and state institutions that have failed to submit audit reports required by the Audit Act.

**Governor not authorized to reduce periodic allotments.** — This section does not by itself supply standards sufficient to authorize executive department regulation of the state treasury; thus, the governor could not reduce periodic allotments in anticipation of appropriation reductions by the legislature. *State ex rel. Schwartz v. Johnson*, 1995-NMSC-080, 120 N.M. 820, 907 P.2d 1001.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Liability for work done or materials furnished, etc., for state or federal governments in excess of appropriations, 19 A.L.R. 408.

## 6-3-7. Annual operating budgets; supervision and control; submission of proposed budgets; approval; review by governor.

Each state agency shall annually on or before May 1 submit to the state budget division a budget for the ensuing fiscal year, in such form as may be prescribed by the division and containing such information concerning the anticipated receipts, expenditures and balances on hand as may be prescribed by law or by the state budget division. Such budget shall be subject to the approval of the state budget division and no expenditures shall be made by any state agency for the fiscal year covered by said budget until the budget shall have been approved by the state budget division, provided

that any action by the division shall be subject to review and modification by the governor.

**History:** 1953 Comp., § 11-4-1.8, enacted by Laws 1957, ch. 253, § 8; 1963, ch. 147, § 1.

**ANNOTATIONS**

**Cross references.** — For budgets of local public bodies, *see* 6-6-2 NMSA 1978 et seq.

For the Public School Finance Act, *see* 22-8-1 NMSA 1978 et seq.

**Legislature may authorize executive to control expenditure of amounts appropriated.** — The legislature, without the same constituting any violation of N.M. Const., art. IV, § 22, or N.M. Const., art. III, § 1, may provide in the general appropriation bill for the executive to control the expenditure of the amounts appropriated. *State ex rel. Holmes v. State Bd. of Fin.*, 1961-NMSC-172, 69 N.M. 430, 367 P.2d 925.

**Budget director may not prevent expenditure of appropriated money.** — The words "shall be subject to the approval" of the budget division do not give its director authority to prevent any agency from expending the full amount of money appropriated to it with the budget division approving a budget in a sum less than the total appropriated. *State ex rel. Lee v. Hartman*, 1961-NMSC-171, 69 N.M. 419, 367 P.2d 918.

**Right to approve budget does not include the right to reduce** where the budget is within the appropriation. If a budget as submitted is within the amounts appropriated and the items are proper, the director of the department of finance (now secretary of finance and administration) is given no discretion except to approve or disapprove it. *State ex rel. Lee v. Hartman*, 1961-NMSC-171, 69 N.M. 419, 367 P.2d 918.

**Transfer of money from general appropriation to construction of communications building in state police headquarters facilities.** — The radio communications department (now part of the communications division of the general services department) can transfer money from its general appropriation to the construction of the communications building in the state police headquarters facilities, subject to the approval of the department of finance and administration and its budget division pursuant to this section. 1969 Op. Att'y Gen. No. 69-56.

**Law reviews.** — For article, "Separation of Powers and the Judicial Rule-Making Power in New Mexico: The Need for Prudential Restraints," see 15 N.M.L. Rev. 407 (1985).

## 6-3-8. [Violation of expenditure restrictions; penalty.]

Any public official or employee who shall violate provisions of this act [6-3-6, 6-3-8 NMSA 1978] shall be guilty of a felony and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars ($10,000) nor less than five hundred dollars ($500) or imprisonment for a term of not more than ten years, or both, and in addition thereto, shall be liable for the payment to the state of all amounts expended for any payment made in violation thereof.

**History:** 1953 Comp., § 11-4-1.9, enacted by Laws 1963, ch. 38, § 2.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-3-9. State agency defined.

State agency means any department, institution, board, bureau, commission, district or committee of government of the state of New Mexico and means every office or officer of any of the above.

**History:** 1953 Comp., § 11-4-2.1, enacted by Laws 1955, ch. 114, § 1.

**ANNOTATIONS**

**New Mexico beef council.** — The New Mexico beef council, created under Section 77-2A-3 NMSA 1978, is a commission or committee of government and falls within this definition of "state agency"; it, thus, is subject to the requirements of this article. 1987 Op. Att'y Gen. No. 87-44.

## 6-3-10. Budget defined.

The budget means a complete statement as to the financial operation of all state agencies for the fiscal year last completed, the current fiscal year and a financial plan for the operation of all state agencies for the succeeding fiscal year.

The budget for the succeeding fiscal year shall set forth in detail the following:

A. all proposed expenditures for the administration, operation and maintenance of all state agencies;

B. all interest and debt redemption charges;

C. all expenditures for capital projects to be undertaken and executed;

D. all anticipated revenues; and

E. means of financing proposed expenditures.

**History:** 1953 Comp., § 11-4-2.2, enacted by Laws 1955, ch. 114, § 2; 1977, ch. 247, § 125.

## 6-3-11. Parts of the budget.

The budget shall contain the following parts:

A. the governor's budget message;

B. summary statements showing the following:

(1) financial condition of the state government at the beginning and at the end of the fiscal year last completed;

(2) financial condition of the state government at the beginning of the current fiscal year and condition anticipated at the end of the current fiscal year;

(3) anticipated financial condition of the state government at the beginning and end of the succeeding fiscal year;

(4) condition of all funds for the fiscal year last completed, the current fiscal year and the succeeding fiscal year, as follows:

(a) balance or anticipated balance at the beginning of the fiscal year;

(b) balance or anticipated balance at the end of the fiscal year;

(c) revenue or anticipated revenue during the fiscal year;

(d) source of revenue or anticipated revenue during the fiscal year; and

(e) expenditures or anticipated expenditures during the fiscal year;

(5) the bonded indebtedness, debts authorized, debts redeemed, interest requirements and the condition of sinking funds;

(6) appropriations recommended by the governor compared with appropriations for the fiscal year last completed and the current fiscal year. Any increase or decrease in the recommended appropriation shall be explained;

(7) anticipated revenue for the succeeding fiscal year, classified according to source of revenue and compared with revenues for the fiscal year last completed and anticipated revenue for the current fiscal year;

(8) other information necessary to make known in practicable detail the financial operation of the state government; and

(9) if anticipated revenue is less than the total of all appropriations recommended in any fiscal year, recommendations as to how the deficit shall be met;

C. a summary statement of requested appropriations by state agencies and recommendations of the state budget division concerning such requested appropriations; and

D. an appropriation bill recommended by the governor. Such bill shall follow budget classification and shall be stated in lump sums according to function or purpose of each agency.

**History:** 1953 Comp., § 11-4-2.3, enacted by Laws 1955, ch. 114, § 3; 1977, ch. 247, § 126.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Budget provisions of constitution or statute in relation to appropriation of state funds, 40 A.L.R. 1067.

## 6-3-11.1, 6-3-11.2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 71, § 2 repealed 6-3-11.1 and 6-3-11.2 NMSA 1978, as enacted by Laws 1987, ch. 347, §§ 1 and 2, relating to limitation on recommended appropriations and to determination of expenditure limitation by department of finance and administration, effective June 16, 1989.

## 6-3-12. Printing of budget.

The budget shall be printed.

**History:** 1953 Comp., § 11-4-2.4, enacted by Laws 1955, ch. 114, § 4.

## 6-3-13. Index.

The budget shall be indexed.

**History:** 1953 Comp., § 11-4-2.5, enacted by Laws 1955, ch. 114, § 5.

## 6-3-14. Repealed.

ANNOTATIONS

**Repeals.** — Laws 1999, ch. 15, § 13 repealed 6-3-14 NMSA 1978, as enacted by Laws 1921, ch. 133, § 314, relating to consideration of the budget by the legislature, effective June 18, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com.*

## 6-3-15. State budget division director; powers and duties.

The director of the state budget division shall:

A. administer the provisions of Sections 6-3-1 through 6-3-22 NMSA 1978 and make rules and regulations necessary in that administration;

B. prepare a tentative budget and submit it to the governor;

C. assist the governor in the preparation of the budget;

D. obtain from each state agency information on budgetary and financial problems, including costs of operation, past income and expenditures and present financial condition;

E. require periodic reports from all state agencies giving detailed information regarding applications for federal money or federal grants-in-aid or regarding federal money or federal grants-in-aid received, including details of programs, matching requirements, personnel requirements, salary provisions and program numbers as indicated in the catalog of federal domestic assistance of the federal funds applied for and of those received;

F. review data submitted by any state agency for use in the budget;

G. supervise the printing of the budget;

H. cause the budget to be indexed;

I. examine for budgetary purposes, if he deems it necessary, all bids, contracts, plans, specifications, blueprints, records, invoices, documents and correspondence relating to the enlarging, maintenance and operation of state institutions; and

J. through his agents and employees, visit each state agency whenever it is necessary to determine the financial needs of the agency.

**History:** 1953 Comp., § 11-4-7.1, enacted by Laws 1955, ch. 114, § 6; 1976 (S.S.), ch. 28, § 2; 1977, ch. 247, § 127; 1999, ch. 5, § 9; 1999, ch. 15, § 9.

ANNOTATIONS

**1999 amendments.** — Identical amendments to this section were enacted by Laws 1999, ch. 5, § 9, effective June 18, 1999, approved March 1, 1999, and Laws 1999, ch. 15, § 9, also effective June 18, 1999, approved March 10, 1999, which in Subsection B deleted "not later than January 2" from the end, deleted "but not limited to" following "including" in Subsections D and E, updated statutory references, and made minor stylistic changes. The section was set out as amended by Laws 1999, ch. 15, § 9. *See* 12-1-8 NMSA 1978.

## 6-3-16. Power to sue.

The secretary of finance and administration and the state budget division director are hereby authorized to bring suit in the district court for the purpose of securing compliance with the provisions of Sections 6-3-9 through 6-3-13 and 6-3-15 through 6-3-22 NMSA 1978.

**History:** 1953 Comp., § 11-4-7.2, enacted by Laws 1955, ch. 114, § 7; 1977, ch. 247, § 128.

## 6-3-17. Agencies subject to act.

All state agencies are subject to the provisions of this act [6-3-9 to 6-3-11, 6-3-12, 6-3-13, 6-3-15 to 6-3-22 NMSA 1978].

**History:** 1953 Comp., § 11-4-7.3, enacted by Laws 1955, ch. 114, § 8.

## 6-3-18. Budget forms.

On or before June 15 of each year, the state budget division shall send to each state agency forms that provide for the following information:

A. revenue or anticipated revenue, from all sources for the fiscal year last completed, the current fiscal year and for the succeeding fiscal year, including among other things:

(1) grants from the federal government;

(2) gifts and grants from private sources;

(3) income from investments;

(4) proceeds from sale of bonds or other instruments of indebtedness;

(5) income from sale of land;

(6) income from sale of personal property;

(7) income from lease of land or lease of personal property;

(8) income from services;

(9) income from fees, licenses, fines, penalties, tuition, royalties and other charges;

(10) income from athletic activities and related enterprises; and

(11) income from each tax collected;

B. expenditures or anticipated expenditures for the current fiscal year and for the two succeeding fiscal years, including among other things:

(1) capital expenditures consisting of:

(a) additions to plant or office;

(b) repairs and replacements;

(c) permanent equipment; and

(d) other; and

(2) operational expenditures consisting of:

(a) operation and maintenance of institution, office or building;

(b) supplies and equipment;

(c) personal services;

(d) travel; and

(e) other;

C. appropriation requested for the succeeding fiscal year, with a statement as to the functions and activities of each agency, division and bureau;

D. if increased appropriations are requested, the reason therefor; and

E. citation of statutory authority for functions and activities of the agency, a summary statement as to the workload of the agency and such other information as is specified by the state budget division.

**History:** 1953 Comp., § 11-4-7.4, enacted by Laws 1955, ch. 114, § 9; 1963, ch. 147, § 2; 1977, ch. 247, § 129; 1999, ch. 5, § 10; 1999, ch. 15, § 10.

**ANNOTATIONS**

**1999 amendments.** — Identical amendments to this section were enacted by Laws 1999, ch. 5, § 10, effective June 18, 1999, approved March 1, 1999, and Laws 1999, ch. 15, § 10, also effective June 18, 1999, approved March 10, 1999, which substituted "June 15" for "July 15" in the introductory language of the section; in the introductory language of Subsection B, deleted "fiscal year last completed, the" preceding "current fiscal year" and substituted "two succeeding fiscal years" for "succeeding fiscal year"; and made minor stylistic changes. The section was set out as amended by Laws 1999, ch. 15, § 10. *See* 12-1-8 NMSA 1978.

## 6-3-19. Agencies to complete budget forms.

Each state agency shall fill out the budget forms provided for in Section 6-3-18 NMSA 1978 in the manner prescribed by the state budget division. Each state agency, in completing the budget forms, shall include information for all divisions, subdivisions and offices of the agency. Related agencies, upon approval of the state budget division, may join in submitting one set of budget forms. Completed budget forms shall be returned to the state budget division not later than September 1 in each year.

**History:** 1953 Comp., § 11-4-7.5, enacted by Laws 1955, ch. 114, § 10; 1963, ch. 147, § 3; 1977, ch. 247, § 130; 1999, ch. 5, § 11; 1999, ch. 15, § 11.

**ANNOTATIONS**

**1999 amendments.** — Identical amendments to this section were enacted by Laws 1999, ch. 5, § 11, effective June 18, 1999, approved March 1, 1999, and Laws 1999, ch. 15, § 11, also effective June 18, 1999, approved March 10, 1999, which updated a statutory reference in the first sentence. The section was set out as enacted by Laws 1999, ch. 15, § 11. *See* 12-1-8 NMSA 1978.

## 6-3-20. Review of budget forms.

The state budget division shall review the completed budget forms of all state agencies and shall include recommendations concerning the requested appropriation in the tentative budget. Prior to submission of the tentative budget to the governor, any state agency may be given an informal hearing by the state budget division concerning recommendation of the division pertaining to the requested appropriation of such agency, and shall be given such a hearing if the state budget division proposes to decrease the requested appropriation.

**History:** 1953 Comp., § 11-4-7.6, enacted by Laws 1955, ch. 114, § 11; 1977, ch. 247, § 131.

## 6-3-21. Preparation of the budget.

A. The governor shall prepare the budget and submit it to the legislative finance committee and each member of the legislature not later than January 5 in even-numbered years and not later than January 10 in odd-numbered years. In the preparation of the budget the governor may:

(1) change the tentative budget by adding new items, increasing or decreasing or eliminating items;

(2) obtain advice and assistance from any state agency; and

(3) hold hearings on the budget.

B. Any budget hearings conducted by the governor shall be open to the public. The governor may require the attendance of any head of an agency, whether elective or appointive. At the hearings, any officer or agency may protest budget items.

**History:** 1953 Comp., § 11-4-7.7, enacted by Laws 1955, ch. 114, § 12; 1999, ch. 5, § 12; 1999, ch. 15, § 12; 2004, ch. 39, § 1.

**ANNOTATIONS**

**The 2004 amendment,** effective May 19, 2004, amended Subsection A to change January 1 of each year to "January 5 in even-numbered years and not later than January 10 in odd-numbered years".

**1999 amendments.** — Laws 1999, ch. 5, § 12, effective June 18, 1999, adding the subsection designations and changing the internal designations in Subsection A accordingly; in Subsection A substituting "and submit it to the legislative finance committee and each member of the legislature not later than December 15 of each year" for "and shall submit the budget to the legislature not later than the 25th legislative day of each regular session"; deleting the last sentence in Subsection B, which read "A governor-elect shall be invited to attend budget hearings and shall have the right to make suggestions"; and making a minor stylistic change, was approved on March 1, 1999. However Laws 1999, ch. 15, § 12, effective June 18, 1999, making identical changes except referring to "January 1 of each year" instead of "December 15 of each year" at the end of the first sentence in Subsection A, was approved on March 10, 1999. The section was set out as amended by Laws 1999, ch. 15, § 12. *See* 12-1-8 NMSA 1978.

**Provision of 1980 General Appropriation Act void.** — The provision of the General Appropriation Act of 1980, Laws 1980, ch. 155, which refers to the disposition of federal funds received by the state auditor is a matter unrelated to an appropriation contained in the act, and is void. 1980 Op. Att'y Gen. No. 80-40.

## 6-3-22. Copies of the budget.

At the time the budget is submitted, each member of the legislature and each state agency shall be furnished a copy of the budget by the state budget division.

**History:** 1953 Comp., § 11-4-7.8, enacted by Laws 1955, ch. 114, § 13; 1977, ch. 247, § 132.

## 6-3-23. Budget adjustment defined.

As used in Chapter 6, Article 3 NMSA 1978, "budget adjustment" means:

A. an increase or decrease in expenditures from other state funds, internal service funds or interagency transfer;

B. a transfer of funds from one division of an agency to other divisions of that agency;

C. a transfer of funds between budget categories within an agency or a division; or

D. an authorization to expend federal funds.

**History:** 1978 Comp., § 6-3-23, enacted by Laws 1992, ch. 2, § 1.

## 6-3-24. Budget adjustments; authorizations permitted.

A. A state agency may be specifically authorized by law to request a budget adjustment. The amount of budget adjustment authorized may be limited by law. All requests for budget adjustments shall be made in accordance with the procedures set forth in Section 6-3-25 NMSA 1978.

B. The state budget division of the department of finance and administration may approve budget adjustments for state agencies as provided by law. If the budget adjustment results in an increased expenditure of other state funds, internal service funds or interagency transfer funds above the amounts appropriated, such funds are hereby appropriated.

**History:** 1978 Comp., § 6-3-24, enacted by Laws 1992, ch. 2, § 2.

**ANNOTATIONS**

## 6-3-25. Budget adjustment procedure.

A. Except for federal funds, disaster assistance funds and emergency response funds, any budget adjustment request to transfer, decrease or increase funds shall be

held in abeyance for ten calendar days after the director of the state budget division of the department of finance and administration has approved the request and has filed the request with the director of the legislative finance committee or his designee. The request shall be accompanied by a statement, in writing, of the conditions under which the budget adjustment request is approved, together with justification for approval.

B. If within ten days the director of the legislative finance committee or his designee objects to the request, the request shall not go into effect until it is reviewed by the legislative finance committee at a public hearing held within thirty-five calendar days of receipt of the proposed budget adjustment by the director of the legislative finance committee or his designee. If the state fiscal year ends prior to the date scheduled for a hearing, the request shall go into effect on the last day of the fiscal year.

C. If within ten days of receipt of a budget adjustment request the director of the legislative finance committee or his designee indicates that no objection will be forthcoming, the proposed budget adjustment request may be implemented immediately. If no public hearing is held within the required thirty-five days, the request may be implemented.

**History:** 1978 Comp., § 6-3-25, enacted by Laws 1992, ch. 2, § 3; 2000, ch. 30, § 1.

**ANNOTATIONS**

**The 2000 amendment,** effective May 17, 2000, inserted "disaster assistance funds and emergency response funds" near the beginning of Subsection A, and inserted "of the legislative finance committee or his designee" at the end of the first sentence in Subsection B.

# ARTICLE 3A
# Accountability in Government

## 6-3A-1. Short title.

Chapter 6, Article 3A NMSA 1978 may be cited as the "Accountability in Government Act".

**History:** Laws 1999, ch. 5, § 1 and 1999, ch. 15, § 1; 2019, ch. 23, § 1.

**ANNOTATIONS**

**The 2019 amendment,** effective June 14, 2019 changed "Sections 1 through 8 of this act" to "Chapter 6, Article 3A NMSA 1978".

## 6-3A-2. Findings and purpose.

A. The legislature finds that agencies should:

(1) be granted sufficient statutory authority and flexibility to use their resources in the best possible way in order to better serve the citizens of New Mexico through the efficient delivery of services and products and the effective administration of governmental programs;

(2) be held accountable for the services and products they deliver in accordance with clearly defined missions, goals and objectives;

(3) develop performance measures for evaluating performance and assessing progress in achieving goals and objectives, and those measures should be integrated into the planning and budgeting process and maintained on an ongoing basis;

(4) have incentives to deliver services and products in the most efficient and effective manner and, if appropriate, recommend the restructuring of ineffective programs or the elimination of unnecessary programs;

(5) have their performance in achieving desired outputs and outcomes and in efficiently operating programs measured and evaluated in an effort to improve program coordination, eliminate duplicate programs or activities and provide better information to the governor, the legislature and the public; and

(6) strive to keep the citizens of this state informed of the public benefits derived from the delivery of agency services and products and of the progress agencies are making with regard to improving performance.

B. The purpose of the Accountability in Government Act is to provide for more cost-effective and responsive government services by using the state budget process and defined outputs, outcomes and performance measures to annually evaluate the performance of state government programs.

**History:** Laws 1999, ch. 5, § 2; 1999, ch. 15, § 2; 2004, ch. 39, § 2.

**ANNOTATIONS**

**The 2004 amendment,** effective May 19, 2004, reenacted this section without amendments.

## 6-3A-3. Definitions.

As used in the Accountability in Government Act:

A. "agency" means a branch, department, institution, board, bureau, commission, district or committee of the state;

B. "approved program" means a program included in an approved list of programs issued by the division pursuant to Section 6-3A-4 NMSA 1978;

C. "baseline data" means the current level of a program's performance measures established pursuant to guidelines established by the division in consultation with the committee;

D. "committee" means the legislative finance committee;

E. "cost beneficial" means that the cost savings and benefits realized over a reasonable period of time are greater than the costs of implementation;

F. "division" means the state budget division of the department of finance and administration;

G. "evidence-based" means that a program or practice:

(1) incorporates methods demonstrated to be effective for the intended population through scientifically based research, including statistically controlled evaluations or randomized trials;

(2) can be implemented with a set of procedures to allow successful replication in New Mexico; and

(3) when possible, has been determined to be cost beneficial;

H. "outcome" means the measurement of the actual impact or public benefit of a program;

I. "output" means the measure of the volume of work completed or the level of actual services or products delivered by a program;

J. "performance-based program budget" means a budget that identifies a total allowed expenditure for a program and includes performance measures, performance standards and program evaluations;

K. "performance measure" means a quantitative or qualitative indicator used to assess the output or outcome of an approved program;

L. "performance target" means the expected level of performance of a program's performance measures;

M. "program" means a set of activities undertaken in accordance with a plan of action organized to realize identifiable goals and objectives based on legislative authorization;

N. "promising" means that a program or practice, based on statistical analyses or preliminary research, presents potential for becoming research-based or evidence-based

O. "research-based" means that a program or practice has some research demonstrating effectiveness, but does not yet meet the standard of evidence-based; and

P. "sub-program" means a set of discrete uniquely identifiable activities undertaken in accordance with a plan of action organized to realize identifiable goals within an approved program.

**History:** Laws 1999, ch. 5, § 3; 1999, ch. 15, § 3; 2004, ch. 39, § 3; 2019, ch. 23, § 2.

**ANNOTATIONS**

**The 2019 amendment,** effective June 14, 2019, defined "cost beneficial," "evidence-based," "promising," "research-based," and "sub-program" as used in the Accountability in Government Act; added a new Subsection E and redesignated former Subsection E as Subsection F; added a new Subsection G and redesignated former Subsections F through K as Subsections H through M, respectively; and added new Subsections N through P.

**The 2004 amendment,** effective May 19, 2004, added new Subsection G, redesignated former Subsections G and H as Subsections H and I, deleted former Subsection I, added Subsection J and redesignated former Subsection J as Subsection K.

## 6-3A-4. Program identification.

A. Prior to July 15 of each year, each agency shall submit to the division and the committee proposed changes to its current program structure. The division, in consultation with the committee and the agency, shall review the requested changes, make any necessary revisions and issue approval or disapproval within thirty days of receipt. The division shall send a copy of its approval or disapproval to the committee.

B. The program list submitted by the agency shall be accompanied by:

(1) the constitutional or statutory direction and authority for each program;

(2) identification of the users of each program;

(3) the purpose of each program or the benefit derived by the users of the program; and

(4) other financial information as required by the division in consultation with the committee.

**History:** Laws 1999, ch. 5, § 4; 1999, ch. 15, § 4; 2004, ch. 39, § 4.

**ANNOTATIONS**

**The 2004 amendment,** effective May 19, 2004, rewrote Subsection A to change May 1 to July 15, deleted "that is required to submit a performance-based budget request in the subsequent fiscal year", added "and the committee" after "the division", added "proposed changes to its current program structure" and changed "the approved list" to "its approval or disapproval".

## 6-3A-5. Performance measures.

A. Prior to June 15 of each year, the division, in consultation with the committee, shall develop instructions for the development of performance measures for evaluating approved programs.

B. Prior to July 15 of each year, each agency shall submit to the division and the committee proposed changes in its performance measures. The agency shall identify the outputs produced by each program, the outcomes resulting from each program and baseline data associated with each performance measure. The division, in consultation with the committee and the agency, shall review the proposed changes, make necessary revisions and issue its approval or disapproval within thirty days of receipt. The division shall send a copy of its approval or disapproval to the committee.

**History:** Laws 1999, ch. 5, § 5; 1999, ch. 15, § 5; 2004, ch. 39, § 5.

**ANNOTATIONS**

**The 2004 amendment,** effective June 19, 2004, in Subsection A, changed "June 1" to "July 15"; in Subsection B, changed "July 1" to "July 15", deleted "that is required to submit a performance-based budget request in the subsequent fiscal year", added "and the committee" after "the division", added "proposed changes to its current program structure", and changed "the approved list" to "its approval or disapproval".

## 6-3A-6. Schedule for submission of performance-based program budget requests.

No later than September 1 of each year, agencies shall submit performance-based program budget requests for the subsequent fiscal year to the division and to the committee.

**History:** Laws 1999, ch. 5, § 6; 1999, ch. 15, § 6; 2004, ch. 39, § 6.

**ANNOTATIONS**

**The 2004 amendment,** effective May 19, 2004, deleted the first sentence of Subsection A, deleted obsolete language in Subsection A and deleted Subsection B.

## 6-3A-7. Performance-based program budget requests.

A. The division, in consultation with the committee, shall develop instructions for those agencies required to submit performance-based program budget requests. The instructions shall be sent to the agencies on or before June 15 of each year and shall be in addition to any other forms required by Section 6-3-18 NMSA 1978. The instructions shall require that performance-based program budget requests contain the following:

(1) a summary of each approved program, including a justification for the program;

(2) for each approved program, an evaluation of the agency's progress in meeting the performance targets. The evaluation shall be developed as prescribed in the budget instructions;

(3) for each approved program, the outputs, outcomes, baseline data, performance measures and historic and proposed performance targets;

(4) if a performance audit has been conducted on an approved program during either the present or any of the immediately preceding two fiscal years, any responses that the agency may have to the audit and any actions that the agency has taken as a result of the audit;

(5) the results of the program inventory pursuant to Section 5 of this 2019 act and a summary of how the agency has prioritized evidence-based, research-based or promising sub-programs within its performance-based program budget request; and

(6) any other information that the division believes may be useful to the division or the legislature in developing a budget for the agency.

B. On or before September 1 of each year, each agency shall submit a performance-based program budget request to the division and the committee in the form and manner prescribed in the budget instructions. Budget requests submitted pursuant to this section shall be in lieu of those required by Section 6-3-19 NMSA 1978.

**History:** Laws 1999, ch. 5, § 7; 1999, ch. 15, § 7; 2004, ch. 39, § 7; 2019, ch. 23, § 3.

**ANNOTATIONS**

**The 2019 amendment,** effective June 14, 2019, required that performance-based program budget requests contain the results of the program inventory and a summary of how the agency has prioritized evidence-based, research-based, or promising sub-

programs within its performance-based program budget request; and added a new Paragraph A(5) and redesignated former Paragraph A(5) as Paragraph A(6).

**The 2004 amendment,** effective May 19, 2004, amended Subsection A to change July 1 to June 15 and to change in Paragraph (3) "standards" to "targets" and amended Subsection B to change "required to" to "shall" and to delete "shall submit the request".

## 6-3A-8. Performance-based program budgets.

A. For each agency, the governor's proposed budget submitted pursuant to Section 6-3-21 NMSA 1978 and the committee's budget recommendation pursuant to Section 2-5-4 NMSA 1978 shall contain:

(1) a budget recommendation for each approved program;

(2) a summary, including the outputs and outcomes, of each approved program;

(3) performance measures and performance targets for each approved program;

(4) an evaluation of the performance of each approved program;

(5) the amount of the budget recommendation that is intended for evidence-based, research-based and promising sub-programs; and

(6) any other criteria deemed relevant by the governor or the committee.

B. For each agency, the governor's proposed budget submitted pursuant to Section 6-3-21 NMSA 1978 and the committee's budget recommendation pursuant to Section 2-5-4 NMSA 1978 may contain recommendations regarding incentives or disincentives for agency performance and implementation of evidence-based, research-based or promising sub-programs. Incentives or disincentives may apply to all or part of an agency and may apply to any or all of an agency's approved programs.

C. Pursuant to Section 6-3-7 NMSA 1978, the division shall prescribe forms and approve operating budgets for agencies funded by performance-based program budgets; however, the division shall not take any action that hinders an agency from operating under a performance-based appropriation or that is otherwise inconsistent with the purposes of the Accountability in Government Act. Notwithstanding the provisions of Sections 6-3-23 through 6-3-25 NMSA 1978, and absent specific authorization in the general appropriation act or other act of the legislature, no funds may be transferred either into or out of a performance-based program budget.

D. Each agency shall develop, in consultation with the division, a plan for monitoring and reviewing the agency's programs to ensure that performance data are maintained and supported by agency records.

**History:** Laws 1999, ch. 5, § 8; 1999, ch. 15, § 8; 2004, ch. 39, § 8; 2019, ch. 23, § 4.

**ANNOTATIONS**

**The 2019 amendment,** effective June 14, 2019, provided that for each agency, the governor's proposed budget shall identify the amount of funding that is intended for evidence-based, research-based and promising sub-programs; added new Paragraph A(5) and redesignated former Paragraph A(5) as Paragraph A(6); and in Subsection B, after "agency performance", added "and implementation of evidence-based, research-based or promising sub-programs".

**The 2004 amendment,** effective May 19, 2004, amended Subsection A to delete "required to submit a performance-based program budget request" and to change in Paragraph (3) "standards" to "targets", amended Subsection B to delete "required to submit a performance-based program budget request" and amended Subsection D to delete before "agency" "No later than July 1 of the year in which a state agency begins operating under a performance-based program budget, the" and to insert in its place "Each".

## 6-3A-9. Quarterly reporting.

A. The division, in consultation with the committee, shall select agencies and specify performance measures for those agencies that shall be reported on a quarterly basis.

B. Quarterly reports shall compare actual performance for the report period with targeted performance and shall be filed with the division and committee within thirty days of the end of a reporting period.

**History:** Laws 2004, ch. 39, § 9.

**ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 39 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

## 6-3A-10. Program inventory.

The division and the committee shall approve a list of programs to inventory on or before June 15 of each year. The division shall send to each agency required to submit a performance-based program budget request a notification identifying the programs

that have been selected for the inventory. The notification shall set forth the process for completing and submitting the program inventory and shall direct each agency to:

A. identify each sub-program as evidence-based, research-based, promising or lacking evidence of effectiveness; and

B. compile an inventory that includes for each sub-program:

(1) the goals and objectives of the sub-program;

(2) current and historical budget and spending data;

(3) the target population to be served;

(4) the number of persons served annually;

(5) any outcome data that demonstrate efficiency and effectiveness;

(6) any data demonstrating that the sub-program has proven cost beneficial in New Mexico or that the sub-program is likely to be cost beneficial in New Mexico; and

(7) the results of any evaluations or audits of the sub-program.

**History:** Laws 2019, ch. 23, § 5.

**ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after adjournment of the legislature.

# ARTICLE 4
# State Funds and Capital Programs

## 6-4-1. Capital programs; preparation; duties.

A. The department of finance and administration and the general services department shall jointly prepare, amend and maintain a four-year program of major state capital improvement projects recommended to be undertaken by the state or to be undertaken with state aid or under state regulation. The program shall classify projects with respect to urgency and need for realization, and it shall recommend a time sequence for construction. The program shall also contain the contract price or estimated cost of each project and it shall indicate probable operating and maintenance costs and probable revenues, if any, as well as existing sources of funds or the need for additional sources of funds for the construction and operation of each project.

B. Heads of departments and other agencies of the state shall transmit to the department of finance and administration on July 1 of each year a statement of all capital projects proposed for the ensuing four years for review and recommendation to the governor with respect to inclusion in the capital program of the state.

**History:** 1953 Comp., § 11-1-37, enacted by Laws 1975, ch. 282, § 3; 1983, ch. 301, § 10.

**ANNOTATIONS**

**Cross references.** — For capital program fund, *see* 15-3B-16 NMSA 1978.

## 6-4-2. [General fund created.]

There is created a fund to be known as the "general fund" to which the state treasurer shall credit all revenues not otherwise allocated by law. Expenditures from this fund shall be made only in accordance with appropriations authorized by the legislature.

**History:** 1953 Comp., § 11-2-3.1, enacted by Laws 1957, ch. 7, § 1.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For the Short-Term Cash Management Act, *see* Chapter 6, Article 12A NMSA 1978.

For distribution of vehicle fees, *see* 66-6-23 NMSA 1978.

**Erroneous crediting of federal money to general fund may be corrected.** — The crediting of $677.35, which, by virtue of federal law, was really federal and not state money, to the general fund instead of to the vocational rehabilitation account was a clerical error which could be corrected without violation of N.M. Const., art. IV, § 30 or of this section. 1964 Op. Att'y Gen. No. 64-04.

## 6-4-2.1. General fund operating reserve created; authorizing expenditures.

A. There is hereby created within the general fund the "general fund operating reserve". Notwithstanding any other provision of law to the contrary, there shall be deposited to the general fund operating reserve cash balances in the fund existing pursuant to Laws 1966, Chapter 66, Section 16; Laws 1968, Chapter 71, Section 13; Laws 1970, Chapter 89, Section 4; Laws 1971, Chapter 327, Section 6; Laws 1972, Chapter 98, Section 6; Laws 1973, Chapter 403, Section 6; Laws 1974 (S.S.), Chapter 3, Section 6; Laws 1975 (S.S.), Chapter 17, Section 6; Laws 1976, Chapter 58, Section

7; Laws 1979, Chapter 404, Section 7; Laws 1981, Chapter 38, Section 7; Laws 1983, Chapter 46, Section 8; Laws 1984 (S.S.), Chapter 7, Section 7; and Laws 1986, Chapter 116, Section 1.

B. The general fund operating reserve may be expended only upon specific authorization by the legislature in an amount authorized by the legislature and only in the event general fund revenues and balances, including all other transfers to the general fund authorized by law, are insufficient to meet the level of appropriations authorized.

**History:** 1978 Comp., § 6-4-2.1, enacted by Laws 1987, ch. 184, § 1.

**ANNOTATIONS**

**Compiler's notes.** — All of the session laws referred to in the second sentence in Subsection A are uncodified provisions, relating mainly to fiscal matters.

Laws 2007, ch. 100, § 1, effective June 15, 2007, provided for the closure of the department of finance and administration revolving loan fund once all loans outstanding July 30, 2007 have been paid, prohibited loans after June 30, 2007, and reverted the fund balance to the general fund.

## 6-4-2.2. General fund tax stabilization reserve.

A. The "tax stabilization reserve" is created within the state treasury as a reserve fund of the state.

B. The tax stabilization reserve consists of money directed or appropriated to it by law and all income from investment of the reserve. The state investment officer, subject to the approval of the state investment council, shall invest money in the reserve:

(1) in accordance with the prudent investor rule set forth in the Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978]; and

(2) in consultation with the state treasurer.

C. The state investment officer shall report quarterly to the legislative finance committee and the state investment council on the investments made pursuant to this section. Annually, a report shall be submitted no later than October 1 each year to the legislative finance committee, the revenue stabilization and tax policy committee and any other appropriate interim committees.

D. Except as otherwise provided in Subsection E of this section, Subsection B of Section 6-4-4 NMSA 1978 and Section 4 of this 2024 act, any balance of the tax stabilization reserve may be:

(1) appropriated only by a two-thirds' majority vote of both houses of the legislature following receipt by the legislature of a declaration of the governor that such an appropriation is necessary for the public peace, health and safety; or

(2) expended by the governor only:

(a) pursuant to an appropriation made by a two-thirds' majority vote of both houses of the legislature specifying the amount of the appropriation and the purpose of the expenditure; and

(b) if the governor declares that the expenditure is necessary for the public peace, health and safety.

E. If general fund revenues, including all transfers to the general fund authorized by law, are projected by the governor to be insufficient either to meet the level of appropriations authorized by law from the general fund for the current fiscal year or to meet the level of appropriations recommended in the budget and appropriations bill submitted in accordance with Section 6-3-21 NMSA 1978 for the next fiscal year, the balance in the tax stabilization reserve may be appropriated by the legislature up to the amount of the projected insufficiency for either or both fiscal years.

**History:** 1978 Comp., § 6-4-2.2, enacted by Laws 1987, ch. 264, § 3; 1987, ch. 347, § 3; 1989, ch. 324, § 1; 2002, ch. 109, § 1; 2019, ch. 138, § 1; 2020, ch. 34, § 1; 2024, ch. 61, § 3.

## ANNOTATIONS

**The 2024 amendment,** effective May 15, 2024, added an exception to the provision authorizing any balance of the tax stabilization reserve to be appropriated as stated in the section; and in Subsection D, after "NMSA 1978", added "and Section 4 of this 2024 act".

**Appropriations.** — Laws 2024, ch. 61, § 4 provided that nine hundred fifty-nine million dollars ($959,000,000) is transferred from the tax stabilization reserve to the higher education trust fund.

**The 2020 amendment,** effective May 20, 2020, provided an exception to the appropriation requirements for the tax stabilization reserve; and in Subsection D, added "and Subsection B of Section 6-4-4 NMSA 1978".

**The 2019 amendment,** effective July 1, 2019, transferred the "tax stabilization reserve" from the general fund to the state treasury; in Subsection A, deleted "There is created within the general fund the 'tax stabilization reserve'" and added "The 'tax stabilization reserve' is created within the state treasury as a reserve fund of the state."; in Subsection B, after "The", deleted "balance of the", after "tax stabilization reserve", deleted "shall be those funds" and added "consists of money", after "directed", added

"or appropriated", after "by law and", deleted "such other funds as the legislature may appropriate from time to time to the reserve" and added the remainder of the subsection; and added a new Subsection C and redesignated former Subsections C and D as Subsections D and E, respectively.

**The 2002 amendment,** effective May 15, 2002, added Subsection C(2) and substituted "6-3-21" for "6-3-11.1" in Subsection D.

**The 1989 amendment,** effective April 7, 1989, in Subsection A, deleted "hereby" preceding "created" and, in Subsection B, deleted the former second sentence which read "Earnings on balances in the tax stabilization reserve are appropriated to the tax stabilization reserve".

## 6-4-2.3. Appropriation contingency fund.

There is created within the general fund the "appropriation contingency fund".

A. The appropriation contingency fund may be expended only upon specific authorization by the legislature or as provided in Sections 6-7-1 through 6-7-3 NMSA 1978 in the event there is no surplus of unappropriated money in the general fund and in the amount authorized by the legislature.

B. Notwithstanding Section 6-4-4 NMSA 1978, for the seventy-ninth fiscal year, if the revenues of the general fund exceed the total appropriations from the general fund, the excess revenue shall be transferred to the appropriation contingency fund.

C. Five million dollars ($5,000,000) is transferred from the operating reserve fund to the public school state-support reserve fund in the eightieth fiscal year.

D. If revenues and transfers to the general fund, excluding transfers to the operating reserve, appropriation contingency fund and public school state-support reserve, as of the end of the seventy-ninth fiscal year, are not sufficient to meet appropriations, the governor, with state board of finance approval, may transfer at the end of that year the amount necessary to meet the year's obligations from the unencumbered balance remaining in the general fund operating reserve in a total not to exceed sixty million dollars ($60,000,000).

**History:** Laws 1991, ch. 10, § 7.

## 6-4-2.4. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2000, ch. 27, § 7, repealed 6-4-2.4 NMSA 1978, as enacted by Laws 1996 (1st S.S.), ch. 3, § 1, relating to the creation and use of the risk reserve account,

effective March 6, 2000. For provisions of former section, *see* the 1999 NMSA 1978 on *NMOneSource.com.*

## 6-4-2.5. New Mexico recovery and reinvestment fund.

A. The legislature finds that:

(1) the state is not eligible for an increase to the federal medical assistance percentage provided in Subsection (b) or (c) of Section 5001 of the federal American Recovery and Reinvestment Act of 2009 if any amounts attributable, directly or indirectly, to the increase are deposited or credited into any reserve or rainy day fund of the state;

(2) in order to ensure compliance with this requirement, it is desirable to set up a fund separate and apart from the state's general fund to capture unexpended fiscal year 2009, 2010 or 2011 general fund appropriations attributable to an increase to the federal medical assistance percentage provided in Subsection (b) or (c) of Section 5001 of the federal American Recovery and Reinvestment Act of 2009;

(3) the separate fund will also enable the state to clearly account to the federal government regarding earnings and expenditures on unexpended fiscal year 2009, 2010 or 2011 general fund appropriations attributable to an increase to the federal medical assistance percentage provided in Subsection (b) or (c) of Section 5001 of the federal American Recovery and Reinvestment Act of 2009; and

(4) in the period of time during which the fund will be available for expenditure, the fund will be used to stabilize the state's budget in the event of revenue shortfalls and to fund the state's share of the medicaid program, thereby preserving jobs and minimizing reductions in essential services, both of which are stated purposes of the federal American Recovery and Reinvestment Act of 2009.

B. The "New Mexico recovery and reinvestment fund" is created in the state treasury. The fund shall consist of money that is credited to the fund pursuant to Subsection C of this section, reversions to the fund of the unexpended balances of appropriations from the fund, appropriations made to the fund and investment income credited to the fund. Money in the fund shall not revert to any other state fund at the end of any fiscal year and shall not be expended for any purpose except as provided in this section. Income from investment of the fund shall be credited to the fund.

C. Notwithstanding the reversion provisions of general appropriation acts or other laws, at the end of fiscal year 2009, fiscal year 2010 and fiscal year 2011, the unexpended balance of a general fund appropriation shall be credited to the New Mexico recovery and reinvestment fund if the secretary of finance and administration, in consultation with the director of the legislative finance committee, determines that the unexpended balance is attributable to an increase in the federal medical assistance

percentage provided in Subsection (b) or (c) of Section 5001 of the federal American Recovery and Reinvestment Act of 2009.

D. If revenue and transfers to the general fund at the end of fiscal year 2009, 2010 or 2011 are not sufficient to meet general fund appropriations, the governor, with state board of finance approval, may transfer to the general fund from the unappropriated balance of the New Mexico recovery and reinvestment fund an amount up to the amount of the insufficiency.

E. Except as provided in Subsection D of this section, the New Mexico recovery and reinvestment fund may be appropriated by the legislature solely for medicaid expenses in fiscal year 2010, fiscal year 2011 and the first quarter of fiscal year 2012; provided that any balance of an appropriation from the fund not expended within the period provided in the appropriation shall revert to the fund.

F. The unexpended balance of the New Mexico recovery and reinvestment fund as of September 30, 2011 shall be returned to the federal government, unless federal law or regulation provides for a different disposition.

**History:** Laws 2009, ch. 126, § 1; 2010, ch. 61, § 1.

**ANNOTATIONS**

**The 2010 amendment,** effective March 8, 2010, in Subsection A(2), after "fiscal year 2009", added "2010 or 2011"; in Subsection A(3), after "fiscal year 2009", added "2010 or 2011"; and in Subsection C, after "fiscal year 2009", added "fiscal year 2010 and fiscal year 2011".

## 6-4-3. State revenue-sharing trust fund created.

A. The "state revenue-sharing trust fund" is created. There shall be deposited in the state revenue-sharing trust fund all money allotted to the state government pursuant to the State and Local Fiscal Assistance Act of 1972 as may be amended from time to time.

B. Money deposited in the fund shall be expended only upon appropriation by the legislature and shall be disbursed upon vouchers signed by the secretary of finance and administration.

**History:** 1953 Comp., § 11-3-7, enacted by Laws 1973, ch. 296, § 1; 1977, ch. 247, § 122.

**ANNOTATIONS**

**Compiler's notes.** — The State and Local Fiscal Assistance Act of 1972 appeared as 31 U.S.C. § 1221 et seq., before being repealed in 1986.

## 6-4-4. Transfer from the general fund to the government results and opportunity expendable trust; transfer from the tax stabilization reserve to the general fund operating reserve.

A. If the revenues of the general fund exceed the total of appropriations from the general fund, the excess revenue shall be transferred to the general fund operating reserve; provided that if the sum of the excess revenue plus the balance in the general fund operating reserve prior to the transfer is greater than eight percent of the aggregate recurring appropriations from the general fund for the previous fiscal year, then an amount equal to the smaller of either the amount of the excess revenue or the difference between the sum and eight percent of the aggregate recurring appropriations from the general fund for the previous fiscal year shall be transferred to the government results and opportunity expendable trust.

B. If the balance in the general fund operating reserve as of the end of a fiscal year is less than one percent of aggregate general fund appropriations for that fiscal year, as determined by the department of finance and administration, then an amount equal to the smaller of either one percent of aggregate general fund appropriations for that fiscal year or the amount necessary to bring the balance of the general fund operating reserve to one percent of aggregate general fund appropriations for that fiscal year shall be transferred from the tax stabilization reserve to the general fund operating reserve.

**History:** 1978 Comp., § 6-4-4, enacted by Laws 1987, ch. 347, § 4; 1989, ch. 71, § 1; 2017 (1st S.S.), ch. 3, § 1; 2020, ch. 34, § 2; 2024, ch. 18, § 3.

### ANNOTATIONS

**The 2024 amendment,** effective May 15, 2024, provided that the excess revenues of the general fund operating reserve are to be transferred to the government results and opportunity expendable trust instead of the tax stabilization reserve; in the section heading, deleted "Transfers between general fund reserves" and added the remainder of the section heading; and in Subsection A, deleted "For the seventy-seventh and subsequent fiscal years" and after "transferred to the" deleted "tax stabilization reserve" and added "government results and opportunity expendable trust".

**Temporary provisions.** — Laws 2024, ch. 18, § 4 provided that during the 2024 legislative interim, the staff of the legislative finance committee and the state budget division of the department of finance and administration shall meet regularly to examine and analyze the provisions of the Accountability in Government Act [Chapter 6, Article 3A NMSA 1978] to determine if changes to that act could be made to ensure more cost-effective and responsive government services. On or before December 15, 2024, the staff shall report their findings and make recommendations for legislative changes if any are found to be necessary to the legislative finance committee.

**The 2020 amendment,** effective May 20, 2020, provided for the transfer of a portion of the balance in the tax stabilization reserve if the balance in the general fund operating

reserve is less than one percent of aggregate appropriations; in the section heading, deleted "Reservation of excess" and added "Transfers between", and after "general fund", deleted "revenues" and added "reserves"; added subsection designation "A.", and before each occurrence of "operating reserve", added "general fund"; and added Subsection B.

**The 2017 (1st S.S.) amendment,** effective July 1, 2018, eliminated the transfer of funds to the taxpayers dividend fund; in the catchline, deleted "appropriation to taxpayers dividend fund"; and after "transferred to the tax stabilization reserve", deleted the remainder of the section, which related to certain transfers of excess funds to the taxpayers dividend fund.

## 6-4-5. Repealed.

**History:** 1978 Comp., § 6-4-5, enacted by Laws 1987, ch. 347, § 5; repealed by Laws 2017 (1st S.S.), ch. 3, § 23.

**ANNOTATIONS**

**Repeals.** — Laws 2017 (1st S.S.), ch. 3, § 23 repealed 6-4-5 NMSA 1978, as enacted by Laws 1987, ch. 347, § 5, relating to taxpayers dividend fund, creation and purpose, effective July 1, 2018. For provisions of former section, *see* the 2017 NMSA 1978 on *NMOneSource.com*.

## 6-4-6. Expenditures authorized to maintain cash flow.

For cash flow purposes all amounts that have been appropriated for general government purposes may be used to pay current expenses and obligations of state government regardless of the specific fund or account to which the accounting records of the state government may show those funds or accounts allocated or appropriated. Nothing in this section authorizes:

A. the payment of expenses or obligations of state government from any fund or account unless it may reasonably be expected that at the end of the fiscal year the balances in that fund or account will be fully restored; or

B. the transfer or use of the following amounts to pay current expenses or obligations of state government unless there is a specific authorization for such a transfer or payment in a current law other than this section:

(1) revenues deposited for credit to any permanent fund;

(2) revenues deposited and pledged for the payment of principal and interest on any evidence of indebtedness of the state;

(3) federal revenues deposited for payment for a specific program; and

(4) any income from the permanent fund or from any other fund if the expenditure or transfer of that income would violate a constitutional, enabling act or trust provision.

**History:** Laws 1991, ch. 132, § 1.

**ANNOTATIONS**

**Legislature may transfer non-reverting funds to the general fund to address budgetary problems.** — This section authorizes the legislature to use the general fund to pay current expenses and obligations of state government regardless of the specific fund or account to which the accounting records of the state government may show those funds or accounts allocated or appropriated, as long as the funds are not from revenues deposited for credit to any permanent fund, from revenues deposited and pledged for the payment of principal and interest on any state indebtedness, from federal revenues deposited for payment for a specific program, or from income from the permanent fund, and therefore the legislature may, in order to pay current expenses or obligations of state government, transfer funds from a fund whose authorizing statute specifies that its funds do not revert to the general fund. *Transfers from the Enhanced 911 Fund* (3/15/17), Att'y Gen. Adv. Ltr. 2017-03.

## 6-4-7. Computer systems enhancement fund; created.

There is created in the state treasury the "computer systems enhancement fund". The state treasurer shall deposit in the fund all amounts appropriated to the fund. The department of finance and administration shall administer the fund for the purpose of enhancing computer programs and systems and providing personnel support for those systems. The department is authorized to transfer any necessary federal or other state funds to serve as matching funds to carry out the purposes of the fund.

**History:** Laws 1992, ch. 112, § 2.

**ANNOTATIONS**

**Fund transfers valid.** — The fees assessed against employers and employees and paid into the workers' compensation administration fund may be diverted to another fund, like the computer systems enhancement fund, even though the other purposes are not specified in the statute creating the workers' compensation administration fund. The general rule permits the transfer to the different fund or purpose as long as the money remains subject to legislative control. 1994 Op. Att'y Gen. No. 94-05.

## 6-4-8. Repealed.

**History:** Laws 1993, ch. 65, § 20; repealed by Laws 2007, ch. 190, § 2.

**ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 190, § 2 repealed 6-4-8 NMSA 1978, as enacted by Laws 1993, ch. 65, § 20, relating to DWI program fund, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

**Compiler's notes.** — Laws 2007, ch. 190, § 1, effective June 15, 2007, appropriated the balance of the DWI program fund as of July 1, 2007 to the department of finance and administration for expenditure in fiscal years 2008 and 2009 for enforcement of laws related to driving while intoxicated and a study of DWI-drug courts.

## 6-4-9. Tobacco settlement permanent fund; investment; distribution.

A. The "tobacco settlement permanent fund" is created in the state treasury. The fund is not a reserve fund of the state. The fund shall consist of money distributed to the state pursuant to the master settlement agreement entered into between tobacco product manufacturers and various states, including New Mexico, and executed November 23, 1998 or any money released to the state from a qualified escrow fund or otherwise paid to the state as authorized by Section 6-4-13 NMSA 1978, enacted pursuant to the master settlement agreement or as otherwise authorized by law. Money in the fund shall be invested by the state investment officer in accordance with the limitations in Article 12, Section 7 of the constitution of New Mexico. Income from investment of the fund shall be credited to the fund. Money in the fund shall not be expended for any purpose, except as provided in this section.

B. In each fiscal year, an annual distribution shall be made from the tobacco settlement permanent fund to the tobacco settlement program fund of an amount equal to four and seven-tenths percent of the average of the year-end market values of the tobacco settlement permanent fund for the immediately preceding five calendar years. In the event that the actual amount distributed to the tobacco settlement program fund in a fiscal year is insufficient to meet appropriations from that fund for that fiscal year, the secretary of finance and administration shall proportionately reduce each appropriation accordingly.

C. Money in the tobacco settlement permanent fund may be expended in the event that general fund balances, including all authorized revenues and transfers to the general fund and balances in the general fund operating reserve, the appropriation contingency fund and the tax stabilization reserve, will not meet the level of appropriations authorized from the general fund for a fiscal year. In that event, in order to avoid an unconstitutional deficit, the legislature may authorize a transfer from the tobacco settlement permanent fund to the general fund but only in an amount necessary to meet general fund appropriations.

**History:** Laws 1999, ch. 207, § 1; 2000 (2nd S.S.), ch. 9, § 1; 2003, ch. 312, § 1; 2009, ch. 3, § 5; 2010, ch. 49, § 1; 2011, ch. 3, § 1; 2011, ch. 167, § 1; 2013, ch. 228, § 1; 2015, ch. 36, § 1; 2016 (2nd S.S.), ch. 4, § 1; 2017, ch. 2, § 6; 2017, ch. 80, § 1; 2021, ch. 60, § 1; 2024, ch. 25, § 1.

## ANNOTATIONS

**The 2024 amendment,** effective July 1, 2024, provided that the tobacco settlement permanent fund is not a reserve fund of the state, and deleted outdated provisions; in Subsection A, after "state treasury" added "The fund is not a reserve fund of the state."; in Subsection B, after "In" deleted "fiscal year 2007 and in", and deleted "fifty percent of the total amount of money distributed to the tobacco settlement permanent fund in that fiscal year until that amount is less than an amount equal to four and seven-tenths percent of the average of the year-end market values of the tobacco settlement permanent fund for the immediately preceding five calendar years. Thereafter, the amount of the annual distribution shall be"; deleted former Subsections C through F, which provided distributions from the tobacco settlement permanent fund for prior years, and redesignated former Subsection F as Subsection C; and in Subsection C, deleted the introductory clause, which provided that the tobacco settlement permanent fund is a reserve fund of the state, and deleted former Paragraph F(2).

**The 2021 amendment,** effective June 18, 2021, required the remaining fifty percent of distributions to the tobacco settlement permanent fund for fiscal year 2022 be distributed to the tobacco settlement program fund; and in Subsection C, after "2018", added "and 2022".

**2017 Amendments.** — Laws 2017, ch. 80, § 1, effective June 16, 2017, authorized a 2018 distribution from the tobacco settlement permanent fund to the tobacco settlement program fund, and made technical changes; in Subsection C, after "2013", deleted "and", and after "2016", added "and 2018"; and in Subsection F, in Paragraph F(2), after "as provided in", added "Laws 2016 (2nd S.S.), Chapter 4", and after "Section 2", deleted "of this 2016 act".

Laws 2017, ch. 2, § 6, effective June 16, 2017, amended the language to reflect transfers from the tobacco settlement permanent fund to the general fund in 2016 and 2017, and made technical changes; in Subsection A, after "paid to the state as authorized by", deleted "Sections 6-4-12 and" and added "Section"; in Paragraph F(2), after "as provided in", added "Laws 2016 (2nd S.S.), Chapter 4", and after "Section 2", deleted "of this 2016 act" and added "and in Section 7 of this 2017 act".

**The 2016 (2nd S.S.) amendment,** effective January 4, 2017, authorized the transfer of funds from the tobacco settlement permanent fund to the appropriation account of the general fund to meet the appropriations authorized by law for fiscal years 2016 and 2017; in Subsection F, after "tobacco settlement permanent fund", deleted "shall be considered" and added "is", after "reserve fund of the state", deleted "and, as a reserve", after the first sentence, added "Money in the tobacco settlement permanent fund", after "may be expended", added the paragraph designation "(1)"; and added new Paragraph F(2).

**The 2015 amendment,** effective July 1, 2015, provided the legislature with authority to distribute fifty percent of the total amount of money distributed to the tobacco settlement

permanent fund in 2016 to be distributed from the tobacco settlement permanent fund to the tobacco settlement program fund; and in Subsection C, after "2013", added "and 2016".

**The 2013 amendment,** effective July 1, 2013, increased distributions to the lottery tuition fund; made a distribution from the tobacco settlement permanent fund to the lottery tuition fund; made a distribution from the tobacco settlement permanent fund to the tobacco settlement program fund for appropriation for early childhood care and education programs administered by the children, youth and families department; in Subsection A, in the second sentence, after "master settlement agreement", added "or as otherwise authorized by law"; deleted former Subsection B, which made a distribution from the tobacco settlement permanent fund to the general fund; and added Subsections D and E.

**The 2010 amendment,** effective May 19, 2010, in Subsection D, after "fiscal year 2009", deleted "and in" and after "fiscal year 2010", added "and fiscal year 2011".

**The 2009 amendment,** effective February 6, 2009, added Subsection D.

**The 2003 amendment,** effective June 20, 2003, substituted "except as provided in this section" for "but an annual distribution shall be made to the tobacco settlement program fund in accordance with Subsection B of this section" at the end of Subsection A; deleted "On July 1 of fiscal year 2001 and on July 1 of" at the beginning of former Subsection B; added present Subsection B; added the Subsection C designation and in present Subsection C, added "In fiscal year 2007 and in" at the beginning, substituted "that" for "the immediately preceding" following "permanent fund in", added the last sentence; and added Subsection D.

**The 2000 amendment,** effective April 12, 2000, inserted "distribution" in the section heading; in Subsection A, inserted "any money released to the state", substituted "or otherwise paid the state as authorized by the model statute, Sections 6-4-12 and 6-4-13 NMSA 1978" for "authorized by a qualifying state statute", inserted "Income from investment of the fund shall be credited to the fund", and rewrote the last sentence; and added Subsection B.

## 6-4-10. Tobacco settlement program fund created; purpose.

A. The "tobacco settlement program fund" is created in the state treasury and shall consist of distributions made to the fund from the tobacco settlement permanent fund. Income from investment of the tobacco settlement program fund shall be credited to the fund. Beginning in fiscal year 2002, money in the tobacco settlement program fund may be appropriated by the legislature for any of the purposes specified in Subsection B of this section and after receiving the recommendations of the tobacco settlement revenue oversight committee. Balances in the tobacco settlement program fund at the end of any fiscal year shall remain in the fund.

B. Money may be appropriated from the tobacco settlement program fund for health and educational purposes, including:

(1) support of additional public school programs, including extracurricular and after-school programs designed to involve students in athletic, academic, musical, cultural, civic, mentoring and similar types of activities;

(2) any health or health care program or service for prevention or treatment of disease or illness;

(3) basic and applied research conducted by higher educational institutions or state agencies addressing the impact of smoking or other behavior on health and disease;

(4) public health programs and needs; and

(5) tobacco use cessation and prevention programs, including statewide public information, education and media campaigns.

**History:** Laws 1999, ch. 207, § 2; 2000 (2nd S.S.), ch. 9, § 2.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 3, § 12 repealed Laws 2008, ch. 50, § 1, relating to tobacco settlement program fund appropriations, effective February 6, 2009.

**The 2000 amendment,** effective April 12, 2000, changed the "tobacco settlement income fund" to the "tobacco settlement program fund" in the section heading and in the beginning of Subsections A and B; in Subsection A, substituted "distributions" for "appropriations", added the second sentence, inserted "Beginning in fiscal year 2002" and "and after receiving the recommendations of the tobacco settlement revenue oversight committee" in the third sentence and added the fourth sentence; and inserted "statewide" in Subsection B(5).

## 6-4-11. Tobacco settlement distributions to state; transfer to tobacco settlement permanent fund.

The state treasurer shall deposit in the tobacco settlement permanent fund all amounts distributed to the state pursuant to the master settlement agreement entered into between tobacco product manufacturers and various states, including New Mexico, and executed November 23, 1998 or any money released to the state from a qualified escrow fund or otherwise paid to the state as authorized under the model state statute, Sections 6-4-12 and 6-4-13 NMSA 1978, enacted pursuant to the master settlement agreement.

**History:** Laws 1999, ch. 207, § 3; 2000 (2nd S.S.), ch. 9, § 3.

ANNOTATIONS

**The 2000 amendment,** effective April 12, 2000, inserted "any money released to the state" preceding "1998" and substituted "or otherwise paid to the state as authorized under the model state statute, Sections 6-4-12 and 6-4-13 NMSA 1978" for "authorized by a qualifying state statute".

## 6-4-12. Definitions.

As used in Sections 6-4-12 and 6-4-13 NMSA 1978:

A. "adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the master settlement agreement;

B. "affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns", "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons;

C. "allocable share" means Allocable Share as that term is defined in the master settlement agreement;

D. "cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(1) any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in Paragraph (1) of this subsection. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette", 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette";

E. "master settlement agreement" means the settlement agreement (and related documents) entered into on November 23, 1998 by the state and leading United States tobacco product manufacturers;

F. "qualified escrow fund" means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars ($1,000,000,000) where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with Subsection B of Section 6-4-13 NMSA 1978;

G. "released claims" means Released Claims as that term is defined in the master settlement agreement;

H. "releasing parties" means Releasing Parties as that term is defined in the master settlement agreement;

I. "tobacco product manufacturer" means an entity that after the date of enactment of this act directly (and not exclusively through any affiliate):

(1) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the master settlement agreement) that will be responsible for the payments under the master settlement agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the master settlement agreement and that pays the taxes specified in subsection II(z) of the master settlement agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(2) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(3) becomes a successor of an entity described in Paragraph (1) or (2) of this subsection.

The term "tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within Paragraph (1), (2) or (3) of this subsection; and

J. "units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected, ounces of "roll-your-own" tobacco sold and sales of products bearing tax-exempt stamps on packs or "roll-your-own" tobacco containers. The secretary of taxation and revenue shall promulgate such rules as are necessary to

ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

**History:** Laws 1999, ch. 208, § 1; 2009, ch. 197, § 1.

**ANNOTATIONS**

**The 2009 amendment,** effective July 1, 2009, changed the reference of the act to Sections 6-4-12 and 6-4-13 NMSA 1978; in Subsection D(3), changed the reference from "clause (1) of this definition" to "Paragraph (1) of this subsection"; and in Subsection J, after "excise taxes collected", deleted "by the state on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the state" and added "ounces of "roll-your-own" tobacco sold and sales of products bearing tax-exempt stamps on packs or "roll-your-own" tobacco containers".

## 6-4-13. Requirements.

A. Any tobacco product manufacturer selling cigarettes to consumers within the state (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this act shall do one of the following:

(1) become a participating manufacturer (as that term is defined in section II(jj) of the master settlement agreement) and generally perform its financial obligations under the master settlement agreement; or

(2) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

(a) 1999: $.0094241 per unit sold after the date of enactment of this act;

(b) 2000: $.0104712 per unit sold;

(c) for each of 2001 and 2002: $.0136125 per unit sold;

(d) for each of 2003 through 2006: $.0167539 per unit sold; and

(e) for each of 2007 and each year thereafter: $.0188482 per unit sold.

B. A tobacco product manufacturer that places funds into escrow pursuant to Paragraph (2) of Subsection A of this section shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(1) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this paragraph:

(a) in the order in which they were placed into escrow; and

(b) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(2) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the master settlement agreement payments, as determined pursuant to section IX(i) of that agreement, including after final determination of all adjustments, that such manufacturer would have been required to make an account of such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(3) to the extent not released from escrow under Paragraphs (1) or (2) of this subsection, funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

C. Each tobacco product manufacturer that elects to place funds into escrow pursuant to Paragraph (2) of Subsection A of this section shall annually certify to the attorney general that it is in compliance with Paragraph (2) of Subsection A of this section and Subsection B of this section. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under Paragraph (2) of Subsection A of this section and Subsection B of this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under Paragraph (2) of Subsection A of this section and Subsection B of this section shall:

(1) be required within fifteen days to place such funds into escrow as shall bring it into compliance with Paragraph (2) of Subsection A of this section and Subsection B of this section. The court, upon a finding of a violation of Paragraph (2) of Subsection A of this section or Subsection B of this section, may impose a civil penalty to be paid to the state general fund in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent of the original amount improperly withheld from escrow;

(2) in the case of a knowing violation, be required within fifteen days to place such funds into escrow as shall bring it into compliance with Paragraph (2) of Subsection A of this section and Subsection B of this section. The court, upon a finding of a knowing violation of Paragraph (2) of Subsection A of this section or Subsection B of this section, may impose a civil penalty to be paid to the state general fund in an amount not to exceed fifteen percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent of the original amount improperly withheld from escrow; and

(3) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed two years.

Each failure to make an annual deposit required under Paragraph (2) of Subsection A of this section shall constitute a separate violation.

**History:** Laws 1999, ch. 208, § 2; 2004, ch. 90, § 1.

**ANNOTATIONS**

**The 2004 amendment,** effective May 19, 2004, amended Paragraph (2) of Subsection B by deleting "in a particular year was greater than the state's allocable share of the total payments that such manufacturer would have been required to make in that year under the master settlement agreement (as determined pursuant to section IX(i)(2) of the master settlement agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that agreement other than the inflation adjustment)" and inserting in its place: "on account of units sold in the state in a particular year was greater than the master settlement agreement payments, as determined pursuant to section IX(i) of that agreement, including after final determination of all adjustments, that such manufacturer would have been required to make an account of such units sold".

**Arbitration of diligent enforcement.** — The Master Settlement Agreement with tobacco products manufacturers requires that the state submit the issue of its diligent enforcement of its qualifying statute to arbitration before a single, nationwide arbitration panel. *State of N.M. ex rel. King v. Am. Tobacco Co., Inc.*, 2008-NMCA-142, 145 N.M. 134, 194 P.3d 749.

## 6-4-13.1. Severability.

If the 2004 amendment to Paragraph (2) of Subsection B of Section 6-4-13 NMSA 1978 is held by a court of competent jurisdiction to be unconstitutional, then Paragraph (2) of Subsection B of Section 6-4-13 NMSA 1978 shall be deemed to be repealed in its entirety. If Subsection B of Section 6-4-13 NMSA 1978 is thereafter held by a court of competent jurisdiction to be unconstitutional, then the 2004 amendment shall be deemed repealed and Paragraph (2) of Subsection B of Section 6-4-13 NMSA 1978 shall be restored as if no such amendment had been made. Neither a holding of unconstitutionality nor the repeal of Paragraph (2) of Subsection B of Section 6-4-13 NMSA 1978 shall affect, impair or invalidate any other portion of Sections 6-4-12 and 6-4-13 NMSA 1978, or the application of such sections to any other person or circumstance, and such remaining portions of Sections 6-4-12 and 6-4-13 NMSA 1978 shall at all times continue in full force and effect.

**History:** Laws 2004, ch. 90, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 90 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

## 6-4-14. Short title.

Sections 6-4-14 through 6-4-24 NMSA 1978 may be cited as the "Tobacco Escrow Fund Act".

**History:** Laws 2003, ch. 114, § 1; 2009, ch. 197, § 2.

**ANNOTATIONS**

**The 2009 amendment,** effective July 1, 2009, changed the reference of the act to Sections 6-4-14 through 6-4-24 NMSA 1978.

## 6-4-15. Findings and purpose.

The legislature finds that violations of Section 6-4-13 NMSA 1978 threaten the integrity of the master settlement agreement and that enacting procedural requirements will safeguard the agreement and aid in its enforcement.

**History:** Laws 2003, ch. 114, § 2.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 114, § 12 contained an emergency clause and was approved April 2, 2003.

## 6-4-16. Definitions.

As used in the Tobacco Escrow Fund Act [6-4-14 to 6-4-24 NMSA 1978]:

A. "brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers such as "menthol", "lights", "kings" and "100s", and includes the use of a brand name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors or other indicia similar to or identifiable with a previously known brand of cigarettes;

B. "cigarette" means "cigarette" as defined in Subsection D of Section 6-4-12 NMSA 1978;

C. "department" means the taxation and revenue department;

D. "directory" means a listing of tobacco product manufacturers and brand families that is developed, maintained and published by the attorney general;

E. "distributor" means a person required to affix stamps on cigarette packages pursuant to Section 7-12-5 NMSA 1978 or required to pay excise tax imposed on cigarettes pursuant to Section 7-12A-3 NMSA 1978. "Distributor" does not include a retailer of cigarette packages upon which stamps were already affixed when the packages were received by that retailer;

F. "master settlement agreement" means the settlement agreement and related documents entered into on November 23, 1998 by the state and leading United States tobacco product manufacturers;

G. "nonparticipating manufacturer" means a tobacco product manufacturer that is not a participating manufacturer;

H. "participating manufacturer" means a tobacco product manufacturer that is a "participating manufacturer" as defined in Section II(jj) of the master settlement agreement and subsequent amendments to that section;

I. "qualified escrow fund" means "qualified escrow fund" as defined in Subsection F of Section 6-4-12 NMSA 1978;

J. "secretary" means the secretary of taxation and revenue;

K. "tobacco product manufacturer" means "tobacco product manufacturer" as defined in Subsection I of Section 6-4-12 NMSA 1978; and

L. "units sold" means "units sold" as defined in Subsection J of Section 6-4-12 NMSA 1978.

**History:** Laws 2003, ch. 114, § 3.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 114, § 12 contained an emergency clause and was approved April 2, 2003.

## 6-4-17. Certification by tobacco product manufacturer.

A. No later than April 30 of each year, a tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer or similar intermediary, shall execute and deliver to the attorney general, in the manner and on the form prescribed by the attorney general requesting such information as the attorney general deems reasonably necessary to make the determination required by Section 6-4-18 NMSA 1978, a certification pursuant to this section. The certification shall:

(1) be made under penalty of perjury;

(2) state that as of the date of the certification, the tobacco product manufacturer is either a participating or a nonparticipating manufacturer; and

(3) include the information required pursuant to Subsection B or C of this section.

B. In its certification, a participating manufacturer shall include a complete list of its brand families.

C. In its certification, a nonparticipating manufacturer shall:

(1) certify that it is registered to do business in the state or has appointed an agent for service of process and has provided written notice to the attorney general in accordance with Section 6-4-20 NMSA 1978;

(2) certify that it is in full compliance with Section 6-4-13 NMSA 1978, the Tobacco Escrow Fund Act [6-4-14 to 6-4-24 NMSA 1978] and any rules promulgated pursuant to that act, including all annual payments as may be required by the attorney general;

(3) certify that it has established and maintains a qualified escrow fund governed by a qualified escrow agreement that has been reviewed and approved by the attorney general and provide:

(a) the name, address and telephone number of the financial institution where the fund is established;

(b) the account number of the fund and the subaccount number for the state;

(c) the amounts placed in the fund for cigarettes sold in the state during the preceding calendar year, including the date and amount of each deposit and any other evidence or verification of the amounts as the attorney general deems necessary; and

(d) the amount and date of each withdrawal or transfer of funds made at any time from the fund or from any other qualified escrow fund into which the nonparticipating manufacturer has made escrow payments pursuant to Section 6-4-13 NMSA 1978; and

(4) include a complete list of its brand families and:

(a) separately list the number of units sold in the state for each brand family during the preceding calendar year, indicating any brand family sold in the state during the preceding calendar year that is no longer being sold as of the date of certification; and

(b) indicate all of its brand families that have been sold in the state at any time during the current calendar year, identifying by name and address any other manufacturer of the brand families in the preceding or current calendar year.

D. In its certification, a nonparticipating manufacturer located outside of the United States shall also:

(1) certify that it has provided a declaration, on a form prescribed by the attorney general, from each of its importers into the United States of any of its brand families to be sold in New Mexico that the importer accepts joint and several liability with the nonparticipating manufacturer for all escrow deposits due in accordance with Section 6-4-13 NMSA 1978, for all penalties assessed in accordance with Section 6-4-13 NMSA 1978 and for payment of all costs and attorney fees imposed in accordance with the Tobacco Escrow Fund Act or Section 6-4-13 NMSA 1978; and

(2) certify that it has appointed a resident agent for service of process in New Mexico in accordance with Section 6-4-20 NMSA 1978.

E. A tobacco product manufacturer may not include a brand family in its certification unless:

(1) in the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed its cigarettes for purposes of calculating its payments under the master settlement agreement for the relevant year in the volume and shares determined pursuant to the master settlement agreement; or

(2) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed its cigarettes for purposes of Section 6-4-13 NMSA 1978.

F. A tobacco product manufacturer shall update the list of its brand families thirty days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general.

G. A tobacco product manufacturer shall maintain all invoices and documentation of sales and other information relied upon for its certification to the attorney general for a period of five years, unless otherwise required by law to maintain them for a greater period of time.

H. Nothing in this section shall limit or otherwise affect the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of Section 6-4-13 NMSA 1978.

**History:** Laws 2003, ch. 114, § 4; 2009, ch. 197, § 3.

## ANNOTATIONS

**The 2009 amendment,** effective July 1, 2009, after "attorney general", added "requesting such information as the attorney general deems reasonably necessary to make the determination required by Section 6-4-18 NMSA 1978"; and added Subsection D.

## 6-4-18. Directory of tobacco product manufacturers and cigarette brands.

A. The attorney general shall develop, maintain and publish on its web site a directory listing all tobacco product manufacturers that have provided current, accurate and complete certifications as required by the Tobacco Escrow Fund Act [6-4-14 to 6-4-24 NMSA 1978] and all brand families that are listed in those certifications. The attorney general shall not include or retain in the directory a name or brand family if:

(1) the participating manufacturer fails to provide the required certification or to make a payment calculated by an independent auditor to be due from it under the master settlement agreement except to the extent that it is disputing such payment;

(2) the nonparticipating manufacturer fails to provide the required certification or the attorney general determines that its certification is not in compliance with Section 6-4-17 NMSA 1978; or

(3) the attorney general concludes that:

(a) all escrow payments required by Section 6-4-13 NMSA 1978 for any period for any brand family, whether or not listed by the nonparticipating manufacturer, have not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general;

(b) any outstanding final judgments, including interest thereon, for violations of Section 6-4-13 NMSA 1978 have not been fully satisfied for the brand family or the nonparticipating manufacturer;

(c) for a nonparticipating manufacturer or a tobacco product manufacturer that became a participating manufacturer after the master settlement agreement in New Mexico or in any other state, or any of its principals, the nonparticipating manufacturer or tobacco product manufacturer fails to provide reasonable assurance that it will comply with the requirements of the Tobacco Escrow Fund Act; or

(d) the manufacturer has knowingly failed to disclose any material information required or knowingly made any material false statement in the certification of any supporting information or documentation provided.

B. As used in this section, "reasonable assurances" means information and documentation establishing to the satisfaction of the attorney general that a failure to pay in New Mexico or elsewhere was the result of a good faith dispute over the payment obligation.

C. The attorney general shall update the directory as necessary by adding or removing a tobacco product manufacturer or a brand family to keep the directory in conformity with the requirements of the Tobacco Escrow Fund Act.

D. A distributor shall provide a current electronic mail address to the attorney general for the purpose of receiving notifications as may be required pursuant to the Tobacco Escrow Fund Act.

**History:** Laws 2003, ch. 114, § 5; 2009, ch. 197, § 4.

**ANNOTATIONS**

**The 2009 amendment,** effective July 1, 2009, in Subsection A, after "retain in the dictionary a", deleted "nonparticipating manufacturer" and added "name"; added Paragraph (1) of Subsection A; added Subparagraphs (c) and (d) of Paragraph (3) of Subsection A; and added Subsection B.

## 6-4-18.1. Bond requirements for newly qualified and elevated risk nonparticipating manufacturers.

A. The attorney general may require a nonparticipating manufacturer to post a bond for the first three years of the manufacturer's listing in the directory or for a longer period if the manufacturer has been determined to pose an elevated risk for noncompliance with the Tobacco Escrow Fund Act [6-4-14 to 6-4-24 NMSA 1978]. The attorney general may consult with other states to determine the viability of a potential nonparticipating manufacturer and may impose additional requirements to protect state interests.

B. Notwithstanding any other provision of law, if a nonparticipating manufacturer is to be listed in the directory, and if the attorney general reasonably determines that a nonparticipating manufacturer that has filed a certification pursuant to Section 6-4-17 NMSA 1978 poses an elevated risk for noncompliance with the Tobacco Escrow Fund Act, the nonparticipating manufacturer and any of its brand families shall not be included in the directory until the nonparticipating manufacturer, or its United States importer that undertakes joint and several liability for the manufacturer's performance in accordance with Section 6-4-20 NMSA 1978, has posted bond in accordance with this section.

C. The bond shall be posted by a corporate surety located within the United States in an amount equal to the greater of fifty thousand dollars ($50,000) or the amount of escrow the manufacturer, in either its current or predecessor form, was required to deposit as a result of its previous calendar year sales in New Mexico. The bond shall be

written in favor of the state of New Mexico and shall be conditioned on the performance by the nonparticipating manufacturer or its United States importer that undertakes joint and several liability for the manufacturer's performance in accordance with all of its obligations under the Tobacco Escrow Fund Act or Section 6-4-13 NMSA 1978 during the year in which the certification is filed and the next succeeding calendar year.

D. A nonparticipating manufacturer may be deemed to pose an elevated risk for noncompliance with this section or Section 6-4-13 NMSA 1978 if:

(1) the nonparticipating manufacturer or any of its affiliates has underpaid an escrow obligation within the past three calendar years, unless:

(a) the manufacturer did not make underpayment knowingly or recklessly and the manufacturer promptly cured the underpayment within one hundred eighty days of notice; or

(b) the underpayment or lack of payment is the subject of a good faith dispute as documented to the satisfaction of the attorney general and the underpayment is cured within one hundred eighty days of entry of a final order establishing the amount of the required escrow payment;

(2) any state has removed the manufacturer or its brands or brand families or an affiliate or any of the affiliate's brands or brand families from the state's tobacco directory for noncompliance with the state law at any time within the past three calendar years; or

(3) any state has litigation pending against, or an unsatisfied judgment against, the manufacturer or any of its affiliates for escrow or for penalties, costs or attorney fees related to noncompliance with the state escrow laws.

E. As used in this section, "newly qualified nonparticipating manufacturer" means a nonparticipating manufacturer that has not previously been listed in the directory.

**History:** 1978 Comp., § 6-4-18.1, as enacted by Laws 2009, ch. 197, § 5.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 197, § 26 made Laws 2009, ch. 197, § 5 effective July 1, 2009.

## 6-4-19. Maintenance of directory; notice.

A. If the attorney general determines to remove from or to not include a tobacco product manufacturer or brand family in the directory, the attorney general shall provide by email or other practicable means notice of the preliminary determination to the tobacco product manufacturer's registered agent for service of process in the state;

provided, however, that if one of the bases of removal or non-inclusion in the directory is the failure to satisfy Section 7 [6-4-20 NMSA 1978] of the Tobacco Escrow Fund Act [6-4-14 to 6-4-24 NMSA 1978], the determination shall be final and no preliminary notice shall be necessary. The tobacco product manufacturer shall have ten business days from the date of the attorney general's notice of the preliminary determination to the registered agent for service of process in the state to establish, to the attorney general's satisfaction, compliance with Section 6-4-13 NMSA 1978 and the Tobacco Escrow Fund Act.

B. If the tobacco product manufacturer fails to establish said compliance within the ten-day period set forth above, the attorney general shall remove from or not include the tobacco product manufacturer or brand family in the directory. The determination to remove from or to not include a tobacco product manufacturer or brand family in the directory may be appealed to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** Laws 2003, ch. 114, § 6.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 114, § 12 contained an emergency clause and was approved April 2, 2003.

## 6-4-20. Agent for service of process.

A. A nonparticipating manufacturer not registered to do business in the state shall, as a condition precedent to having its name or its brand families listed and retained in the directory, appoint and continually engage without interruption a registered agent in this state for service of process on whom all process and any action or proceeding arising out of the enforcement of the Tobacco Escrow Fund Act [6-4-14 to 6-4-24 NMSA 1978] or Section 6-4-13 NMSA 1978 may be served. The nonparticipating manufacturer shall provide to the attorney general the name, address and telephone number of its agent for service of process and shall provide any other information relating to its agent as may be requested by the attorney general.

B. A nonparticipating manufacturer located outside of the United States shall, as an additional condition precedent to having its brand families listed or retained in the directory, cause each of its importers of any of its brand families to be sold in New Mexico to appoint, and continually engage without interruption, the services of an agent in the state in accordance with the provisions of this section. All obligations of a nonparticipating manufacturer imposed by this section with respect to appointment of its agent shall also apply to the importers with respect to appointment of their agents.

C. A nonparticipating manufacturer shall provide written notice to the attorney general thirty calendar days prior to the termination of the authority of an agent appointed pursuant to Subsections A and B of this section. No less than five calendar

days prior to the termination of an existing agent appointment, a nonparticipating manufacturer shall provide to the attorney general the name, address and telephone number of its newly appointed agent for service of process and shall provide any other information relating to the new appointment as may be requested by the attorney general. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the attorney general of the termination within five calendar days and shall include proof to the satisfaction of the attorney general of the appointment of a new agent.

D. A nonparticipating manufacturer whose products are sold in this state without appointing or designating an agent as required by this section shall be deemed to have appointed the secretary of state as agent and may be proceeded against in the courts of this state by service of process upon the secretary of state; provided that the appointment of the secretary of state as agent shall not satisfy any other requirement of the Tobacco Escrow Fund Act.

**History:** Laws 2003, ch. 114, § 7; 2009, ch. 197, § 6.

**ANNOTATIONS**

**The 2009 amendment,** effective July 1, 2009, added Subsection B; and in Subsection C, after "agent appointed pursuant to" changed "Subsection A" to "Subsections A and B".

## 6-4-20.1. Joint and several liability.

For each nonparticipating manufacturer located outside the United States, each importer into the United States of the nonparticipating manufacturer's brand families that are sold in New Mexico shall bear joint and several liability with the nonparticipating manufacturer for deposit of all escrow amounts due under Section 6-4-13 NMSA 1978, payment of all penalties imposed in accordance with Section 6-4-13 NMSA 1978 and payment of all costs and attorney fees imposed in accordance with the Tobacco Escrow Fund Act [6-4-14 to 6-4-24 NMSA 1978].

**History:** 1978 Comp., § 6-4-20.1, as enacted by Laws 2009, ch. 197, § 7.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 197, § 26 made Laws 2009, ch. 197, § 7 effective July 1, 2009.

## 6-4-21. Reporting of information; escrow installments.

A. A distributor shall submit to the department by the twenty-fifth day of each month a list by brand family of the total number of cigarettes, or equivalent stick count in the case of roll-your-own, for which the distributor affixed tax stamps or otherwise paid the

tax due during the previous calendar month, and any other information that the department or attorney general may require. A distributor shall maintain and make available to the department and attorney general all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the department and attorney general for a period of five years.

B. The department and attorney general shall share information received pursuant to the Tobacco Escrow Fund Act [6-4-14 to 6-4-24 NMSA 1978], and may share information with other federal, state or local agencies for purposes of enforcement of that act, enforcement of Section 6-4-13 NMSA 1978 or enforcement of corresponding laws of other states.

C. The attorney general may require proof from a nonparticipating manufacturer that it has established a qualified escrow fund with verification of the amount of money in the fund exclusive of interest, including the balance, dates and amounts of deposits and dates and amounts of withdrawals.

D. The attorney general and the department may require a distributor or tobacco product manufacturer to submit additional information as necessary to determine compliance with the Tobacco Escrow Fund Act, including samples of the packaging or labeling of each brand family.

E. The attorney general may require a nonparticipating manufacturer to make escrow fund deposits quarterly and may require information sufficient to determine the adequacy of the amount of the quarterly deposit.

F. The attorney general or the department may seek an injunction to compel compliance with this section. In any action brought pursuant to this subsection, the state shall be entitled to recover the costs of investigation, costs of the action and reasonable attorney fees.

**History:** Laws 2003, ch. 114, § 8; 2004, ch. 103, § 1.

**ANNOTATIONS**

**The 2004 amendment,** effective May 19, 2004, amended Subsection E to permit the attorney general to require quarterly rather than annual escrow fund deposits and information.

## 6-4-22. Penalties and other remedies.

A. It is unlawful for a person to:

(1) affix a tax stamp or otherwise pay the tax due on a package or other container of cigarettes of a tobacco product manufacturer or a brand family that is not included in the directory; or

(2) sell, offer for sale or possess for any purpose other than personal use cigarettes of a tobacco product manufacturer or a brand family that is not included in the directory.

B. The secretary may revoke or suspend the registration or license of a person licensed or registered pursuant to Section 7-12-9.1 or 7-12A-7 NMSA 1978 that violates Subsection A of this section.

C. Each stamp affixed, payment of tobacco tax, offer to sell, possession for any purpose other than personal use or sale of cigarettes in violation of Subsection A of this section constitutes a separate violation. For each violation, the secretary may impose a civil penalty in an amount not to exceed the greater of five thousand dollars ($5,000) or five hundred percent of the retail value of the cigarettes sold, offered for sale or possessed for any purpose other than personal use.

D. Cigarettes that have been sold, offered for sale or possessed for any purpose other than personal use in this state in violation of Subsection A of this section are contraband, are subject to seizure and forfeiture and shall be destroyed.

E. It is unlawful for a person to sell, distribute, acquire, hold, own, possess, transport, import or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in violation of Subsection A of this section. A person who violates this subsection is guilty of a misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978.

F. A tobacco product manufacturer, stamping agent or importer of cigarettes, or any officer, employee or agent of any such entity, who knowingly makes any materially false statement in any record required by the Tobacco Escrow Fund Act [6-4-14 to 6-4-24 NMSA 1978] or Section 6-4-13 NMSA 1978 to be filed with the attorney general is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

G. The attorney general or the department may seek an injunction to compel compliance with or to restrain a threatened or actual violation of Subsection A of this section. In any action brought pursuant to this subsection, the state shall be entitled to recover the costs of investigation, costs of the action and reasonable attorney fees, if the state prevails.

H. The attorney general may issue a civil investigative demand based on reasonable belief that any person may be in possession, custody or control of an original or copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription or other document or recording relevant to the subject matter of an investigation of a probable violation of the Tobacco Escrow Fund Act. The attorney general may, prior to the institution of a civil proceeding, execute in writing and cause to be served upon the person a civil

investigative demand requiring the person to produce documentary material and permit the inspection and copying of the material.

I. For the purposes of this section, fewer than one thousand cigarettes shall be presumed to be for personal use.

**History:** Laws 2003, ch. 114, § 9; 2009, ch. 197, § 8.

**ANNOTATIONS**

**The 2009 amendment,** effective July 1, 2009, in Paragraph (2) of Subsection A, after "sell, offer", added "for sale" and after "or possess for", deleted "sale" and added "any purpose other than personal use"; in Subsection C, after "possession for", deleted "sale" and added "any purpose other than personal use"; and after "possessed for", deleted "sale" and added "any purpose other than personal use"; in Subsection D, after "possessed for", deleted "sale" and added "any purpose other than personal use"; and added Subsections F, H and I.

## 6-4-23. General provisions.

A. The attorney general and the secretary shall promulgate rules to effectuate the purposes of the Tobacco Escrow Fund Act [6-4-14 to 6-4-24 NMSA 1978].

B. In an action brought by the state to enforce the provisions of the Tobacco Escrow Fund Act, the state shall be entitled to recover the costs of investigation, costs of the action and reasonable attorney fees, if the state prevails.

C. If a court determines that a person has violated a provision of the Tobacco Escrow Fund Act, the court shall order any profits, gain, gross receipts or other benefit from the violation to be disgorged and paid to the state treasurer for deposit in the general fund.

D. The remedies and penalties provided in the Tobacco Escrow Fund Act are cumulative to each other and to penalties and remedies available under other laws.

**History:** Laws 2003, ch. 114, § 10.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 114, § 12 contained an emergency clause and was approved April 2, 2003.

## 6-4-24. Construction of act.

If a court finds that a provision of the Tobacco Escrow Fund Act [6-4-14 to 6-4-24 NMSA 1978] and of Sections 6-4-12 and 6-4-13 NMSA 1978 conflict and cannot be

harmonized, Sections 6-4-12 and 6-4-13 NMSA 1978 shall control. If a provision of the Tobacco Escrow Fund Act causes Sections 6-4-12 and 6-4-13 NMSA 1978 to no longer constitute a qualifying or model statute as those terms are defined in the master settlement agreement, that provision shall be invalid.

**History:** Laws 2003, ch. 114, § 11.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 114, § 12 contained an emergency clause and was approved April 2, 2003.

## 6-4-24.1. Attorney general authority; audit and investigation.

The attorney general or the attorney general's authorized representative may conduct audits and investigations of:

A. a nonparticipating tobacco product manufacturer and its importers;

B. a tobacco product manufacturer as defined in Section 6-4-12 NMSA 1978 that became a participating manufacturer after the master settlement agreement execution date, as defined at section II(aa) of the master settlement agreement, and its importers;

C. exclusive distributors, retail dealers, stamping agents and wholesale dealers; and

D. persons or entities engaged in delivery sales.

**History:** 1978 Comp., § 6-4-24.1, as enacted by Laws 2009, ch. 197, § 9.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 197, § 26 made Laws 2009, ch. 197, § 9 effective July 1, 2009.

## 6-4-24.2. Presumption.

In any action under Section 6-4-13 NMSA 1978, reports of numbers of cigarettes stamped submitted pursuant to Subsection A of Section 6-4-21 NMSA 1978 shall be admissible evidence and shall be presumed to state accurately the number of cigarettes stamped during the time period by the stamping agent that submitted the report, absent a contrary showing by the nonparticipating manufacturer or importer. Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that such reports are incorrect or do not accurately reflect a nonparticipating manufacturer's sales in the state during the time period in question, and the presumption shall not apply in the event that the state does so maintain.

**History:** 1978 Comp., § 6-4-24.2, as enacted by Laws 2009, ch. 197, § 10.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 197, § 26 made Laws 2009, ch. 197, § 10 effective July 1, 2009.

## 6-4-25. Gasoline and home heating relief fund; created.

The "gasoline and home heating relief fund" is created in the state treasury. The fund consists of appropriations, gifts, grants and donations. Balances in the fund at the end of a fiscal year shall not revert to the general fund. The fund is administered by the department of finance and administration and money in the fund is subject to appropriation by the legislature:

A. to provide gasoline price rebates to New Mexico taxpayers burdened as a result of extremely high gasoline prices;

B. to provide economic relief, in accordance with programs existing within New Mexico law, to New Mexico taxpayers suffering from rapidly increasing home heating costs; and

C. for the low income home energy assistance program.

**History:** Laws 2005 (1st S.S.), ch. 2, § 1.

**ANNOTATIONS**

**Cross references.** — For the low income home energy assistance program, *see* 58-18-5.5 NMSA 1978.

For the low income utility assistance fund, *see* 27-6-16 NMSA 1978.

**Effective dates.** — Laws 2005 (1st S.S.), ch. 2, § 5 made Laws 2005 (1st S.S.), ch. 2, § 1 effective October 13, 2005.

## 6-4-26. Governor's contingency fund; created; purpose; audits.

The "governor's contingency fund" is created in the state treasury. The governor's office shall administer the fund, and money in the fund shall be expended by the governor's office to pay for expenses directly connected with obligations of the elected office of governor. Expenditures from the fund shall be by warrant of the secretary of finance and administration upon vouchers signed by the governor or the governor's authorized representative. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall revert to the general fund. Money in the fund shall not be used to pay or supplement the salary of the governor or any state employee or as perquisites

or allowances for state employees. The fund is subject to the provisions of the Audit Act [12-6-1 to 12-6-14 NMSA 1978], the Procurement Code [13-1-28 to 13-1-199 NMSA 1978], the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978] and all other applicable laws and rules. The governor shall provide monthly reports to the department of finance and administration and the legislative finance committee about expenditures from the fund, including an itemized list of expenditures and the balance remaining in the fund.

**History:** Laws 2018, ch. 27, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2018, ch. 27, § 4 made Laws 2018, ch. 27, § 1 effective January 1, 2019.

**Applicability.** — Laws 2018, ch. 27, § 3 provided that the initial audit conducted pursuant to Laws 2018, ch. 27, § 1 shall be only for expenditures occurring on or after January 1, 2019.

## 6-4-27. Excess extraction taxes suspense fund; transfer of excess oil and gas emergency school tax revenue; tax stabilization reserve; early childhood education and care fund; severance tax permanent fund.

A. The "excess extraction taxes suspense fund" is created as a nonreverting fund in the state treasury. Money in the fund shall only be used to make transfers by the department of finance and administration as required by this section.

B. At the end of each fiscal year, the department of finance and administration shall calculate and transfer the balance of the fund attributable to that fiscal year as follows:

(1) if in the current fiscal year the total net receipts attributable to the tax imposed pursuant to Section 7-31-4 NMSA 1978 and distributed pursuant to Section 7-1-6.20 NMSA 1978 exceed the annual average amount, the department shall distribute the excess amount above the annual average amount as follows:

(a) to the tax stabilization reserve, the amount necessary to bring the balance of state reserves to a level equal to twenty-five percent of the aggregate recurring appropriations for that fiscal year from the general fund, as determined by the department; provided that, if the balance in the excess extraction taxes suspense fund is not sufficient to meet that level, the entire balance shall be transferred to the tax stabilization reserve; and

(b) to the early childhood education and care fund, the balance of the excess amount above the annual average amount, if any, after the transfer is made pursuant to Subparagraph (a) of this paragraph; and

(2) the remaining balance of the fund, if any, shall be distributed to the severance tax permanent fund.

C. As used in this section:

(1) "annual average amount" means the total net receipts attributable to the tax imposed pursuant to Section 7-31-4 NMSA 1978 and distributed pursuant to Section 7-1-6.20 NMSA 1978 in the immediately preceding five fiscal years, divided by five; and

(2) "state reserves" means the general fund balances, as determined by the department of finance and administration, including all authorized revenues and transfers to the general fund and balances in the appropriation contingency fund, the general fund operating reserve, the state-support reserve fund and the tax stabilization reserve.

**History:** Laws 2020, ch. 3, § 4; 2023, ch. 22, § 1.

**ANNOTATIONS**

**The 2023 amendment,** effective July 1, 2024, provided for the distribution of certain excess oil and gas tax revenues to the severance tax permanent fund, and defined "annual average amount" and revised the definition of "state reserves"; in the section heading, added "severance tax permanent fund"; in Subsection B, after "administration shall" added "calculate and"; in Paragraph B(1), added "if in the current fiscal year the total net receipts attributable to the tax imposed pursuant to Section 7-31-4 NMSA 1978 and distributed pursuant to Section 7-1-6.20 NMSA 1978 exceed the annual average amount, the department shall distribute the excess amount above the annual average amount as follows", added new subparagraph designation "(a)", in Subparagraph B(1)(b), after "the balance", deleted "remaining in the excess extraction taxes suspense fund" and added "of the excess amount above the annual average amount", after "made pursuant to" deleted "Paragraph (1) of this subsection" and added "Subparagraph (a) of this paragraph; and", and added Paragraph B(2); and in Subsection C, added a new Paragraph C(1), and in Paragraph C(2), after "the tax stabilization reserve", deleted "and the tobacco settlement permanent fund".

## 6-4-28. Opioid settlement restricted fund created; administration; income to the fund.

A. The "opioid settlement restricted fund" is created as a nonreverting fund in the state treasury, separate and distinct from the general fund. The opioid settlement restricted fund consists of money, other than attorney fees and costs, paid to the state pursuant to the New Mexico opioid allocation agreement and pursuant to:

(1) the distributor settlement agreement; and

(2) opioid settlements.

B. The opioid settlement restricted fund also consists of appropriations and donations. Money in the fund shall be invested by the state investment officer in accordance with law. Income from investment of the fund shall be credited to the fund.

C. Opioid funds designated by the New Mexico opioid allocation agreement to be distributed to local governments shall not be deposited into the fund.

D. Appropriations from the opioid settlement restricted fund shall only be made to the opioid crisis recovery fund and shall not be made for any other purpose.

E. On July 1, 2024, a distribution shall be made from the opioid settlement restricted fund to the opioid crisis recovery fund in an amount equal to five percent of the year-end market value of the opioid settlement restricted fund for the immediately preceding fiscal year.

F. On July 1, 2025, a distribution shall be made from the opioid settlement restricted fund to the opioid crisis recovery fund in an amount equal to five percent of the average of the year-end market value of the opioid settlement restricted fund for the immediately preceding two calendar years.

G. On July 1, 2026, and on each July 1 thereafter, a distribution shall be made from the opioid settlement restricted fund to the opioid crisis recovery fund in an amount equal to five percent of the average of the year-end market values of the opioid settlement restricted fund for the immediately preceding three calendar years.

H. For the purposes of this section:

(1) "distributor settlement agreement" means the settlement agreement between the state and participating political subdivisions and opioid distributors, including McKesson corporation, Cardinal health and AmerisourceBergen corporation, dated as of July 21, 2021 and any revision to the agreement;

(2) "local government" means every litigating county and municipality, each county regardless of population and each municipality with a population exceeding ten thousand according to the latest federal decennial census, any special district identified in the distributor settlement agreement and any local government identified in the New Mexico opioid allocation agreement within the geographic boundaries of New Mexico;

(3) "New Mexico opioid allocation agreement" means the agreement entered into between the state and various local governments on March 7, 2022 that relates to the allocation of opioid funds in New Mexico;

(4) "opioid funds" means money obtained through judgments or settlements as arising from the liability of distributors of opioids, manufacturers of opioids, pharmacies for the selling of opioids or the consultants, agents or associates of distributors, manufacturers or pharmacies; and

(5) "opioid settlements" means judgments or settlements arising from the liability of distributors of opioids, manufacturers of opioids, pharmacies for the selling of opioids or the consultants, agents or associates of distributors, manufacturers or pharmacies.

**History:** Laws 2023, ch. 166, § 1.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2023, ch. 166, § 3 contained an emergency clause and was approved April 5, 2023.

## 6-4-29. Opioid crisis recovery fund; use of fund money; income to the fund.

A. The "opioid crisis recovery fund" is created as a nonreverting fund in the state treasury. Money in the fund shall be invested by the state treasurer as provided by law, and income from investment of the fund shall be credited to the fund.

B. Money in the opioid crisis recovery fund may only be expended upon appropriation by the legislature and shall only be opioid remediation expenditures. Priority shall be given to appropriations that support evidence-based statewide and regional programs that seek to abate opioid use disorders and any co-occurring substance use disorders or mental health conditions.

C. The opioid crisis recovery fund consists of distributions made to the fund from the opioid settlement restricted fund, appropriations and donations.

D. In accordance with this section, money in the opioid crisis recovery fund shall be allocated to statewide and regional programs, including programs that use evidence-based strategies to:

(1) treat opioid use disorders and any co-occurring substance use disorders or mental health conditions;

(2) provide connections to care for individuals who have or are at risk of developing opioid use disorders and any co-occurring substance use disorders or mental health conditions;

(3) address the needs of individuals with opioid use disorders and any co-occurring substance use disorders or mental health conditions and who are involved in, at risk of becoming involved in or in transition from the criminal justice system;

(4) address the needs of pregnant or parenting women with opioid use disorders and any co-occurring substance use disorders or mental health conditions and the needs of their families, including babies with neonatal abstinence syndrome;

(5) support efforts to prevent over-prescribing of opioids and ensure appropriate prescribing and dispensing of opioids;

(6) support efforts to discourage or prevent misuse of opioids;

(7) support efforts to prevent or reduce overdose deaths or other opioid-related harms;

(8) educate law enforcement or other first responders regarding appropriate practices and precautions when dealing with users of fentanyl or other opioids; or

(9) provide wellness and support services for first responders and others who experience secondary trauma associated with opioid-related emergency events.

E. In accordance with this section, a portion of the money may be allocated toward research on opioid abatement or evaluations of effectiveness and outcomes reporting for substance use disorder abatement infrastructure, programs, services, supports and resources for which money from the opioid crisis recovery fund was disbursed, such as the impact on access to harm reduction services or treatment for substance use disorders or a reduction in drug-related mortality.

F. For the purposes of this section:

(1) "distributor settlement agreement" means the settlement agreement between the state and participating political subdivisions and opioid distributors, including McKesson corporation, Cardinal health and AmerisourceBergen corporation, dated as of July 21, 2021 and any revision to the agreement;

(2) "evidence-based" means an activity, practice, program, service, support or strategy that meets one of the following evidentiary criteria:

(a) systematic reviews or meta analyses have found the activity, practice, program, service, support or strategy to be effective;

(b) evidence from a scientifically rigorous experimental study, including a randomized controlled trial, demonstrates that the activity, practice, program, service, support or strategy is effective; or

(c) multiple observational studies from locations in the United States indicate that the activity, practice, program, service, support or strategy is effective; and

(3) "opioid remediation expenditure" means expenditures on care, treatment and other programs, including reimbursement for past programs or expenditures, consistent with the distributor settlement agreement and designed to:

(a) address the misuse and abuse of opioid products;

(b) treat or mitigate opioid use disorder or related disorders; or

(c) mitigate other effects of the opioid epidemic.

**History:** Laws 2023, ch. 166, § 2.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2023, ch. 166, § 3 contained an emergency clause and was approved April 5, 2023.

## 6-4-30. Government results and opportunity expendable trust.

A. The "government results and opportunity expendable trust" is created as a nonreverting fund in the state treasury. The trust shall consist of distributions, appropriations, gifts, grants and donations. Income from investment of the trust shall be credited to the trust. Money in the trust shall be expended only as provided in this section.

B. Beginning July 1, 2025 and July 1 of each year thereafter, a distribution shall be made from the government results and opportunity expendable trust to the government results and opportunity program fund in an amount equal to twenty-five percent of the balance of the trust or one hundred million dollars ($100,000,000), whichever is greater; provided that if the balance of the trust is less than one hundred million dollars ($100,000,000), the balance of the trust shall be distributed. For fiscal year 2025, any unexpended or unencumbered balance remaining after the distribution is made in that fiscal year shall be included in the calculation of state reserves.

C. In addition to the distribution pursuant to Subsection B of this section, money in the government results and opportunity expendable trust may be expended in the event that general fund balances, including all authorized revenues and transfers to the general fund and balances in the general fund operating reserve, will not meet the level of appropriations authorized from the general fund for a fiscal year. In that event, the legislature may appropriate from the government results and opportunity expendable trust to the general fund only in the amount necessary to meet general fund appropriations for that fiscal year and only if the legislature has authorized a transfer from the general fund operating reserve that exhausts that fund balance.

**History:** Laws 2024, ch. 18, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2024, ch. 18 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 15, 2024, 90 days after adjournment of the legislature.

**Temporary provisions.** — Laws 2024, ch. 18, § 4 provided that during the 2024 legislative interim, the staff of the legislative finance committee and the state budget division of the department of finance and administration shall meet regularly to examine and analyze the provisions of the Accountability in Government Act [Chapter 6, Article 3A NMSA 1978] to determine if changes to that act could be made to ensure more cost-effective and responsive government services. On or before December 15, 2024, the staff shall report their findings and make recommendations for legislative changes if any are found to be necessary to the legislative finance committee.

## 6-4-31. Government results and opportunity program fund.

The "government results and opportunity program fund" is created as a nonreverting fund in the state treasury. The fund consists of distributions, appropriations, gifts, grants, donations and income from investment of the fund. The department of finance and administration shall administer the fund. Money in the fund is subject to appropriation by the legislature. Expenditures from the fund shall be by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of finance and administration or the secretary's authorized representative.

**History:** Laws 2024, ch. 18, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2024, ch. 18 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 15, 2024, 90 days after adjournment of the legislature.

**Temporary provisions.** — Laws 2024, ch. 18, § 4 provided that during the 2024 legislative interim, the staff of the legislative finance committee and the state budget division of the department of finance and administration shall meet regularly to examine and analyze the provisions of the Accountability in Government Act [Chapter 6, Article 3A NMSA 1978] to determine if changes to that act could be made to ensure more cost-effective and responsive government services. On or before December 15, 2024, the staff shall report their findings and make recommendations for legislative changes if any are found to be necessary to the legislative finance committee.

## 6-4-32. Higher education trust fund.

A. The "higher education trust fund" is created as a nonreverting fund in the state treasury. The fund consists of distributions, appropriations, gifts, grants and donations. Income from investment of the fund shall be credited to the fund. Money in the fund shall be expended only as provided in this section.

B. The state investment officer, subject to the approval of the state investment council, shall invest money in the fund:

(1) in accordance with the prudent investor rule set forth in the Uniform Prudent Investor Act [45-7-601 through 45-7-612 NMSA 1978]; and

(2) in consultation with the state treasurer.

C. The state investment officer shall report quarterly to the legislative finance committee and the state investment council on the investments made pursuant to this section. Annually, a report shall be submitted no later than October 1 each year to the legislative finance committee, the revenue stabilization and tax policy committee and any other appropriate interim committees.

D. On July 1, 2024, a distribution shall be made from the trust fund to the higher education program fund in an amount equal to forty-seven million nine hundred fifty thousand dollars ($47,950,000).

E. On July 1, 2025 and each July 1 thereafter, a distribution shall be made from the trust fund to the higher education program fund in an amount equal to five percent of the average of the year-end market values of the trust fund for the immediately preceding three calendar years. If, on July 1 of a year, the trust fund has been in effect for less than three calendar years, the distribution shall be in an amount equal to five percent of the average of the year-end market values of the trust fund for the immediately preceding number of calendar years that the trust fund has been in effect.

F. In addition to the distribution pursuant to Subsections D and E of this section, money in the higher education trust fund may be expended in the event that general fund balances, including all authorized revenues and transfers to the general fund and balances in the general fund operating reserve, the appropriation contingency fund and the tax stabilization reserve, will not meet the level of appropriations authorized from the general fund for a fiscal year. In that event, to avoid an unconstitutional deficit, the legislature may appropriate from the trust fund to the general fund only in the amount necessary to meet general fund appropriations for that fiscal year and only if the legislature has authorized transfers from the appropriation contingency fund, the general fund operating reserve and the tax stabilization reserve that exhaust those fund balances.

**History:** Laws 2024, ch. 61, § 1.

## ANNOTATIONS

**Effective dates.** — Laws 2024, ch. 61 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 15, 2024, 90 days after adjournment of the legislature.

**Appropriations.** — Laws 2024, ch. 61, § 4 provided that nine hundred fifty-nine million dollars ($959,000,000) is transferred from the tax stabilization reserve to the higher education trust fund.

## 6-4-33. Higher education program fund.

The "higher education program fund" is created in the state treasury. The fund consists of distributions, appropriations, gifts, grants, donations and income from investment of the fund. The higher education department shall administer the fund. Money in the fund is subject to appropriation by the legislature to provide money for scholarships for tuition and fees at public post-secondary educational institutions, as provided by law. Expenditures from the fund shall be by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of higher education or the secretary's authorized representative. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall revert to the higher education trust fund.

**History:** Laws 2024, ch. 61, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2024, ch. 61 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 15, 2024, 90 days after adjournment of the legislature.

# ARTICLE 5
# Financial Control

## 6-5-1. Definitions.

As used in Chapter 6, Article 5 NMSA 1978:

A. "division" means the financial control division of the department of finance and administration;

B. "central accounting system" means the accounting system used by the division to process and record payments, deposits and other financial transactions for state agencies and departments;

C. "electronic" means electric, digital, magnetic, optical, electronic or similar media;

D. "local public body" means any political subdivision of the state that expends public money from whatever source derived, including counties, county institutions, boards, bureaus or commissions; incorporated cities, towns or villages; drainage, conservancy, irrigation or other districts; charitable institutions for which appropriations are made by the legislature; and every office or officer of any of the above;

E. "model accounting practices" means the accounting methods and procedures used by the state;

F. "processing document" means a form, including supporting documents, submitted by a state agency to the division that will be used by the division to record a financial transaction or make payment;

G. "state agency" means any department, institution, board, bureau, commission, district or committee of the government of the state and means every office or officer of any of the above; and

H. "statewide accounting system network" means the central accounting system, the central payroll system, the central treasury system and all other financial accounting systems operated by state agencies as one system through manual or automated interfaces.

**History:** 1953 Comp., § 11-2-63, enacted by Laws 1957, ch. 252, § 1; 2003, ch. 273, § 1.

## ANNOTATIONS

**The 2003 amendment,** effective July 1, 2003, rewrote the section by adding the introductory paragraph and Subsections A to C and E to H and adding the Subsection D and G designations.

**DFA control over expenditures.** — The articles on financial control (6-5-1 NMSA 1978 et seq.) and local government finances (6-6-1 NMSA 1978 et seq.) make it clear that the legislature intended the department of finance and administration to have significant control over the expenditure of public monies. *Joseph E. Montoya & Assocs. v. State*, 1985-NMSC-074, 103 N.M. 224, 704 P.2d 1100.

**Article constitutional.** — Article 5 of Chapter 6 NMSA 1978, which provides for a change in the duties of the state auditor, is constitutional. 1957 Op. Att'y Gen. No. 57-77.

**Retiree health care authority.** — The retiree health care authority is a "state agency" as defined in this section and is subject to the financial control laws set forth in this article since its enabling legislation does not exempt it from the operation of these laws. 1991 Op. Att'y Gen. No. 91-06.

## 6-5-2. Financial control division; central system of state accounts; accounting systems; processing documents; model accounting practices; internal accounting controls.

A. The division shall maintain a central system of state accounts and shall devise, formulate, approve, control and set standards for the accounting methods and procedures of all state agencies. The division shall prescribe procedures, policies and processing documents for use by state agencies in connection with fiscal matters and may require reports from state agencies as may be necessary to carry out its duties and functions. Procedures and policies issued by the division are exempt from the uniform standards of style and format promulgated by the state commission of public records.

B. The division shall issue a manual of model accounting practices containing the procedures and policies prescribed pursuant to Subsection A of this section and shall annually review and, if necessary, revise and reissue the manual. State agencies shall comply with the model accounting practices established by the division, and the administrative head of each state agency shall ensure that the model accounting practices are followed.

C. State agencies shall implement internal accounting controls designed to prevent accounting errors and violations of state and federal law and rules related to financial matters. In addition, state agencies shall implement controls to prevent the submission of processing documents to the division that contain errors or that are for a purpose not authorized by law.

**History:** 1953 Comp., § 11-2-64, enacted by Laws 1957, ch. 252, § 2; 1977, ch. 247, § 114; 2003, ch. 273, § 2.

### ANNOTATIONS

**The 2003 amendment,** effective July 1, 2003, substituted "processing documents; model accounting practices; internal accounting controls" for "forms" in the section heading; added Subsection A designation and in Subsection A, substituted "The division" for "The financial control division of the state department of finance and administration" at the beginning, inserted "and set standards for" following "accounts and shall", substituted "procedures, policies and processing documents" for "forms" following "division shall prescribe", added the last sentence; and added Subsections B and C.

**Executive conditions on grants of capital outlay appropriations.** — Executive Order 2013-006, which requires state agencies, local public bodies and other entities to meet criteria that exceed the conditions required under the 2013 Work New Mexico Act, Laws 2013, ch. 226, before they can receive and use capital outlay appropriations, violates the separation of powers mandated by Article III, Section 1 of the New Mexico Constitution. 2013 Op. Att’y Gen. No.13-03.

**Authority to create working capital fund to finance central data processing service.** — The department of finance and administration has authority to set up and maintain a working capital fund to finance the operation of a central electronic data processing service. 1959 Op. Att'y Gen. No. 59-187.

## 6-5-2.1. Division; additional duties.

The division shall:

A. coordinate all procedures for financial administration and financial control and integrate them into an adequate and unified system, including the devising, prescribing and installing of processing documents, records and procedures for state agencies;

B. collect and maintain the necessary information to produce ledgers, journals, registers and other supporting records and analyses;

C. maintain information that adequately supports all entries in the state general ledger;

D. verify and control state agency compliance with allotments;

E. conduct all central accounting and fiscal reporting for the state as a whole and produce interim statewide financial reports and the state's comprehensive annual financial statements;

F. prescribe, develop, operate and maintain a uniform statewide accounting system network;

G. prescribe and approve the installation of any changes in the statewide accounting system network as necessary to secure and maintain internal control and facilitate the recording of accounting data in order to prepare reliable and meaningful statements and reports;

H. prescribe the uniform classification of accounts to be used by state agencies;

I. operate a central payroll system;

J. perform monthly reconciliations with the balances and accounts kept by the state treasurer and adopt and promulgate rules regarding reconciliation for state agencies;

K. prescribe and revise procedures, techniques and formats for electronic data transmission to improve the flow of data among state agencies;

L. monitor reversion of unexpended general fund balances by September 30 of each year;

M. promulgate rules relating to the acceptance of credit, charge and debit cards for the payment of fees, taxes and other charges assessed by state agencies;

N. store and maintain records electronically;

O. establish, with the attorney general's approval, a procedure for electronic signatures;

P. maintain accounts and information as necessary to show the sources of state revenues and the purposes for which expenditures are made and provide proper accounting controls to protect state finances;

Q. make improvements in the state's model accounting practices, systems and procedures;

R. assist state agencies in resolving financial questions or problems;

S. have access to and authority to examine books, accounts, reports, vouchers, correspondence files and other records, bank accounts, money and other property of a state agency; and

T. consult with the state auditor to promote better financial statement reporting.

**History:** Laws 2003, ch. 273, § 9.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 273, § 26 made the act effective July 1, 2003.

## 6-5-3. Legality and authority for proposed expenditures determined by division and state agency; encumbering funds.

Before any vouchers or purchase orders are issued or contracts are entered into involving the expenditure of public funds by a state agency, the authority for the proposed expenditure shall be determined by the division and the state agency. After the authority for the expenditure is determined, the appropriate fund shall be shown by the division to be encumbered to the extent of the proposed expenditure. The division may request, and the state agency shall provide, such documentation and other information as the division deems necessary to justify the state agency's determination of authority. The division may disapprove the proposed expenditure if it determines that the justification is inadequate or is not substantiated by law. The division may perform, on a statistical or stratified basis, internal pre-audit and post-audit procedures to monitor and enforce compliance with the provisions of this section.

**History:** 1953 Comp., § 11-2-65, enacted by Laws 1957, ch. 252, § 3; 1977, ch. 247, § 115; 2003, ch. 273, § 3.

**ANNOTATIONS**

**Cross references.** — For provision that New Mexico beef council is not required to submit vouchers, purchase orders or contracts, *see* 77-2A-8 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, substituted "division and state agency" for "financial control division" in the section heading and also in the first sentence and added the last three sentences to the section.

**Rule requiring approval of contracts officers.** — The department of finance and administration's Rule 78-2 that contracts are not effective or binding until approved by the contracts officer derives its authority from Section 6-5-3 NMSA 1978. *Joseph E. Montoya & Assocs. v. State*, 1985-NMSC-074, 103 N.M. 224, 704 P.2d 1100.

**Establishment of maximum wage not authorized.** — This section authorizes the department of finance and administration to determine whether the payroll voucher is submitted in proper form and whether the employee actually performed the services stated therein, but does not authorize the department to establish a maximum wage or make a determination thereon. 1958 Op. Att'y Gen. No. 58-52.

## 6-5-4. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 273, § 25 repealed 6-5-4 NMSA 1978, as enacted by Laws 1957, ch. 252, § 4, relating to reports to legislature, effective July 1, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 6-5-4.1. Annual financial report.

The division shall compile a comprehensive annual financial report. To assist in the compilation of the report, each state agency shall compile, in accordance with generally accepted accounting principles, its financial statements on a schedule established by the division.

**History:** Laws 2003, ch. 273, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 273, § 26 made the act effective July 1, 2003.

## 6-5-5. Warrants issued by secretary; powers and duties of state auditor regarding warrants and transfer of funds imposed upon secretary.

All warrants upon the state treasury shall be issued by the secretary. All the powers and duties of the state auditor relating to the issuance of warrants or the transfer of funds are imposed upon the secretary.

**History:** 1953 Comp., § 11-2-67, enacted by Laws 1957, ch. 252, § 5; 1977, ch. 247, § 117.

**ANNOTATIONS**

**Only secretary authorized to draw warrants.** — Warrants drawn for the purpose of paying per diem and traveling expenses of the legislative finance committee, and warrants drawn to effect payment of the legislative council and legislative council's services, should only be by the director (secretary) of the department of public finance and administration, and not by the state auditor. 1957 Op. Att'y Gen. No. 57-184.

## 6-5-6. Determinations to be made prior to issuance of warrants.

A. No warrant upon the state treasury for the disbursement of funds shall be issued except upon the determination of the division and the state agency that the amount of the expenditure:

(1) does not exceed the appropriation made to the state agency; and

(2) does not exceed the periodic allotment made to the state agency or the unencumbered balance of funds at its disposal unless the warrant includes federal funds that will be receipted based upon established warrant-clearing patterns.

B. The division may implement and perform internal pre-audit and post-audit procedures to monitor and enforce compliance with the provisions of this section. The pre-audit and post-audit procedures may be applied on a stratified or statistical basis.

C. A state agency shall determine that a proposed expenditure is for a public benefit and purpose consistent with the related appropriation and is necessary to carry out the statutory mission of the state agency prior to committing the state to the transaction.

**History:** 1953 Comp., § 11-2-68, enacted by Laws 1957, ch. 252, § 7; 1977, ch. 247, § 118; 1993, ch. 105, § 3; 2003, ch. 273, § 4.

**ANNOTATIONS**

**The 2003 amendment,** effective July 1, 2003, added present designation Subsection A and redesignated former Subsections A and B as Paragraphs A(1) and (2); substituted "division and the state agency" for "financial control division" in present Subsection A; inserted "state" preceding "agency" in Paragraphs A(1) and (2); deleted Subsection C which read: "is for a purpose included within the appropriation or otherwise authorized by law"; and added present Subsections B and C.

**The 1993 amendment,** effective June 18, 1993, added the language beginning "unless the warrant" at the end of Subsection B.

**Responsibility for determining propriety of funds to be disbursed.** — The responsibility for determining that funds to be disbursed from the state treasurer are paid for a proper and legal purpose falls upon the department of finance and administration and more specifically upon the division of financial control. 1961 Op. Att'y Gen. No. 61-09.

**Reimbursement of sheriff for payment of guard's authorized expenses.** — If a sheriff has expended his own money in payment for a guard's authorized expenses, those expenses would therefore be legal expenses of the sheriff for which he could properly be reimbursed. As regards the responsibility of the state auditor (secretary of finance and administration) in determining whether this payment was proper, his responsibility would be fulfilled by determining that a guard actually accompanied the sheriff on the subject trip and that expenses submitted by the sheriff were properly substantiated. 1961 Op. Att'y Gen. No. 61-09.

**Effect of section on employee's salary.** — This section could have a definite bearing upon an employee's salary if the issuance of the salary exceeds the appropriation made to the agency or exceeds the agency's periodic allotment or its unencumbered balance of funds at its disposal. 1958 Op. Att'y Gen. No. 58-52.

## 6-5-7. Warrant or documentation to show fund from which payment is made; settlement of claims against state; account between state and treasury.

Every warrant issued or its supporting documentation shall contain the particular fund appropriated by law out of which it is to be paid. The division shall settle all claims against the state payable by law out of the treasury and keep an account between the state and the treasurer.

**History:** 1953 Comp., § 11-2-69, enacted by Laws 1957, ch. 252, § 8; 1977, ch. 247, § 119; 2006, ch. 24, § 1.

**ANNOTATIONS**

**The 2006 amendment,** effective May 17, 2006, provided that funding sources shall appear on every warrant or its supporting documentation.

## 6-5-8. Vouchers.

All claims for payment of public money shall be made upon a public voucher. All public vouchers shall be in the form and contain the information required by the division. All purchase vouchers for goods and services, other than personnel, shall be

accompanied by supporting invoices and documentation required by the division. Vouchers for the reimbursement of public officers and employees shall have receipts attached for all money claimed, except that travel advance or reimbursement vouchers for claims of mileage and per diem at standard rates need not be accompanied by receipts. All vouchers shall be certified as true and correct by the officer or employee designated to approve payments of claims against state agencies and local public bodies, including public schools. The division may require that payroll, travel advance, reimbursement, refund or other vouchers be sworn to by the certifying officer or payee. Certification may be in writing or by electronic media.

**History:** 1953 Comp., § 11-2-70, enacted by Laws 1963, ch. 47, § 1; 1967, ch. 92, § 1; 1977, ch. 247, § 120; 1984, ch. 29, § 1; 2003, ch. 273, § 5.

**ANNOTATIONS**

**Cross references.** — For per diem and mileage rates, *see* 10-8-4 NMSA 1978.

For restrictions on advances to public officers or employees, *see* 10-8-5 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, substituted "All claims" for "Every claim" at the beginning, substituted "division" for "secretary of finance and administration" in the second and sixth sentences, substituted "personnel" for "personal" following "services, other than", inserted "and documentation required by the division" following "by supporting invoices", and added the last sentence.

**Department may establish rules and regulations.** — Within its broad powers to make certain that state moneys are spent for authorized purposes, the department of finance and administration may establish such rules and regulations as may be necessary to accomplish this purpose. 1961 Op. Att'y Gen. No. 61-09.

**Lease of office space is not rendering of service.** — The leasing of office space to state agencies does not constitute the rendering of a service within the meaning of this section. 1965 Op. Att'y Gen. No. 65-117.

**Presentation of warrants within reasonable time.** — The director (secretary) of the department of finance and administration may lawfully provide by regulation that all agreements on behalf of the state for purchases to be made or for services to be rendered shall be subject to the condition that any warrant issued in payment of the claim must be presented within a reasonable period prescribed; that all vouchers submitted as the basis for claim against public funds shall contain such stipulation; and that all warrants to be issued on the basis of such vouchers shall contain the same stipulation. 1958 Op. Att'y Gen. No. 58-05.

**Sworn statement requirement superseded in practice.** — So long as county warrants are issued in accordance with this section, county officers are in compliance with the law. The requirement of Section 4-45-1 NMSA 1978 (now repealed) that county

officials take a signed sworn statement from the payee before a warrant may be issued has, in practice, been superseded. 1980 Op. Att'y Gen. No. 80-01.

## 6-5-9. Secretary may authorize state agencies to issue warrants; secretary may except state agencies from submission of proposed vouchers, purchase orders or contracts.

The secretary of finance and administration may, when he determines that efficiency or economy so requires, authorize state agencies to issue warrants and except state agencies from the requirement of prior submission of proposed vouchers, purchase orders or contracts to the financial control division as provided in Section 6-5-3 NMSA 1978. The authorization or exception shall be made annually by the order of the secretary in writing. The order shall state the extent of the authorization or exception and the reasons therefore [therefor]. The department of finance and administration shall promulgate rules providing conditions for agencies to meet before obtaining an authorization or exception pursuant to this section. The department shall annually report to the legislative finance committee on the authorizations and exceptions granted.

**History:** 1953 Comp., § 11-2-71, enacted by Laws 1957, ch. 252, § 15; 1977, ch. 247, § 121; 2003, ch. 273, § 6.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**The 2003 amendment,** effective July 1, 2003, substituted "Section 6-5-3 NMSA 1978. The" for "Section 11-2-65 NMSA 1953. Such" following "as provided in", inserted "annually" following "shall be made", and added the last two sentences.

**State highway engineer may sign warrants for highway department.** — The director (now secretary) of the department of finance and administration has the authority under this section to authorize the chief highway engineer (now state highway engineer) to sign warrants issued by the highway department. 1963 Op. Att'y Gen. No. 63-60.

**Written order should include a specification for surety bonds.** 1963 Op. Att'y Gen. No. 63-60.

## 6-5-9.1. Procurement card project.

The division shall design and implement a procurement card project that allows state agencies to pay for purchases by using procurement cards. To implement the project, the division may enter into an agreement with a procurement card issuer. The division shall determine the limits of the project, including the number of state agencies that

participate and limitations on types of goods and services that may be eligible for purchase through procurement cards.

**History:** Laws 2003, ch. 273, § 10.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 273, § 26 made the act effective July 1, 2003.

## 6-5-10. State agency reversions; director powers; compliance with federal rules.

A. Except as provided in Subsections B and C of this section, all unreserved undesignated fund balances in reverting funds and accounts as reflected in the central financial reporting and accounting system as of June 30 shall revert by September 30 to the general fund. The division may adjust the reversion within forty-five days of release of the audit report for that fiscal year.

B. The director of the division may modify a reversion required pursuant to Subsection A of this section if the reversion would violate federal law or rules pertaining to supplanting of state funds with federal funds or other applicable federal provisions.

**History:** Laws 1994, ch. 11, § 1; 2001, ch. 324, § 1; 2003, ch. 273, § 7.

**ANNOTATIONS**

**The 2003 amendment,** effective July 1, 2003, deleted "and regulations" in the section heading; in Subsection A, substituted "shall revert by September 30" for "as adjusted shall revert" following "of June 30", substituted "The division may adjust the reversion within forty-five" for "within ten" preceding "days of release"; in subsection B, substituted "the division may" for "the financial control division of the department of finance and administration may" near the beginning, substituted "law or rules" for "law rules or regulations" following "would violate federal"; and deleted former Subsection C which read: "Appropriations to the human services department for medicaid payments may be expended by the department for medicaid obligations for prior fiscal years."

**The 2001 amendment,** effective June 15, 2001, inserted the exception at the beginning of Subsection A; in Subsection B, deleted the former last sentence, which read "For the eighty-third fiscal year, the director of the financial control division may modify a reversion pursuant to this section if the reversion would result in a financial hardship to the state"; and added Subsection C.

## 6-5-11. "Annual" defined for payroll administration.

For the purpose of administering payroll for all branches of government, "annual" means fifty-two calendar weeks.

**History:** 1978 Comp., § 6-5-11, enacted by Laws 1999, ch. 24, § 1.

# ARTICLE 5A
# Requirements for Receiving Funds from Certain Organizations

## 6-5A-1. Definitions; requirements for governmental entities that receive funds or property from certain organizations.

A. As used in this section:

(1) "agency" means any state agency, department or board, any public institution of higher education or public post-secondary educational institution and any county, municipality or public school district;

(2) "organization" means an organization that has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c) of the Internal Revenue Code of 1986, as amended or renumbered, and whose principal and authorized purpose is to complement, contribute to and support or aid the function of or forward the purposes of a single agency through financial support or contribution of services, goods, data or information that help or aid the agency in carrying out its statutory purpose and goals, including, but not limited to, the provision of scholarships to students of educational institutions and the provision of grants to supplement ongoing research or to provide funds for research and programs being carried out by an agency;

(3) "post-secondary educational institution" means an educational institution designated in Article 12, Section 11 of the constitution of New Mexico and includes an academic, vocational, technical, business, professional or other school, college or university or other organization or person offering or purporting to offer courses, instruction, training or education through correspondence or in person to any individual within this state over the compulsory school attendance age, if that post-secondary educational institution is directly supported in whole or in part by state or local taxation; and

(4) "transferred" means given or otherwise transferred, with or without consideration.

B. Prior to an agency accepting property or funds that have been transferred to an agency by an organization, the agency and the organization shall enter into a written agreement that includes at least the following:

(1) a concise statement of the organization's purpose and of how that purpose is supportive of the agency's statutory responsibilities and authority;

(2) provisions explicitly describing the relationship of the agency to the organization in connection with such issues as authority, autonomy and information sharing and reporting;

(3) provisions defining the extent to which the organization may complement and support functions that are the statutory responsibility of the agency;

(4) requirements that the organization:

(a) if its total annual expenses exceed seven hundred fifty thousand dollars ($750,000), have a financial accounting system considered adequate under customarily and currently accepted accounting standards and that the financial affairs of the organization be audited annually in accordance with generally accepted governmental auditing standards by an independent professional auditor who would be required to furnish to the agency copies of the annual audit, which, exclusive of any lists of donors or donations, shall be a public record, and to make the associated working papers available to the agency for review upon its written request for a period of three years after the audit report date; or

(b) if its total annual expenses are seven hundred fifty thousand dollars ($750,000) or less, file a statement with the agency in the form of a balance sheet showing the assets of the organization, its liabilities, its income, classified by general source, and its expenditures, classified by object;

(5) a provision requiring that any funds or property transferred to the agency by the organization be considered subject to all state laws and regulations governing the disbursement and administration of public funds and public property, except to the extent of any specific conditions of the transfer that are acceptable to the agency and do not require actions that are punishable as crimes under state law;

(6) a provision stating that the agency has reviewed the bylaws of the organization and found them acceptable and a provision requiring that the organization furnish copies of the bylaws to the agency;

(7) a provision requiring specification of the consideration that the agency received from the organization for any agency services provided in support of the organization; and

(8) a provision requiring the application by the organization of the standard described in Section 6-8-10 NMSA 1978 as the standard for evaluating investments of the organization.

C. The written agreement required by Subsection B of this section is not required for each transfer but is a precondition of an agency's acceptance of any transfers. The agreement may be amended by mutual written agreement of the agency and the organization.

D. Nothing in this section subjects an organization to the provisions of the Open Meetings Act [Chapter 10, Article 15 NMSA 1978] or makes its records, other than the annual audit required under this section, public records within the purview of Section 14-2-1 NMSA 1978."

**History:** Laws 1992, ch. 27, § 1; 2011, ch. 174, § 1; 2023, ch. 43, § 1.

## ANNOTATIONS

**Cross references.** — For Section 501(c) of the Internal Revenue Code of 1986, *see* 26 U.S.C. § 501(c).

**The 2023 amendment,** effective January 1, 2024, changed the threshold from two hundred fifty thousand dollars of gross annual income to seven hundred fifty thousand of total annual expenses for tax-exempt organizations that are required to provide proof of an adequate accounting system and an annual audit prior to soliciting or receiving donations; and in Subsection B, Subparagraph B(4)(a), after "if its", deleted "gross annual income exceeds two hundred fifty thousand dollars ($250,000)" and added "total annual expenses exceed seven hundred fifty thousand dollars ($750,000)", and in Subparagraph B(4)(b), after "if its", deleted "gross annual income is two hundred fifty thousand dollars ($250,000)" and added "total annual expenses are seven hundred fifty thousand dollars ($750,000)".

**The 2011 amendment,** effective June 17, 2011, in Subsection B, increased the threshold amount of gross annual income that subjects an organization to the requirement that it have an adequate financial accounting system and that it be audited annually from one hundred thousand dollars to two hundred fifty thousand dollars; and changed the threshold amount of gross annual income that subjects an organization to the requirement that it file a balance sheet with the recipient agency from one hundred thousand dollars to two hundred fifty thousand dollars.

**Section 6-5A-1(D) NMSA 1978 does not serve as a statutory exemption to the Inspection of Public Records Act.** — In consolidated appeals arising from two lawsuits brought by plaintiff against defendants, the university of New Mexico foundation, the university of New Mexico lobo club, and the board of regents of the university of New Mexico, under the Inspection of Public Records Act (IPRA), §§ 14-2-1 through 14-2-12 NMSA 1978, seeking donor lists and records and communications related to a naming agreement between the university of New Mexico and a restaurant chain that obtained naming rights to a major sporting facility operated by the university, and where defendants argued that these records were exempt from disclosure under § 6-5A-1 NMSA 1978, and that the records were not public records under IPRA, the district court did not err in ruling that § 6-5A-1(D) did not function as an exemption to IPRA, because a plain reading of § 6-5A-1 establishes that the legislature expressly designated organizations' annual audits as public records, but also made clear that it was not doing the same for other records. Thus, while an organization's records might

be public records subject to inspection, § 6-5A-1 does not specifically exempt any records from disclosure. *Libit v. UNM Lobo Club*, 2022-NMCA-043, cert. granted.

# ARTICLE 6
# Local Government Finances

## 6-6-1. Definitions.

"Local public body" means every political subdivision of the state that expends public money from whatever source derived, including counties, county institutions, boards, bureaus or commissions; incorporated cities, towns or villages; drainage, conservancy, irrigation or other districts; charitable institutions for which an appropriation is made by the legislature; and every office or officer of any of the above. "Local public body" does not include a mutual domestic water consumers association, a land grant, an incorporated municipality or a special district with an annual revenue, exclusive of capital outlay funds, federal or private grants or capital outlay funds disbursed directly by an administrating agency, of less than fifty thousand dollars ($50,000), nor county, municipal, consolidated, union or rural school districts and their officers or irrigation districts organized under Sections 73-10-1 through 73-10-47 NMSA 1978.

**History:** 1953 Comp., § 11-2-56, enacted by Laws 1957, ch. 250, § 1; 1961, ch. 207, § 1; 2009, ch. 283, § 1; 2017, ch. 146, § 1.

**ANNOTATIONS**

**Compiler's notes.** — Senate Bill 222, enacted by the Fifty-Third Legislature, First Session, 2017, was vetoed by the governor on March 15, 2017. Pursuant to the First Judicial District Court's decision in State ex rel. New Mexico Legislative Council v. Honorable Susana Martinez, Governor of the State of New Mexico et al., D-101-CV-2017-01550, and affirmed by S.Ct. Order No. S-1-SC-36731, on April 25, 2018, which held that Article IV, Section 22 of the New Mexico Constitution requires that objections must accompany a returned bill, Senate Bill 222 was chaptered into law by the Secretary of State.

**The 2017 amendment,** effective July 1, 2017, raised the threshold for being exempt from the definition of "local public body"; in the first sentence, after "including", deleted "but not limited to"; and in the second sentence, after "of less", changed "then" to "than", and deleted "ten thousand dollars ($10,000)" and added "fifty thousand dollars ($50,000)".

**The 2009 amendment,** effective July 1, 2010, in the second sentence, between "does not include" and "county, municipal", added new language and changed the statutory reference from Sections 75-23-1 through 75-23-45 NMSA 1978 to Sections 73-10-1 through 73-10-47 NMSA 1978.

**DFA control over expenditures.** — The articles on financial control (Section 6-5-1 NMSA 1978 et seq.) and local government finances (Section 6-6-1 NMSA 1978 et seq.) make it clear that the legislature intended the department of finance and administration to have significant control over the expenditure of public monies. *Joseph E. Montoya & Assocs. v. State*, 1985-NMSC-074, 103 N.M. 224, 704 P.2d 1100.

**Validity of 6-6-1 to 6-6-6 NMSA 1978.** — Sections 6-6-1 to 6-6-6 NMSA 1978 constitute an independent statute, the meaning of which is reasonably clear from an examination of the statute itself, and it does not constitute "blind legislation" prohibited by the constitution. 1958 Op. Att'y Gen. No. 58-85.

**The middle Rio Grande conservancy district is a "local public body"** as defined by this section. 1960 Op. Att'y Gen. No. 60-209.

## 6-6-2. Local government division; powers and duties.

The local government division of the department of finance and administration has the power and duty in relation to local public bodies to:

A. require each local public body to furnish and file with the division, on or before June 1 of each year, a proposed budget for the next fiscal year;

B. examine each proposed budget and, on or before July 1 of each year, approve and certify to each local public body an operating budget for use pending approval of a final budget;

C. hold public hearings on proposed budgets;

D. make corrections, revisions and amendments to the proposed budgets as may be necessary to meet the requirements of law;

E. certify a final budget for each local public body to the appropriate governing body prior to the first Monday in September of each year. The budgets, when approved, are binding upon all tax officials of the state;

F. require periodic financial reports, at least quarterly, of local public bodies. The reports shall contain the pertinent details regarding applications for federal money or federal grants-in-aid or regarding federal money or federal grants-in-aid received, including details of programs, matching funds, personnel requirements, salary provisions and program numbers, as indicated in the catalog of federal domestic assistance, of the federal funds applied for and of those received;

G. notify the secretary of finance and administration if a municipality or county has failed to submit two consecutive financial reports required by Subsection F of this section;

H. upon the approval of the secretary of finance and administration, authorize the transfer of funds from one budget item to another when the transfer is requested and a need exists meriting the transfer and the transfer is not prohibited by law. In case of a need necessitating the expenditure for an item not provided for in the budget, upon approval of the secretary of finance and administration, the budget may be revised to authorize the expenditures;

I. with written approval of the secretary of finance and administration, increase the total budget of any local public body in the event the local public body undertakes an activity, service, project or construction program that was not contemplated at the time the final budget was adopted and approved and which activity, service, project or construction program will produce sufficient revenue to cover the increase in the budget or the local public body has surplus funds on hand not necessary to meet the expenditures provided for in the budget with which to cover the increase in the budget; provided, however, that the attorney general shall review legal questions identified by the secretary arising in connection with such budget increase requests;

J. supervise the disbursement of funds to the end that expenditures will not be made in excess of budgeted items or for items not budgeted and that there will not be illegal expenditures;

K. prescribe the form for all budgets, books, records and accounts for local public bodies; and

L. with the approval of the secretary of finance and administration, make rules relating to budgets, records, reports, handling and disbursement of public funds or in any manner relating to the financial affairs of the local public bodies.

**History:** 1953 Comp., § 11-2-57, enacted by Laws 1957, ch. 250, § 2; 1976 (S.S.), ch. 28, § 1; 1977, ch. 247, § 112; 1987, ch. 261, § 1; 2003, ch. 273, § 11; 2011, ch. 106, § 2.

## ANNOTATIONS

**Temporary provisions.** — Laws 2023, ch. 2, § 1, effective February 20, 2023, provided that:

A. The local government division of the department of finance and administration, in consultation with the homeland security and emergency management department, shall provide zero-interest reimbursable loans to political subdivisions of the state that have been approved for federal public assistance funding for projects to replace or repair public infrastructure damaged by fire, flooding or debris flows caused by or stemming from the Hermits Peak-Calf Canyon fire. The local government division shall require a contract for reimbursement from a political subdivision of the state receiving a loan pursuant to this section. The contract shall specify:

(1) that the political subdivision shall pay the loan using first dollars received from the approved federal public assistance funding that serves as the basis for the loan;

(2) the political subdivision shall repay the loan within thirty days of having received the approved federal public assistance funding;

(3) such notice or reporting requirements that the local government division deems necessary to be sufficiently informed regarding compliance with Paragraphs (1) and (2) this subsection; and

(4) that upon failure to meet a requirement of this subsection, the loan shall be repaid at current market interest rates.

B. All loan repayments made pursuant to this section shall be deposited into the general fund.

C. The secretary of finance and administration shall take any and all legal actions necessary to enforce the terms of contracts entered into pursuant to this section.

D. On or before April 1, 2023, and every three months thereafter, the local government division shall provide a report to the legislative finance committee and the governor regarding the loans made pursuant to this section, including: the projects for which loan contracts have been made, the dollar amounts of those contracts, the repayments made pursuant to contracts, any breaches of contract and subsequent enforcement actions pursuant to this section. Reports pursuant to this subsection shall cease upon the final repayment on a contract pursuant to this section.

**Temporary provisions.** — Laws 2019, ch. 231, § 1, effective June14, 2019, provided:

A. The local government division of the department of finance and administration shall:

(1) conduct an analysis and feasibility study of the siting, planning, design and construction of a library and multi-use complex to provide for the health and well-being of the residents of Chaparral; and

(2) recommend an implementation schedule for the siting, planning, design and construction of such facility.

B. The feasibility study shall assess:

(1) the needs of the community that can be met by the construction of a library and multi-use complex, including:

(a) library resources, including reading material, audiobooks and access to computer and internet services and multimedia technology;

(b) temporary facilities for public agencies to provide services and support to local residents;

(c) office and meeting spaces for nonprofit organizations to offer health and well-being services, including physical health and dental services, domestic violence and sexual assault counseling, legal aid clinics, taxpayer assistance, financial literacy classes, fitness and nutritional support, entrepreneurial and small business advising and resume and job skills training; and

(d) public space for town halls and other community meetings;

(2) whether the library and multi-use complex should be constructed separately or as a single facility; and

(3) options for siting of the facility or facilities, including a cost-benefit analysis of each option. The cost-benefit analysis shall consider:

(a) convenience for the residents of Chaparral;

(b) safe and secure access and visibility;

(c) opportunities to leverage public or private property and resources for cost saving; and

(d) availability of appropriate property and any legal or physical siting constraints.

C. In conducting the feasibility study, the division shall consider input from residents of Chaparral and elected officials representing the community at the local, state and federal levels.

D. The implementation schedule shall recommend time line and budget phases for all aspects of the project, including siting, planning, design and construction.

E. The study is contingent on funding received through legislative appropriation.

**The 2011 amendment,** effective July 1, 2012, required the local government division to notify the secretary of finance and administration if a municipality or a county failed to submit two consecutive financial reports.

**The 2003 amendment,** effective July 1, 2003, in Subsection F, inserted "at least quarterly" following "financial reports", deleted "but not limited to" following "grants-in-aid received, including"; inserted "exists" following "and a need" in Subsection G; and deleted "and regulations" following "rules" in Subsection K.

**City may spend revenues where approval should have been granted.** — Where a city properly meets the standards set out in Subsection H of this section and approval

by the attorney general and the department of finance and administration should be granted, the city will not be precluded from using the revenues in question. *Apodaca v. Wilson*, 1974-NMSC-071, 86 N.M. 516, 525 P.2d 876 (decided under prior law).

**City bound by budget resolution requesting approval.** — Where a home-rule city passes a budget resolution which, by its very terms, requests approval of the attorney general and the department of finance and administration under Subsection H of this section, the city is bound by its own resolution in requesting such approval, and cannot later contend that it may act without regard to state approval. *Apodaca v. Wilson*, 1974-NMSC-071, 86 N.M. 516, 525 P.2d 876 (decided prior to 1987 amendment).

**Local government division may suspend public hearing on proposed budget** at any time for good cause. 1961 Op. Att'y Gen. No. 61-77.

**Prorating of funds when insufficient funds available for payment of salaries.** — Where funds are not available for the payment of salaries, the Bateman Act (Sections 6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) requires that available funds be distributed pro rata to the elected county officials so long as they last. The local government division cannot use the guise of forcing a large line item figure in a budget to justify cutting of salaries. 1961 Op. Att'y Gen. No. 61-77.

**Budget line transfer authorized where clerical error results in budget line deficit.** — Where a clerical error results in a budget line deficit, an authorized budget line transfer may be accomplished by the director (secretary) of the department of finance and administration with or without request of the local authorities. 1969 Op. Att'y Gen. No. 69-09.

**Division has authority to correct, revise and amend local budgets.** — The local government division of the department of finance and administration has the authority under this section to correct, revise and amend the budget of a subdivision of a state and to certify a final budget prior to the first Monday in September of each year. 1969 Op. Att'y Gen. No. 69-09.

**Local agency may not maintain separate account where county treasurer is agency's disbursing agent.** — Where the county treasurer is the disbursing agent for normal transactions handled by a local county civil defense agency, the latter may not maintain a separate checking account for public funds of such agency. 1965 Op. Att'y Gen. No. 65-51.

**Board of county commissioners, acting as a board of finance, may not delegate to a financial advisor duties that are statutorily delegated to either the county treasurer or the board.** — Where the Sandoval county board of county commissioners hired a contractor to formulate an investment policy for the county and to advise the Sandoval county treasurer and the board of financial matters, the contractor may aid the county commissioners, acting as the board of finance, in the formulation of an investment policy, but the contractor may not be delegated the statutory authority to

supervise, demand or oversee the roles and responsibilities of the county treasurer. New Mexico courts have confirmed that a board of county commissioners may delegate its "advice and consent" authority to the county treasurer through the adoption of a county investment policy; yet, it may not delegate its statutory "advice and consent" authority to a contractor. *Sandoval County Treasurer* (5/17/16), Att'y Gen. Adv. Ltr. 2016-04.

**Division may not substitute its judgment for that of local officials.** — Subsection D of this section, giving the local government division the power to make corrections, revisions and amendments to proposed budgets, does not give that division a bludgeon to be held over the governing board of a local body to force them to exercise their discretion in accordance with the views of the officials in control of the department of finance and administration. The amount of money deemed necessary to repair a court house should be left to the exercise of sound discretion by the board of county commissioners. A line item within a budget for repair of the court house is not such an expenditure as is necessary to meet the requirements of law within the meaning of Subsection D of this section, insofar as fixing the amount necessary is concerned. The local government division cannot arbitrarily force the board of county commissioners to establish a line item in a budget at a sum which, in the judgment of the board of county commissioners, is excessive to meet the needs of that item. As a consequence thereto, the local government division does not have the power to order suspension of all disbursements by a county merely because the county has not provided a sum of money for a line item which the local government division feels is necessary. 1961 Op. Att'y Gen. No. 61-77.

## 6-6-3. Local public bodies; duties.

Every local public body shall:

A. keep all the books, records and accounts in their respective offices in the form prescribed by the local government division;

B. make all reports as may be required by the local government division; and

C. conform to the rules and regulations adopted by the local government division.

**History:** 1953 Comp., § 11-2-58, enacted by Laws 1957, ch. 250, § 3; 1977, ch. 247, § 113.

**ANNOTATIONS**

**Conservancy districts subject to provisions of 6-6-1 to 6-6-6 NMSA 1978.** — Conservancy districts, as characterized by 73-14-3 NMSA 1978, are subject to the provisions of 6-6-1 to 6-6-6 NMSA 1978. 1958 Op. Att'y Gen. No. 58-51.

**Board of county commissioners, acting as a board of finance, may not delegate to a financial advisor duties that are statutorily delegated to either the county treasurer or the board.** — Where the Sandoval county board of county commissioners hired a contractor to formulate an investment policy for the county and to advise the Sandoval county treasurer and the board of financial matters, the contractor may aid the county commissioners, acting as the board of finance, in the formulation of an investment policy, but the contractor may not be delegated the statutory authority to supervise, demand or oversee the roles and responsibilities of the county treasurer. New Mexico courts have confirmed that a board of county commissioners may delegate its "advice and consent" authority to the county treasurer through the adoption of a county investment policy; yet, it may not delegate its statutory "advice and consent" authority to a contractor. *Sandoval County Treasurer* (5/17/16), Att'y Gen. Adv. Ltr. 2016-04.

## 6-6-4. Local government division; research and survey; report to governor and legislature.

The local government division shall have the power, authority and responsibility to engage in research, conduct surveys and examine the operation and activities, including but not limited to the purchasing practices, of local public bodies, submitting to the governor and the legislature and local public bodies measures to secure greater administrative efficiency and economy, to minimize the duplication of activities, and to effect a better organization and consolidation of functions among local public bodies.

**History:** 1953 Comp., § 11-2-59, enacted by Laws 1957, ch. 250, § 4; 1975, ch. 164, § 1.

## 6-6-4.1. Local government division; additional duties; occupancy tax quarterly reports.

The local government division of the department of finance and administration shall promulgate rules and regulations that require the governing body of any municipality or county imposing and collecting an occupancy tax pursuant to the Lodgers' Tax Act [3-38-13 to 3-38-25 NMSA 1978] to report to the division on a quarterly basis any expenditure of occupancy tax funds pursuant to Sections 3-38-15 and 3-38-21 NMSA 1978.

**History:** Laws 1996, ch. 58, § 11.

## 6-6-5. Record of approved budget.

Upon receipt of any budget approved by the local government division, the local public body shall cause such budget to be made a part of the minutes of such body.

**History:** 1953 Comp., § 11-2-60, enacted by Laws 1957, ch. 250, § 5.

## 6-6-6. Approved budgets; claims or warrants in excess of budget; liability.

When any budget for a local public body has been approved and received by a local public body, it is binding upon all officials and governing authorities, and no governing authority or official shall allow or approve claims in excess thereof, and no official shall pay any check or warrant in excess thereof, and the allowances or claims or checks or warrants so allowed or paid shall be a liability against the officials so allowing or paying those claims or checks or warrants, and recovery for the excess amounts so allowed or paid may be had against the bondsmen of those officials.

**History:** 1953 Comp., § 11-2-61, enacted by Laws 1957, ch. 250, § 6; 2001, ch. 147, § 3.

**ANNOTATIONS**

**The 2001 amendment,** effective June 15, 2001, inserted "check or" preceding "warrant" and inserted "checks or" preceding "warrants" in two places.

## 6-6-7. [Limitation on county expenditures during year official's term expires; exceptions.]

It shall be unlawful for the board of county commissioners, the county clerk or any other county official authorized to make purchases to disburse, expend or obligate any sum in excess of fifty per centum of the approved budget for the fiscal year during which the terms of office of any such official will expire; provided, however, that expendtiures or [expenditures for] election expense, record books, necessary office equipment and fuel shall be excepted from the provisions of this act [6-6-7, 6-6-9, 6-6-10 NMSA 1978]. In the event it may be deemed advisable or advantageous to contract for fuel for the entire year, proper precaution must be exercised that a sufficient supply of fuel will be on hand and available for the needs of the incoming officials, or an amount equal to the sum by which one-half the budget item has been exceeded.

**History:** 1941 Comp., § 7-602, enacted by Laws 1941, ch. 190, § 1; 1953 Comp., § 11-6-1.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For destruction of documentary evidence of extinguished debt, *see* 6-10-62 NMSA 1978.

**Legislature intended this section to apply to each fund** and item of the budget. 1956 Op. Att'y Gen. No. 56-6551.

**County clerk's duties ministerial.** — The duties of a county clerk with respect to fiscal matters are ministerial. 1979 Op. Att'y Gen. No. 79-33.

**County clerk not responsible for disbursement of funds.** — Legal responsibility for disbursement of public funds vested in board of county commissioners does not extend to county clerks. 1979 Op. Att'y Gen. No. 79-33.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 20 C.J.S. Counties § 201; 79 C.J.S. Schools and School Districts § 325.

## 6-6-8. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 54, § 1 repealed 6-6-8 NMSA 1978, relating to a limitation on county school expenditures during the fiscal year in which the superintendent's term expires.

## 6-6-9. [Limitation on municipal expenditures during year officials' terms expire.]

It shall be unlawful for the governing board or council of any city, town or village in the state of New Mexico to disburse, expend or contract for the expenditure of more than the proportionate share of the fiscal year budget during any fiscal year in which the terms of office of such officials will expire, as the number of months such officials are in office bears to the entire fiscal year.

**History:** 1941 Comp., § 7-604, enacted by Laws 1941, ch. 190, § 3; 1953 Comp., § 11-6-3.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64A C.J.S. Municipal Corporations §§ 1582, 1583.

## 6-6-10. Violation of expense limit; penalty.

Any member of any board of county commissioners, or of any local school board, or of any governing board or council of any municipality, or any other official who shall

violate the provisions of Sections 6-6-7 through 6-6-10 NMSA 1978 [6-6-7, 6-6-9, 6-6-10 NMSA 1978] shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars ($500) or by imprisonment for not more than six months or both [and] upon conviction under the section the position shall be declared vacant. Any official whose duty it is to allow claims and issue warrants therefor, who issues warrants or evidences of indebtedness contrary to the provisions of Sections 6-6-7 through 6-6-10 NMSA 1978 shall be liable to his respective county, school district or municipality for such violations and recovery may be made against the bondsmen of such official.

**History:** 1941 Comp., § 7-606, enacted by Laws 1941, ch. 190, § 5; 1953 Comp., § 11-6-5; 1979, ch. 335, § 1.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For penalty for misusing public funds, *see* 6-10-40 and 6-10-52 NMSA 1978.

**Compiler's notes.** — Section 6-6-8 NMSA 1978, referred to in both the first and second sentences, was repealed in 1979.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 63C Am. Jur. 2d Public Officers and Employees §§ 287 to 290.

67 C.J.S. Officers and Public Employees §§ 225, 242.

## 6-6-11. Yearly expenditures limited to income; Bateman Act.

It is unlawful for any board of county commissioners, municipal governing body or any local school board, for any purpose whatever to become indebted or contract any debts of any kind or nature whatsoever during any current year which, at the end of such current year, is not and cannot then be paid out of the money actually collected and belonging to that current year, and any indebtedness for any current year which is not paid and cannot be paid, as above provided for, is void. Any officer of any county, municipality, school district or local school board, who shall issue any certificate or other form of approval of indebtedness separate from the account filed in the first place or who shall at any time use the fund belonging to any current year for any other purpose than paying the current expenses of that year, or who shall violate any of the provisions of this section, is guilty of a misdemeanor.

**History:** Laws 1897, ch. 42, § 15; C.L. 1897, § 299; Code 1915, § 1227; C.S. 1929, § 33-4241; 1941 Comp., § 7-607; 1953 Comp., § 11-6-6; Laws 1968, ch. 72, § 7.

## ANNOTATIONS

**Cross references.** — For budgets of local public bodies, *see* 6-6-2 to 6-6-6 NMSA 1978.

**Compiler's notes.** — The Bateman Act, which provided for funding the floating indebtedness of counties, boards of education, municipal corporations and school districts, was enacted by Laws 1897, ch. 42. Only the presently operative portions thereof, §§ 15 to 21 (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978), were retained in the 1915 Code and subsequent compilations.

### I. GENERAL CONSIDERATION.

**Bateman Act not repealed by later enactments.** — The Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) was not repealed by § 1339, 1915 Code (since repealed) relating to tax levies for judgments for current expenses. *James v. Board of Comm'rs*, 1918-NMSC-106, 24 N.M. 509, 174 P. 1001.

The Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) was not repealed by Laws 1915, ch. 12 (since repealed) which fixed salaries for county officers. *James v. Board of Comm'rs*, 1918-NMSC-106, 24 N.M. 509, 174 P. 1001.

The Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978), limiting county expenses to current funds, was not repealed by a statute permitting levy of taxes for judgments for current expenses. *Optic Publ'g Co. v. Board of Comm'rs*, 1921-NMSC-088, 27 N.M. 371, 202 P. 124.

The Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) was not repealed by Acts 1919, ch. 16 (since repealed), providing for the payment of salaries of county officers. *Baca v. Board of Comm'rs*, 1924-NMSC-073, 30 N.M. 163, 231 P. 637.

**Purpose.** — The purpose of the Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) is to prevent counties and municipalities from contracting debts they are not able to pay. *Treloar v. County of Chaves*, 2001-NMSC-074, 130 N.M. 794, 32 P.3d 803, cert. denied, 131 N.M. 64, 33 P.3d 284 (2001).

**Intent of Bateman Act.** — The Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) was designed to require municipalities to live within their annual incomes. *City of Hobbs v. State ex rel. Reynolds*, 1970-NMSC-133, 82 N.M. 102, 476 P.2d 500.

**Policy adopted by legislature.** — The legislature adopted as a policy the plan that counties and other municipal subdivisions should be compelled to limit their expenses to their respective incomes, and that their debts insofar as they exceeded such income should be void, except for the purposes of entitling the creditor to his pro rata of moneys coming in from deferred taxes. *Johnston v. Board of Cnty. Comm'rs*, 1904-NMSC-018, 12 N.M. 237, 78 P. 43.

**This statute does not exempt villages.** *Campbell v. Village of Green Tree*, 1955-NMSC-030, 59 N.M. 255, 282 P.2d 1101.

## II. APPLICABILITY.

**Bateman Act applicable to debts for necessities.** — The Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) applies to debts created for necessities such as water and lights for use at a courthouse or others which may be arbitrarily placed against a county, as well as those of voluntary creation. *Santa Fe Water & Light Co. v. Santa Fe Cnty*., 1924-NMSC-028, 29 N.M. 538, 224 P. 402.

**County indebtedness for publication of delinquent tax list.** — Indebtedness incurred by county for publication of delinquent tax list is within the provisions and limitations of the Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978). *Sena v. Board of Comm'rs*, 1921-NMSC-094, 27 N.M. 461, 202 P. 984.

**Inapplicable to indebtedness to state.** — The Bateman Act (Sections 6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) does not apply to indebtedness to the state. *State ex rel. Wilson v. Board of Cnty. Comm'rs*, 1957-NMSC-005, 62 N.M. 137, 306 P.2d 259; *State v. Board of Cnty. Comm'rs*, 1928-NMSC-026, 33 N.M. 340, 267 P. 72.

**Contracts for services of attorney.** — The Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) does not apply to contracts for services of an attorney. An attorney rendering services is entitled to payment from taxes collected that year, but not used, and in the next tax levy, if necessary. *Neal v. Board of Educ*., 1935-NMSC-093, 40 N.M. 13, 52 P.2d 614.

**Bateman Act not applicable to special funds.** — The Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) has no application to special funds created for special purposes. *San Juan Water Comm'n v. Taxpayers & Water Users of San Juan Cnty*., 1993-NMSC-050, 116 N.M. 106, 860 P.2d 748.

**Special funds for special services.** — If a special fund for a special purpose is created, the Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) is not applicable. *City of Hobbs v. State ex rel. Reynolds*, 1970-NMSC-133, 82 N.M. 102, 476 P.2d 500.

## III. EXPENDITURES AND INDEBTEDNESS.

**Special fund available to pay contract.** — The Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978)was not applicable to defeat a physician's claim for monies due following the termination of his employment with a county hospital since the county's setting aside several million dollars for contingencies from the sale of the hospital created a special fund from which the claim could be paid. *Treloar v. County of Chaves*, 2001-NMCA-074, 130 N.M. 794, 32 P.3d 803, cert. denied, 131 N.M. 64, 33 P.3d 284.

**Joint powers agreement to fund water acquisition.** — A joint powers agreement entered in to with the U.S. bureau of reclamation pursuant to the Joint Powers Agreement Act was intended to create a specific general fund funded by a specific mill levy to pay for the acquisition of water rights and thus did not violate the Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978). *San Juan Water Comm'n v. Taxpayers & Water Users of San Juan Cnty.*, 1993-NMSC-050, 116 N.M. 106, 860 P.2d 748.

**Terminated physician's claim against county hospital.** — The Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) did not defeat a physician's claim for monies allegedly due following the involuntary termination of his employment with a county hospital since there was no indication that, if the hospital had continued as a county hospital, it would not have been able to pay the severance payments out of the funds it collected in the year the physician's services were terminated. *Treloar v. County of Chaves*, 2001-NMCA-074,130 N.M. 794, 32 P.3d 803, cert. denied, 131 N.M. 64, 33 P.3d 284.

**Bateman Act does not excuse payment of debts which could have been paid.** — The Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) makes void debts which are not and cannot be paid, but where the debt was not paid, although it could have been paid, the statute is not applicable. *Cathey v. City of Hobbs*, 1973-NMSC-042, 85 N.M. 1, 508 P.2d 1298.

**Payments for water supply financed by water charges sufficient to meet payments not general obligations.** — Where a municipality enacts an ordinance to obtain, supplement and pay for its water supply and to adopt and enforce water charges sufficient to meet the required payments, such payments are not general obligations or indebtednesses within the meaning of any constitutional or statutory provisions. *City of Hobbs v. State ex rel. Reynolds*, 1970-NMSC-133, 82 N.M. 102, 476 P.2d 500.

**Materials for school district are direct charge item for which only that district is liable.** — Obligation to pay for roofing material sold to county board of education as agent for a particular school district is a direct charge item for which only the district for which it is allocated is liable, and even then is recoverable only in the event that current revenues sufficient in amount to pay the bill are collected. *McAtee v. Gutierrez*, 1944-NMSC-001, 48 N.M. 100, 146 P.2d 315.

**Limitation on funds from which judgments may be paid.** — A judgment rendered in one year for fees, salaries or perquisites of an officer for a preceding year cannot be paid out of any funds except the taxes collected for the current year in which the services are rendered or the fees and perquisites become due. *Territory ex rel. Adair v. Beall*, 1904-NMSC-007, 12 N.M. 131, 75 P. 38.

**Irregular issuance of certificates of indebtedness.** — An irregular issue of certificates of indebtedness far exceeding anticipated proceeds of tax levy for the year does not show conscious wrongdoing preventing certificate holders from proceeding

against the buildings for the erection of which the certificates were issued. *Shaw v. Board of Educ.*, 1934-NMSC-031, 38 N.M. 298, 31 P.2d 993.

**City indebtedness for swimming pool construction over two-year period.** — Indebtedness incurred for swimming pool construction over two-year period is void by reason of the provisions of this section. *McMurtry v. City of Raton*, 1959-NMSC-096, 66 N.M. 277, 347 P.2d 168.

**City employees may not recover back wages under invalid minimum wage ordinance.** — A city has no authority to delegate to the state labor commissioner power to establish minimum wages for city employees, and city employees may not recover wages for past years that would have been payable under such an invalid standard. *Adams v. City of Albuquerque*, 1957-NMSC-006, 62 N.M. 208, 307 P.2d 792.

## IV. PLEADING AND PRACTICE.

**Answer.** — In action for mandamus to compel levy of tax to satisfy judgment, the respondents, relying on the alleged fact that the town's certificates of indebtedness were issued for current indebtedness, should have raised the issue by answer, instead of demurring to alternative writ of mandamus. *State ex rel. Chesher v. Beall*, 1937-NMSC-079, 41 N.M. 652, 73 P.2d 329.

**Availability of mandamus.** — If previous special levies produced a sufficient amount to satisfy a judgment against a town, and portions thereof were unlawfully diverted to other purposes, the Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) would not bar application for mandamus to compel a new levy. *State ex rel. Chesher v. Beall*, 1937-NMSC-079, 41 N.M. 652, 73 P.2d 329.

**Constitutional questions.** — In a mandamus proceeding to compel levy of a tax to pay a judgment, in absence of evidence to show that combined tax rate for state and local purposes would exceed the constitutional limitation, no constitutional question is presented, for neither the statutory limitation nor the prohibitions of the Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) will shield the county from a forced levy to satisfy a tort judgment, and the holder of such judgment is entitled to mandamus against the state tax commission to approve levy of taxes for its payment. *State ex rel. Martin v. Harris*, 1941-NMSC-032, 45 N.M. 335, 115 P.2d 80.

**Allegation of violation of Bateman Act held premature.** — Prior to approval by the state engineer of a municipality's applications to appropriate underground water, it is premature to allege that a contract involving a municipal water supply violates the Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978). *City of Hobbs v. State ex rel. Reynolds*, 1970-NMSC-133, 82 N.M. 102, 476 P.2d 500.

Where a municipality files applications with the state engineer to appropriate underground water, only if such applications are approved will any type of purchase financing be required and only subsequent to such approval could the amount of the

obligation be ascertainable, in which event such financing might be accomplished by means which would satisfy the requisites of either 3-27-5 NMSA 1978 or this section. *City of Hobbs v. State ex rel. Reynolds*, 1970-NMSC-133, 82 N.M. 102, 476 P.2d 500.

**Exhaustion of current funds is defense.** — This section does not permit the rendition of a judgment against a county for current expenses where the complaint shows on its face that the claim on which judgment is sought has been allowed by the county commissioners, and the payment denied or refused for want of funds. *Optic Publ'g Co. v. Board of Comm'rs*, 1921-NMSC-088, 27 N.M. 371, 202 P. 124.

**Insufficient funds defense.** — No judgment can be rendered against a county on a claim for current indebtedness arising out of the publication of the delinquent tax list where such claim has been presented and allowed, and payment thereon refused or denied on account of insufficient funds with which to pay it. *Sena v. Board of Comm'rs*, 1921-NMSC-094, 27 N.M. 461, 202 P. 984.

**Insufficient funds defense not applicable where due to unlawful diversion of funds.** — A county creditor whose claim cannot be paid because of exhaustion of appropriate fund of the current year must bear the loss, except for his right to participate with other creditors in subsequent collections of revenue belonging to that year; but such exhaustion is no defense if it was due to an unlawful diversion. *Las Vegas Indep. Publ'g Co. v. Board of Cnty. Comm'rs*, 1931-NMSC-033, 35 N.M. 486, 1 P.2d 564.

**Bateman Act not defense where funds from special tax levy diverted to other purposes.** — The Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) is no defense to an action to recover judgment on certificates of indebtedness issued by a county in anticipation of the collection of a special tax levy, and payable from the proceeds of that levy, where the levy produced sufficient funds to pay the certificates, but the funds were diverted to other purposes. *Capital City Bank v. Board of Comm'rs*, 1921-NMSC-112, 27 N.M. 541, 203 P. 535.

**Violation of Bateman Act must be pleaded and proved.** — A violation of the Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) in the employment of teachers for a municipal school is a defensive matter which must be pleaded and proved in an action for breach of contract for discharge of a teacher. *Landers v. Board of Educ.*, 1941-NMSC-039, 45 N.M. 446, 116 P.2d 690.

**Pleading affirmative defense of violation of act.** — The Bateman Act (Sections 6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) is an affirmative defense which must be pleaded and proven with the burden upon the party asserting it to so prove its application. Where city had not shown that required funds were unavailable at the time that resolution in question was duly passed by the city council to pay for the contractual services of the plaintiff, the act was not applicable. *National Civil Serv. League v. City of Santa Fe*, 370 F. Supp. 1128 (D.N.M. 1973).

**Burden of proof of applicability of Act.** — A party relying upon the Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) has the burden of pleading and proving its application. *McAtee v. Gutierrez*, 1944-NMSC-001, 48 N.M. 100, 146 P.2d 315.

**Development agreements.** — A home rule municipality has the authority to enter into a contract with a private developer in order to facilitate the construction of retail business establishments, which contract provides for the reimbursement or forgiveness of impact fees, so long as the reimbursement comes from a special fund dedicated for that special purpose. 2002 Op. Att'y Gen. No. 02-02.

**Contract for salary during second year of contract term.** — A contract between a local school board and a school administrator may provide for a specific salary during the second year of the contract term without violating the Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) but only if the board commits funds from the fiscal year of contracting to pay the salaries for both years and funds from any other fiscal year are not necessary to pay the salaries. 1988 Op. Att'y Gen. No. 88-55.

**Contract paying monthly sum for 25 years.** — A contract that would pay a contractor a certain sum each month for the next 25 years for privately operating a prison violates the Bateman Act, (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978), in that it presently obligates unconditional future payments of money for future services to be rendered. 1983 Op. Att'y Gen. No. 83-05.

**Contracts for school yearbooks which extend beyond current year.** — Since the money for school yearbooks is not collected except for the current year, it is a violation of the Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) for a school district to continue with contracts for their publication which extend beyond the current year. 1969 Op. Att'y Gen. No. 69-17.

**Long-term leases.** — The Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) does not prohibit a school district from entering into long-term leases. 1968 Op. Att'y Gen. No. 68-23.

**Contracts, as well as actual indebtedness, are covered by this section.** — The prohibition of this section relates not only to becoming indebted, but also to the contracting of debts which are not or cannot be paid out of money actually collected and belonging to the current year. 1965 Op. Att'y Gen. No. 65-53.

**Collections not payable on indebtedness of another year.** A municipal corporation may not pay from funds of the current fiscal year several old accounts payable, even though current funds are sufficient to pay such obligations. 1958 Op. Att'y Gen. No. 58-41.

**Date of abandonment of project determines year in which obligation payable.** — Where a contract for engineering was made in 1954 and formal abandonment of the project was made in 1956, the town could make payment out of current funds for these

services, as the act of abandonment created the obligation to pay for the services under the terms of the contract. 1956 Op. Att'y Gen. No. 56-6535.

**Vacation time for county employees cannot be accumulated beyond current year** and be paid for out of the succeeding year's budget. County officers and employees are entitled to a lawful vacation period, but if they waive the same and elect to work during their vacation period, they may not be paid an additional amount for such work. 1955 Op. Att'y Gen. No. 55-6121.

**Indebtedness to federal government.** — The Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) does not apply to an indebtedness of a municipality to the federal government. 1956 Op. Att'y Gen. No. 56-6483.

**Contract prohibited if not payable in current year.** — This section prohibits a county board of education from entering into a contract which cannot be paid out of the money actually collected and belonging to that current year. 1956 Op. Att'y Gen. No. 56-6443.

**Later collections for current year may be distributed pro rata among creditors.** — County obligations must be paid from revenues available for year or be null and void except that moneys collected later belonging to such year may be distributed pro rata among creditors. 1937 Op. Att'y Gen. No. 37-1705.

**Reduction of salaries of deputy county officers.** — The board of county commissioners of a second class county has no authority to reduce salaries of deputy county officers below amount provided by law, especially where full amount of such salaries for year was duly budgeted, although all county officers have to bear pro rata reduction in order to limit expenditures of year to its income. 1937 Op. Att'y Gen. No. 37-1649.

**Failure by county commission to levy tax to pay interest on school district bonds.** — A school district cannot borrow money to pay interest on its bonds, which were issued validly, when county commissioners fail to levy tax for such purpose, and one district cannot loan money to another for such purpose out of moneys in its sinking fund. 1931 Op. Att'y Gen. No. 31-81.

**Collections for particular current year may be applied on indebtedness for that year,** regardless of when such collections are made. 1932 Op. Att'y Gen. No. 32-383.

**Collections not payable on indebtedness of another year.** — Collections made during any current year, for such year, cannot be applied on indebtedness for another year. 1932 Op. Att'y Gen. No. 32-383.

**County board of education may borrow money to pay warrants of school teachers** to avoid the necessity of discounting the warrants. 1921 Op. Att'y Gen. No. 21-2785.

**School expenditures.** — The Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) applies to school expenditures as well as to all others. 1921 Op. Att'y Gen. No. 21-3186.

**Warrants limited by tax levy and not by amount of money actually collected.** — A county board of education may lawfully issue warrants to the amount of the levy for the year in which said warrants are issued, and they are not limited to the amount of money actually collected. 1919 Op. Att'y Gen. No. 19-2430.

**Money need not be on hand when warrants issued if warrants limited to current year funds.** — School district warrants may be approved, even though the funds may not be on hand to meet them, provided the warrants so drawn will not run beyond what can be paid from the funds of the current year. 1915 Op. Att'y Gen. No. 15-1505.

**Floating indebtedness prohibited.** — There can be no outstanding floating indebtedness in excess of current revenue collections for the same year under the Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978). 1913 Op. Att'y Gen. No. 13-1137.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 594; 68 Am. Jur. 2d Schools § 101.

Power of municipality or other governmental body to issue refunding bonds to retire obligation in respect of which the creation and maintenance of a sinking fund by taxation is required, 157 A.L.R. 794.

Bond issue in excess of amount permitted by law, validity of within authorized debt, tax or voted limit, 175 A.L.R. 823.

20 C.J.S. Counties § 188; 64 C.J.S. Municipal Corporations § 1846; 79 C.J.S. Schools and School Districts § 325; 87 C.J.S. Towns § 113.

## 6-6-12. Exemptions from Bateman Act.

Insurance contracts not exceeding five years, joint projects between two or more local public bodies not exceeding five years, lease-purchase agreements, lease agreements, contracts providing for the operation or provision and operation of a jail by or with another local public body or by an independent contractor entered into by a local public body set out in Section 6-6-11 NMSA 1978 and guaranteed energy savings contracts and installment payment contracts or lease-purchase agreements pursuant to guaranteed energy savings contracts are exempt from the provisions of Section 6-6-11 NMSA 1978, and such contracts, lease-purchase agreements, lease agreements and jail contracts are declared not to constitute the creation of debt.

**History:** 1953 Comp., § 11-6-6.1, enacted by Laws 1968, ch. 72, § 8; 1984, ch. 22, § 2; 1993, ch. 231, § 11; 1999, ch. 198, § 1.

**ANNOTATIONS**

**The 1999 amendment,** effective June 18, 1999, inserted "joint projects between two or more local public bodies not exceeding five years" following "five years" and inserted "by or with another local public body or" following "jail".

**Lease-sale.** — If an option price required to be paid by a county is nominal or nonexistent, a purported lease may be treated as a sale, creating the type of future economic commitment that requires the arrangement be approved by the voters, pursuant to N.M. Const., art. IX, § 10. *Montano v. Gabaldon*, 1989-NMSC-001, 108 N.M. 94, 766 P.2d 1328.

**Municipalities may enter into long-term lease agreements** and lease purchase agreements without violating the provisions of the Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978). 1969 Op. Att'y Gen. No. 69-39.

**Lease purchase agreements.** — In spite of the language of this section, certain lease purchase agreements may constitute the creation of debt within N.M. Const., art. IX, §§ 10, 11 and 12. 1969 Op. Att'y Gen. No. 69-39.

**The purchase of school yearbooks does not fall within any of the exceptions** provided in this section. 1969 Op. Att'y Gen. No. 69-17.

**Lease purchase agreements binding on future councils.** — Although a municipality may not earmark receipts of the future so that these receipts will go to the payment of the amount due each year under a lease purchase agreement, nevertheless, such agreements are binding on future councils and mayors of municipalities. 1969 Op. Att'y Gen. No. 69-39.

## 6-6-13. Salaries to be prorated.

All fees, salaries and perquisites of officers of counties, municipalities, boards of education, school districts and all other officers shall be reduced if there is an insufficient collection of money with which to pay them as provided by law for their services in any current year so that there is no violation of the provisions of law as to incurring indebtedness for any current year over and above the money actually collected for that current year.

**History:** Laws 1897, ch. 42, § 16; C.L. 1897, § 300; Code 1915, § 1228; C.S. 1929, § 33-4242; 1941 Comp., § 7-608; 1953 Comp., § 11-6-7; Laws 1968, ch. 69, § 3.

**ANNOTATIONS**

**Available salary fund to be apportioned among officers and creditors.** — The Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) applies to officers and creditors alike, and the available salary fund should be apportioned pro rata among all as the law

directs if, when supplemented by the current expense fund, there is a deficiency. *Taylor v. Board of Comm'rs*, 1940-NMSC-064, 44 N.M. 605, 107 P.2d 121.

**Restrictions on payment of judgment.** — A judgment rendered in one year for fees, salaries or perquisites of an officer for a preceding year cannot be paid out of any funds except the taxes collected for the year in which the services are rendered or the fees and perquisites become due. *Territory ex rel. Adair v. Beall*, 1904-NMSC-007, 12 N.M. 131, 75 P. 38.

## 6-6-14. [Insufficient funds; prorating salaries and claims; preference for expense of boarding prisoners.]

In the event that there is an insufficient amount of money collected during any current year with which to pay for the services, fees and salaries of the several officers mentioned in Section 6-6-13 NMSA 1978, then and in that event the said officers and all creditors shall receive in full payment of their respective claims each his pro rata share of the money collected, and the payment of said pro rata part shall be made quarterly between all officers and creditors and in the event of an insufficient amount of money to pay in full for any one quarter the officers and creditors remaining unpaid shall not be paid that amount until the salaries and expenses of the next succeeding quarter or quarters shall have been paid, and in the event all the officers and creditors of any one quarter shall have been paid in full and there then remains any money for the current year, the same shall then be distributed pro rata among the said officers and creditors: provided, that all the actual expenses for boarding county prisoners shall be paid in full befor [before] any bill, fees or salaries are paid and before any pro rata is made, and such expenses may be paid at the expiration of each and every quarter.

**History:** Laws 1897, ch. 42, § 17; C.L. 1897, § 301; Laws 1901, ch. 36, § 1; Code 1915, § 1229; C.S. 1929, § 33-4243; 1941 Comp., § 7-609; 1953 Comp., § 11-6-8.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Applicability of section.** — The limitation of this section applies to debts created for necessities such as water and lights for use at a courthouse or others which may be arbitrarily placed against a county, as well as those of voluntary creation. *Santa Fe Water & Light Co. v. Santa Fe Cnty.*, 1924-NMSC-028, 29 N.M. 538, 224 P. 402.

**Judgment may not be rendered where complaint shows funds not available to pay claim.** — Section 6-6-11 NMSA 1978 does not permit the rendition of a judgment against a county for current expenses, where the complaint showed on its face that the claim on which the judgment was sought had been allowed by the county commissioners, and payment was denied or refused because there were no funds for

the payment of the claim. *Optic Publ'g Co. v. Board of Comm'rs*, 1921-NMSC-088, 27 N.M. 371, 202 P. 124.

**Payment of county officer's salary for half year.** — A county officer's salary for a half year should be paid in full if there is a balance sufficient to cover it. *Territory ex rel. Clancy v. Board of Cnty. Comm'rs*, 1905-NMSC-013, 13 N.M. 89, 79 P. 709.

**Available salary fund to be apportioned pro rata among all.** — The available salary fund should be apportioned pro rata among all as the law directs, if, when supplemented by the current expense fund, there is a deficiency. *Taylor v. Board of Comm'rs*, 1940-NMSC-064, 44 N.M. 605, 107 P.2d 121.

**Outstanding warrants may be paid only from money allocated for year in which contracted.** — Outstanding town warrants, if valid, are to be paid by the money allocated for such expenses of the year for which contracted. Warrants for the current year, if funds are insufficient, should be paid pro rata. 1913 Op. Att'y Gen. No. 13-1001.

**Law reviews.** — For article, "Prisoners Are People," see 10 Nat. Resources J. 869 (1970).

## 6-6-15. [Void indebtedness; payment from later collections; disposition of surplus.]

The void indebtedness mentioned in Section 6-6-11 NMSA 1978 shall remain valid to the extent and for the sole purpose of receiving any money which may afterwards be collected and belongs to the current year when they were contracted, and the collection thereof, when made, shall be distributed pro rata among the creditors having the void indebtedness, and in the event all of the valid and void indebtedness of any current year are paid in full and there is money for that current year remaining, the sum shall be converted into the fund for the next succeeding current year.

**History:** Laws 1897, ch. 42, § 18; C.L. 1897, § 302; Code 1915, § 1230; C.S. 1929, § 33-4244; 1941 Comp., § 7-610; 1953 Comp., § 11-6-9.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Debts exceeding income for year are void.** — The legislature adopted as a policy the plan that counties and other municipal subdivisions should be compelled to limit their expenses to their respective incomes, and that their debts, insofar as they exceeded such income, should be void, except for the purposes of entitling the creditor to his pro rata of moneys coming in from deferred taxes. *Johnston v. Board of Comm'rs*, 1904-NMSC-018, 12 N.M. 237, 78 P. 43.

**Recovery limited to pro rata share.** — Where the Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) applies, the contractor's recovery is limited to his pro rata share with other creditors of any sums unexpended for the fiscal year and remaining in the general fund or subsequently collected and belonging to that current year. *McMurtry v. City of Raton*, 1958-NMSC-062, 64 N.M. 117, 325 P.2d 707 (1958), *aff'd*, 66 N.M. 277, 347 P.2d 168.

**Judgment cannot be rendered against county when claim not paid due to insufficient funds.** — No judgment can be rendered against a county on a claim for current indebtedness arising out of the publication of the delinquent tax list where such claim has been presented and allowed, and payment thereon refused or denied on account of insufficient funds. *Sena v. Board of Comm'rs*, 1921-NMSC-094, 27 N.M. 461, 202 P. 984.

**Exhaustion of funds no defense when due to unlawful diversion.** — A county creditor whose claim cannot be paid because of exhaustion of appropriate fund of the current year must bear the loss, except for his right to participate with other creditors in subsequent collections of revenue belonging to that year; but such exhaustion is no defense if it was due to an unlawful diversion. *Las Vegas Indep. Publ'g Co. v. Board of Cnty. Comm'rs*, 1931-NMSC-033, 35 N.M. 486, 1 P.2d 564.

**Excess income received by public service company owned by city may be used to pay indebtedness.** — When a public service company owes its existence to a municipal ordinance and operates thereunder and the city is the beneficial owner of all its stock which is held by a trustee, and the city, directly or indirectly, controls the activity of the trustee, such income as is collected in a year over and above outstanding bond obligations may be used to pay off void indebtedness. *McMurtry v. City of Raton*, 1959-NMSC-096, 66 N.M. 277, 347 P.2d 168.

**Reduction of salary of deputy county clerk held improper.** — Where board of county commissioners reduced the salary of the deputy county clerk when it was confronted with a shortage of funds, instead of resorting to the current expense fund or prorating the funds available as the statute requires in case of insufficiency of current expense fund, and there were sufficient funds on hand collected from delinquent taxes to satisfy all claims payable therefrom for the respective years during which the deputy's salary was reduced, he was entitled to be paid. *Taylor v. Board of Comm'rs*, 1940-NMSC-064, 44 N.M. 605, 107 P.2d 121.

## 6-6-16. [Appealed claims; payment.]

In the event any claimant, during any current year, should appeal from the board of county commissioners, as provided for by law, from the amount allowed him by such board, the commissioners, in making their quarterly payments as above-provided for, shall estimate and allow such claimant the amount allowed him, and in the event the court should allow such claimant a larger sum than was allowed him by the board of

county commissioners the amount so allowed by the court shall be considered and paid as above-provided for at the next quarterly settlement after such decision of the court.

**History:** Laws 1897, ch. 42, § 19; C.L. 1897, § 303; Code 1915, § 1231; C.S. 1929, § 33-4245; 1941 Comp., § 7-611; 1953 Comp., § 11-6-10.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For appeal from board of county commissioners, *see* 4-45-5 NMSA 1978.

**Judgment can be satisfied only out of funds collected for year in which accrued.** — A judgment on appeal from a disallowance by the commissioners of a claim of a county officer for fees, services or perquisites can be satisfied only out of taxes collected for the year in which accrued. *Territory ex rel. Adair v. Beall*, 1904-NMSC-007, 12 N.M. 131, 75 P. 38.

## 6-6-17. [Current year same as fiscal year.]

The current year for the purpose of Sections 6-6-11, 6-6-13 to 6-6-16 NMSA 1978 inclusive shall be construed to mean the fiscal year as defined in Section 6-10-1 NMSA 1978.

**History:** Laws 1897, ch. 42, § 20; C.L. 1897, § 304; Code 1915, § 1232; C.S. 1929, § 33-4246; Laws 1939, ch. 56, § 1; 1941 Comp., § 7-612; 1953 Comp., § 11-6-11.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material in the catchline was inserted by the compiler and is not part of the law.

## 6-6-18. Current year; disposition of funds.

All money collected from the tax schedule of any one year for county purposes or that should have been collected for that year for that purpose, whether it was placed on the tax schedule or not, except money collected for that year from assessments made for some special purpose and except for money deposited pursuant to the provisions of Section 6-6-19 NMSA 1978, shall constitute the fund for the current year.

**History:** Laws 1897, ch. 42, § 21; C.L. 1897, § 305; Code 1915, § 1233; C.S. 1929, § 33-4247; 1941 Comp., § 7-613; 1953 Comp., § 11-6-12; Laws 1989, ch. 276, § 2.

**ANNOTATIONS**

**Cibola county entitled to federal "payment in lieu of taxes".** — Cibola county, created in 1981 from the western portion of Valencia county, was entitled to a portion of the "payment in lieu of taxes" paid by the federal government to Valencia county to compensate the local governmental unit for loss of tax revenues from certain tax-exempt federal lands ("entitlement lands") located within local governmental boundaries. *Board of Cnty. Comm'rs v. Board of Cnty. Comm'rs*, 1986-NMSC-081, 105 N.M. 44, 728 P.2d 454.

**School fund.** — Money collected by taxes for school purposes constitutes a fund for schools for the current year. 1914 Op. Att'y Gen. No. 14-1307.

**Indebtedness of several years for water or sewerage facilities not affected.** — The Bateman Act (6-6-11 and 6-6-13 to 6-6-18 NMSA 1978) does not apply to the creation of an indebtedness for water or sewerage facilities for municipalities to cover a period of several years. 1920 Op. Att'y Gen. No. 20-2456.

## 6-6-19. Local government permanent fund.

A. The local governing body of a county or municipality may by ordinance establish a local government permanent fund and a local government income fund.

B. The local government permanent fund shall constitute a fund in the treasury of the county or municipality into which may be deposited at the end of a fiscal year an amount of the unappropriated general fund surplus. The amount that may be deposited into the local government permanent fund is any portion of the unappropriated general fund surplus that is in excess of fifty percent of the prior fiscal year's budget of the county or municipality. Money in the permanent fund may be appropriated or expended only pursuant to approval of the voters of the county or municipality as provided in Subsection E of this section.

C. Money in the local government permanent fund may be invested by the local board of finance for the county or municipality in the types of investments specified in Section 6-10-10 NMSA 1978 and as specified in Sections 6-10-36 and 6-10-44 NMSA 1978, except as provided in Paragraph (2) of Subsection D of this section. Earnings from the investment of the permanent fund shall be deposited in the local government income fund in the treasury of the county or municipality. Money in the income fund may be budgeted and appropriated by the local governing body for expenditure for any purpose of the county or municipality or may be deposited in the permanent fund.

D. Investment authority for a local government permanent fund shall be as follows:

(1) if the fund is less than forty million dollars ($40,000,000), it shall be invested as other funds of the local government; and

(2) if the fund is forty million dollars ($40,000,000) or over, it may be invested as funds of class A counties are invested and, if the fund is managed by an investment

advisor that is registered with the federal securities and exchange commission and that currently manages assets with a value of at least five hundred million dollars ($500,000,000), the fund may also be invested in the following:

(a) corporate debt securities, provided that: 1) the total amount invested in securities issued by the same corporation or related corporate affiliates shall not exceed five percent of the market value of the permanent fund; 2) the securities shall be denominated in United States currency; 3) the securities shall be rated AA- or higher by a nationally recognized statistical rating organization; 4) the final maturity of the securities may not exceed five years; and 5) the total amount invested pursuant to this subparagraph and Subparagraph (b) of this paragraph in the aggregate shall not exceed thirty percent of the market value of the permanent fund;

(b) commercial paper, provided that: 1) the total amount invested in securities issued by the same corporation or related corporate affiliates shall not exceed five percent of the market value of the permanent fund; 2) the securities shall be denominated in United States currency; 3) the securities shall be rated in the highest rating category by a nationally recognized statistical rating organization; 4) the final maturity of the securities may not exceed two hundred seventy days; and 5) the total amount invested pursuant to this subparagraph and Subparagraph (a) of this paragraph in the aggregate shall not exceed thirty percent of the market value of the permanent fund; and

(c) asset-backed securities, mortgage-backed securities, collateralized mortgage obligations or commercial mortgage-backed securities, provided that: 1) the total amount invested pursuant to this subparagraph shall not exceed five percent of the market value of the permanent fund; 2) the securities shall be denominated in United States currency; 3) the securities shall be rated AAA by a nationally recognized statistical rating organization; and 4) the final stated maturity of the securities may not exceed ten years.

E. The governing body of a county or municipality may adopt a resolution calling for an election on the question of expenditure of any amount of the local government permanent fund for a specified county or municipal purpose. The election shall be held within sixty days after the action of the governing body. The election shall be called, conducted, counted and canvassed substantially in the manner provided by law for general elections within the county or special municipal elections under the Local Election Act [Chapter 1, Article 22 NMSA 1978]. If a majority of the registered voters of the county or municipality voting on the question votes for the expenditure of a specified amount of the local government permanent fund for a specified county or municipal purpose, then that amount of money shall be available for appropriation and expenditure by the county or municipality for that purpose. If a majority of the registered voters of the county or municipality voting on the question votes against the expenditure of a specified amount of the local government permanent fund for a specified county or municipal purpose, then money in the local government permanent fund shall not be expended or appropriated for that purpose. Following an election at which the question

was not approved, the question shall not again be submitted to the voters of that county or municipality within one year of the date of that election.

**History:** 1978 Comp., § 6-6-19, enacted by Laws 1989, ch. 276, § 3; 2003, ch. 84, § 1; 2011, ch. 133, § 1; 2018, ch. 79, § 74.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, provided that elections on the question of expenditure of any amount of the local government permanent fund for a specified county or municipal purpose shall be called, conducted, counted and canvassed substantially in the manner provided by law for general elections within the county or special municipal elections under the Local Election Act, and made technical and conforming changes; and in Subsection E, after "municipal elections under the", deleted "Municipal Election Code" and added "Local Election Act".

**Temporary provisions.** — Laws 2018, ch. 79, § 174 provided that references in law to the Municipal Election Code and to the School Election Law shall be deemed to be references to the Local Election Act.

**The 2011 amendment,** effective June 17, 2011, in Subsection D, increased the value of a permanent fund that must be invested as other funds of the local government are invested from less than ten million dollars to less than forty million dollars; increased the minimum size of a permanent fund that may be invested as funds of class A counties are invested from ten million dollars or more to forty million dollars or more; and authorized the investment of permanent funds that may be invested as funds of class A counties are invested in corporate debt securities, commercial paper, and asset-backed securities and mortgage-backed or collateralized obligations if the fund is managed by a registered investment advisor.

**The 2003 amendment,** effective June 20, 2003 in Subsection C substituted "in the types of investments" for "as" following "county or municipality" near the middle, substituted "Section" for "Sections" preceding "6-10-10", and inserted "NMSA 1978 and as specified in Sections" following "6-10-10" near the middle; and added present Subsection D and redesignated former Subsection D as present Subsection E.

## 6-6-20. Municipal post-employment life insurance benefits trust.

A. A municipal post-employment life insurance benefits trust may be established, maintained and used by a municipal treasurer with the advice and consent of the municipal board of finance.

B. The municipality's contributions to the municipal post-employment life insurance benefits trust shall be irrevocable, and the money in the trust shall be dedicated exclusively to funding post-employment life insurance benefits pursuant to the provisions of the trust established by the municipal treasurer.

C. Money in a municipal post-employment life insurance benefits trust shall be invested pursuant to the Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978] and the provisions of this section. Earnings and income from investment of money in the trust shall be credited to the trust.

D. The municipal treasurer shall serve as the trustee and may use the services of a trust company to manage the investment of money in the municipal post-employment life insurance benefits trust.

E. As used in this section:

(1) "municipal post-employment life insurance benefits trust" means an investment fund established, maintained and used by a municipality exclusively for the purposes permitted by this act; and

(2) "trust company" means an individual or a company, corporation, firm, partnership, state-chartered bank, national bank or other legal entity that provides investment services pursuant to the Trust Company Act [Chapter 58, Article 9 NMSA 1978] and that agrees to adhere to the provisions of the Uniform Prudent Investor Act.

**History:** Laws 2017, ch. 14, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 14 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

# ARTICLE 6A
# Leasehold Community Assistance

## 6-6A-1. Short title.

This act [6-6A-1 to 6-6A-5 NMSA 1978] may be referred to as the "Leasehold Community Assistance Act".

**History:** Laws 1985, ch. 214, § 1.

## 6-6A-2. Definition.

As used in the Leasehold Community Assistance Act, "leasehold community" means a community which:

A. is located on an Indian pueblo on lands leased from that pueblo;

B. is chartered by the pueblo;

C. has a mayor-council form of government; and

D. contains lands leased from the pueblo which, together with improvements, has a net property tax valuation of at least five million dollars ($5,000,000).

**History:** Laws 1985, ch. 214, § 2.

## 6-6A-3. Leasehold community assistance fund; creation; dispositon [disposition].

A. There is created in the state treasury the "leasehold community assistance fund". The purpose of the fund is to provide leasehold communities with assistance in meeting their operating budgets.

B. The leasehold community assistance fund shall be administered by the local government division of the department of finance and administration. The division shall determine the funds the leasehold community is eligible to receive from the fund by calculating the amount of money a municipality of similar size receives under all appropriate state laws. Such sources shall include but not be limited to:

(1) property tax levies;

(2) the law enforcement protection fund;

(3) the small cities assistance fund;

(4) the fire protection fund;

(5) gross receipts distribution;

(6) gasoline tax distributions;

(7) cigarette tax distributions; and

(8) motor vehicle fees distributions.

C. Prior to receiving any assistance from the leasehold community assistance fund, the governing body of the community shall agree to be bound by such rules and regulations promulgated by the local government division of the department of finance and administration. That division has the power and duty in relation to leasehold communities to:

(1) require each leasehold community to furnish and file with the division, on or before June 1, of each year, a proposed budget for the next fiscal year;

(2) examine each proposed budget and, on or before July 1 of each year, approve and certify to each leasehold community an operating budget for use pending approval of a final budget;

(3) hold public hearings on proposed budgets;

(4) make corrections, revisions and amendments to the proposed budgets as may be necessary to meet the requirements of law;

(5) certify a final budget for each leasehold community to the appropriate governing body prior to the first Monday in September of each year. The budgets, when approved, are binding upon all tax officials of the state;

(6) require periodic financial reports of leasehold communities. The reports shall contain the pertinent details regarding applications for federal money or federal grants-in-aid or regarding federal money or federal grants-in-aid received, including but not limited to details of programs, matching funds, personnel requirements, salary provisions and program numbers, as indicated in the catalog of federal domestic assistance, of the federal funds applied for and of those received;

(7) with written approval of the secretary of finance and administration and the attorney general, increase the total budget of any leasehold community in the event the leasehold community undertakes an activity, service, project or construction program which was not contemplated at the time the final budget was adopted and approved and which activity, service, project or construction program will produce sufficient revenue to cover the increase in the budget or the leasehold community has surplus funds on hand not necessary to meet the expenditures provided for in the budget with which to cover the increase in the budget;

(8) supervise the disbursement of funds to the end that expenditures will not be made in excess of budgeted items or for items not budgeted and that there will not be illegal expenditures;

(9) prescribe the form for all budgets, books, records and accounts for leasehold communities; and

(10) with the approval of the secretary of finance and administration, make rules and regulations relating to budgets, records, reports, handling and disbursement of public funds or in any manner relating to the financial affairs of the leasehold communities.

**History:** Laws 1985, ch. 214, § 3.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Investment of leasehold community funds.** — Because leasehold communities are not local public bodies or political subdivisions of the state, they are subject to the rules and oversight of the department of finance and administration only if they accept leasehold community assistance funds under the Leasehold Community Assistance Act, 6-6A-1 NMSA 1978 et seq., and if the department develops valid rules governing deposits and investment instruments pursuant to the department's authority under the act. Unless the department develops rules governing deposits and investment instruments, leasehold communities are not subject to the restrictions of 6-10-10, 6-10-36 and 6-10-44 NMSA 1978. 2013 Op. Att'y Gen. No. 13-01.

## 6-6A-4. Leasehold communities; duties.

Every leasehold community shall:

A. keep all the books, records and accounts in their respective offices in the form prescribed by the local government division;

B. submit to an audit of its books upon request of the local government division;

C. make all reports as may be required by the local government division; and

D. conform to the rules and regulations adopted by the local government division.

**History:** Laws 1985, ch. 214, § 4.

**ANNOTATIONS**

**Cross references.** — For local government division, *see* 9-6-3 NMSA 1978.

## 6-6A-5. Inclusion of leasehold community assistance fund in the local government division's annual budget.

The local government division shall calculate the amount of funds to which all leasehold communities are entitled as provided in Subsection B of Section 3 [6-6A-3B NMSA 1978] of the Leasehold Community Assistance Act and shall include that amount in the division's annual budget in the general appropriation act. These budgeted funds shall be used to replenish annually the money available for distribution from the leasehold community assistance fund.

**History:** Laws 1985, ch. 214, § 5.

# ARTICLE 7
# Disaster Relief (Recompiled.)

## 6-7-1. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2005, ch. 22, § 4 recompiled former 6-7-1 NMSA 1978 as 12-11-23 NMSA 1978, effective July 1, 2005.

## 6-7-2. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2005, ch. 22, § 4 recompiled former 6-7-2 NMSA 1978 as 12-11-24 NMSA 1978, effective July 1, 2005.

## 6-7-3. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2005, ch. 22, § 4 recompiled former 6-7-3 NMSA 1978 as 12-11-25 NMSA 1978, effective July 1, 2005.

# ARTICLE 8
# Investment of Public Money

## 6-8-1. Definitions.

As used in Chapter 6, Article 8 NMSA 1978:

A. "council" means the state investment council;

B. "department" means the department of finance and administration;

C. "land grant permanent funds" means the permanent school fund established by Article 12, Section 2 of the constitution of New Mexico and all other permanent funds derived from lands granted or confirmed to the state by the act of congress of June 20, 1910, entitled "An Act To enable the people of New Mexico to form a constitution and state government and be admitted into the Union on an equal footing with the original States...";

D. "permanent funds" means the land grant permanent funds, rural libraries endowment fund, severance tax permanent fund, tobacco settlement permanent fund, conservation legacy permanent fund and water trust fund;

E. "secretary" means the secretary of finance and administration;

F. "severance tax permanent fund" means the fund established by Article 8, Section 10 of the constitution of New Mexico;

G. "tobacco settlement permanent fund" means the fund established by Section 6-4-9 NMSA 1978; and

H. "water trust fund" means the fund established by Article 16, Section 6 of the constitution of New Mexico.

**History:** 1953 Comp., § 11-2-8.4, enacted by Laws 1957, ch. 179, § 1; 1977, ch. 247, § 5; 1983, ch. 301, § 11; 1983, ch. 306, § 1; 1997, ch. 135, § 1; 1997, ch. 183, § 1; 2015, ch. 95, § 1; 2019, ch. 165, § 5; 2023, ch. 26, § 1.

## ANNOTATIONS

**The 2023 amendment,** effective June 16, 2023, added the "conservation legacy permanent fund" to the definition of "permanent funds"; and in Subsection D, after "tobacco settlement permanent fund", added "conservation legacy permanent fund".

**The 2019 amendment,** effective July 1, 2019, included the "rural libraries endowment fund" within the definition of "permanent funds", as used in Chapter 6, Article 8 NMSA 1978; and in Subsection D, after "land grant permanent funds", added "rural libraries endowment fund".

**The 2015 amendment,** effective June 19, 2015, amended certain definitions relating to public finances and the investment of public money; deleted Subsections A, B and C; redesignated Subsection D as Subsection A; and added new Subsections B through H.

**The second 1997 amendment,** effective on the date the United States congress consents to amendments of N.M. Const., art. VIII, § 10 and article XII, §§ 2, 4 and 7, approved at the 1996 general election, effected the same changes in the section as the first 1997 amendment. The United States Congress approved the constitutional amendments in P.L. 105-37, 111 Stat. 1113, the New Mexico Statehood and Enabling Act Amendments of 1997, approved August 7, 1997.

**The first 1997 amendment,** effective April 9, 1997, substituted "Chapter 6, Article 8" for "Sections 6-8-1 through 6-8-16" in the introductory language and substituted "land grant permanent funds" for "permanent fund" in Subsection C.

**The restrictions specified in this article are valid and constitutional.** 1958 Op. Att'y Gen. No. 58-10.

## 6-8-2. State investment council.

A. There is created a "state investment council". The council shall be composed of:

(1) the governor;

(2) the state treasurer;

(3) the commissioner of public lands;

(4) the secretary;

(5) the chief financial officer of a state institution of higher education appointed by the governor with the advice and consent of the senate;

(6) four members appointed by the New Mexico legislative council with the advice and consent of the senate; provided that no more than two members shall be members of the same political party; and

(7) two members appointed by the governor with the advice and consent of the senate.

B. The chair of the council shall be the governor, and the vice chair shall be selected by the council. All actions of the council shall be by majority vote, and a majority of the members shall constitute a quorum.

C. Members of the council appointed pursuant to Paragraphs (6) and (7) of Subsection A of this section shall be reimbursed per diem and mileage pursuant to the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** 1953 Comp., § 11-2-8.5, enacted by Laws 1957, ch. 179, § 2; 1977, ch. 247, § 96; 1979, ch. 273, § 1; 1981, ch. 264, § 1; 1983, ch. 306, § 2; 2010, ch. 14, § 1.

**ANNOTATIONS**

**The 2010 amendment,** effective March 1, 2010, in Subsection A, deleted "three public members appointed by the governor with the advice and consent of the senate"; deleted "the state investment officer; and"; and added Paragraphs (6) and (7); in Subsection B, in the first sentence, after "governor", added the remainder of the sentence; and in the second sentence, after "majority vote, and", deleted "at least three members appointed pursuant to Subsections E and G of this section must be present to" and added "a majority of the members shall"; and in Subsection C, after "appointed pursuant to", added "Paragraphs (6) and (7) of" and after "Subsection", changed "E" to "A".

**Temporary provisions.** — Laws 2010, ch. 14, § 8 provided:

A. On March 1, 2010, the state investment officer is no longer a member of the state investment council.

B. On the effective date of this act, the three public members serving on the state investment council the day before the effective date of this act are no longer members of the state investment council.

C. Within thirty days of the effective date of the act, four members shall be appointed to the state investment council by the New Mexico legislative council pursuant to Paragraph (6) of Subsection A of Section 6-8-2 NMSA 1978 and shall serve on an interim basis until confirmed by the senate.

D. Within thirty days of the effective date of this act, two members shall be appointed to the state investment council by the governor pursuant to Paragraph (7) of Subsection A of Section 6-8-2 NMSA 1978 and shall serve on an interim basis until confirmed by the senate.

E. The four members appointed pursuant to Subsection C of this section and the two members appointed pursuant to Subsection D of this section shall, by lot, determine the initial terms of office for each position so that one position will be for a term of one year, one position will be for a term of two years, two positions will be for terms of three years, one position will be for a term of four years and one position will be for a tem of five years. Thereafter, the terms shall be for five years.

**State investment council is an arm of the state.** *State ex rel. Nat. Educ. Assn. of N.M. v. Austin*, 671 F. Supp. 2d 1249 (D.N.M. 2009).

**Powers and rights of council limited to those granted by constitution and statute.** — The investment council is a creature of statute, being unknown at common law, and has only those powers and rights granted to it by the constitution and legislative enactment. 1961 Op. Att'y Gen. No. 61-49.

**Members of council are public employees, not officers.** — The constitutional provisions relative to the investment council do not explicitly provide for the term of the position created, the method of appointment or the specific duties of the position. These matters are left to the legislature, acting within its powers subject to constitutional restrictions. Accordingly, members of the investment council are public employees and not public officers. 1958 Op. Att'y Gen. No. 58-10.

## 6-8-3. Council terms and qualifications.

A. Members of the council appointed pursuant to Paragraphs (6) and (7) of Subsection A of Section 6-8-2 NMSA 1978, with the advice and consent of the senate,

shall serve for staggered terms of five years. Members of the council shall serve until their successors are appointed and have qualified.

B. The members of the council appointed pursuant to Paragraphs (6) and (7) of Subsection A of Section 6-8-2 NMSA 1978 shall be qualified by competence and no less than ten years' experience in the field of investment management, investment risk management, corporate governance, investment accounting or finance. A member of the council shall not have had any contracts to do business with the council, the investment office, the office of the state treasurer, the educational retirement board, the public employees retirement association, the New Mexico finance authority or the state board of finance for a period of two calendar years prior to the person's appointment to the council and shall not enter into any contracts to do business with any of the named state agencies or instrumentalities for a period of two calendar years after the end of the term for which the member was appointed. Members of the council and officers and employees of the council shall be governed by the provisions of the Governmental Conduct Act [Chapter 10, Article 16 NMSA 1978]. Nothing in this section or in the Governmental Conduct Act shall be construed as prohibiting an officer of a financial institution from participating as a member of the council in setting general policies of the council, nor shall any provision of the Governmental Conduct Act prohibit the council or the state treasurer from depositing funds under the jurisdiction of the council in any financial institution. A council member shall not hold an office or employment in a political party.

C. The member appointed pursuant to Paragraph (5) of Subsection A of Section 6-8-2 NMSA 1978 shall serve at the pleasure of the governor. A member of the council appointed pursuant to Paragraphs (6) and (7) of Subsection A of Section 6-8-2 NMSA 1978 may be removed from the council by the appointing person or entity, for failure to attend three consecutive meetings or other cause, in the manner provided for removal of members of boards of regents under Article 12, Section 13 of the constitution of New Mexico. A vacancy in the membership of the council occurring other than by expiration of term shall be filled in the same manner as the original appointment but for the unexpired term only.

**History:** 1953 Comp., § 11-2-8.6, enacted by Laws 1957, ch. 179, § 3; 1981, ch. 264, § 2; 1983, ch. 306, § 3; 2010, ch. 14, § 2; 2015, ch. 95, § 2.

## ANNOTATIONS

**The 2015 amendment,** effective June 19, 2015, expanded the qualification requirements for members of the state investment council; and in Subsection B, after "field of investment", added "management, investment risk management, corporate governance, investment accounting", and after "business with the", deleted "state investment".

**The 2010 amendment,** effective March 1, 2010, in Subsection A, in the first sentence, after "council appointed", deleted "by the governor" and added "pursuant to Paragraphs

(6) and (7) of Subsection A of Section 6-8-2 NMSA 1978"; in Subsection B, in the first sentence, after "appointed pursuant to", added "Paragraphs (6) and (7) of"; after "Subsection", changed "E" to "A"; and after "qualified by competence and", added "no less than ten years"; deleted the former second sentence, which provided that during tenure, council members could not engage in any capacity in the sale of securities to the state; added the second sentence; in the third and fourth sentences, changed the statutory reference from "the Conflict of Interest Act" to "the Governmental Conduct Act"; in Subsection C, added the first sentence; in the second sentence, after "appointed pursuant to", added "Paragraphs (6) and (7) of" and after "Subsection", changed "E or G" to "A"; and changed "removed from the council by the governor for cause" to "removed from the council by the appointing person or entity, for failure to attend three consecutive meetings or other cause".

## 6-8-4. Investment office; state investment officer; terms.

A. There is established an "investment office". The chief administrative officer of the office shall be known as the "state investment officer".

B. The state investment officer shall be appointed by the council. The state investment officer shall devote the officer's entire time and attention to the duties of that office and shall not engage in any other occupation or profession or hold any other public office, appointive or elective. The state investment officer shall be an individual qualified by at least ten years of investment and executive experience to direct the work of the investment office. The state investment officer shall appoint a deputy state investment officer, with at least seven years' professional experience in the field of institutional investment management, to serve as the chief investment officer. The state investment officer shall receive a salary to be determined by the council.

C. The state investment officer shall serve at the will of the council.

**History:** 1953 Comp., § 11-2-8.7, enacted by Laws 1957, ch. 179, § 4; 1977, ch. 247, § 97; 1981, ch. 264, § 3; 2010, ch. 14, § 3; 2015, ch. 95, § 3.

**ANNOTATIONS**

**The 2015 amendment,** effective June 19, 2015, expanded the qualification requirements for the state investment officer and the deputy state investment officer; in Subsection B, after "appointive or elective. The", added "state investment", after "shall be", deleted "a person" and added "an individual", after "qualified by", deleted "training and" and added "at least ten years of", after "investment", added "and executive", after "investment office", deleted "and shall have had at least five years' professional experience as an investment officer" and added "The state investment officer shall appoint a deputy state investment officer, with at least seven years' professional experience in the field of institutional investment management, to serve as the chief investment officer.", after "The", added "state investment", after "determined by the", deleted "state investment", after "council", deleted "but in no case less than fifty

thousand dollars ($50,000) annually"; and in Subsection C, after "investment officer shall serve", deleted "for an initial term of two years beginning July 1, 1981 and thereafter for terms of four years. The state investment officer may be removed from office by the council for cause" and added "at the will of the council".

**The 2010 amendment,** effective March 1, 2010, in Subsection B, changed the first sentence, after "shall be appointed by the", deleted "governor with the advice and consent of the senate" and added "council"; deleted the former second sentence, which provided that recommendations for the appointment of the state investment officer shall be made to the governor by the investment council; and in Subsection C, in the second sentence, after "removed from office by the" changed "governor for cause in the manner provided for removal of members of boards of regents under Article 12, Section 13 of the constitution of New Mexico" to "council for cause".

**Duties of investment officer not delegated.** — Within the scope of the duties and potential liabilities established within the contractual relationship, an investment advisor was required to advise the state to make lawful investments. The contract did not delegate nondelegable duties to the advisor, and the advisor was therefore estopped to assert that doctrine as a bar to suit on the contract. *State ex rel. Udall v. Colonial Penn Ins. Co.*, 1991-NMSC-048, 112 N.M. 123, 812 P.2d 777.

**The state investment council may not delegate authority to settle litigation.** — Where the New Mexico state investment council (NMSIC) delegated authority to a litigation committee to settle legal matters and where the litigation committee approved a settlement under the Fraud Against Taxpayers Act, 44-9-1 to 44-9-14 NMSA 1978, the actions of the litigation committee were void because the only mention of NMSIC's ability to delegate its responsibilities states that the NMSIC may delegate administrative and investment-related functions to the state investment officer, and that the NMSIC may use committees, but only to make recommendations to the NMSIC. *N.M. State Inv. Council v. Weinstein*, 2016-NMCA-069, cert. denied.

## 6-8-5. Bond; staff; budget.

A. Before the state investment officer or other responsible employee of the investment office enters upon the officer's or employee's duties, the secretary shall require an individual bond or include the state investment officer and all employees of the investment office under a blanket bond for an amount and for a coverage deemed best to protect the state's interest. The bond premiums shall be paid by the state.

B. The state investment officer shall annually prepare a budget for administering and investing all funds managed by the investment office, which shall be reviewed and approved by the council. Any funds provided for the operating budget of the investment office shall be appropriated by the legislature from the assets of the land grant permanent funds, the severance tax permanent fund, funds available for investment pursuant to Subsection I of Section 6-8-7 NMSA 1978 or any other funds managed by the investment office, as authorized by law.

C. Amounts budgeted or appropriated from the land grant permanent funds and the severance tax permanent fund for the costs of administering and investing those funds shall be in addition to the amounts distributed to the beneficiaries of the land grant permanent funds and to the general fund from the severance tax permanent fund as provided by law.

D. The state investment officer shall appoint all employees of the investment office.

**History:** 1953 Comp., § 11-2-8.8, enacted by Laws 1957, ch. 179, § 5; 1976, ch. 6, § 1; 1977, ch. 247, § 98; 1997, ch. 135, § 2; 2015, ch. 95, § 4.

**ANNOTATIONS**

**The 2015 amendment,** effective June 19, 2015, changed certain requirements for administering and investing certain funds by the state investment officer; in Subsection A, after "enters upon", deleted "his" and added "the officer's or employee's", after "investment officer and", deleted "other responsible" and added "all", and after "employees", added of the investment office"; in Subsection B, after "shall be appropriated", added "by the legislature", after "as authorized by law", deleted the remainder of the subsection relating to the land grant permanent funds; and in Subsection C, after "permanent fund as provided by law", deleted the remainder of the subsection relating to amounts budgeted or appropriated from the land grant permanent fund.

**The 1997 amendment,** effective April 9, 1997, in Subsection A, substituted "office, enters" for "division, shall enter" and deleted "shall" preceding "include"; rewrote Subsection B; added Subsection C and redesignated former Subsection C as Subsection D; and substituted "office" for "division" in Subsection D.

## 6-8-6. Transfer of investment powers.

The functions, powers and duties vested by law relating to the investment or reinvestment of money and the purchase, sale or exchange of investments or securities of the permanent fund are transferred to the state investment officer. The state treasurer shall maintain custody of the state permanent fund but shall at all times render the fund or any part of it available for investment in accordance with the provisions of Sections 6-8-1 through 6-8-18 NMSA 1978.

Any provision of existing law requiring or designating an elected state official to serve by virtue of his office in an active or advisory capacity concerning the investment of the state permanent fund shall be inoperative.

**History:** 1953 Comp., § 11-2-8.9, enacted by Laws 1957, ch. 179, § 6; 1977, ch. 247, § 99; 1981, ch. 264, § 4.

**ANNOTATIONS**

**Cross references.** — For investment responsibility of state investment officer for "public buildings at capital, permanent fund", *see* 19-1-19 NMSA 1978.

**Limitation on investment of "permanent fund".** — This section limits the power of the state investment officer to investment of those funds which are in the "permanent fund." 1962 Op. Att'y Gen. No. 62-76.

## 6-8-7. Powers and duties of the state investment council and state investment officer; investment policy; investment managers.

A. Subject to the limitations, conditions and restrictions contained in policymaking regulations or resolutions adopted by the council, the council may make purchases, sales, exchanges, investments and reinvestments of the assets of all funds in accordance with the Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978]. The state investment officer and the council are trustees of all funds under their control and shall see that money invested is at all times handled in the best interests of the state. The council may delegate administrative and investment-related functions to the state investment officer.

B. The state investment officer shall formulate and recommend to the council for approval investment regulations or resolutions pertaining to the kind or nature of investments and limitations, conditions and restrictions upon the methods, practices or procedures for investment, reinvestment, purchase, sale or exchange transactions that should govern the activities of the investment office.

C. The council shall meet at least ten times per year, and as often as exigencies may demand, to consult with the state investment officer concerning the work of the investment office. The council shall have access to all files and records of the investment office and shall require the state investment officer to report on and provide information necessary to the performance of council functions. The council may hire investment management or consulting firms to advise the council with respect to the council's investment decisions for the investment of funds managed by the investment office and pay reasonable compensation for such management or consulting services from the assets of the applicable funds, subject to budgeting and appropriation by the legislature. The terms of any such investment management or consulting services contract shall incorporate the statutory requirements for investment of funds under the council's jurisdiction. Prior to being hired, a prospective investment management, advisory or consulting services firm shall submit to the council a disclosure detailing all campaign contributions made within the last two years by the firm or the principals of the firm to any member of the council, or to a political committee or other entity that is intended to aid or promote the nomination or election of any council member to a political office.

D. The council shall provide an opportunity for public comment at meetings of the council. Advance notice of meetings shall be published on the council's web site and in a newspaper of general circulation at least ten days in advance of the meeting.

E. All funds managed by the state investment officer shall be managed in accordance with the Uniform Prudent Investor Act. The council may form and use committees to study and make recommendations to the council. Prior to commencing work for the council, a committee member who is not a member of the council shall submit to the council a disclosure detailing all campaign contributions made within the last two years to any member of the council or to a political committee or other entity that is intended to aid or promote the nomination or election of any council member to a political office.

F. Fiduciaries of the permanent funds are:

(1) the council;

(2) the state investment officer and investment office staff;

(3) any person providing investment advice to the council, the state investment officer or investment office staff for an investment management, advisory or consulting services fee; and

(4) all persons exercising discretionary authority over or control of funds under the management of the council.

G. The council may contract for legal services for litigation on a contingent or partly contingent fee basis, subject to an expedited solicitation process devised and approved by the council; provided that:

(1) amounts recovered by the legal services contractor shall be deposited in the state investment council suspense fund;

(2) the council shall submit each proposed contract to the attorney general and the department for review of the contingency fee. The attorney general's and the department's review shall take into account the complexity of the factual and legal issues presented by the claims to be pursued under the contract. If the attorney general or the department advises the council that the proposed contingency fee is not reasonable, the council may nevertheless approve the contract and the contingency fee by a majority vote of its members; and

(3) each prospective legal services contractor seeking to represent the council on a contingent or partly contingent fee basis shall file with the council the disclosure required by Section 13-1-191.1 NMSA 1978 disclosing all campaign contributions made to the governor, attorney general, state treasurer or any member of the council, or to a political committee that is intended to aid or promote the nomination or election of any candidate to a state office if the committee is:

(a) established by any of the foregoing persons or their agents;

(b) established in consultation with or at the request of any of the foregoing persons or their agents; or

(c) controlled by one of the foregoing persons or their agents.

H. The council may select and contract for the services of one or more custodian banks for all funds under the council's management. For the purpose of this subsection, "custodian bank" means a financial institution with the general fiduciary duties to manage, control and collect the assets of an investment fund, including receiving all deposits and paying all disbursements as directed by staff, safekeeping of assets, coordination of asset transfers, timely settlement of securities transactions and accurate and timely reporting of the assets by individual account and in total.

I. For funds available for investment for more than one year, the council may contract with any state agency to provide investment advisory or investment management services, separately or through a pooled investment fund; provided that the state agency enters into a joint powers agreement with the council and that the state agency pays at least the direct cost of such services. Notwithstanding any statutory provision governing state agency investments, the council may invest funds available from a state agency pursuant to a joint powers agreement in any type of investment permitted for the land grant permanent funds under the prudent investor rule. In performing investment services for a state agency, the council and the state investment officer and investment office staff are exempt from the New Mexico Uniform Securities Act [58-13C-101 to 58-13C-701 NMSA 1978]. As used in this subsection, "state agency" means any branch, agency, department, board, instrumentality, institution or political subdivision of the state, the New Mexico finance authority, the New Mexico mortgage finance authority and any tax-exempt private endowment entity whose sole beneficiary is a state agency or whose beneficiaries are students attending a public educational institution in the state.

J. The state investment officer shall provide quarterly performance reports to the legislative finance committee. Annually, the state investment officer shall ratify and provide written investment policies, including any amendments, to the legislative finance committee.

K. Council members, the state investment officer and investment office staff and committee members appointed by the council, jointly and severally, shall be indemnified by the state, out of the permanent funds, from all claims, demands, suits, actions, damages, judgments, costs, charges and expenses, including court costs and attorney fees, against all claims, liability, losses or damages arising from any decisions made or actions taken while acting within the scope of duty and pursuant to law as a council member, the state investment officer, investment office staff or a committee member appointed by the council. Following indemnification, if it is shown that the indemnified person acted fraudulently or with intentional malice, the state shall have the right to recover from the indemnified person any amount expended under this subsection.

**History:** 1953 Comp., § 11-2-8.10, enacted by Laws 1957, ch. 179, § 7; 1977, ch. 247, § 100; 1981, ch. 264, § 5; 1983, ch. 306, § 4; 1991, ch. 57, § 1; 1993, ch. 113, § 1; 1997, ch. 135, § 3; 2001, ch. 252, § 1; 2005, ch. 194, § 1; 2005, ch. 240, § 1; 2010, ch. 14, § 4; 2011, ch. 9, § 1; 2015, ch. 95, § 5.

**ANNOTATIONS**

**Cross references.** — For constitutional provision as to duties of state investment officer relative to permanent school fund, *see* N.M. Const., art. XII, § 7.

For the New Mexico mortgage finance authority, *see* 58-18-4 NMSA 1978.

**The 2015 amendment,** effective June 19, 2015, required certain disclosures from prospective investment management, advisory or consulting services firms and from advisory committee members; in Subsection A, after "delegate administrative", added "and investment-related"; in Subsection C, after "shall meet at least", deleted "once each month" and added "ten times per year", after "council may hire", deleted "one or more", after "investment management", added "or consulting", after "respect to council's", deleted "overall", after "investment", deleted "plan" and added "decisions", after "compensation for such", deleted "advisory" and added "management or consulting", after "such investment management", added "or consulting", and after "council's jurisdiction", added the remainder of the subsection; in Subsection E, after "The council may", deleted "employ investment management services to invest the funds and may pay reasonable compensation for investment management services from the assets of the applicable funds, subject to budgeting and appropriation by the legislature" and added the remainder of the subsection; in Subsection F, added "Fiduciaries of the permanent funds are" and added the designation for Paragraph (1) of Subsection F, and after "council", added the designation for Paragraph (2) of Subsection F; in Paragraph (2) of Subsection F, after "investment officer", added "and investment office staff"; added the designation for Paragraph (3) of Subsection F; in Paragraph (3) of Subsection F, after "advice to the council", deleted "or" and added "and", after "state investment officer", added "or investment office staff", after "for", deleted "a" and added "an investment management, advisory or consulting services", and after "fee", deleted "or other compensation"; added the designation Paragraph (4) of Subsection F; in Subsection F, Paragraph (4), after "management of the council", deleted "are fiduciaries"; in Subsection I, after "fund; provided", added "that", after "the council and the state investment officer", added "and investment office staff", and after "beneficiary is a state agency", added "or whose beneficiaries are students attending a public educational institution in the state"; and added Subsection K.

**The 2011 amendment,** effective March 17, 2011, added Subsection G to permit the council to contract for legal services on a contingent basis, subject to review of the terms of the contract by the attorney general and the department of finance and administration and to the disclosure by prospective contractors of political contributions.

**The 2010 amendment,** effective March 1, 2010, in the catchline, after "duties of", added "the state investment council and"; in Subsection A, in the first sentence, after "resolutions adopted by the council", changed "and subject to prior authorization by the council the state investment officer may make purchases" to "the council may make purchases" and after "assets of all funds", deleted "administered under the supervision of the council"; in the second sentence, after "The state investment officer", added "and the council are trustees of all funds under their control and"; and added the third sentence; added Subsection D; in Subsection E, at the beginning of the second sentence, deleted "With the approval of" and in the second sentence, after "The council", deleted "the state investment officer"; added Subsections F and G; and in Subsection H, in the first sentence, after "investment for more than one year, the", deleted "state investment officer" and added "council"; in the second sentence, after "governing state agency investments, the", deleted "state investment officer" and added "council"; and in the third sentence, changed the statutory reference from the "New Mexico Securities Act of 1986" to the "New Mexico Uniform Securities Act"; and relettered the succeeding subsections accordingly.

**The 2005 amendment,** effective July 1, 2005, provided in Subsection A that the state investment officer shall act in accordance with the Uniform Prudent Investor Act; deleted former Subsection B, which provided that sales of securities or investments could not be at a price less than going market; deleted former Subsection C which provided that the state investment officer shall obtain an attorney's opinion certifying the legality of bonds to be purchased; provides in Subsection D that all funds managed by the state investment officer shall be managed in accordance with the Uniform Prudent Investor Act; and added Subsection F to provide that the state investment officer shall provide reports and investment policies to the legislative finance committee.

**The 2001 amendment,** effective June 15, 2001, substituted "in accordance with the prudent investor rule set forth in the Uniform Prudent Investor Act" for "on a total rate of return basis in a prudent manner, unless a higher standard of care is required by law" in Subsection F; in Subsection G, substituted "prudent investor rule" for "same standard of care applicable to investments of the land grant permanent funds" at the end of the second sentence, and inserted "and any tax-exempt private endowment entity whose sole beneficiary is a state agency" at the end of the subsection.

**The 1997 amendment,** effective April 9, 1997, substituted "assets of all funds administered under the supervision of the council" for "permanent fund" in Subsection A; substituted "shall be" for "is" in Subsection B; in the second sentence of Subsection E, inserted "for the investment of all funds managed by the investment office", inserted "advisory", and substituted the language beginning "the assets of the applicable" for "funds of the investment office"; rewrote Subsection F; in Subsection G, deleted "state investment" preceding "council" in the first sentence, and substituted the language beginning "institution or political" for "or institution of the state other than the educational retirement board and the retirement board created by the Public Employees Retirement Act" in the last sentence.

**The 1993 amendment,** effective June 18, 1993, made a stylistic change in the second sentence of Subsection A and rewrote Subsection G, substituting references to state agencies for references to educational institutions.

**The 1991 amendment,** effective June 14, 1991, added the subsection designations; in the first sentence of Subsection A substituted "adopted" for "promulgated"; in Subsection D substituted "that should govern" for "which should govern"; and added Subsection G.

**Duties of investment officer not delegated.** — Within the scope of the duties and potential liabilities established within the contractual relationship, an investment advisor was required to advise the state to make lawful investments. The contract did not delegate nondelegable duties to the advisor, and the advisor was therefore estopped to assert that doctrine as a bar to suit on the contract. *State ex rel. Udall v. Colonial Penn Ins. Co.*, 1991-NMSC-048, 112 N.M. 123, 812 P.2d 777.

**Investment officer has only powers granted by constitution or statute.** — The investment officer is a creature of statute, being unknown at common law, and has only those powers and rights granted to him by the constitution and legislative enactment. 1961 Op. Att'y Gen. No. 61-49.

**Requirements for exchange of securities.** — The requirement of this section, as it pertains to an exchange, is that the securities which are to be received in the exchange must have an aggregate price which is equal to or in excess of the market price of the securities which are to be given by the state. 1960 Op. Att'y Gen. No. 60-09.

**Determination of "market price".** — The generally accepted definition or meaning of the term "market price" indicates that the words imply price or value in an open market where one desires but is not compelled to buy and one is willing but not compelled to sell. In order for an item to have a market price, the same or similar items must have been sold enough times so that the items obtain a somewhat fixed price or value to purchasers. 1960 Op. Att'y Gen. No. 60-09.

**Mere combining of funds from several trusts for investment** does not violate intermingling rule. 1960 Op. Att'y Gen. No. 60-09.

**Investment officer may sell or exchange securities held in portfolio.** — This section confers upon the investment officer the power to sell and exchange securities originally held in the state portfolio. 1960 Op. Att'y Gen. No. 60-09.

**Investment not limited to current funds.** — The primary purpose for the creation of the investment council was to improve the position of the permanent fund in regard to its investments generally, and specifically, its return on the funds invested, keeping in mind the preservation of the principal. This goal could not be accomplished if the powers of the council were limited to investing only current funds. 1960 Op. Att'y Gen. No. 60-09.

**Capital gains from sale of common stock may not be used to offset loss on sale of fixed-income security.** — Since the 1965 amendment to N.M. Const., art. XII, § 7, the state investment council has not had the power to sell common stocks realizing a capital gain and use such gain to offset a loss taken on the sale of a fixed-income security. 1968 Op. Att'y Gen. No. 68-116.

**Sale at loss which cannot be made up by increased interest income.** — The state investment officer has the power and the duty to sell fixed income securities at less than their original acquisition cost and take a loss which cannot be made up by increased interest income where, in his discretion, such action is consistent with the protection and preservation of the permanent fund. While the loss must be reimbursed, it is up to the legislature to effect it; accordingly, in the event of a loss, the state investment council should inform the legislature thereof. 1989 Op. Att'y Gen. No. 89-19.

**Commitment for purchase prior to actual investment.** — Investment council can make definite commitment for purchase of Capehart mortgages prior to actual investment in them. 1959 Op. Att'y Gen. No. 59-160.

**Employment of management company constitutes unlawful delegation of powers.** — If a management company is to be of any real value to the investment council, it must by the very nature of its duties possess a portion of the decision-making powers of the investment officer. This is an unlawful delegation of the investment power of the investment officer. 1961 Op. Att'y Gen. No. 61-49.

## 6-8-8. Compromise; adjustment.

In the event of default in the payment of principal [of], or interest on, an investment made, the investment officer is authorized to institute proper proceedings to collect matured interest and principal; the investment officer may, after consultation with the investment council, accept for exchange purposes refunding bonds or other evidences of indebtedness at interest rates to be agreed upon with the obligor. The investment officer, after consultation with the council, is authorized to adjust past-due interest or principal in default.

**History:** 1953 Comp., § 11-2-8.11, enacted by Laws 1957, ch. 179, § 8; 1977, ch. 247, § 101; 1981, ch. 264, § 6.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and it is not part of the law.

## 6-8-9. Repealed.

**History:** 1953 Comp., § 11-2-8.12, enacted by Laws 1957, ch. 179, § 9; 1961, ch. 248, § 1; 1965, ch. 219, § 1; 1969, ch. 262, § 1; 1970, ch. 81, § 2; 1975, ch. 211, § 2; 1983,

ch. 277, § 1; 1987, ch. 231, § 1; 1989, ch. 98, § 1; 1991, ch. 83, § 1; 1996, ch. 31, § 1; 1997, ch. 183, § 2; 1998, ch. 19, § 1; 2001, ch. 252, § 2; 1978 Comp., § 6-8-9, repealed by Laws 2005, ch. 240, § 7.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 240, § 7 repealed 6-8-9 NMSA 1978, as enacted by Laws 1957, ch. 179, § 9, relating to securities and investments, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

## 6-8-10. Investment standards.

Investments made pursuant to Sections 6-8-1 through 6-8-16 NMSA 1978 shall be made in accordance with the prudent investor rule set forth in the Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978].

**History:** 1953 Comp., § 11-2-8.13, enacted by Laws 1957, ch. 179, § 10; 2001, ch. 252, § 3.

**ANNOTATIONS**

**The 2001 amendment,** effective June 15, 2001, substituted the language beginning "in accordance with" for "with the exercise of that degree of judgment and care, under circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived".

**Prudent man rule applicable to purchases of securities.** — This section has adopted, for the purposes of investment of the permanent fund, the prudent man rule of investments that is applicable to trustees generally. Under this rule, it is generally held that a trustee can properly invest in securities, the purchase price of which is greater than the face value of security, or at a premium. 1959 Op. Att'y Gen. No. 59-157.

**Standards of this section may be applied when investing funds of museum of New Mexico.** — In investing funds belonging to the museum of New Mexico, the state treasurer and state board of finance may, in their discretion, utilize the same standards as govern the investment of public funds controlled by the state commissioner of public lands and as are set forth in this section. 1964 Op. Att'y Gen. No. 64-29.

## 6-8-11. Custody of securities.

Securities purchased or held by the state investment officer or the council shall be in the custody of a custodian bank contracted pursuant to the provisions of Subsection H of Section 6-8-7 NMSA 1978.

**History:** 1953 Comp., § 11-2-8.14, enacted by Laws 1957, ch. 179, § 11; 1975, ch. 211, § 3; 1977, ch. 247, § 102; 2015, ch. 95, § 6.

**ANNOTATIONS**

**The 2015 amendment,** effective June 19, 2015, required securities purchased or held by the state investment officer or the council to be in the custody of a contracted custodian bank; after "state investment officer or the", deleted "state investment", after "custody of", deleted "the state treasurer who may, with the approval of the secretary, deposit with a bank or trust company the securities for safekeeping and servicing" and added "a custodian bank contracted pursuant to the provisions of Subsection H of Section 6-8-7 NMSA 1978".

## 6-8-12. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1996, ch. 4, § 3, repealed 6-8-12 NMSA 1978, as enacted by Laws 1957, ch. 179, § 12, relating to collection of income and proceeds and availability for investment, effective upon certification by the secretary of state that the proposed amendments to art. 8, § 10 and art. 12, §§ 2, 4, and 7 of the New Mexico Constitution have passed and been ratified by the United States congress. Those constitutional amendments, proposed by S.J.R. No. 2 (Laws 1996), were adopted at the general election held November 5, 1996, by a vote of 307,442 for and 153,021 against. For provisions of former section, *see* the 1995 NMSA 1978 on *NMOneSource.com.*

## 6-8-13. Record of investments.

The investment office shall keep accurate and complete records and accounts concerning the state investment portfolio.

**History:** 1953 Comp., § 11-2-8.16, enacted by Laws 1957, ch. 179, § 13, 1977, ch. 247, § 103; 2015, ch. 95, § 7.

**ANNOTATIONS**

**The 2015 amendment,** effective June 19, 2015, changed "investment division" to "investment office".

## 6-8-14. Monthly reports.

No later than twenty days after the end of each month, the state investment officer shall submit to the council a report of the operations of the investment office during the past month. Each report shall include a schedule of cumulative fiscal year actual and budgeted expenditures and a monthly summary of contributions, distributions, fees, income and net gains or losses for each permanent fund and investment pool. The

reports shall be published on the web site of the council and the sunshine portal and shall be open for inspection to the public and the press in the investment office.

**History:** 1953 Comp., § 11-2-8.17, enacted by Laws 1957, ch. 179, § 14; 1977, ch. 247, § 104; 2010, ch. 14, § 5; 2015, ch. 95, § 8.

**ANNOTATIONS**

**The 2015 amendment,** effective June 19, 2015, amended the contents of the monthly report of the operations of the investment office that is required to be submitted by the state investment officer; after "No later than", deleted "ten" and added "twenty", after "days after the", deleted "close" and added "end", after "investment officer shall submit to", deleted "the secretary and", after "the", deleted "state investment", after "operations of the", added "investment", after "Each report shall", deleted "give complete statement of the state investment portfolio as of the time of the report and, in addition, shall include a detailed summary of the month’s investment, reinvestment, purchase, sale and exchange transactions, setting forth the investments bought, sold or exchanged, the dates thereof, the prices paid or obtained, the name of the dealers involved, fees paid for each transaction, disclosure of contractor arrangements and a statement of the funds or accounts referred to herein. The reports shall also be circulated to a mailing list of investment bankers and brokers recommended by the council" and added "include a schedule of cumulative fiscal year actual and budgeted expenditures and a monthly summary of contributions, distributions, fees, income and net gains or losses for each permanent fund and investment pool", after "published on the web", changed "sites" to "site", after "of the council", deleted "the legislature and the department of finance and administration" and added "and the sunshine portal", after "the press in the", deleted "office of the state", and after "investment", deleted "officer" and added "office".

**The 2010 amendment,** effective March 1, 2010, in the second sentence, after "the names of dealers involved", added "fees paid for each transaction, disclosure of contractor arrangements" and in the fourth sentence, after "The reports shall be", added "published on the web sites of the council, the legislature and the department of finance and administration and shall be".

## 6-8-15. Post-audit.

The state auditor shall be responsible for conducting a continuous post-audit of the investment transactions of the state, and shall submit annually a special report on his findings to the investment council, the secretary, the governor, and to the appropriate legislative committee.

**History:** 1953 Comp., § 11-2-8.28, enacted by Laws 1957, ch. 179, § 15; 1977, ch. 247, § 105.

## 6-8-16. Annual report.

On or before January 1 of each year, and at such other times as it may deem in the public interest, the investment council shall report to the governor and to the legislature with respect to its review of the work of the investment division [office].

**History:** 1953 Comp., § 11-2-8.19, enacted by Laws 1957, ch. 179, § 16; 1977, ch. 247, § 106.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and it is not part of the law. Laws 1981, ch. 264, § 3 changed the name of the investment division to the investment office. *See* 6-8-4 NMSA 1978.

## 6-8-17. Repealed.

**History:** 1953 Comp., § 11-2-10.1, enacted by Laws 1970, ch. 2, § 1; 1978 Comp., § 6-8-17, repealed by Laws 2005, ch. 240, § 7.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 240, § 7 repealed 6-8-17 NMSA 1978, as enacted by Laws 1970, ch. 2, § 1, relating to the purpose of the act, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

## 6-8-18. Repealed.

**History:** 1953 Comp., § 11-2-10.2, enacted by Laws 1970, ch. 2, § 2; 1971, ch. 41, § 1; 1987, ch. 79, § 2; 1978 Comp., § 6-8-18, repealed by Laws 2005, ch. 240, § 7.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 240, § 7, repealed 6-8-18 NMSA 1978, as enacted by Laws 1970, ch. 2, § 2, relating to permanent funds and investment in interest-bearing time deposits, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

## 6-8-19. Repealed.

**History:** Laws 1987, ch. 126, § 1; 1989, ch. 98, § 2; 1990, ch. 91, § 1; 1996, ch. 31, § 2; 1997, ch. 183, § 3; 2001, ch. 252, § 4; repealed by Laws 2005, ch. 240, § 7.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 240, § 7 repealed 6-8-19 NMSA 1978, as enacted by Laws 1987, ch. 126, § 1, relating to short-term investments, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

## 6-8-20. Repealed.

**History:** Laws 1987, ch. 219, § 3; 1990, ch. 126, § 1; 1997, ch. 183, § 4; 2001, ch. 252, § 5; 2005, ch. 240, § 2; 2010, ch. 14, § 6; repealed by Laws 2015, ch. 95, § 11.

**ANNOTATIONS**

**Repeals.** — Laws 2015, ch. 95, § 11 repealed 6-8-20 NMSA 1978, as enacted by Laws 1987, ch. 219, § 3, relating to the creation of a private equity investment advisory committee, membership, duties, terms, liabilities and conflict of interest, effective June 19, 2015. For provisions of former section, *see* the 2014 NMSA 1978 on *NMOneSource.com*.

## 6-8-21. Repealed.

**History:** Laws 1997, ch. 183, § 5; 2001, ch. 252, § 6; repealed by Laws 2005, ch. 240, § 7.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 240, § 7 repealed 6-8-21 NMSA 1978, as enacted by Laws 1997, ch. 183, § 5, relating to private equity investments, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

## 6-8-22. Disclosure of third-party marketers; penalty.

A. Neither the state investment council nor the state investment officer shall make any investment, other than investments in publicly traded equities or publicly traded fixed-income securities, unless the recipient of the investment discloses the identity of any third-party marketer who rendered services on behalf of the recipient in obtaining the investment and also discloses the amount of any fee, commission or retainer paid to the third-party marketer for the services rendered.

B. Information disclosed pursuant to Subsection A of this section shall be included in the monthly reports of the state investment officer and the annual reports of the state investment council.

C. Any person who knowingly withholds information required by Subsection A of this section is guilty of a fourth degree felony and shall be punished by a fine of not more than twenty thousand dollars ($20,000) or by imprisonment for a definite term not to exceed eighteen months or both.

D. As used in this section, "third-party marketer" means a person who, on behalf of an investment fund manager or other person seeking an investment of public money and under a written or implied agreement, receives a fee, commission or retainer for such services from the person seeking an investment of public money.

**History:** Laws 2009, ch. 152, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 152 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## 6-8-23. Compensation under contingent fee contracts; suspense fund created.

A. For the purpose of making disbursements and distributions pursuant to this section, the "state investment council suspense fund" is created in the state treasury.

B. When pursuing a claim and utilizing legal services on a contingent fee basis, all amounts received by the legal services contractor as satisfaction of the claim shall be transferred to the council and deposited into the state investment council suspense fund to the credit of the council. Upon the direction of the state investment officer, the contingent attorney fees due to the legal services contractor shall be disbursed from the suspense fund to the contractor.

C. After a disbursement to a contractor pursuant to Subsection B of this section, the balance of the deposit into the state investment council suspense fund shall be distributed to the appropriate permanent fund or other appropriate fund from which the loss occurred that originated the claim pursued by the legal services contractor.

**History:** Laws 2011, ch. 9, § 2.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2011, ch. 9, § 4 contained an emergency clause and was approved March 17, 2011.

## 6-8-24. Qui tam plaintiffs.

Nothing in this 2011 act [6-8-7, 6-8-23 NMSA 1978] shall prejudice or impair the rights of a qui tam plaintiff pursuant to the Fraud Against Taxpayers Act [44-9-1 to 44-9-14 NMSA 1978].

**History:** Laws 2011, ch. 9, § 3.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2011, ch. 9, § 4 contained an emergency clause and was approved March 17, 2011.

## 6-8-25. Accounts for support of persons with disabilities.

The state treasurer shall establish and maintain the program established pursuant to 26 U.S.C. Section 529A and the Accounts for Persons with Disabilities Act [6-8A-1 to 6-8A-7 NMSA 1978].

**History:** Laws 2016, ch. 40, § 8.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2016, ch. 40, § 11 contained an emergency clause and was approved March 3, 2016.

**Applicability.** — Laws 2016, ch. 40, § 10 provided that the provisions of Laws 2016, ch. 40 apply to taxable years beginning on or after January 1, 2016.

# ARTICLE 8A
# Accounts for Persons with Disabilities

## 6-8A-1. Short title.

Sections 1 through 7 [6-8A-1 to 6-8A-7 NMSA 1978] of this act may be cited as the "Accounts for Persons with Disabilities Act".

**History:** Laws 2016, ch. 40, § 1.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2016, ch. 40, § 11 contained an emergency clause and was approved March 3, 2016.

**Applicability.** — Laws 2016, ch. 40, § 10 provided that the provisions of Laws 2016, ch. 40 apply to taxable years beginning on or after January 1, 2016.

## 6-8A-2. Definitions.

As used in the Accounts for Persons with Disabilities Act:

A. "account" means an individual tax-free savings account for a designated beneficiary that is established pursuant to Section 529A of the Internal Revenue Code of 1986, as amended;

B. "account owner" means a person who establishes and owns an account under the Accounts for Persons with Disabilities Act and who is one of the following:

(1) the designated beneficiary of the account;

(2) the parent, guardian or conservator of a minor designated beneficiary; or

(3) the conservator of a designated beneficiary otherwise incapable of handling such beneficiary's financial affairs;

C. "designated beneficiary" means a person for whom an account is established under the Accounts for Persons with Disabilities Act;

D. "disability certification" means a certification deemed sufficient by the United States secretary of the treasury to establish a certain level of physical or mental impairment that meets the requirements of Section 529A of the Internal Revenue Code of 1986, as amended;

E. "eligible person" means, for a taxable year, a person who is either:

(1) entitled during that taxable year to benefits based on blindness or disability under Title 2 or Title 16 of the federal Social Security Act; provided that such blindness or disability occurred before the date on which the individual attained age twenty-six; or

(2) the subject of a disability certification filed with the United States secretary of the treasury;

F. "family member" means a sibling, whether by blood or adoption, including a brother, sister, stepbrother, stepsister, half-brother or half-sister;

G. "fiduciary" means a person authorized to do business in New Mexico and acting as a fiduciary to manage and invest an account; provided that such person is bonded and is not the parent, guardian or conservator of the designated beneficiary of the account;

H. "financial organization" means an organization that is authorized to do business in New Mexico and is:

(1) licensed or chartered by the office of superintendent of insurance;

(2) licensed or chartered by the financial institutions division of the regulation and licensing department; or

(3) subject to the jurisdiction of the federal securities and exchange commission;

I. "office" means the office of the state treasurer;

J. "qualified disability expenses" means any expenses, related to the designated beneficiary's blindness or disability, that include the following:

(1) education;

(2) housing;

(3) transportation;

(4) employment training and support;

(5) assistive technology and personal support services;

(6) health, prevention and wellness;

(7) financial management and administrative services;

(8) legal fees;

(9) expenses for oversight and monitoring;

(10) funeral and burial expenses; and

(11) other expenses approved by the United States secretary of the treasury; and

K. "qualified program" means a program established and maintained by the state or an agency or instrumentality of the state pursuant to 26 U.S.C. Section 529A.

**History:** Laws 2016, ch. 40, § 2.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2016, ch. 40, § 11 contained an emergency clause and was approved March 3, 2016.

**Applicability.** — Laws 2016, ch. 40, § 10 provided that the provisions of Laws 2016, ch. 40 apply to taxable years beginning on or after January 1, 2016.

## *6-8A-2. Definitions. (Effective January 1, 2026.)*

*As used in the Accounts for Persons with Disabilities Act:*

*A. "account" means an individual tax-free savings account for a designated beneficiary that is established pursuant to Section 529A of the Internal Revenue Code of 1986, as amended;*

*B. "account owner" means a person who establishes and owns an account under the Accounts for Persons with Disabilities Act and who is one of the following:*

*(1) the designated beneficiary of the account;*

*(2) the parent, guardian or conservator of a minor designated beneficiary; or*

*(3) the conservator of a designated beneficiary otherwise incapable of handling such beneficiary's financial affairs;*

*C. "designated beneficiary" means a person for whom an account is established under the Accounts for Persons with Disabilities Act;*

*D. "disability certification" means a certification deemed sufficient by the United States secretary of the treasury to establish a certain level of physical or mental impairment that meets the requirements of Section 529A of the Internal Revenue Code of 1986, as amended;*

*E. "eligible person" means, for a taxable year, a person who is either:*

*(1) entitled during that taxable year to benefits based on blindness or disability under Title 2 or Title 16 of the federal Social Security Act; provided that such blindness or disability occurred before the date on which the individual attained age forty-six; or*

*(2) the subject of a disability certification filed with the United States secretary of the treasury;*

*F. "family member" means a sibling, whether by blood or adoption, including a brother, sister, stepbrother, stepsister, half-brother or half-sister;*

*G. "fiduciary" means a person authorized to do business in New Mexico and acting as a fiduciary to manage and invest an account; provided that such person is bonded and is not the parent, guardian or conservator of the designated beneficiary of the account;*

*H. "financial organization" means an organization that is authorized to do business in New Mexico and is:*

*(1) licensed or chartered by the office of superintendent of insurance;*

*(2) licensed or chartered by the financial institutions division of the regulation and licensing department; or*

*(3) subject to the jurisdiction of the federal securities and exchange commission;*

*I. "office" means the office of the state treasurer;*

*J. "qualified disability expenses" means any expenses, related to the designated beneficiary's blindness or disability, that include the following:*

*(1) education;*

*(2) housing;*

*(3) transportation;*

*(4) employment training and support;*

*(5) assistive technology and personal support services;*

*(6) health, prevention and wellness;*

*(7) financial management and administrative services;*

*(8) legal fees;*

*(9) expenses for oversight and monitoring;*

*(10) funeral and burial expenses; and*

*(11) other expenses approved by the United States secretary of the treasury; and*

*K. "qualified program" means a program established and maintained by the state or an agency or instrumentality of the state pursuant to 26 U.S.C. Section 529A.*

***History:*** *Laws 2016, ch. 40, § 2; 2024, ch. 17, § 1.*

***ANNOTATIONS***

***The 2024 amendment,*** *effective January 1, 2026, expanded the eligibility for an individual tax-free savings account for a designated beneficiary by revising the definition of "eligible person"; and in Subsection E, Paragraph E(1), after "attained age," changed "twenty-six" to "forty-six".*

## 6-8A-3. Duties and authority of the office.

A. The office shall:

(1) ensure that an account meets the requirements of a qualified program; and

(2) promulgate rules to implement and administer the qualified program and other requirements of the Accounts for Persons with Disabilities Act.

B. The office may contract with third parties to:

(1) verify the disability certification of each designated beneficiary under the state's qualified program and certify whether expenses paid from such account are qualified disability expenses;

(2) provide such information related to accounts as the state is required to report to the federal social security administration; and

(3) administer and manage the accounts and report account activity to the office on an annual or such other basis as determined by the office.

**History:** Laws 2016, ch. 40, § 3.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2016, ch. 40, § 11 contained an emergency clause and was approved March 3, 2016.

**Applicability.** — Laws 2016, ch. 40, § 10 provided that the provisions of Laws 2016, ch. 40 apply to taxable years beginning on or after January 1, 2016.

## 6-8A-4. Accounts.

A. An account owner may:

(1) establish an account with a financial organization or fiduciary;

(2) close the account and establish an account with another financial organization or fiduciary, no more than twice in any tax year; and

(3) change the owner of an account to a family member of a designated beneficiary; provided that the family member is an eligible person.

B. More than one person may contribute to an account.

C. A person shall not be the designated beneficiary of more than one account.

**History:** Laws 2016, ch. 40, § 4.

### ANNOTATIONS

**Emergency clauses.** — Laws 2016, ch. 40, § 11 contained an emergency clause and was approved March 3, 2016.

**Applicability.** — Laws 2016, ch. 40, § 10 provided that the provisions of Laws 2016, ch. 40 apply to taxable years beginning on or after January 1, 2016.

## 6-8A-5. Duties of financial organization or fiduciary.

A. If a designated beneficiary incurs a qualified disability expense, the financial organization or fiduciary shall pay such expense, or reimburse such expense; provided that the account balance is sufficient to do so.

B. If any person attempts to contribute to an account and such contribution would exceed the limits on annual or maximum aggregate contributions to the account pursuant to 26 U.S.C. Section 529A, the financial organization or fiduciary shall return the amount that exceeds such limits to the contributor.

**History:** Laws 2016, ch. 40, § 5.

### ANNOTATIONS

**Emergency clauses.** — Laws 2016, ch. 40, § 11 contained an emergency clause and was approved March 3, 2016.

**Applicability.** — Laws 2016, ch. 40, § 10 provided that the provisions of Laws 2016, ch. 40 apply to taxable years beginning on or after January 1, 2016.

## 6-8A-6. Limitation on medicaid payback.

Unless required by federal law, the state or an agency or instrumentality of the state shall not:

A. seek payment from an account or its proceeds for benefits provided to the beneficiary of the account pursuant to 26 U.S.C. Section 529A; or

B. undertake estate recovery from an account pursuant to 26 U.S.C. Section 529A.

**History:** Laws 2016, ch. 40, § 6; repealed and reenacted by Laws 2024, ch. 17, § 2.

### ANNOTATIONS

**Repeals and reenactments.** — Laws 2024, ch. 17, § 2 repealed former 6-8A-6 NMSA 1978 and enacted a new section, effective July 1, 2024.

**Applicability.** — Laws 2016, ch. 40, § 10 provided that the provisions of Laws 2016, ch. 40 apply to taxable years beginning on or after January 1, 2016.

## 6-8A-7. Treatment of accounts under federal means-tested programs.

A. Notwithstanding any other provision of federal law that requires consideration of one or more financial circumstances of a person when determining eligibility to receive benefits or determining the amount of assistance, such provisions shall not apply to a designated beneficiary except that, in the case of the supplemental security income program under Title 16 of the federal Social Security Act:

(1) a distribution for housing expenses shall be allowed; and

(2) any amount in an account established pursuant to the Accounts for Persons with Disabilities Act, including earnings on investment of the account, in excess of one hundred thousand dollars ($100,000) shall be considered an excess resource of the designated beneficiary.

B. The benefits of a designated beneficiary under the supplemental security income program under Title 16 of the federal Social Security Act shall not be terminated, but shall be suspended, by reason of excess resources of the designated beneficiary attributable to an amount in the account, within the meaning of Section 529A of the Internal Revenue Code of 1986, as amended.

**History:** Laws 2016, ch. 40, § 7.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2016, ch. 40, § 11 contained an emergency clause and was approved March 3, 2016.

**Applicability.** — Laws 2016, ch. 40, § 10 provided that the provisions of Laws 2016, ch. 40 apply to taxable years beginning on or after January 1, 2016.

## 6-8A-8. Disclaimer of liability.

The state shall not be liable for financial losses suffered by any account owner, or designated beneficiary, with respect to an account established pursuant to the Accounts for Persons with Disabilities Act.

**History:** Laws 2016, ch. 40, § 9.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2016, ch. 40, § 11 contained an emergency clause and was approved March 3, 2016.

**Compiler's notes.** – Section 6-8A-8 NMSA 1978 was not enacted as part of the Accounts for Persons with Disabilities Act, but was compiled there for the convenience of the user.

**Applicability.** — Laws 2016, ch. 40, § 10 provided that the provisions of Laws 2016, ch. 40 apply to taxable years beginning on or after January 1, 2016.

# ARTICLE 9
# Facsimile Signatures

## 6-9-1. Definitions.

As used in the Uniform Facsimile Signature of Public Officials Act:

A. "public security" means a bond, note, certificate of indebtedness or other obligation for the payment of money issued by this state or by any of its departments, agencies, boards or other instrumentalities or by any of its political subdivisions;

B. "instrument of payment" means a check, draft, warrant or order for the payment, delivery or transfer of funds;

C. "authorized officer" means any official of this state or any of its departments, boards, agencies or other instrumentalities, any county, municipality as defined in the Municipal Code [Chapter 3 NMSA 1978], school district, other district, educational institution or any other governmental agency, political subdivision or instrumentality of the state or any officer or other authorized person of any corporate or other trustee, registrar, paying agent or transfer agent within the United States whose signature to a public security or instrument of payment is required or permitted by statute or charter or the ordinance, resolution or other official action authorizing the public security; and

D. "facsimile signature" means a reproduction by engraving, imprinting, stamping or other means of the manual signature of an authorized officer.

**History:** 1953 Comp., § 5-9-1, enacted by Laws 1959, ch. 118, § 1; 1983, ch. 265, § 5.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64 Am. Jur. 2d Public Securities and Obligations § 191.

80 C.J.S. Signatures §§ 1, 2, 9.

## 6-9-2. Facsimile signature.

Any authorized officer, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed with a facsimile signature in lieu of his manual signature:

A. any public security, provided that at least one signature required or permitted to be placed thereon by statute, charter or the ordinance, resolution or other official action authorizing the public security shall be manually subscribed; and

B. any instrument of payment.

Upon compliance with the Uniform Facsimile Signature of Public Officials Act by the authorized officer, his facsimile signature has the same legal effect as his manual signature.

**History:** 1953 Comp., § 5-9-2, enacted by Laws 1959, ch. 118, § 2; 1983, ch. 265, § 6.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64 Am. Jur. 2d Public Securities and Obligations § 191.

Procuring signature by fraud as forgery, 11 A.L.R.3d 1074.

80 C.J.S. Signatures §§ 1, 2, 9.

## 6-9-3. Use of facsimile seal.

When the seal of this state or any of its departments, agencies or other instrumentalities or of any of its political subdivisions is required in the execution of a public security or instrument of payment, the authorized officer may cause the seal to be printed, engraved, stamped or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal.

**History:** 1953 Comp., § 5-9-3, enacted by Laws 1959, ch. 118, § 3.

## 6-9-4. Violation and penalty.

Any person who with intent to defraud uses on a public security or an instrument of payment:

A. a facsimile signature, or any reproduction of it, of any authorized officer; or

B. any facsimile seal, or any reproduction of it, of this state or any of its departments, agencies or other instrumentalities or of any of its political subdivisions is guilty of a felony.

**History:** 1953 Comp., § 5-9-4, enacted by Laws 1959, ch. 118, § 4.

**ANNOTATIONS**

**Cross references.** — For sentencing for noncapital felonies, *see* 31-18-15 NMSA 1978.

### 6-9-5. Uniformity of interpretation.

This act [6-9-1 to 6-9-6 NMSA 1978] shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**History:** 1953 Comp., § 5-9-5, enacted by Laws 1959, ch. 118, § 5.

### 6-9-6. Short title.

This act [6-9-1 through 6-9-6 NMSA 1978] may be cited as the Uniform Facsimile Signature of Public Officials Act.

**History:** 1953 Comp., § 5-9-6, enacted by Laws 1959, ch. 118, § 6.

## ARTICLE 10
## Public Money

### 6-10-1. Fiscal year designated.

A. The fiscal year for the state and for the counties, cities, towns, villages and school districts thereof begins on July 1 and ends on June 30. The year beginning on July 1, 1925 shall be known as the fourteenth fiscal year.

B. Beginning July 1, 1994, the fiscal year shall be cited by citing the calendar year in which the fiscal year ends. The fiscal year beginning July 1, 1994 shall be fiscal year 1995.

**History:** Laws 1903, ch. 108, § 7; Code 1915, § 5330; Laws 1925, ch. 80, § 1; C.S. 1929, § 134-409; 1941 Comp., § 7-201; 1953 Comp., § 11-2-1; 1994, ch. 12, § 1.

**ANNOTATIONS**

**Cross references.** — For provision that current year is same as fiscal year, *see* 6-6-17 NMSA 1978.

**The 1994 amendment,** effective May 18, 1994, designated the previously undesignated language as Subsection A; added Subsection B; and, in Subsection A, substituted "begins on July 1 and ends" for "shall begin on July 1 and end" in the first sentence and deleted the former last sentence, relating to appropriations for state purposes.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 81A C.J.S. States § 203.

## 6-10-1.1. Definitions.

As used in Chapter 6, Article 10 NMSA 1978:

A. "department" means the department of finance and administration;

B. "deposit" includes share, share certificate and share draft;

C. "eligible governing body" means a local governing body, the governing authority of a tribe or any other governmental or quasi-governmental body created or authorized to be created pursuant to New Mexico statutes;

D. "finance officer" means the chief financial officer of an eligible governing body or a participating government;

E. "local governing body" means a political subdivision of the state, including a school district or a post-secondary educational institution;

F. "participating government" means an eligible governing body or the state treasurer on behalf of the general fund that has invested money in the local government investment pool;

G. "secretary" means the secretary of finance and administration;

H. "treasury" means the master depository or cash concentration account held at the state's fiscal agent bank and administered by the office of the state treasurer, unless the context otherwise clearly indicates; and

I. "tribe" means a federally recognized Indian nation, tribe or pueblo or a subdivision or agency of a federally recognized Indian nation, tribe or pueblo, located wholly or partially in New Mexico.

**History:** 1978 Comp., § 6-10-1.1, enacted by Laws 1987, ch. 79, § 3; 2003, ch. 273, § 12; 2008, ch. 23, § 1; 2011, ch. 88, § 1; 2013, ch. 65, § 1.

**ANNOTATIONS**

**The 2013 amendment,** effective June 14, 2013, changed the name of the participating government investment fund to the local government investment pool; and in

Subsection F, after "invested money in the", deleted "participating government investment fund" and added "local government investment pool".

**The 2011 amendment,** effective July 1, 2011, added Subsection H to define "treasury".

**The 2008 amendment,** effective February 27, 2008, added Subsections C through F and H.

**The 2003 amendment,** effective July 1, 2003, inserted the Subsection A designation and added Subsections B and C.

## 6-10-1.2. Payment methods authorized; fee.

A. A state agency or local governing body may accept payment by credit card or electronic means of any amount due under any law or program administered by the agency or local governing body. The state board of finance shall adopt rules on the terms and conditions of a state agency accepting payments by credit card or electronic transfer. The local governing body shall adopt procedures, subject to the approval of the department, on the terms and conditions of accepting payments by credit card or electronic transfer.

B. A state agency or local governing body may charge a uniform convenience fee to cover the approximate costs imposed by a financial institution that are directly related to processing a credit card or electronic transfer transaction. The fee shall be charged to the person using a credit card or electronic transfer. Amounts collected pursuant to this subsection are appropriated to the state agency or local governing body to defray the cost of processing the transaction.

**History:** Laws 1999, ch. 176, § 1; 2009, ch. 218, § 1; 2010, ch. 64, § 1; 2011, ch. 86, § 1.

**ANNOTATIONS**

**The 2011 amendment,** effective June 1, 2011, permitted state agencies and local governing bodies to charge a uniform convenience fee to cover the approximate costs charged by financial institutions that are directly related to credit card or electronic transfer transactions.

**The 2010 amendment,** effective May 19, 2010, in the catchline, added "fee"; in Subsection A, in the third sentence, after "approval of the department", deleted "of finance and administration"; and added Subsection B.

**The 2009 amendment,** effective June 19, 2009, in the first sentence, in two places, after "agency", added "or local governing body" and added the second sentence.

## 6-10-2. Public money; cash books; daily balance; public record.

It is the duty of every public official or agency of this state that receives or disburses public money to maintain a cash record in which is entered daily, in detail, all items of receipts and disbursements of public money. The cash record shall be balanced daily so as to show the balance of public money on hand at the close of each day's business. Except as may be otherwise provided by law, the cash record is a public record and is open to public inspection.

**History:** Laws 1923, ch. 76, § 1; C.S. 1929, § 112-101; 1941 Comp., § 7-202; 1953 Comp., § 11-2-2; 2003, ch. 273, § 13.

**ANNOTATIONS**

**The 2003 amendment,** effective July 1, 2003, added the present section heading; substituted "is" for "shall be" near the beginning and near the end, substituted "that" for "who" following "of this state", substituted "money to maintain a cash record in which is" for "monies to keep in his office a cash book wherein shall be" following "or disburses public", substituted "money. The cash record" for "monies and which" following "disbursements of public", substituted "money" for "monies" following "balance of public", substituted "Except as may be otherwise provided by law, the cash record is" for "and such the cash book shall be" following "each day's business".

## 6-10-2.1. State treasurer; duty.

The state treasurer shall identify and allocate to the general fund all earnings, including realized and unrealized gains and losses, from the investment of all accounts or funds in his custody unless the allocation of the earnings is:

A. otherwise provided by law;

B. prohibited by federal law creating the fund or the account or by specific court order; or

C. from the investment of a permanent fund and the use of the interest and income from the fund is restricted by constitutional or statutory provisions to particular purposes.

**History:** Laws 1989, ch. 324, § 41; 2001, ch. 182, § 1; 2002, ch. 57, § 1.

**ANNOTATIONS**

**The 2002 amendment,** effective May 15, 2002, substituted "is" for "and realized and unrealized gains and losses are" at the end of the introductory matter; and deleted "specifically" preceding "provided" in Subsection A.

**The 2001 amendment,** effective June 15, 2001, in the introductory language, substituted "allocate" for "credit" and "earnings on and realized and unrealized gains and losses from the investment of" for "interest on", and inserted "the allocation of the

earnings and realized and unrealized gains and losses are"; deleted "the crediting of the interest is" from the beginning of Subsections A and B; and in Subsection C, deleted "the interest is" from the beginning of the subsection and deleted "that is impressed with a trust that prohibits expenditure of the corpus of the fund" following "permanent fund".

## 6-10-3. Payment of state money into treasury; suspense funds.

All public money in the custody or under the control of any state official or agency obtained or received by any official or agency from any source, except as in Section 6-10-54 NMSA 1978 provided, shall be paid into the state treasury. It is the duty of every official or person in charge of any state agency receiving any money in cash or by check, draft or otherwise for or on behalf of the state or any agency thereof from any source, except as in Section 6-10-54 NMSA 1978 provided, to forthwith and before the close of the next succeeding business day after the receipt of the money to deliver or remit it to the state treasurer; provided, however, that:

A. the money collected by the state parks division of the energy, minerals and natural resources department and the state monuments division of the cultural affairs department shall be deposited into the state treasury no later than ten days following collection;

B. county treasurers shall remit all money received for taxes for state purposes or that are by law required to be remitted to the department on or before the tenth day of the next succeeding month following the receipt or collection thereof;

C. every official or person in charge of any state agency receiving any money, except as in Section 6-10-54 NMSA 1978 provided, in cash or by check or draft, on deposit, in escrow or in evidence of good faith to secure the performance of any contract or agreement with the state or with any department, institution or agency of the state, which money has not yet been earned so as to become the absolute property of the state, shall deliver or remit to the state treasury within the times and in the manner as in this section provided, which money shall be deposited in a suspense account to the credit of the proper official, person, board or bureau in charge of any state agency so receiving the money; and

D. all money held by the commissioner of public lands on deposit, in escrow or in evidence of good faith to secure the performance of any contract or agreement with the state shall be delivered or remitted to the state treasury within six months from the date this act is approved and at those times, in the amounts and from the various banks in which it is deposited as may be directed by the state board of finance.

**History:** Laws 1923, ch. 76, § 2; C.S. 1929, § 112-102; 1941 Comp., § 7-203; 1953 Comp., § 11-2-3; Laws 1987, ch. 295, § 1; 2003, ch. 281, § 1; 2011, ch. 88, § 2.

**ANNOTATIONS**

**The 2011 amendment,** effective July 1, 2011, modified references to the state department and divisions to reflect current usage and to the state treasury.

**The 2003 amendment,** effective June 20, 2003, deleted "Thirty days from the taking effect of Chapter 6, Article 10 NMSA 1978" at the beginning and, inserted "the energy, minerals and natural resources department and the state monuments of the museum division of the office of cultural affairs" in the third sentence.

**The 1987 amendment,** effective June 19, 1987, added the first proviso after the second sentence; deleted "of New Mexico, at the time this act takes effect" following "agreement with the state" near the end of the last sentence and "at the time this act is approved" following "deposit," also near the end of the last sentence; and made minor stylistic changes throughout the section.

**Funds are not state property until deposited in state treasury.** — Where purchase price of state land was not deposited in state treasury, the money did not become the property of the state and the purchaser did not acquire an interest in the land. *Laguna Gatuna, Inc. v. U.S*. 50 Fed.Cl. 336 (2001).

**District attorney's office may use monetary donations for purposes of carrying out its official duties.** — In 2018, the New Mexico legislature authorized certain budget adjustments for fiscal years 2018 and 2019, which allowed the second judicial district attorney's office to request budget increases "from internal service funds/interagency transfers and other state funds from grants and local governments for case prosecution and related support services," and although the legislature did not define "other state funds from grants," the plain meaning of "grant" appears to cover monetary donations the district attorney's office receives for purposes of carrying out its official duties, and therefore money donated to the district attorney's office by third parties would qualify as "other state funds from grants" for the purpose of requesting a budget increase permitted by the legislature, assuming the district attorney's office properly deposits monetary donations it receives into the state treasury, as required by this section. *Use of Funds and Services Received from Third Parties* (1/14/19), Att'y Gen. Adv. Ltr. 2019-01.

**Public money.** — If the Museum of New Mexico imposes a fee on portal program participants, the museum must deposit the funds so generated with the state treasurer because the money is public money within the meaning of this section. 1988 Op. Att'y Gen. No. 88-25.

**Time for deposit of state funds with state treasurer.** — This section means literally that all receipts of any state official or agency, other than a county treasurer, must be deposited with the state treasurer before the close of the next succeeding business day after the receipt of such moneys. 1959 Op. Att'y Gen. No. 59-193; 1954 Op. Att'y Gen. No. 54-6023.

**Check paid in due course constitutes payment at time of delivery.** — Under general rules of law, a check constitutes conditional payment only, but, if paid in due course, constitutes payment at the time of the delivery of the check. 1958 Op. Att'y Gen. No. 58-242.

**Creation of a suspense fund by the investment council** is in accordance with law. 1962 Op. Att'y Gen. No. 62-46.

**Acceptance of federal matching funds for charitable, educational, etc., institutions.** — New Mexico may accept federal matching funds even though they are eventually to be paid to charitable, educational or other benevolent institutions not under the absolute control of the state because this section allows the state treasurer to create suspense accounts where the state treasurer does not deposit the money in the treasury, thus not violating N.M. Const., art. IV, §§ 30 and 31. 1967 Op. Att'y Gen. No. 67-07.

**Escrow funds in hands of insurance department (state insurance board)** must be deposited with the state treasurer. 1923 Op. Att'y Gen. No. 23-3693.

**Funds collected by state bar association to be kept in separate fund.** — All moneys collected by the state bar association become public funds and should be paid into the state treasury to be kept in a separate fund as state bar fund. 1932 Op. Att'y Gen. No. 32-349.

**State treasurer custodian of insurance proceeds belonging to vocational education division.** — Proceeds of fire insurance on property of the department of vocational education (vocational education division) destroyed at state college (New Mexico state university) should go to state treasurer as custodian of the board's funds. 1937 Op. Att'y Gen. No. 37-1772.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 63C Am. Jur. 2d Public Funds § 5.

81 C.J.S. States § 224.

## 6-10-4. Payment of obligations of prior years from current year appropriations.

A. Except as provided in Subsection B of this section, appropriations made for a specific fiscal year may not be used for paying obligations of any prior fiscal year except upon approval of the department. As a condition to the approval, the department shall certify that there existed in the affected state agency's budget at the end of the fiscal year sufficient funds, including uncollected earned revenue, to pay the obligation had the bill been presented prior to the end of that fiscal year. The department shall make quarterly reports to the legislative finance committee concerning all authorizations of payment.

B. Appropriations to the human services department [health care authority department] for medicaid payments may be expended by that department for medicaid obligations for prior fiscal years.

**History:** 1953 Comp., § 11-2-3.2, enacted by Laws 1963, ch. 35, § 1; 1971, ch. 5, § 1; 2003, ch. 273, § 14.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 205, § 16 provided that references to the human services department shall be deemed to be references to the health care authority department.

**The 2003 amendment,** effective July 1, 2003, substituted "year appropriations" for "general fund" in the section heading; added the Subsection A designation; in Subsection A, substituted "Except as provided in Subsection B of this section" for "General fund" at the beginning, deleted "of finance and administration" following "the department" three times, inserted "including uncollected earned revenue" following "year sufficient funds"; and added Subsection B.

**Expenditures should be charged to current fiscal year budget.** — School districts should charge expenditures to the current fiscal year budget, and not to the fiscal year in which the obligation was incurred. 1965 Op. Att'y Gen. No. 65-239.

## 6-10-5. General fund deficiency; certificates of indebtedness.

In the event of a deficiency in the state general fund, upon prior approval by the state board of finance there shall be issued certificates of indebtedness of the state of New Mexico. These certificates shall be issued in an amount as may be required but not in excess of the constitutional limitation; such certificates shall be in the form prescribed by the attorney general of the state.

**History:** 1953 Comp., § 11-2-3.3, enacted by Laws 1963, ch. 36, § 1.

## 6-10-6. Issuance of certificates.

The certificates shall bear interest at a rate to be fixed by the state treasurer at the time of issuance and sale. Such interest shall not exceed three percent a year, payable semiannually on January 1 and July 1 of each year from the state general fund; both principal and interest shall be payable at the office of the state treasurer. The certificates shall be signed by the secretary of finance and administration and by the state treasurer; the coupons attached thereto, if any, for the semiannual interest shall bear the signature of the state treasurer.

The certificates shall be sold at not less than par and when so sold, the amount of the proceeds thereof shall be placed in a special fund and a separate account thereof shall be kept. All payments made from this special fund shall be made on the warrant or transfer order of the department of finance and administration.

**History:** 1953 Comp., § 11-2-3.4, enacted by Laws 1963, ch. 36, § 2; 1977, ch. 247, § 94.

## 6-10-7. Retirement of certificates.

Such certificates of indebtedness shall be paid within two years after date upon order of the department of finance and administration. Any balance remaining in the special fund created for the proceeds of the issuance and sale of the certificates of indebtedness shall be first applied. Any additional amount required for retirement of such certificates shall be paid from the state general fund.

**History:** 1953 Comp., § 11-2-3.5, enacted by Laws 1963, ch. 36, § 3.

## 6-10-8. County boards of finance.

The board of county commissioners in each county in the state shall, ex officio and without additional compensation, constitute a county board of finance and as such shall, subject to the limitations of this act, have supervision over the determination of the qualifications and selection of banks, savings and loan associations and credit unions, whose deposits are insured by an agency of the United States, to receive the public money of their respective counties and of independent rural school districts, rural school districts and municipal school districts of municipalities having less than twenty-five thousand population according to the next preceding United States census and of any special or other districts in their respective counties for which the respective county treasurers of such counties act as ex-officio tax collectors. The county clerk in each county shall, ex officio and without additional compensation, act as clerk of such county board of finance. Every county board of finance shall hold meetings whenever necessary for the discharge of its duties, and the chairman shall convene such board whenever necessity therefor exists or when requested so to do by two of its members or at any time when the county treasurer shall advise the chairman that he has in his custody public money in excess of the aggregate amount which depositories qualified by law are entitled to hold. A majority of the board shall constitute a quorum for the transaction of business.

The county treasurer of each county in the state shall have supervision of the deposit and safekeeping of the public money of his county and all the money which may at any time come into or be in his possession as county treasurer and ex-officio tax collector for the use and benefit of the state or of any county, municipality or district or of any subdivision of any county or of any state or public institution and by and with the advice and consent of the respective boards of finance having jurisdiction over the respective funds shall designate banks, savings and loan associations and credit

unions, whose deposits are insured by an agency of the United States, to receive on deposit all moneys entrusted in his care.

**History:** Laws 1933, ch. 175, § 1; 1941 Comp., § 7-204; 1953 Comp., § 11-2-4; Laws 1968, ch. 18, § 2; 1981, ch. 332, § 1; 1987, ch. 79, § 4.

## ANNOTATIONS

**Compiler's notes.** — The term "this act," which appears in the first sentence, was added by the 1968 amendment. It appears to refer to Laws 1968, ch. 18, which is compiled in 6-1-1, 6-10-8, 6-10-10, 6-10-24, 6-10-26, 6-10-29, 6-10-31, 6-10-32, 22-8-31 and 22-8-37 NMSA 1978.

**The 1987 amendment,** effective June 16, 1987, inserted "and credit unions" following "savings and loan associations" in the first sentence of the first paragraph and in the last sentence of the second paragraph and made minor language changes throughout the section.

**Delegation to country treasurer.** — There is no statutory prohibition against delegation to the county treasurer by the board of county commissioners, sitting as the county board of finance, of specific investment decision-making. For example, the board could adopt a policy and permit the treasurer to make investment decisions that conform to the policy. Such delegation may be essential to enable the treasurer to respond to sudden changes in the financial markets. *Board of Cnty. Comm'rs v. Padilla*, 1990-NMCA-125, 111 N.M. 278, 804 P.2d 1097.

**Relationship between county treasurer and board of finance.** — The county treasurer determines how to deposit and invest county funds. That decision must then be approved by the board of county commissioners, sitting as the county board of finance. The board of finance has no power to modify the county treasurer's decision without the treasurer's concurrence. On the other hand, the county treasurer cannot impose a unilateral decision upon the board of finance. *Board of Cnty. Comm'rs v. Padilla*, 1990-NMCA-125, 111 N.M. 278, 804 P.2d 1097.

**The county treasurer is empowered to make investment decisions, but only with the advice and consent of the county commission.** — The county treasurer has supervision of the deposit and safekeeping of the public money of their county, and with the advice and consent of the county commission, acting in its capacity as the county board of finance, designates the depository institutions to receive on deposit all moneys entrusted in the treasurer's care, and additionally, the county treasurer, with the advice and consent of the county commission, acting in its capacity as the county board of finance, is authorized to invest money remaining unspent from the issue of bonds, other securities and all money not immediately necessary for public uses and not invested in banks of other federally charged depository institutions. 2024 Op. Att'y Gen. No. 24-08.

**Board of county commissioners, acting as a board of finance, may not delegate to a financial advisor duties that are statutorily delegated to either the county treasurer or the board.** — Where the Sandoval county board of county commissioners hired a contractor to formulate an investment policy for the county and to advise the Sandoval county treasurer and the board of financial matters, the contractor may aid the county commissioners, acting as the board of finance, in the formulation of an investment policy, but the contractor may not be delegated the statutory authority to supervise, demand or oversee the roles and responsibilities of the county treasurer. New Mexico courts have confirmed that a board of county commissioners may delegate its "advice and consent" authority to the county treasurer through the adoption of a county investment policy; yet, it may not delegate its statutory "advice and consent" authority to a contractor. *Sandoval County Treasurer* (5/17/16), Att'y Gen. Adv. Ltr. 2016-04.

**Boards of county commissioners have exclusive authority** and responsibility to act as county boards of finance, the only limitations upon their authority being those imposed by statute. 1962 Op. Att'y Gen. No. 62-71.

**Designation of banks as official depositories of county funds.** — The county boards of finance are the sole authorities within their respective counties to determine which banks are to be designated as the official depositories of county funds and if more than one bank in each county is so designated to then determine the distribution of deposits between such banks. 1962 Op. Att'y Gen. No. 62-71.

**County treasurer acts in purely ministerial capacity** and can only deal with such moneys in the manner prescribed by the county board of finance. 1962 Op. Att'y Gen. No. 62-71, but *see Board of County Comm'rs v. Padilla*, 1990-NMCA-125, 111 N.M. 278, 804 P.2d 1097.

**"School activity funds" of public schools are public funds** so as to require that they be deposited in the same manner as other public funds. 1962 Op. Att'y Gen. No. 62-71.

**Money derived from tax levies** and used to support a county hospital are public funds. 1969 Op. Att'y Gen. No. 69-76.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 63C Am. Jur. 2d Public Funds §§ 5, 6, 11, 12.

20 C.J.S. Counties §§ 193 to 203.

## 6-10-9. Boards of finance for institutions.

The boards in control of the various public and educational institutions in this state, and all other boards handling funds in any manner whatever, except local boards of education, are hereby designated as boards of finance for such institutions and boards respectively. Each of such boards shall receive, handle and account, as provided by

law, for all public moneys received by it, and shall deposit the funds of such institutions or boards in a depository or depositories qualified in accordance with the requirements of this act, equitably and upon the terms and conditions and in like manner and subject to such limitations as in this act prescribed for the deposit of public moneys by other boards of finance.

**History:** Laws 1933, ch. 175, § 3; 1941 Comp., § 7-206; 1953 Comp., § 11-2-6; Laws 1963, ch. 190, § 1; 1981, ch. 332, § 2.

**ANNOTATIONS**

**Compiler's notes.** — The term "this act," which appears in the second sentence, refers to Laws 1933, ch. 175, which is compiled as 6-10-8 to 6-10-10, 6-10-15, 6-10-18, 6-10-19 and 6-10-51 NMSA 1978.

**Board of trustees of county hospital.** — The board of trustees of the county hospital has the authority to sit as a board of finance, being regulated by the same standards as would the members of any other board of finance within the state or its political subdivisions. 1969 Op. Att'y Gen. No. 69-76.

**Board of regents of school for the deaf.** — Under this section the board of regents for the school for the deaf is the board of finance for that school. 1969 Op. Att'y Gen. No. 69-27.

**Municipal boards of education.** — This section allows municipal boards of education to operate as a municipal board of finance. 1960 Op. Att'y Gen. No. 60-163.

**Signature of president of board of education not required on checks drawn on special payroll account.** — Where a city board of education acts as its own board of finance in accordance with law, said board may establish a special payroll account in which will be deposited a lump sum each month by check signed by the president of the board, and the school board president's signature is not required on any payroll checks drawn thereon. 1953 Op. Att'y Gen. No. 53-5799.

## 6-10-10. Deposit and investment of funds.

A. Upon the certification or designation of a bank, savings and loan association or credit union whose deposits are insured by an agency of the United States to receive public money on deposit, the state treasurer and county or municipal treasurers who have on hand any public money by virtue of their offices shall make deposit of that money in banks and savings and loan associations and may make deposit of that money in credit unions whose deposits are insured by an agency of the United States, designated by the authority authorized by law to so designate to receive the deposits of all money thereafter received or collected by the treasurers.

B. County or municipal treasurers may deposit money in one or more accounts with any such bank, savings and loan association or credit union located in their respective counties, subject to the limitation on credit union accounts.

C. The state treasurer may deposit money in one or more accounts with any such bank, savings and loan association or credit union, subject to the limitation on credit union accounts.

D. Duplicate receipts or deposit slips shall be taken for each deposit made pursuant to Subsection A, B or C of this section. When deposits are made by the state treasurer, one copy of the receipt or deposit slip shall be retained by the state treasurer and the other copy shall be filed monthly on the first day of each month with the financial control division of the department. When deposits are made by the treasurer or any other authorized person making the deposits for a board of finance of a public or educational institution, one copy of the receipt or deposit slip shall be retained by the treasurer or authorized person making the deposit and the other copy shall be filed monthly on the first day of each month with that board of finance. When deposits are made by a county or municipal treasurer, one of the duplicate receipts or deposit slips shall be retained by the treasurer making the deposit and the other copy shall be filed monthly on the first day of each month with the secretary of the board of finance of the county or municipality for which that treasurer is acting.

E. As used in this section:

(1) "deposit" means either investment or deposit and includes share, share certificate and share draft;

(2) "investment policy" means a document drafted between the treasurer and the board of finance that describes the parameters for investing government funds and identifies the investment objectives, preferences or tolerances for risk and constraints on the investment portfolio. The investment policy applies to all financial assets, including general funds, special revenues, capital projects funds, enterprise funds, debt issuance proceeds, debt service funds, debt service reserves, permanent funds and agency funds;

(3) "supranational issuer" means an international development institution formed by two or more central governments. "Supranational issuer" includes the international bank for reconstruction and development, the international finance corporation and the inter-American development bank; and

(4) "United States government sponsored enterprises" includes federal home loan banks, the federal home loan mortgage corporation, the federal national mortgage association, the federal farm credit banks funding corporation, the federal agricultural mortgage corporation and the government national mortgage association.

F. County or municipal treasurers, with the advice and consent of their respective boards of finance charged with the supervision and control of the respective funds, may invest all sinking funds or money remaining unexpended from the proceeds of any issue of bonds or other negotiable securities of any county, municipality or school district that is entrusted to their care and custody and all money not immediately necessary for the public uses of the counties, municipalities or school districts not invested or deposited in banks, savings and loan associations or credit unions in:

(1) bonds or negotiable securities of the United States, the state or a county, municipality or school district that has a taxable valuation of real property for the last preceding year of at least one million dollars ($1,000,000) and that has not defaulted in the payment of any interest or sinking fund obligation or failed to meet any bonds at maturity at any time within five years last preceding and that have a maturity date that does not exceed ten years from the date of purchase;

(2) securities that are issued and backed by the full faith and credit of the United States government or issued by its agencies or instrumentalities, including securities issued by federal home loan banks, the federal home loan mortgage corporation, the federal national mortgage association, the federal farm credit banks funding corporation, the federal agricultural mortgage corporation or the government national mortgage association and that have a maturity date that does not exceed ten years from the date of purchase; or

(3) federally insured obligations, including brokered certificates of deposit, certificate of deposit account placement services and federally insured cash accounts.

G. It shall be the duty of the treasurer to bring amendments to the investment policy to the board of finance and obtain consent before such amendments take effect. The investment policy shall be reviewed at least every two years. The treasurer of a class A county or the treasurer of a municipality having a population of more than sixty-five thousand according to the most recent federal decennial census and located within a class A county, with the advice and consent of the boards of finance, charged with the supervision and control of the funds as can be reflected by an investment policy that is amended by the treasurer and approved by the board of finance, may invest all sinking funds or money remaining unexpended from the proceeds of any issue of bonds or other negotiable securities of the county or municipality that is entrusted to the treasurer's care and custody and all money not immediately necessary for the public uses of the county or municipality not invested or deposited in banks, savings and loan associations or credit unions in:

(1) shares of a diversified investment company registered pursuant to the federal Investment Company Act of 1940 that invests in fixed-income securities or debt instruments that passively match or track the components of a broad-market, fixed-income-securities market index; provided that the investment company or manager has total assets under management of at least one hundred million dollars ($100,000,000) and provided that the board of finance of the county or municipality may allow

reasonable administrative and investment expenses to be paid directly from the income or assets of these investments;

(2) shares of pooled investment funds managed by the state investment officer, as provided in Subsection I of Section 6-8-7 NMSA 1978; provided that the board of finance of the county or municipality may allow reasonable administrative and investment expenses to be paid directly from the income or assets of these investments;

(3) securities that are issued by a supranational issuer and that:

(a) are eligible for purchase and sale within the United States;

(b) are denominated in United States dollars;

(c) have a maturity date that does not exceed five years from the date of purchase; and

(d) are rated "AA" or its equivalent or better by a nationally recognized statistical rating organization;

(4) commercial paper rated "A1" or "P1", also known as "prime" quality, by a nationally recognized statistical rating organization, issued by corporations organized and operating within the United States and having a maturity at purchase of no longer than one hundred eighty days; or

(5) shares of an open-ended diversified investment company that:

(a) is registered with the United States securities and exchange commission;

(b) complies with the diversification, quality and maturity requirements of Rule 2a-7, or any successor rule, of the United States securities and exchange commission applicable to money market mutual funds; and

(c) assesses no fees pursuant to Rule 12b-1, or any successor rule, of the United States securities and exchange commission, no sales load on the purchase of shares and no contingent deferred sales charge or other similar charges, however designated, provided that the county or municipality shall not, at any time, own more than five percent of a money market mutual fund's assets.

H. A local public body, with the advice and consent of the body charged with the supervision and control of the local public body's respective funds, may invest all sinking funds or money remaining unexpended from the proceeds of any issue of bonds or other negotiable securities of the investor that is entrusted to the local public body's care and custody and all money not immediately necessary for the public uses of the investor and not otherwise invested or deposited in banks, savings and loan associations or

credit unions in contracts with banks, savings and loan associations or credit unions for the present purchase and resale at a specified time in the future of specific securities at specified prices at a price differential representing the interest income to be earned by the investor. The contract shall be fully secured by obligations of the United States or the securities of its agencies, instrumentalities or United States government sponsored enterprises having a market value of at least one hundred two percent of the contract. The collateral required for investment in the contracts provided for in this subsection shall be shown on the books of the financial institution as being the property of the investor and the designation shall be contemporaneous with the investment. As used in this subsection, "local public body" includes all political subdivisions of the state and agencies, instrumentalities and institutions thereof; provided that home rule municipalities that prior to July 1, 1994 had enacted ordinances authorizing the investment of repurchase agreements may continue investment in repurchase agreements pursuant to those ordinances.

I. The state treasurer, with the advice and consent of the state board of finance, may invest money held in demand deposits and not immediately needed for the operation of state government and money held in the local government investment pool, except as provided in Section 6-10-10.1 NMSA 1978. The investments may be made in securities that are issued and backed by the full faith and credit of the United States government or issued by its agencies or instrumentalities, including securities issued by all United States government sponsored enterprises.

J. The state treasurer, with the advice and consent of the state board of finance, may also invest in contracts for the present purchase and resale at a specified time in the future, not to exceed one year or, in the case of bond proceeds, not to exceed three years, of specific securities at specified prices at a price differential representing the interest income to be earned by the state. Such contract shall not be invested in unless the contract is fully secured by obligations of the United States, its agencies, instrumentalities or United States government sponsored enterprises or by other securities backed by the United States, its agencies, instrumentalities or United States government sponsored enterprises having a market value of at least one hundred two percent of the amount of the contract. The securities required as collateral under this subsection shall be delivered to a third-party custodian bank pursuant to a contract with the state and the counterparty or to the fiscal agent of New Mexico or its designee. Delivery shall be made simultaneously with the transfer of funds or as soon as practicable, but no later than the same day that the funds are transferred.

K. The state treasurer, with the advice and consent of the state board of finance, may also invest in contracts for the temporary exchange of state-owned securities for the use of broker-dealers, banks or other recognized institutional investors in securities, for periods not to exceed one year for a specified fee rate. Such contract shall not be invested in unless the contract is fully secured by exchange of an irrevocable letter of credit running to the state, cash or equivalent collateral of at least one hundred two percent of the market value of the securities plus accrued interest temporarily exchanged. The collateral required by this subsection shall be delivered to the state of

New Mexico or its designee simultaneously with the transfer of funds or as soon as practicable, but no later than the same day that the state-owned securities are transferred.

L. Neither of the contracts in Subsection J or K of this section shall be invested in unless the contracting bank, brokerage firm or recognized institutional investor has a net worth in excess of five hundred million dollars ($500,000,000).

M. The state treasurer, with the advice and consent of the state board of finance, may also invest in any of the following investments in an amount not to exceed forty percent of any fund that the state treasurer invests:

(1) commercial paper rated "prime" quality by a national rating service, issued by corporations organized and operating within the United States;

(2) medium-term notes and corporate notes with a maturity not exceeding five years that are rated "A" or its equivalent or better by a nationally recognized rating service and that are issued by a corporation organized and operating in the United States; or

(3) an asset-backed obligation with a maturity not exceeding five years that is rated "AAA" or its equivalent by a nationally recognized rating service.

N. The state treasurer, with the advice and consent of the state board of finance, may also invest in:

(1) shares of an open-ended diversified investment company that:

(a) is registered with the United States securities and exchange commission;

(b) complies with the diversification, quality and maturity requirements of Rule 2a-7, or any successor rule, of the United States securities and exchange commission applicable to money market mutual funds; and

(c) assesses no fees pursuant to Rule 12b-1, or any successor rule, of the United States securities and exchange commission, no sales load on the purchase of shares and no contingent deferred sales charge or other similar charges, however designated, provided that the state shall not, at any time, own more than five percent of a money market mutual fund's assets;

(2) individual, common or collective trust funds of banks or trust companies that invest in United States fixed-income securities or debt instruments authorized pursuant to Subsections I, J and M of this section, provided that the investment manager has assets under management of at least one billion dollars ($1,000,000,000) and the investments made by the state treasurer pursuant to this paragraph are less than five percent of the assets of the individual, common or collective trust fund;

(3) the local government investment pool managed by the office of the state treasurer. Investments made pursuant to this paragraph shall, in aggregate, be no more than thirty-five percent of the total assets of the local government investment pool;

(4) securities issued by the state of New Mexico, its agencies, institutions, counties, municipalities, school districts, community college districts or other subdivisions of the state, or as otherwise provided by law;

(5) securities issued by states other than New Mexico or governmental entities in states other than New Mexico; or

(6) securities that are issued by a supranational issuer and that:

(a) are eligible for purchase and sale within the United States;

(b) are denominated in United States dollars;

(c) have a maturity date that does not exceed five years from the date of purchase; and

(d) are rated "AA" or its equivalent or better by a nationally recognized statistical rating organization.

O. Public funds to be invested in negotiable securities or loans to financial institutions fully secured by negotiable securities at current market value shall not be paid out unless there is a contemporaneous transfer of the securities at the earliest time industry practice permits, but in all cases, settlement shall be on a same-day basis either by physical delivery or, in the case of uncertificated securities, by appropriate book entry on the books of the issuer, to the purchaser or to a reputable safekeeping financial institution acting as agent or trustee for the purchaser, which agent or trustee shall furnish timely confirmation to the purchaser.

**History:** Laws 1933, ch. 175, § 4; 1941 Comp., § 7-207; 1953 Comp., § 11-2-7; Laws 1968, ch. 18, § 3; 1975, ch. 157, § 1; 1979, ch. 262, § 1; 1981, ch. 332, § 3; 1983, ch. 24, § 1; 1987, ch. 79, § 5; 1987, ch. 230, § 1; 1988, ch. 61, § 1; 1989, ch. 39, § 1; 1991, ch. 247, § 1; 1994, ch. 71, § 1; 1997, ch. 128, § 1; 1999, ch. 233, § 1; 2002, ch. 39, § 1; 2003, ch. 271, § 1; 2005, ch. 238, § 1; 2005, ch. 239, § 1; 2006, ch. 80, § 1; 2008, ch. 23, § 2; 2013, ch. 65, § 2; 2016, ch. 50, § 1; 2017, ch. 67, § 1; 2019, ch. 170, § 1; 2021, ch. 29, § 1.

## ANNOTATIONS

**Cross references.** — For deposit of receipts by municipality with no suitable banking facility within its boundaries, *see* 6-10-36.1 NMSA 1978.

For the federal Investment Company Act of 1940, *see* 15 U.S.C. § 80a-1 et seq.

**The 2021 amendment,** effective June 18, 2021, authorized counties and municipalities to invest funds in certificate of deposit account placement services; and in Subsection F, Paragraph F(3), after "certificate of deposit account", deleted "registry service" and added "placement services".

**The 2019 amendment,** effective June 14, 2019, defined "investment policy", supranational issuer", and "United States government sponsored enterprises" as used in this section, allowed the state treasurer and county and municipal treasurers to invest in securities issued by a supranational issuer, permitted the state treasurer to invest in securities issued by all United States government sponsored enterprises, and restricted the maturity timeframe for most investments by county and municipal treasurers; in Subsection E, added Paragraphs E(2) through E(4); in Subsection F, Paragraph F(1), after "last preceding", added "and that have a maturity date that does not exceed ten years from the date of purchase", in Paragraph F(2), after "federal home loan banks,", added the remainder of the paragraph; in Subsection G, added "It shall be the duty of the treasurer to bring amendments to the investment policy to the board of finance and obtain consent before such amendments take effect. The investment policy shall be reviewed at least every two years.", after "control of the funds", added "as can be reflected by an investment policy that is amended by the treasurer and approved by the board of finance", in Paragraph G(1), after "instruments that", deleted "are listed in a nationally recognized" and added "passively match or track the components of a", deleted former Paragraph G(2) and redesignated former Paragraph G(3) as Paragraph G(2), and added new Paragraphs G(3) through G(5); in Subsection H, after "United States or", deleted "other securities backed by the United States" and added "the securities of its agencies, instrumentalities or United States government sponsored enterprises"; in Subsection I, after "securities issued by", deleted "federal home loan banks" and added "all United States government sponsored enterprises"; in Subsection J, after each occurrence of "agencies, instrumentalities", added "or United States government sponsored enterprises"; and in Subsection N, added Paragraph N(6).

**The 2017 amendment,** effective June 16, 2017, clarified the authorization for the use of letters of credit issued by a federal home loan bank for securitization of public fund deposits in New Mexico; and in Subsection F, Paragraph F(2) and Subsection I, after "instrumentalities", added "including securities issued by federal home loan banks".

**The 2016 amendment,** effective May 18, 2016, allowed county and municipal treasurers to invest in federally insured obligations, including brokered certificates of deposit, certificate of deposit account registry service and federally insured cash accounts; and in Subsection F, added new Paragraph (3).

**The 2013 amendment,** effective June 14, 2013, authorized municipalities, counties, and the state treasurer to invest in securities backed by the full faith and credited of the United States; authorized the state treasurer to invest in securities issued by the state of New Mexico and its agencies, institutions and political subdivisions, and securities issued by other states or governmental entities in other states; increased the percentage of general funds and bond proceeds that may be invested in the local

government investment pool; in Paragraph (2) of Subsection F, after "securities that are issued", added "and backed", after "backed by the", added "full faith and credit of the", after "United States government or", added "issued", and after "instrumentalities", deleted language which required that investments in United States securities be in securities that are direct obligations of the United States or named agencies of the United States or that are backed by the full faith and credit of the United States; in Subsection I, in the first sentence, after "money held in the", deleted "participating government investment fund" and added "local government investment pool" and in the second sentence, after "that are issued," added "and backed", after "backed by", added "the full faith and credit of", after "government or", added "issued", and after "or issued by its", deleted language which required that investments in United States securities be in securities that are direct obligations of the United States or that are backed by the full faith and credit of the United States or agencies sponsored by the United States and added "agencies or instrumentalities"; in Subsection K, in the third sentence, after "delivered to the", deleted "fiscal agent" and added "state"; and in Paragraph (3) of Subsection N, at the beginning of the sentence, after "the", deleted "participating government investment fund" and added "local government investment pool", and in the second sentence, after "this paragraph shall", deleted "be less than five" and added "in aggregate, be no more than thirty-five", and after "total assets of the", deleted "participating government investment fund" and added "local government investment pool"; and added Paragraphs (4) and (5) of Subsection N.

**The 2008 amendment,** effective February 27, 2008, changed the name of the short-term investment fund to the participating government investment fund in Subsection I and added Paragraph (3) of Subsection N.

**The 2006 amendment,** effective May 17, 2006, in Subsection I, in the last sentence, changed "shall be made only" to "may be made"; in Subsection J, added the last two sentences relating to delivery of securities to a third-party custodial bank; in Subsection K, provided for the delivery of collateral to the fiscal agent of New Mexico or its designee; deleted former Subsection L that provided for the delivery of the security required in Subsection J or K to be delivered to the fiscal agent of New Mexico; deleted former Paragraph (1) of Subsection N (formerly Subsection O), which provided for investment in shares of a diversified investment company that invests in certain United States fixed-income securities or debt instruments if the investment company manages assets of at least one billion dollars; and inserted new Subparagraphs (a) through (c) of Paragraph (1) of Subsection N, which provides for investment in an open-ended diversified investment company that meets the listed criteria.

**The 2005 amendment,** effective June 17, 2005, changed "third-party safekeeping financial institution" to "safekeeping financial institution" in Subsection P.

**The 2003 amendment,** effective June 20, 2003, in Paragraph F(2), inserted ", the federal home loan mortgage association, the federal national mortgage association, the federal farm credit bank or the student loan marketing association" following "the United

States" and deleted "or agencies guaranteed by the United States government" at the end.

**The 2002 amendment,** effective May 15, 2002, inserted "with the advice and consent of the state board of finance," in Subsections J and K; substituted "one billion dollars ($1,000,000,000) and the investments made by the state treasurer pursuant to this paragraph are less than five percent of the assets of the investment company" for "one hundred million dollars ($100,000,000)" in Subsection O(1); and substituted "one billion dollars ($1,000,000,000) and the investments made by the state treasurer pursuant to this paragraph are less than five percent of the assets of the individual, common or collective trust fund" for "one hundred million dollars ($100,000,000)" in Subsection O(2).

**The 1999 amendment,** effective January 1, 2000, in Subsection A, deleted "provided that no deposit of public money shall be made in a credit union unless the deposit is insured by an agency of the United States" following "collected by the treasurers"; in Subsection F, substituted "school district that is entrusted" for "school district which are now or may hereafter by law be entrusted"; added Subsection G and redesignated subsequent subsections accordingly; and made stylistic changes throughout.

**The 1997 amendment,** effective June 20, 1997, added Subsections M and N and redesignated former Subsection M as Subsection O.

**The 1994 amendment,** effective July 1, 1994, added Subsection G, redesignated former Subsections G to L as Subsections H to M, deleted "local" following "held in the" in Subsection H, and made minor stylistic changes.

**The 1991 amendment,** effective July 1, 1991, in Subsection F, designated a formerly undesignated provision as Paragraph (1) and added Paragraph (2).

**The 1989 amendment,** effective June 16, 1989, substituted "sponsored" for "guaranteed" near the end of the second sentence of Subsection G.

**The 1988 amendment,** effective May 18, 1988, inserted "and money held in the local short-term investment fund, except as provided in Section 6-10-10.1 NMSA 1978" in the first sentence in Subsection G.

**The 1987 amendment,** effective June 19, 1987, substituted "savings and loan association or credit union" for "or savings and loan association" in several places throughout the section, inserting "and may make deposit of that money in credit unions" in Subsection A and added the proviso at the end of that subsection, added all of the language following "counties" in Subsection B, added all of the language beginning with "subject to" in Subsection C, added all of the language following "or deposit" in Subsection E, added "or agencies guaranteed by the United States government" at the end of Subsection G, redesignated former Subsection H as Subsection L while substituting therein "contemporaneous transfer of the securities at the earliest time

industry practice permits, but in all cases settlement shall be on a same-day basis" for "simultaneous transfer of the securities," and added Subsections H through K.

**The county treasurer is empowered to make investment decisions, but only with the advice and consent of the county commission.** — The county treasurer has supervision of the deposit and safekeeping of the public money of their county, and with the advice and consent of the county commission, acting in its capacity as the county board of finance, designates the depository institutions to receive on deposit all moneys entrusted in the treasurer's care, and additionally, the county treasurer, with the advice and consent of the county commission, acting in its capacity as the county board of finance, is authorized to invest money remaining unspent from the issue of bonds, other securities and all money not immediately necessary for public uses and not invested in banks of other federally charged depository institutions. 2024 Op. Att'y Gen. No. 24-08.

**County treasurer's powers.** — Section 6-10-10(F) NMSA 1978 gave the same investment power to the county treasurer – "by and with the advice and consent" of the board of finance" – as that given to the county board of finance, namely to invest sinking funds, unexpended bond proceeds and money not immediately necessary for public use in government bonds and negotiable securities. *Board of Cnty. Comm'rs v. Padilla*, 1990-NMCA-125, 111 N.M. 278, 804 P.2d 1097.

**Meaning of "advice and consent".** — In 6-10-10 NMSA 1978, the phrase "advice and consent" constricts the state treasurer's ability to invest public money to the extent that the state treasurer must first obtain consent to do so by the state board of finance. The state board of finance has only the power of approval or denial over the state treasurer's investments, but not the power of investment. 2014 Op. Att'y Gen. 14-05.

**The "advice and consent" requirement does not violate balance of powers.** — The legislative requirement of 6-10-10 NMSA 1978 that the state treasurer obtain the "advice and consent" of the state board of finance to invest public money does not violate the constitutional doctrine of separation of powers. 2014 Op. Att'y Gen. 14-05.

**Board of county commissioners, acting as a board of finance, may not delegate to a financial advisor duties that are statutorily delegated to either the county treasurer or the board.** — Where the Sandoval county board of county commissioners hired a contractor to formulate an investment policy for the county and to advise the Sandoval county treasurer and the board of financial matters, the contractor may aid the county commissioners, acting as the board of finance, in the formulation of an investment policy, but the contractor may not be delegated the statutory authority to supervise, demand or oversee the roles and responsibilities of the county treasurer. New Mexico courts have confirmed that a board of county commissioners may delegate its "advice and consent" authority to the county treasurer through the adoption of a county investment policy; yet, it may not delegate its statutory "advice and consent" authority to a contractor. *Sandoval County Treasurer* (5/17/16), Att'y Gen. Adv. Ltr. 2016-04.

**Governor’s power over the state board of finance.** — The governor does not have the power to expand the power of the state board of finance through use of an executive order beyond the power conferred by law. 2014 Op. Att’y Gen. 14-05.

Because the governor has the authority under 6-10-10 NMSA 1978 to direct the state board of finance to oversee investment decisions by the state treasurer with regard to "advice and consent", the governor had the power to issue an executive order that required the state board of finance to adopt a policy establishing procedures and conditions for giving its advice and consent regarding investments by the state treasurer, but the governor cannot compel the board of finance to extend its oversight over any other duties belonging to the state treasurer or other aspects of running the state treasurer’s office. 2014 Op. Att’y Gen. 14-05.

**County commissioners may designate depository bank for all county officials.** — County commissioners, as the county board of finance, have the authority to designate the depository bank which must be used by all county officials as a depository for funds of the county. 1959 Op. Att'y Gen. No. 59-04.

**Revenue derived from operation of waterworks constitutes public funds.** — Irrespective of whether a village, in operating a waterworks, is operating in a governmental or proprietary capacity, it is nonetheless operating the waterworks for the benefit of the public, and the revenues derived therefrom are for the public uses of the municipality. 1953 Op. Att'y Gen. No. 53-5859.

**Funds accumulated by counties for remote contingencies or investment.** — Counties may not accumulate funds as an unreserved general fund balance, for a remote contingency, or for the sole purpose of investment. They must apply excess funds in such categories to the following year's budget estimate. Counties, however, may designate or reserve excess funds for reasonably foreseeable contingencies or capital projects. 1988 Op. Att'y Gen. No. 88-56.

**Impermissible investments.** — Investment of public funds is limited to such interest-bearing securities as are provided by statute, which does not include loans to private individuals. 1933 Op. Att'y Gen. No. 33-667.

A village cannot legally invest any portion of its water meter deposit fund in revenue bonds, whether of said village or any other municipality or school district of the state. 1953 Op. Att'y Gen. No. 53-5859.

CATS's (Certificate of Accrual on Treasury Securities), TIGR's (Treasury Interest Growth Receipts), and ETR's (Easy Growth Treasury Receipts) are not bonds, treasury certificates, or negotiable instruments of the United States government. They therefore are not permissible investments for counties. 1988 Op. Att'y Gen. No. 88-11.

**Investment of funds in United States government bonds authorized.** — This section is sufficient authority to permit a board of county commissioners to invest

moneys in its courthouse and jail sinking fund, which are not immediately needed to retire outstanding bonds, in United States government bonds. 1941 Op. Att'y Gen. No. 41-3903.

**Investment in mutual funds or investment trusts.** — Investment by the state treasurer in a mutual fund acting as an investment conduit (i.e., an open-end mutual fund or a unit investment trust meeting the requirements of Subsection O(1)) is constitutional. 2000 Op. Att'y Gen. No. 00-03.

**"Adjusted trading."** — The law does not proscribe specifically the practice of "adjusted trading." However, engaging in adjusted trades for the purpose of hiding a loss is inconsistent with rendering a true account of the county's investments, and a county treasurer thus may be liable on his bond. 1988 Op. Att'y Gen. No. 88-11.

**Municipally owned utility may invest in bonds of out-of-state municipalities.** — A municipally owned utility company may invest in bonds of out-of-state municipalities, since operation of the utility is not of such a "governmental nature" as to come within the purview of this section. 1941 Op. Att'y Gen. No. 41-3761.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 63C Am. Jur. 2d Public Funds §§ 5, 6; 63C Am. Jur. 2d Public Officers and Employees §§ 413 to 423.

Constitutionality of statute authorizing state to loan money or to engage in business of a private nature, 14 A.L.R. 1151, 115 A.L.R. 1456.

Stock of private corporation, constitutional or statutory provisions prohibiting municipalities or subdivisions of state from investing in, 152 A.L.R. 495.

Liability of public officer or his bond for loss of public funds due to insolvency of bank in which they were deposited, 155 A.L.R. 436.

Liability of public officer for interest or other earnings received on public money in his possession, 5 A.L.R.2d 257.

20 C.J.S. Counties §§ 126, 197; 64 C.J.S. Municipal Corporations §§ 1880, 1881; 81A C.J.S. States § 225; 87 C.J.S. Towns §§ 121, 167.

## 6-10-10.1. Local government investment pool created; distribution of earnings; report of investments.

A. There is created in the state treasury the "local government investment pool". The fund shall consist of all deposits from participating governments, including revenues dedicated to repaying bonds, that are placed in the custody of the state treasurer for investment purposes pursuant to this section. The state treasurer shall maintain one or more separate accounts for each participating government having deposits in the local government investment pool and may divide the fund into two or more subfunds, as the

state treasurer deems appropriate, for short-term and medium-term investment purposes, including one or more subfunds for bond proceeds deposited by participating governments.

B. If an eligible governing body is unable to receive payment on public money at the rate of interest as set forth in Section 6-10-36 NMSA 1978 from financial institutions within the geographic boundaries of the eligible governing body, or if the eligible governing body is not bound by the terms of Section 6-10-36 NMSA 1978, the finance officer having control of the money of that eligible governing body not required for current expenditure may, with the consent of the board of finance of the eligible governing body if consent is required by the laws or rules of the eligible governing body, remit some or all of the money to the state treasurer for deposit for the purpose of investment as allowed by this section.

C. Before funds are invested or reinvested pursuant to this section, a finance officer shall notify and make the funds available for investment to banks, savings and loan associations and credit unions located within the geographical boundaries of the participating government or the eligible governing body, subject to the limitation on credit union accounts. To be eligible for deposit of the government funds, the financial institution shall pay to the participating government or eligible governing body the rate established by the state treasurer pursuant to a policy adopted by the state board of finance for the investments.

D. A finance officer shall specify the length of time a deposit shall be in the local government investment pool. The state treasurer through the use of the state fiscal agent shall separately track each deposit and shall make information regarding the deposit available to the public upon written request.

E. The state treasurer shall invest the local government investment pool as provided in Section 6-10-10 NMSA 1978 regarding the investment of state funds in investments with a maturity at the time of purchase that does not exceed three years. The state treasurer may elect to have the local government investment pool consolidated for investment purposes with the state funds under the control of the state treasurer; provided that accurate and detailed accounting records are maintained for the account of each participating government and that a proportionate amount of interest earned is credited to each of the separate accounts of a participating government. The fund shall be invested to achieve its objective, which is to realize the maximum return consistent with safe and prudent management.

F. At the end of each month, all net investment income or losses from investment of the local government investment pool shall be distributed by the state treasurer to the accounts of participating governments in amounts directly proportionate to the respective amounts deposited by them in the local government investment pool and the length of time the amounts in each account were invested.

G. The state treasurer shall charge participating governments reasonable audit, administrative and investment expenses and shall deduct those expenses directly from the net investment income for the investment and administrative services provided pursuant to this subsection. The amount of the charges, the manner of the use by the state treasurer and the nature of bond-related services to be offered shall be established in rules adopted and promulgated by the state treasurer subject to approval by the state board of finance.

H. Subject to appropriation by the legislature, amounts deducted from the accounts of participating governments for charges permitted pursuant to this section shall be expended by the state treasurer in fiscal year 2008 and in subsequent fiscal years for the administration and management of the local government investment pool, services provided to participating governments related to investment of their money in that fund and other services authorized by this section. Balances remaining at the end of a fiscal year from the amounts deducted pursuant to this section shall revert to the general fund. Balances in the state treasurer's operating account resulting from deductions taken pursuant to this section in excess of the amount required to provide administration, management and related services required by this subsection or other services authorized by this section shall be offset by reductions in the charges made by the state treasurer to the accounts of participating governments in subsequent deductions from participating governments' accounts.

I. Each fiscal year, the state treasurer shall cause to have the short-term investment portion of the local government investment pool rated by a nationally recognized statistical rating organization. If the rating received by the short-term investment portion of the fund is lower than "AA", the state treasurer shall immediately submit a plan to the state board of finance detailing the steps that will be taken to obtain an "AA" or higher rating.

J. The state treasurer may offer to provide to participating governments services related to requirements of the federal income tax laws applicable to the investment of bond proceeds.

K. A tribe or quasi-governmental body created pursuant to New Mexico statute may become a participating government only if the governing authority of the tribe or quasi-governmental body has adopted a resolution authorizing the tribe or quasi-governmental body to remit money to the state treasurer for investment in the local government investment pool.

L. Deposits by the state treasurer on behalf of the general fund and bond proceeds investment pools shall, in aggregate, be no more than thirty-five percent of the total amount in the local government investment pool at any time.

M. The educational retirement board, the public employees retirement association and the state investment council may remit money to the state treasurer for investment in the local government investment pool.

**History:** 1978 Comp., § 6-10-10.1, enacted by Laws 1988, ch. 61, § 2; 1991, ch. 239, § 1; 1991, ch. 258, § 1; 1992, ch. 61, § 32; 1994, ch. 71, § 2; 1995, ch. 64, § 1; 2001, ch. 241, § 1; 2003, ch. 399, § 1; 2006, ch. 80, § 2; 2008, ch. 23, § 3; 2011, ch. 158, § 1; 2013, ch. 65, § 3; 2019, ch. 7, § 1.

## ANNOTATIONS

**The 2019 amendment,** effective June 14, 2019, provided that the educational retirement board, the public employees retirement association and the state investment council may participate in the local government investment pool; and added Subsection M.

**The 2013 amendment,** effective June 14, 2013, changed the name of the participating government investment fund to the local government investment pool; deleted the requirement that short-term investments maintain an “AA” or higher rating; at the beginning of the title, deleted "Participating government investment fund" and added "Local government investment pool"; in Subsections A, D, E, F, H, I, K and L, deleted "participating government investment fund" and added "local government investment pool"; in Subsection I, deleted the former first sentence, which required that short-term investments maintain an "AA" or higher rating and in the current first sentence, after "Each fiscal year", deleted "and at such other times as directed by the state board of finance"; and in Subsection L, after "investment pools shall", deleted "not exceed" and added "in aggregate, be no more than".

**The 2011 amendment,** effective July 1, 2011, in Subsection L, increased the authorized deposits on behalf of the general fund and bond proceeds investment pools from five to thirty-five percent of the total amount in the participating government investment fund.

**The 2008 amendment,** effective February 27, 2008, changed the name of the short-term investment fund to the participating government investment fund; included revenues dedicated to repaying bonds in the fund in Subsection A; deleted the 180 day limitation for investment in the fund in Subsection D; extended the time limit for investment of funds from 397 days to three years in Subsection E; authorized the state treasurer to adopt rules to establish charges and the nature of bond-related services in Subsection G; and added Subsections H and J through L.

**The 2006 amendment,** effective May 17, 2006, added Subsection G to provide that investment shall be made in a manner that the fund maintains a "AA" or higher rating; that the short-term investment fund shall be rated annually and if the fund is lower than "AA", the state treasurer shall submit a plan to the state board of finance to obtain an "AA" or higher rating.

**The 2003 amendment,** effective April 8, 2003, added Paragraph H(18).

**The 2001 amendment,** effective June 15, 2001, in Subsection B, substituted "required for current expenditure" for "not required for expenditure within thirty days or less", deleted "bank, savings and loan association or credit union" following "state treasurer"; in Subsection E, deleted "and" following "NMSA 1978" and inserted "in investments with a maturity at the time of purchase that does not exceed three hundred ninety-seven days. The state treasurer", and deleted the former second sentence, which read "The state treasurer may invest a portion of the funds in banks, savings and loan associations or credit unions subject to the requirements of this section."; in Subsection F, substituted "net investment income or losses" for "interest earned", substituted "reasonable audit, administrative and investment expenses to be paid directly from their net investment income for the investment and administrative services" for "a fee of five basis points for the investment services"; deleted the definition of "short term" in Subsection G; and substituted "development council" for "assistance council" in Paragraph H(4).

**The 1995 amendment,** effective June 16, 1995, substituted "one hundred eighty-one days" for "thirty days" at the end of the first sentence in Subsection D, added the second sentence in Subsection E, and rewrote the second sentence of Subsection F which read: "No fees or transfer expenses shall be charged to the participating entities and Indian tribes or pueblos for investment in the short term investment fund".

**The 1994 amendment,** effective July 1, 1994, deleted "Subsection C of" preceding "Section 6-10-10" and substituted "tribe or pueblo" for "tribes or pueblos" in Subsection E, and inserted "District" following "Advancement" in Paragraph H(6).

**The 1992 amendment,** effective March 9, 1992, added Subsection H(17).

**The 1991 amendment,** effective June 14, 1991, substituted references to entity and Indian tribe or pueblo for "local public body" throughout the section; deleted "local" from the beginning of the catchline and preceding "short-term investment fund" in the first sentence in Subsection A and near the end of Subsection F; inserted "short-term investment" in Subsections D, E and F; and added Subsection H.

**Relationship between county treasurer and board of finance.** — Section 6-10-10.1 NMSA 1978, as enacted in 1988, gives the county treasurer power, "with the consent" of the board of finance, to place county funds in the state treasurer's "local short-term investment fund", which means that the county treasurer's decisions must be approved by the county board of finance. The county board of finance has no power to modify the county treasurer's decisions without the treasurer's concurrence and the treasurer cannot impose a unilateral decision on the board of finance. *Board of Cnty. Comm'rs v. Padilla*, 1990-NMCA-125, 111 N.M. 278, 804 P.2d 1097.

## 6-10-10.2. Statements of condition required to be transmitted to the state cash manager.

As a condition of retaining state deposits or investments, each financial institution certified or designated to receive state public money on deposit shall submit to the state cash manager its quarterly statement of condition at the same time the statement is sent to the federal or state financial authority. The statement shall be certified by an authorized officer of the institution. If the statement is not received by the state cash manager within ten days of its submission to the authority, the manager shall notify the institution of that fact, and the institution shall submit the certified statement within ten days of the notification. Within that twenty-day period, the institution shall not be disqualified from retaining state deposits or investments. If the institution fails to submit the certified statement within the twenty-day period, the state cash manager shall advise the state treasurer, who may withdraw all state funds from the institution in order to protect those state funds.

**History:** Laws 1993, ch. 105, § 2.

## 6-10-11. Approval of investment of state funds.

No moneys of this state belonging to any sinking fund or other fund shall be invested by the state treasurer in any form of security without the prior approval of such investment by the state board of finance. The state board of finance, prior to approving any such investment shall make an investigation of the validity of any such security, including the authority for the issuance thereof and all proceedings leading up to such issuance, and of the adequacy of the means provided for the payment of principal and interest of such security, and shall by resolution adopted at a meeting of said board recite its findings on all said matters.

**History:** Laws 1925, ch. 86, § 1; C.S. 1929, § 112-301; 1941 Comp., § 7-208; 1953 Comp., § 11-2-8; Laws 1978, ch. 121, § 1.

**ANNOTATIONS**

**Investment officer may use services of investment counselor** or other sources of advice to aid in making an investment policy recommendation to the investment council. 1959 Op. Att'y Gen. No. 59-21.

**State investment officer may invest state moneys** in "closed-end" mutual funds subject to the restrictions provided for by this section. 1959 Op. Att'y Gen. No. 59-22.

**Investment of funds of museum of New Mexico.** — In investing funds belonging to the museum of New Mexico, the state treasurer and state board of finance may, in their discretion, utilize the same standards as govern the investment of public funds controlled by the state commissioner of public lands and as set forth in Section 6-8-10 NMSA 1978. but such enumerated investments are not controlling upon the board of finance and the state treasurer. 1964 Op. Att'y Gen. No. 64-29.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Stock of private corporation, constitutional or statutory provisions prohibiting municipalities or subdivisions of state from investing in, 152 A.L.R. 495.

81A C.J.S. States § 225.

## 6-10-12. [Investment of special road fund balances over $10,000.]

The state treasurer is hereby authorized and directed to invest, as hereinafter provided, the funds on deposit in the state treasury to the credit of any special road fund, where such balance is in the amount of $10,000 (ten thousand dollars) or more.

**History:** Laws 1933, ch. 128, § 1; 1941 Comp., § 7-212; 1953 Comp., § 11-2-14.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material in the catchline was inserted by the compiler and is not part of the law.

## 6-10-13. [Limitation on investment of special road fund.]

Investments mentioned in Section one [6-10-12 NMSA 1978] of this act shall not be made until after funds due the highway department for expenses incurred against such balance, are deducted nor shall such investments be made if the balance in such fund is to be expended by the state highway department within one year from the date that investment may be made.

**History:** Laws 1933, ch. 128, § 2; 1941 Comp., § 7-213; 1953 Comp., § 11-2-15.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material in the catchline was inserted by the compiler and is not part of the law.

## 6-10-14. [Securities eligible for special road fund investments.]

Investments provided for in Section one [6-10-12 NMSA 1978] shall be in securities such as are eligible for investment of common school permanent or other permanent funds, and shall be subject to the same regulations and approval.

**History:** Laws 1933, ch. 128, § 3; 1941 Comp., § 7-214; 1953 Comp., § 11-2-16.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material in the catchline was inserted by the compiler and is not part of the law.

## 6-10-15. Surety for deposits.

No public moneys in the custody of the state treasurer or the treasurer of any county, city or town in this state, or in the custody of any board in control mentioned in Section 6 hereof, shall be deposited in any bank or savings and loan association (except as otherwise herein provided) until such bank or savings and loan association is qualified to receive deposits of public moneys by depositing collateral security or by giving bond, as provided in this act.

Any bank or savings and loan association designated as such depository by the proper treasurer and/or board of finance may qualify by giving a bond or bonds in such sum as may be determined by said treasurer and/or board of finance, for the safekeeping and payment of such moneys, and all interest thereon, which bond or bonds shall run to the state of New Mexico, shall be subject to the approval of the proper board of finance of the state, county, city or town, or board in control, as the case may be, and the district judge of the district within which such county, city, town or board in control is situated and conditioned substantially as follows:

KNOW ALL MEN BY THESE PRESENTS: that we . . . . . . . . . . of . . . . . . . . . . as principal, and . . . . . . . . . . as surety, are held and firmly bound unto the state of New Mexico, in the just and full sum of . . . . . . . . . . . dollars ($ . . . . . .) for the payment of which, well and truly to be made, we bind ourselves and all our heirs, personal representatives, successors and assigns, jointly and severally, firmly by these presents.

Dated the . . . . . day of . . . . . . . . ., A.D., 19 . . . ..

The condition of the foregoing obligation is such that

WHEREAS, the said principal, in consideration of the receipt of certain moneys of . . . . . . . . . . in the state of New Mexico on deposit, (the amount whereof shall be subject to withdrawal or diminution by the treasurer of said . . . . . . . . . . as the requirements of said shall demand, and which amount may be increased or decreased as said treasurer may determine) and for the privilege of keeping the same, has agreed to pay and will pay the said . . . . . . . . . . in the state of New Mexico, interest on all moneys so deposited at the rate fixed by the board of finance of said . . . . . . . . . ., to wit: . . . . . . . . . . . at the rate of per centum per annum, the same to be paid monthly on the first day of each month, upon the average daily balance of the moneys of said . . . . . . . . . . so on deposit for the preceding month or fraction thereof:

NOW THEREFORE, if the said principal shall, from the . . . . . . day of . . . . . . . . . ., A.D., 19 . . . ., on the first of each and every month, render to the treasurer and the board of finance of said . . . . . . . . . . a statement, in duplicate, showing in detail, the daily balance of said moneys, so held by said principal on deposit, and the amount of interest accrued thereon, for the last preceding month, and shall pay over said deposit and said interest, upon the check, order or demand in writing of the officer thereunto duly authorized, and shall calculate, credit and pay interest as aforesaid, at the rate and

in the manner aforesaid, and shall, in all respects save and keep the said . . . . . . . . . . safe and harmless by reason of the making of said deposit or deposits, and shall generally do and perform each and everything [every thing] required of depositories of public funds to be done and performed by the provisions of a certain act of the state of New Mexico, entitled, "An Act in Relation to Public Moneys," enacted by the sixth legislature of the state of New Mexico and all amendments thereof and any and all other acts in relation to public moneys then the obligation shall be void and of no effect, otherwise to be and remain in full force and virtue.

It is a further condition of this obligation, however, that said surety shall have the right to terminate its liability hereunder by giving thirty days' notice in writing to the treasurer and to the board of finance of said . . . . . . . . . . of its election so to do, and after the giving of such notice no further moneys shall be deposited with such depositories, and thereupon an accounting shall be immediately had of the liability of such depository for the moneys theretofore deposited with it, and until the payment of all moneys found to be due on such accounting, this bond shall remain in full force and virtue.

WITNESS our hands and seals the day and year first hereinafter written.

Such bond shall be executed as surety by a surety company authorized by compliance with the laws of New Mexico to do business in this state; and neither the state treasurer, nor any county, city or town treasurer, nor the treasurer of any board in control mentioned in Section 6 hereof shall have on deposit at any time more than the penal amount of the bond or bonds given by a depository to secure such deposit.

All bonds given under the provisions of this section to secure state moneys shall, after the approval thereof by the state board of finance be safely kept on file by said state board of finance; and all bonds given hereunder to secure county, city or town moneys, or moneys of any board in control as herein defined, shall, after the approval thereof by the proper board of finance, and the district judge, be kept in the custody of the county clerk of the county wherein is located the board of finance approving the same.

The state board of finance and each county clerk shall keep a record of all such bonds, which record shall be known as "depository bond record" and shall be in form as prescribed by the state board of finance.

Any and all bonds which may be given in pursuance of this act to secure moneys of the state, or moneys of the counties, cities, towns or board [boards] in control, or of moneys lawfully entrusted in the care and custody of the treasurers of such counties, cities, towns or boards in control may be put in suit and prosecuted against all or any one or more of the obligors, principals and sureties named therein in the name of the state of New Mexico for the use and benefit of the state, county, school district, city or town or board in control to secure whose money or any moneys lawfully entrusted to the care and custody of whose treasurers such bond is given.

**History:** Laws 1933, ch. 175, § 5; 1941 Comp., § 7-215; 1953 Comp., § 11-2-17; 1981, ch. 332, § 4.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Laws 1933, ch. 175, § 6, referred to in the first and tenth paragraphs, was repealed by Laws 1934 (S.S.), ch. 24, § 5.

The term "this act," which appears in the first and last paragraphs, refers to Laws 1933, ch. 175, which is compiled as 6-10-8 to 6-10-10, 6-10-15, 6-10-18, 6-10-19 and 6-10-51 NMSA 1978.

The act entitled "An Act in Relation to Public Moneys," enacted by the sixth legislature, was enacted as Laws 1923, ch. 76, and is compiled herein as 6-10-2, 6-10-3, 6-10-20, 6-10-29, 6-10-37 to 6-10-42, 6-10-44, 6-10-46, 6-10-47, 6-10-50, 6-10-52 to 6-10-54, 6-10-58 and 6-10-61 NMSA 1978.

**Qualification of depository prerequisite to receipt of deposits.** — State depositories are not entitled to receive deposits of public funds from the state treasurer until they qualify by providing security for the same. *State ex rel. Hannett v. Graham*, 1925-NMSC-041, 30 N.M. 537, 239 P. 740.

**Statutory requirements part of bond.** — A statute, in pursuance of which a bond is given, is read into the bond, and the parties cannot, by contract or otherwise, limit the statutory obligation. *Fidelity & Deposit Co. v. Richard*, 1940-NMSC-042, 44 N.M. 424, 103 P.2d 628.

**Compensated surety entitled to contribution by additional surety.** — Where a depository bond was executed by additional surety in statutory form with the understanding that an additional bond was to secure deposits as would at any time be in excess of a certain sum, the original compensated surety was without knowledge of additional bond, the depository failed with county deposits less than the amount secured by additional surety and the loss was paid by compensated surety, the compensated surety was entitled to contribution from the additional surety. *Fidelity & Deposit Co. v. Richard*, 1940-NMSC-042, 44 N.M. 424, 103 P.2d 628.

**Separate security for school funds.** — Where county commissioners exact a bond to secure a county deposit, surety on such depository bond is not liable for school moneys required by law to be deposited as directed by the school board and to be secured separately. *State v. Fidelity & Deposit Co.*, 1932-NMSC-022, 36 N.M. 166, 9 P.2d 700.

**Surety of depository bank liable for loss upon attempted transfer of funds from depository to another bank.** — Where county funds were lost on an attempted

transfer from a depository bank to another bank with the knowledge and consent of the agent of the surety of depository, and the original depository was closed, the surety of depository was liable for the loss of the funds of the county. *Nat'l Sur. Co. v. New Mexico*, 16 F.2d 873 (8th Cir. 1926).

**Deposits not to exceed face value of security.** — In no event should deposits exceed the face value of the security given by the depository bank. 1962 Op. Att'y Gen. No. 62-71.

**County boards of finance are deciding authority in evaluating collateral,** but they are subject to the supervisory control of the proper district judge when the collateral security is in the form of surety bonds as provided in this section. 1962 Op. Att'y Gen. No. 62-71.

**Surety liable for loss and interest to date of settlement.** — Upon the closing of a bank, a surety company is liable for its proportionate share of the loss and for interest to date of settlement, unless it tenders its share of the loss at an earlier date. 1924 Op. Att'y Gen. No. 24-3750.

**United States bonds acceptable in lieu of depository bond.** — United States liberty bonds may be accepted in lieu of a depository bond, if the board finds that the market value of the bonds equals their par value. 1921 Op. Att'y Gen. No. 21-3171.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 63C Am. Jur. 2d Public Funds §§ 21 to 29.

26A C.J.S. Depositaries § 9(3).

## 6-10-16. Security for deposits of public money.

A. Deposits of public money shall be secured by:

(1) securities of the United States, its agencies or instrumentalities;

(2) securities of the state of New Mexico, its agencies, instrumentalities, counties, municipalities or other subdivisions;

(3) securities, including student loans, that are guaranteed by the United States or the state of New Mexico;

(4) revenue bonds that are underwritten by a member of the financial industry regulatory authority, known as FINRA, and are rated "BAA" or above by a nationally recognized bond rating service; or

(5) letters of credit issued by a federal home loan bank.

B. No security is required for the deposit of public money that is insured by the federal deposit insurance corporation or the national credit union administration.

C. All securities shall be accepted as security at market value. The restrictions of Subsection A of this section apply to all securities subject to this subsection.

**History:** 1953 Comp., § 11-2-18.1, enacted by Laws 1969, ch. 243, § 1; 1981, ch. 332, § 5; 1987, ch. 79, § 6; 1987, ch. 307, § 1; 2000, ch. 47, § 1; 2013, ch. 65, § 4.

## ANNOTATIONS

**Cross references.** — For federal housing administration bonds as security for public deposits, *see* 3-45-24 NMSA 1978.

For severance tax bonds as security for public deposits, *see* 7-27-19 NMSA 1978.

**The 2013 amendment,** effective June 14, 2013, changed the authorized underwriters of revenue bonds that may secure deposits of public money; deleted the requirement that obligations of the state of New Mexico be accepted at par value; in Paragraph (4) of Subsection A, after "member of the", deleted "national association of securities dealers" and added "financial industry regulatory authority" and after "known as", deleted "N.A.S.D." and added "FINRA"; and in Subsection C, deleted the former first sentence which required that obligations of the state of New Mexico be accepted at par value, and in the current first sentence, after "All", deleted "other".

**The 2000 amendment,** effective May 17, 2000, inserted the paragraph designations within Subsection A and designated part of former Subsection A as present Subsection B, substituted "bonds that" for "bonds qualify as security for the deposit public money only if they" in Subsection A(4), added Subsection A(5), deleted "the federal savings and loan insurance corporation" preceding "or the national credit union" in Subsection B, and redesignated former Subsection B as Subsection C.

**1987 amendments.** — Laws 1987, ch. 79, § 6, effective June 19, 1987, adding to the end of Subsection A "or the national credit union administration," was approved March 20, 1987. However, Laws 1987, ch. 307, § 1, effective June 19, 1987, in Subsection A, deleting "or, if not rated are approved by the state board of finance or its delegate" from the end of the second sentence; and in Subsection B, inserting "which are obligations" near the beginning, was approved April 10, 1987. The section is set out above as amended by the Laws 1987, ch. 307, § 1. *See* 12-1-8 NMSA 1978.

**Mutual funds as collateral.** — Mutual funds may not be pledged as collateral for deposits of public funds. 1987 Op. Att'y Gen. No. 87-04.

**Investment in mutual funds.** — State chartered banks and savings and loan associations are permitted to invest in mutual funds. 1987 Op. Att'y Gen. No. 87-04.

**Bonds of New Mexico mortgage finance authority are acceptable as security.** — Although the New Mexico mortgage finance authority is not a state agency, it is a state instrumentality and as such, its bonds are acceptable as security for deposit of public money under this section. 1977 Op. Att'y Gen. No. 77-27.

**Farmers' home administration loans fully guaranteed by federal government.** — Any farmers' home administration loan which is fully guaranteed by the federal government would qualify as a proper security for public funds which are deposited in banks of this state. 1966 Op. Att'y Gen. No. 66-145.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 63C Am. Jur. 2d Public Funds §§ 13, 14.

26A C.J.S. Depositaries § 9(1).

## 6-10-16.1. Security for public deposits.

All deposits of public funds shall be secured by securities as defined in Section 6-10-16 NMSA 1978 in the amount required by law or by surety bonds as provided for in Section 6-10-15 NMSA 1978. A surety company that issues a surety bond pursuant to this section shall be rated in the highest category by at least one nationally recognized statistical rating agency.

**History:** Laws 1981, ch. 332, § 20; 2001, ch. 21, § 1.

**ANNOTATIONS**

**The 2001 amendment,** effective March 13, 2001, in the first sentence, deleted "made after the effective date of this act" following "All deposits of public funds", added the phrase following "required by law"; and added the last sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 63C Am. Jur. 2d Public Funds §§ 13, 14.

26A C.J.S. Depositaries § 9(1).

## 6-10-17. Amount of security to be deposited.

Any bank or savings and loan association designated as a depository of public money shall deliver securities of the kind specified in Section 6-10-16 NMSA 1978 to a custodial bank described in Section 6-10-21 NMSA 1978 and shall then deliver a joint safekeeping receipt issued by the custodial bank to the public official from whom or the public board from which the public money is received for deposit. The securities delivered shall have an aggregate value equal to one-half the amount of public money to be received in accordance with Subsection B of Section 6-10-16 NMSA 1978. However, any such bank or savings and loan association may deliver a depository bond

executed by a surety company as provided in Section 6-10-15 NMSA 1978 as security for any portion of a deposit of public money.

**History:** 1953 Comp., § 11-2-18.2, enacted by Laws 1969, ch. 243, § 2; 1971, ch. 31, § 1; 1981, ch. 332, § 6; 1991, ch. 31, § 1.

**ANNOTATIONS**

**The 1991 amendment,** effective June 14, 1991, divided the former first sentence into the present first two sentences; inserted "to a custodial bank described in Section 6-10-21 NMSA 1978 and shall then deliver" and "issued by the custodial bank" in the first sentence; added "The securities delivered shall have" at the beginning of the present second sentence; and made related stylistic changes.

## 6-10-17.1. Noncompliance with collateral requirements; withdrawal of public funds.

When a treasurer, board of finance or board of control finds that a bank or savings and loan association that has been designated as a depository of public money has not maintained qualifying securities as collateral for deposits of public money under the control of that treasurer or board as required by law, the treasurer or board shall request the depository to substitute or provide additional qualifying securities to meet those requirements within ten calendar days. If the bank or savings and loan association does not comply with the request within ten calendar days, the treasurer or board shall withdraw from that depository within the next ten calendar days all deposits of public money under the treasurer's or board's control without penalty to the public depositor, notwithstanding any other provision of law to the contrary.

**History:** Laws 1991, ch. 31, § 8.

## 6-10-18. Assignment of securities; disposition.

A. Any bank or savings and loan association designated as a depository by the proper treasurer, board of finance or board of control, prior to the delivery of securities of the kind specified in Section 6-10-16 NMSA 1978 to secure that deposit, shall enter into a written agreement with the state board of finance or the board of finance of the county, municipality or board of control whose money it desires to receive and hold on deposit. The depository shall provide for a security interest in the deposited securities in favor of the proper treasurer, board of finance or board of control and shall follow all procedures and comply with all provisions necessary to assure that the security interest is not avoidable under any provisions of law or regulations, including the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended, and the Federal Deposit Insurance Act, as amended. These provisions and procedures shall be incorporated in the terms of the agreement, and the proper treasurer, board of control or board of finance shall take such steps as are necessary to verify compliance by the depository with all necessary provisions and procedures.

B. In case any bank or savings and loan association holding public money on deposit shall, upon proper demand therefor, default in the payment of any such money or the agreed interest on the money or in the performance of its obligations under the written agreement, the payment thereof being secured in whole or in part by a deposit of securities of the kind specified in Section 6-10-16 NMSA 1978, the treasurer, board of finance or board of control shall instruct the custodial bank in possession of the securities to transfer the securities or such portion of the securities as may be required to the treasurer or other official or its designated agent for disposition in accordance with Subsection C or D of this section.

C. The treasurer or other official or agent, upon delivery of the securities from the custodial bank, may sell the securities at public auction at the state capitol, courthouse or city hall or where the office of the official may be to the highest bidder for cash after thirty days' notice of the time and place and terms of the sale, which notice shall be given by publication thereof in a newspaper published in the county in which the sale is to take place; provided that the board of finance or board of control interested in the sale may become a purchaser at any such sale at not less than ninety-five percent of the market value of the securities.

D. The treasurer or other official or agent, upon delivery of securities from the custodial bank, may sell the securities at public or private sale at a broker's board or on any securities exchange in a manner that is customary in the securities industry for the types of securities being sold.

E. The proceeds realized from the sale under Subsection C or D of this section, after payment therefrom of the expenses of the sale, shall be applied to the payment of the amount of public money in which the bank or savings and loan association is in default and for which the securities so sold were pledged, and the remainder, if any, of the proceeds shall be paid over to the bank or savings and loan association. Upon any and all such sales, the securities sold shall be delivered to the purchaser thereof, the official or agent conducting the sale having first caused it to be endorsed in a manner or done other things as may be necessary to vest the title thereto in the purchaser.

**History:** Laws 1933, ch. 175, § 9; 1941 Comp., § 7-217; 1953 Comp., § 11-2-19; Laws 1977, ch. 219, § 1; 1981, ch. 332, § 7; 1991, ch. 31, § 2.

## ANNOTATIONS

**Cross references.** — For the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989, *see* 12 U.S.C.S. § 1461 et seq.

For the Federal Deposit Insurance Act, *see* 12 U.S.C.S. § 1811 et seq.

**The 1991 amendment,** effective June 14, 1991, rewrote this section to the extent that a detailed analysis would be impracticable.

## 6-10-19. Ineligible depository bonds.

No depository bond with personal sureties shall be accepted as security for deposits of public money.

**History:** Laws 1933, ch. 175, § 10; 1941 Comp., § 7-218; 1953 Comp., § 11-2-20; 1991, ch. 31, § 3.

**ANNOTATIONS**

**The 1991 amendment,** effective June 14, 1991, substituted "as security for deposits of public money" for "by any treasurer and/or board of finance".

**Section repeals, by implication,** personal surety clause in Section 6-10-20 NMSA 1978. 1980 Op. Att'y Gen. No. 80-11.

## 6-10-20. Additional security.

Any board of finance or board of control may at any time within its discretion require any bank or savings and loan association that has qualified as a depository of public money subject to the control of the board to furnish additional security for the deposit of the kind specified in Section 6-10-16 NMSA 1978.

**History:** Laws 1923, ch. 76, § 21; 1925, ch. 123, § 8; C.S. 1929, § 112-121; 1941 Comp., § 7-219; 1953 Comp., § 11-2-21; 1991, ch. 31, § 4.

**ANNOTATIONS**

**The 1991 amendment,** effective June 14, 1991, rewrote this section which read "Any board of finance may at any time within its discretion require any bank which has qualified as a depository of public moneys subject to the control of said board and including banks which have furnished bonds with personal sureties, and which may be continued for the period of one year as specified in Section nineteen hereof to furnish additional security for said deposit of the kind in this act specified."

**Former personal surety clause in this section** is repealed by implication by Section 6-10-19 NMSA 1978. 1980 Op. Att'y Gen. No. 80-11.

**Exercise of board's authority must comply with applicable statutory guidelines.** — The state board of finance may exercise its authority under this section to require additional security for deposits made by the state treasurer from the severance tax permanent fund; however, such exercise of authority must be consistent with the guidelines approved under former Subsection G of Section 7-27-5 NMSA 1978. 1980 Op. Att'y Gen. No. 80-11.

## 6-10-21. Security for deposits; safekeeping; regulations of state board of finance.

The state board of finance is authorized and directed to regulate, by general regulation or by special orders applicable to individual cases, the safekeeping of bonds or other securities delivered by any bank or savings and loan association as security for deposits of public money. The bonds or securities shall be delivered to a third-party custodian, which shall be a federal reserve bank or branch thereof or in any other bank designated by the state board of finance and qualified to perform custodial functions in the state of New Mexico. The bank or savings and loan association delivering securities to that custodial bank shall enter into a written agreement with the custodial bank containing such conditions that will adequately protect the interests of the state, county, city, school district or institution interested in the bonds and securities.

**History:** Laws 1927, ch. 87, § 1; C.S. 1929, § 13-1020; 1941 Comp., § 7-220; 1953 Comp., § 11-2-22; 1981, ch. 332, § 8; 1991, ch. 31, § 5.

**ANNOTATIONS**

**The 1991 amendment,** effective June 14, 1991, rewrote this section to the extent that a detailed analysis would be impracticable.

**Bank within state may be designated as depository.** — This section does not prohibit the state board of finance from designating a bank within this state as a depository for the safekeeping of bonds or other securities delivered by any bank or banks as security for deposits of public moneys. 1957 Op. Att'y Gen. No. 57-217.

## 6-10-22. Security for deposits; liability for loss.

The state treasurer or any board of finance or the secretary or treasurer of any board of finance charged with the custody of any bonds or securities mentioned in Section 6-10-21 NMSA 1978 who complies with the requirements of the state board of finance with respect to the safekeeping of any bonds or securities shall not be liable for the loss of those bonds or securities except in cases where the loss is due to his willful act or might have been avoided by reasonable care on his part.

**History:** Laws 1927, ch. 87, § 2; C.S. 1929, § 13-1021; 1941 Comp., § 7-221; 1953 Comp., § 11-2-23; 1991, ch. 31, § 6.

**ANNOTATIONS**

**The 1991 amendment,** effective June 14, 1991, substituted "Section 6-10-21 NMSA 1978" for "Section 1 hereof" near the middle of the section and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Constitutionality of statutes relieving officer or public depository or sureties from liability for loss of public funds, 96 A.L.R. 295.

## 6-10-23. Safekeeping of pledged securities; acceptance, release and substitution.

A. Whenever securities pledged by a depository bank or savings and loan association to secure public money are delivered to a custodial bank for safekeeping, the custodial bank is authorized to comply with the written instructions given by the depository bank or savings and loan association and the treasurer of the state, county, municipality, school district, public institution or board involved in accepting the securities for safekeeping, in releasing and delivering all or any portion of such pledged securities held in safekeeping and in permitting substitutions of other approved securities for those previously held in safekeeping. It is not necessary for the custodial bank to obtain instructions from or approval thereof by the board of finance having control of the public money involved in the particular transaction.

B. In other cases where a depository bank or savings and loan association is entitled to a withdrawal and return to it of securities which have been deposited to secure deposits of public money, the securities may be withdrawn or substitution of other approved securities effected upon the written instructions executed by the depository bank or savings and loan association and by the treasurer of the state, county, municipality, school district, public institution or board involved. It is not necessary for the instructions to be executed by the board of finance having control of the public money involved in the particular transaction.

C. The written instructions specified in Subsections A and B of this section may be contained in the written agreement between the depository bank or savings and loan association and the custodial bank provided for in Section 6-10-21 NMSA 1978.

**History:** 1941 Comp., § 7-221a, enacted by Laws 1947, ch. 34, § 1; 1953 Comp., § 11-2-24; 1981, ch. 332, § 9; 1986, ch. 25, § 1; 1991, ch. 31, § 7.

**ANNOTATIONS**

**Cross references.** — For state investment council, see 6-8-2 NMSA 1978.

**The 1991 amendment,** effective June 14, 1991, deleted "and mortgage collateral" following "securities" in the catchline; in Subsection A, substituted "a custodial bank" for "another bank or savings and loan association" near the beginning of the first sentence and "custodial bank" for "safe-keeping bank or savings and loan association" in the first and second sentences, and inserted "written" preceding "instructions" in the first sentence; and rewrote Subsection C which pertained to mortgage collateral pledged to secure the deposit of severance tax permanent funds.

## 6-10-24. Deposit of public funds in federally insured banks, savings and loan associations and credit unions; conditions.

A. The state treasurer, the several county and municipal treasurers, the treasurers of any public or educational institution in this state and the treasurers of all irrigation districts and conservancy districts may deposit public funds in any bank of the state of New Mexico insured by the federal deposit insurance corporation up to the amount of the insurance or in any savings and loan association whose deposits are insured by the federal savings and loan insurance corporation up to the amount of the insurance, or in any credit union whose deposits are insured by the national credit union administration up to the amount of the insurance, without requiring the bank, savings and loan association or credit union to qualify as a public depository by giving security as required by the laws of New Mexico relating to public money; provided, however, that a deposit made in any credit union shall not exceed that amount insured by an agency of the United States.

B. The several county and municipal treasurers and the treasurers of all irrigation districts and conservancy districts shall not make any deposits outside their respective political subdivisions.

C. All other boards of control handling public funds in any manner whatever may deposit the public funds in any banks in New Mexico insured by the federal deposit insurance corporation up to the amount of the insurance or in any savings and loan association whose deposits are insured by the federal savings and loan insurance corporation up to the amount of the insurance or in any credit union whose deposits are insured by the national credit union administration up to the amount of such insurance, without requiring the bank, savings and loan association or credit union to qualify as a public depository by giving security as required by the laws of New Mexico relating to public money; provided, however, that a deposit made in any credit union shall not exceed that amount insured by an agency of the United States.

**History:** Laws 1939, ch. 21, § 1; 1941 Comp., § 7-222; 1953 Comp., § 11-2-25; Laws 1968, ch. 18, § 4; 1975, ch. 157, § 2; 1981, ch. 332, § 10; 1987, ch. 79, § 7.

**ANNOTATIONS**

**The 1987 amendment,** effective June 19, 1987, inserted "or credit union" following "savings and loan association" and "or in any credit union whose deposits are insured by the national credit union administration up to the amount of such insurance" preceding "without requiring the bank" near the middle of Subsections A and C; added at the end of Subsections A and C "provided, however, that the deposit made in any credit union shall not exceed that amount insured by an agency of the United States"; and made minor language changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 63C Am. Jur. 2d Public Funds § 11.

26A C.J.S. Depositaries § 8.

## 6-10-24.1. State funds; limitation.

A. No person depositing or investing state funds in banks or savings and loan associations in New Mexico shall deposit or invest any funds if that deposit or investment when added to state funds already in that bank or savings and loan association would be in excess of four hundred percent of equity capital of the bank or four hundred percent of net worth of the savings and loan association or more than twenty-five percent of the total of that financial institution's deposits, whichever is less, as shown by the most recent quarterly statement of financial condition required by federal or state financial authorities as certified by an authorized officer of that institution. The funds held by the state fiscal agent bank as such fiscal agent bank and demand deposits held by a state checking depository bank shall not be considered in construing these limits. The twenty-five percent of total deposits limitation shall not apply to a newly chartered bank or savings and loan association in the first year of its operation.

B. No person depositing state funds in credit unions in New Mexico shall deposit any funds in excess of that which is insured by an agency of the United States.

C. For the purposes of this section, "state funds" means money in the custody of the state treasurer or deposited or invested by him or by any state agency, department or instrumentality in New Mexico banks, savings and loan associations or credit unions and does not include local funds, which include funds deposited by institutions enumerated in Article 12, Section 11 of the constitution of New Mexico.

D. In the event a bank or savings and loan association exceeds the limitations set forth in Subsection A of this section, any person charged with responsibility for investing or depositing state funds shall not deposit additional new funds, but may renew any maturing certificate of deposit at the interest rate applicable for new state fund deposits and may provide for the staged withdrawal of the amount of funds which exceeds such limitation from the bank or savings and loan association over a reasonable period of time in order to avoid causing the failure of the institution. If, however, withdrawal of the state funds is necessary to prevent loss of such funds, they shall be removed.

**History:** Laws 1982, ch. 9, § 1; 1987, ch. 79, § 8; 1987, ch. 266, § 1.

**ANNOTATIONS**

**1987 Multiple Amendments.** — Laws 1987, ch. 79, § 8 and Laws 1987, ch. 266, § 1 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 1987, ch. 266, § 1, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 1987, ch. 79, § 8 and Laws 1987, ch. 266, § 1 are described below.

Laws 1987, ch. 266, § 1, effective June 19, 1987, added a new Subsection B and redesignated the subsequent subsections accordingly; in Subsection C, added "or credit unions" following "savings and loan associations"; and, in Subsection D, at the end of the first sentence substituted "avoid causing the failure of the institution" for "assure that dislocation caused by such withdrawal is avoided" and added the last sentence.

Laws 1987, ch. 79, § 8, effective June 19, 1987, added Subsection B and redesignated the subsequent subsections; and, in Subsection C, added "or credit union" after "savings and loan associations" and made minor changes in language.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 63C Am. Jur. 2d Public Funds §§ 5, 11.

26A C.J.S. Depositaries § 8.

## 6-10-24.2. Linked deposit program.

A. As used in this section:

(1) "financially at risk rural community" means a community with the following characteristics:

(a) no more than one insured bank, thrift institution or credit union within the community; and

(b) a population not exceeding three thousand five hundred; and either

(c) a declining population as evidenced by a decrease in population as shown by the two most recent federal decennial censuses; or

(d) a median household income less than eighty percent of the state median household income;

(2) "linked deposit program" means a depository institution's participation in the deposit program established pursuant to this section;

(3) "market rate" means the rate of return established by the state board of finance for deposits held by qualified depository institutions;

(4) "qualified depository institution" means an insured bank, trust institution or credit union qualified pursuant to Section 6-10-15 NMSA 1978;

(5) "qualifying branch" means an office of a qualified depository institution that is open five days a week, has a night deposit box and provides banking services to residents of the community; and

(6) "state deposits" means public funds under the control of the state treasurer or the state treasurer's designee and held by qualified depository institutions.

B. The state treasurer may invest up to fourteen percent of state deposits, not to exceed forty-nine million dollars ($49,000,000), in qualified depository institutions with a qualifying branch located in a financially at risk rural community. No more than ten million dollars ($10,000,000) may be deposited in any one qualified depository institution pursuant to the linked deposit program. For funds invested in qualified depository institutions pursuant to the linked deposit program, the state treasurer is authorized to accept a rate of return that is not more than one percent below the market rate.

C. The director of the financial institutions division of the regulation and licensing department shall promulgate rules implementing the provisions of this section. Those rules shall address the following areas:

(1) eligibility criteria for qualified depository institutions participating in the linked deposit program;

(2) application procedures for participation in the linked deposit program; and

(3) verification criteria for determining that a qualified depository institution participating in the linked deposit program is meeting the banking service needs of a financially at risk rural community.

**History:** Laws 2007, ch. 153, § 1.

**ANNOTATIONS**

**Cross references.** — For the director of financial institutions division, *see* 58-1-32 NMSA 1978.

**Effective dates.** — Laws 2007, ch. 153, § 2 made Laws 2007, ch. 153, § 1 effective July 1, 2007.

## 6-10-25. Declaration of policy.

All moneys of the state, except permanent funds and income derived therefrom and those funds the investment of which is otherwise authorized by law, not needed to meet expenses of state government for the ensuing quarter year should be invested in interest-bearing time deposits or short-term United States government securities. No funds other than those necessary to meet expenses should be permitted to remain in noninterest-bearing accounts in state depositories.

**History:** 1953 Comp., § 11-2-25.1, enacted by Laws 1955, ch. 140, § 1; 1967, ch. 211, § 1.

**ANNOTATIONS**

**Interest accrues to fund on which paid and not to general fund.** — The general rule is that interest earned by the investment of a special fund is an increment which accrues to the special fund and not to the general funds of the state or other public body. 1958 Op. Att'y Gen. No. 58-149.

**Interest earned on principal in game protection fund** is credited to general fund. 1980 Op. Att'y Gen. No. 80-17.

## 6-10-26. Quarterly reports of funds on demand deposit; investment in interest-bearing deposits and securities.

On or before the tenth day of each quarter of the fiscal year the state treasurer and the secretary of finance and administration shall report to the state board of finance the amount of money on deposit in state depositories, the account or funds to which the money is credited, the amount of money necessary in the opinion of each of such officers to be kept on demand deposit to meet expenses for the quarter, and the amount of money available, in the opinion of each of the officers, for investment for the ensuing quarter. The state board of finance, from such reports and other information which may be available to it, shall direct the state treasurer to invest such sums as it may determine as available for investment in interest-paying time deposits or short-term United States government securities, or a combination thereof. It is the further policy of the state of New Mexico to foster the banking business and the savings and loan business, and the board of finance shall not withdraw funds from the various banks and savings and loan associations of New Mexico if it is the banks' and savings and loan associations' desire to pay some reasonable interest rate on the funds. The state board of finance shall determine the rate of interest to be charged on the investments. The interest earned from the investment of this money shall be placed into the general fund of the state.

**History:** 1953 Comp., § 11-2-25.2, enacted by Laws 1955, ch. 140, § 2; 1957, ch. 102, § 1; 1968, ch. 18, § 5; 1977, ch. 247, § 107; 1979, ch. 99, § 1.

**ANNOTATIONS**

**Interest earned on investment of game protection fund** is credited to that fund. This section relates to all surplus state funds, which is a "class," and not to the game protection fund specifically, which is less than a class and relates to a particular part of a class. Therefore, any interest earned on the investment of money in the game protection fund must be credited to that fund, not to the state general fund. 1982 Op. Att'y Gen. No. 82-01.

**Interest earned on investment in shooting range fund** is credited to that fund, not the state general fund. 1980 Op. Att'y Gen. No. 80-17.

## 6-10-27. Provisions inapplicable to permanent and certain other funds.

The provisions of Sections 6-10-25 and 6-10-26 NMSA 1978, shall not apply to the investment of permanent funds or the income derived therefrom nor to the investment of funds otherwise authorized by law.

**History:** 1953 Comp., § 11-2-25.3, enacted by Laws 1955, ch. 140, § 3; 1967, ch. 211, § 2.

**ANNOTATIONS**

**Interest is generally an accretion** or increment to principal fund earning it, and becomes a part of that fund. 1980 Op. Att'y Gen. No. 80-17.

## 6-10-28. Investment of bond proceeds.

The state treasurer, upon order of the state board of finance, shall invest the proceeds of state revenue and general obligation bonds until the money is needed for the purpose for which the bonds were authorized and sold. Income from these investments shall be applied to payment of principal of and interest on the bonds, for the purposes for which the bonds were issued or to pay rebate, penalty, interest and other obligations of the state relating to the bonds under the Internal Revenue Code of 1986, as amended, including any regulations applicable under the code.

**History:** 1953 Comp., § 11-2-25.4, enacted by Laws 1967, ch. 211, § 3; 1988, ch. 45, § 1.

**ANNOTATIONS**

**Cross references.** — For the Internal Revenue Code of 1986, *see* Title 26 of the United States Code.

**The 1988 amendment,** effective March 4, 1988, in the second sentence, substituted "shall be applied to payment of principal" for "shall be credited to the appropriate fund to apply toward payment of principal", added the phrase beginning "for the purposes for which" at the end of the subsection, and made minor stylistic changes.

## 6-10-29. Banks, savings and loan associations and credit unions to furnish statement of deposits monthly; credit interest monthly; signature to checks.

A. Every bank, savings and loan association and credit union holding public money deposited by the state treasurer shall, on the first day of each month during the time in which it holds such deposits, furnish to the state treasurer and to the financial control

division of the department of finance and administration an itemized statement concerning the deposit, showing the daily balance for the last preceding month and interest accrued thereon. These statements shall be filed by the state treasurer and the financial control division and be public records. Every bank, savings and loan association and credit union having public money on deposit other than that deposited by the state treasurer shall furnish to the treasurer depositing the same and to the board of finance which issued the certificate under which it holds such money, on the first day of each month during the time in which it holds any such money on deposit, an itemized statement concerning the deposit, showing the daily balance of the deposit account for the last preceding month and interest accrued thereon, which statement shall be filed in regular order and carefully preserved in the respective offices. Upon the first day of each month, all interest accrued upon the deposit shall by the bank, savings and loan association or credit union be credited to the state, county, municipality or board in control whose money it so holds.

B. All checks drawn against any account of public money deposited or against any interest account shall be signed by the proper officer authorized to sign them and in his official capacity.

C. "Deposit", as used herein, means either investment or deposit and includes share, share certificate and share draft.

**History:** Laws 1923, ch. 76, § 14; C.S. 1929, § 112-114; 1941 Comp., § 7-223; 1953 Comp., § 11-2-26; Laws 1968, ch. 18, § 6; 1975, ch. 157, § 3; 1987, ch. 79, § 9.

**ANNOTATIONS**

**The 1987 amendment,** effective June 19, 1987, in Subsection A inserted "and credit union" following "savings and loan association" in the first, third and last sentences; in Subsection C added at the end "and includes share, share certificate, and share draft"; and made minor language changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 63C Am. Jur. 2d Public Funds § 9.

26A C.J.S. Depositaries § 12(1).

## 6-10-30. Interest rates set by state board of finance.

The state board of finance at any time, but at least once each fiscal year, shall fix the rate of interest to be paid upon all time deposits of public money made by all public officials authorized to make deposits of public money.

**History:** 1953 Comp., § 11-2-27, enacted by Laws 1975, ch. 304, § 1; 2001, ch. 55, § 1.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1975, ch. 304, § 1, repealed 11-2-27, 1953 Comp., relating to interest rates and powers of state board of finance, and enacted a new section.

**The 2001 amendment,** effective June 15, 2001, changed the minimum number of times the board of finance shall fix interest rates from once each quarter to once each fiscal year.

**Home-rule municipalities may establish interest rates in conflict with those of board of finance.** — Home-rule municipalities have the right to establish an interest rate policy pursuant to N.M. Const., art. X, § 6, that may be in conflict with the interest rate policy established by the board of finance. 1975 Op. Att'y Gen. No. 75-56.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 63C Am. Jur. 2d Public Funds § 10.

Termination of interest, or reduction of interest rate, on deposit of public funds, 107 A.L.R. 1210.

26A C.J.S. Depositaries § 12(1).

## 6-10-31. Interest on time deposits.

Any board of finance may, whenever in its opinion such a course is advisable and the public money under its control, or any part thereof, will not be needed immediately for public purposes, place such funds on time deposit with a bank, savings and loan association or credit union whose deposits are insured by an agency of the United States, taking the certificate of deposit or other evidence of indebtedness of the bank, savings and loan association or credit union receiving the deposit; provided, however, that all such deposits shall be secured as provided by law. No county or municipal board of finance shall make any deposits outside of its county.

**History:** Laws 1929, ch. 92, § 1; C.S. 1929, § 112-201; 1941 Comp., § 7-225; 1953 Comp., § 11-2-28; Laws 1968, ch. 18, § 7; 1973, ch. 78, § 1; 1975, ch. 157, § 4; 1981, ch. 332, § 11; 1987, ch. 79, § 10.

**ANNOTATIONS**

**The 1987 amendment,** effective June 19, 1987, inserted "or credit union" following "savings and loan association" both places it appears and made minor changes in language throughout the section.

**County treasurer's authority.** — The county treasurer, with the advice and consent of the board of finance, may invest public funds on time deposits with a bank. *Board of Cnty. Comm'rs v. Padilla*, 1990-NMCA-125, 111 N.M. 278, 804 P.2d 1097.

**Investment in certificates of deposit.** — The New Mexico school for the deaf may invest surplus funds in certificates of deposit. 1969 Op. Att'y Gen. No. 69-27.

## 6-10-32. Treatment of interest on land grant funds.

All interest collected by the state treasurer on deposits, whether on time deposits or otherwise, in any bank, in any savings and loan association or in any credit union whose deposits are insured by an agency of the United States of money belonging to the common school permanent or income funds or to any other fund derived from lands granted to the state by any act of congress shall be treated by the state treasurer as income of the funds to which that money belongs and as collected by him shall be credited accordingly.

**History:** Laws 1929, ch. 92, § 2; C.S. 1929, § 112-202; 1941 Comp., § 7-226; 1953 Comp., § 11-2-29; Laws 1968, ch. 18, § 8; 1987, ch. 79, § 11.

**ANNOTATIONS**

**The 1987 amendment,** effective June 19, 1987, inserted "or in any credit union" following "savings and loan association" and made minor changes in language throughout the section.

**Interest is generally an accretion** or increment to principal fund earning it, and becomes a part of that fund. 1980 Op. Att'y Gen. No. 80-17.

**Only enumerated funds entitled to interest income.** — By excluding all other funds, this section seems to direct that only funds deposited in any bank belonging to common school permanent or income funds or other funds derived from lands granted to the state by any act of congress are entitled to the interest income upon bank deposits. 1932 Op. Att'y Gen. No. 32-510.

**Disposition of interest on funds other than ones covered by this section.** — All interest earnings upon daily balances on deposit, except on funds mentioned in this section, should be credited to the interest-on-deposits fund and eventually to the general fund of the state. 1932 Op. Att'y Gen. No. 32-510.

## 6-10-33. Interest limited to maximum permitted by federal law or regulation.

No deposit of public funds shall bear interest where any bank, savings and loan association or credit union is precluded from paying interest on the deposit by federal law or the regulations of any agency or instrumentality of the United States, and no deposit of public funds shall bear a greater interest rate than banks, savings and loan associations or credit unions are authorized to pay under such federal laws or regulations.

**History:** 1953 Comp., § 11-2-30, enacted by Laws 1975, ch. 157, § 5; 1981, ch. 332, § 12; 1987, ch. 79, § 12.

### ANNOTATIONS

**Repeals and reenactments.** — Laws 1975, ch. 157, § 5, repealed 11-2-30, 1953 Comp., relating to interest limited to maximum permitted by federal law or regulation, and enacted a new 6-10-33 NMSA 1978.

**The 1987 amendment,** effective June 19, 1987, inserted "or credit union" following "savings and loan association" and made minor changes in language throughout the section.

**Applicability to 6-10-36E NMSA 1978.** — The statutory requirement, 6-10-36E NMSA 1978, that a financial institution forfeit a deposit of public money for failure to pay the rate of interest set by the state board of finance does not apply in the event that the rate is not paid because of federal law or regulation. 1982 Op. Att'y Gen. No. 82-06.

## 6-10-34. Withdrawal of time deposits subject to federal law or regulation.

Notwithstanding any other provision of law, no time deposit of public funds in a member of the federal reserve system, as that term is or may be defined by law or regulation of the board of governors of the federal reserve system, or in a bank or savings and loan association which is a member of the federal home loan bank or the federal savings and loan insurance corporation or in a credit union which is chartered or insured by the national credit union administration may be withdrawn before maturity, except under the conditions as the member bank or savings and loan association or credit union is authorized to repay the deposit before maturity under federal law or regulation, and no time deposit of public funds in a nonmember of the federal reserve system, federal home loan bank system or federal savings and loan insurance corporation, as the term "time deposit" is or may be defined by federal law or regulation of the federal deposit insurance corporation, shall be withdrawn before maturity, except under the conditions as a bank not a member of the federal reserve system, but insured by the federal deposit insurance corporation, is authorized to repay the deposit before maturity under federal law or regulation of the federal deposit insurance corporation.

**History:** Laws 1937, ch. 19, § 2; 1941 Comp., § 7-228; 1953 Comp., § 11-2-31; 1981, ch. 332, § 13; 1987, ch. 79, § 13.

### ANNOTATIONS

**The 1987 amendment,** effective June 19, 1987, inserted "or in a credit union which is chartered or insured by the national credit union administration" following "or the federal savings and loan insurance corporation" just before the middle of the section and "or

credit union" following "savings and loan association" in the middle of the section, and made minor changes in language throughout the section.

## 6-10-35. Fiscal agent of New Mexico; state checking depositories; state depositories; designation by board of finance.

A. Except as otherwise provided by law, the state board of finance may designate a bank or savings and loan association doing business in this state and having an unimpaired capital and surplus of at least one hundred fifty thousand dollars ($150,000) as the "fiscal agent of New Mexico". The designation is subject to change, from time to time, by the state board of finance; however, the board shall formulate and adopt designation procedures, filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], that shall be adhered to on each occasion of designation. The board, after it has designated the fiscal agent, shall apprise the legislature of its action and, in addition to the name of the designated fiscal agent, the communication shall include a brief description of the designee's particular qualifications.

B. The bank or savings and loan association designated as the fiscal agent of New Mexico shall enter into an agreement with the state, acting through the state board of finance, for:

(1) the collection for the state of all checks and other items received by the state on any account;

(2) the handling of the checking account of the state treasurer;

(3) the handling of all transfers of money in connection with the sale or retirement of bonds or obligations of the state or the purchase by the state of bonds or other securities;

(4) the investment of permanent or other funds of the state;

(5) the safekeeping of bonds or other securities belonging to or held by the state or any official of the state;

(6) the rate of interest to be paid upon average daily balances of state funds; and

(7) acting as the agent of the state in fiscal matters generally, subject always to the supervision and approval of the state board of finance.

C. The agreement shall contain the terms and conditions that are necessary, in the judgment of the state board of finance, for the proper conduct of the fiscal affairs of the state and the safekeeping of the money of the state.

D. The state board of finance shall require the fiscal agent of New Mexico to furnish surety company bond or securities of the kinds specified by law for the security of deposits of public money in an amount not less than two million five hundred thousand dollars ($2,500,000) as security for the safekeeping of the money of the state and the faithful performance of its duties as the fiscal agent. The state board of finance may adjust the amount of bond or security from time to time, but in no event shall the bond or security be in an amount less than two million five hundred thousand dollars ($2,500,000). No other bond or security is required of the fiscal agent for the securing of funds deposited by the state treasurer in the fiscal agency account, and the state treasurer is not liable upon the state treasurer's official bond on account of funds deposited in the fiscal agency account when the account is so secured. Nothing in this section shall prevent the bank or savings and loan association designated as fiscal agent from also qualifying as a state depository pursuant to Chapter 6, Article 10 NMSA 1978.

E. Payment to the fiscal agent of New Mexico for services performed may be made by the state board of finance upon warrants drawn by the secretary upon the state treasury as provided by law for expenditure of state funds or by compensating balances or a combination thereof. The legislature shall appropriate funds to the state board of finance for this purpose annually.

F. The state board of finance may also designate, according to its adopted designation procedures, not more than two other banks or savings and loan associations doing business in this state as "state checking depositories" in which money necessary to meet the current obligations of the state may be deposited in temporary checking accounts. No bank or savings and loan association shall be so designated unless it has an unimpaired capital and surplus of at least one hundred fifty thousand dollars ($150,000). Not more than twenty percent of all the state's money on hand shall be on deposit in all such checking accounts, including the checking account with the fiscal agent of New Mexico, for any period of time longer than is required to distribute the amount above twenty percent to applying, qualified depository banks or savings and loan associations. The state board of finance shall require a designated state checking depository to furnish surety company bond or securities of the kinds specified by law for the security of deposits of public money in an amount established by the board. Nothing in this section shall prevent a bank or savings and loan association designated as a state checking depository from also qualifying as a state depository pursuant to Chapter 6, Article 10 NMSA 1978, and nothing in this section shall prohibit the state treasurer from transferring to out-of-state banks and keeping on deposit with them funds necessary to pay interest upon and principal of those outstanding bonds, debentures and certificates of indebtedness that, with the interest coupons, were made payable at an out-of-state bank.

G. An authorized bank, savings and loan association or credit union desiring to receive public money deposits may file with the board of finance having control of the money its written proposal to receive the money on deposit, together with its agreement to pay interest on daily balances of the deposits at the rate of interest fixed by the state

board of finance as prescribed in Section 6-10-30 NMSA 1978. The proposal shall specify whether the deposit is desired as a time deposit. The board of finance shall, at its next meeting after receipt of the proposal, consider the proposal, and, if it is in accordance with Chapter 6, Article 10 NMSA 1978, the board shall thereupon notify the bank or savings and loan association that upon its furnishing security as provided, it will be designated as a "state depository" of public money in an amount to be fixed by the board, which amount shall not exceed seventy-five percent of the capital and surplus of the applicant bank or savings and loan association if the deposit is secured by surety bond. If, after considering the proposal of a credit union and finding it in accordance with Section 6-10-36 NMSA 1978, the board of finance may designate the credit union a "state depository" of public money in an amount to be fixed by the board, which shall not exceed that amount insured by an agency of the United States. Upon furnishing proper bond or other security authorized by Chapter 6, Article 10 NMSA 1978, a certificate shall be issued to the bank or savings and loan association by the board of finance qualifying it as a depository of public money; and, if designated, a certificate shall be issued to a credit union qualifying it as a depository of public money; provided that a bank located outside the state, acting solely in the capacity of a paying bank for the purpose of paying interest upon and principal of state obligations represented by bonds, debentures and certificates of indebtedness and attached interest coupons, is not required to furnish collateral security in excess of one hundred thousand dollars ($100,000) regardless of the amount of state public money on deposit.

**History:** Laws 1934 (S.S.), ch. 24, § 3; 1941 Comp., § 7-229; 1953 Comp., § 11-2-32; Laws 1957, ch. 35, § 2; 1971, ch. 18, § 1; 1981, ch. 332, § 14; 1987, ch. 79, § 14; 1987, ch. 87, § 1; 2010, ch. 14, § 7.

## ANNOTATIONS

**The 2010 amendment,** effective March 1, 2010, in Subsection A, in the first sentence, added "Except as otherwise provided by law," and in the third sentence, after "it has designated the", deleted "state"; in Subsection B, after "loan association designated" added "as the fiscal agent of New Mexico"; in Subsection D, in the first sentence, after "fiscal agent", added "of New Mexico" and in the fourth sentence, after "state depository", deleted "under Sections 11-2-18 NMSA 1953 or 6-10-30, 6-10-35 and 6-10-36" and added "pursuant to Chapter 6, Article 10"; in Subsection E, in the first sentence, after "secretary", deleted "of finance and administration"; in Subsection F, in the third sentence, after "fiscal agent", added "of New Mexico"; and in the fifth sentence, after "state depository", deleted "under Sections 11-2-18 NMSA 1953 or 6-10-30, 6-10-35 and 6-10-36" and added "pursuant to Chapter 6, Article 10"; and in Subsection G, in the third sentence, after "if it is in accordance with", deleted "Sections 11-2-18 NMSA 1953 and 6-10-30, 6-10-35 and 6-10-36" and added "pursuant to Chapter 6, Article 10"; in the fourth sentence, after "finding it in accordance with", deleted "Sections 6-10-30 and" and added "Section"; and in the fifth sentence, after "other security authorized by", deleted "Sections 11-2-18 NMSA 1953 and 6-10-30, 6-10-35 and 6-10-36" and added "Chapter 6, Article 10".

**The 1987 amendment,** effective June 19, 1987, inserted Subsection E; relettered the subsequent subsections; in Subsection G, near the beginning of the first sentence, inserted "or credit unions" following "savings and loan association", inserted the fourth sentence, in the fifth sentence, inserted "and, if designated, a certificate shall be issued to a credit union qualifying it as a depository of public money" preceding the proviso, and made minor changes in language throughout the subsection.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 72 Am. Jur. 2d States, Territories, and Dependencies §§ 75 to 86.

81A C.J.S. States §§ 223 to 229.

## 6-10-36. Public money deposits of certain governmental units; distribution; interest.

A. All public money, except that in the custody of the state treasurer, institutions of higher education, technical and vocational institutes, incorporated municipalities and counties that have adopted home rule charters as authorized by the constitution of New Mexico and local school boards that have been designated as boards of finance, shall be deposited in qualified depositories in accordance with the terms of this section or invested as otherwise provided by law.

B. Deposits of funds of a governmental unit may be made in noninterest-bearing checking accounts in one or more banks or savings and loan associations designated as checking depositories located within the geographical boundaries of the governmental unit. In addition, deposits of funds may be in noninterest-bearing accounts in one or more credit unions designated as checking depositories located within the geographical boundaries of the governmental unit to the extent the deposits are insured by an agency of the United States. If there is no checking depository within the geographical boundaries of the governmental unit, one or more banks, savings and loan associations or credit unions within the county in which the principal office of the governmental unit is located may be so designated, but credit union deposits shall be insured by an agency of the United States.

C. Public money placed in interest-bearing deposits in banks and savings and loan associations shall be equitably distributed among all banks and savings and loan associations having their main or staffed branch offices within the geographical boundaries of the governmental unit that have qualified as public depositories by reason of insurance of the account by an agency of the United States or by depositing collateral security or by giving bond as provided by law and that desire a deposit of public money pursuant to this section. The deposits shall be in the proportion that each bank's or savings and loan association's deposits bears to the total deposits of all banks and savings and loan associations that have their main office or staffed branch office within the geographical boundaries of the governmental unit and that desire a deposit of public money pursuant to this section. The deposits of the main office of a savings and loan association and its staffed branch offices within the geographical boundaries of a

governmental unit is the total deposits of the association multiplied by the percentage that deposits of the main office and the staffed branch offices located within the geographical boundaries of the governmental unit are of the total deposits of the association, net of any public fund deposits. The deposits of each staffed branch office or aggregate of staffed branch offices of a savings and loan association located outside the geographical boundaries of the governmental unit in which the main office is located is the total deposits of the association multiplied by the percentage that deposits of the branch or the aggregate of branches located outside the geographical boundaries of the governmental unit in which the main office is located are of the total deposits of the association, net of any public fund deposits. The director of the financial institutions division of the regulation and licensing department shall promulgate a formula for determining the deposits of banks' main offices and branches for the purposes of distribution of public money as provided for by this section.

D. Public money may be placed at the discretion of the designated board of finance or treasurer in interest-bearing deposits in credit unions having their main or staffed branch offices within the geographical boundaries of the governmental unit to the extent the deposits are insured by an agency of the United States.

E. The rate of interest for all public money deposited in interest-bearing accounts in banks, savings and loan associations and credit unions shall be set by the state board of finance, but in no case shall the rate of interest be less than one hundred percent of the asked price on United States treasury bills of the same maturity on the day of deposit. Any bank or savings and loan association that fails to pay the minimum rate of interest at the time of deposit provided for in this subsection for any respective deposit forfeits its right to an equitable share of that deposit under this section.

If the deposit is part or all of the proceeds of a bond issue and the interest rate prescribed in this subsection materially exceeds the rate of interest of the bonds, the interest rate prescribed by this subsection shall be reduced on that deposit to an amount not materially exceeding the interest rate of the bonds if the bond issue would lose its tax-exempt status pursuant to the provisions of the Internal Revenue Code of 1986, as amended.

F. Public money in excess of that for which banks, savings and loan associations and credit unions within the geographical boundaries of the governmental unit have qualified may be deposited in qualified depositories in other areas within the state under the same requirements for payment of interest as if the money were deposited within the geographical boundaries of the governmental unit or may be invested as provided by law.

G. The department of finance and administration may monitor the deposits of public money by governmental units to assure full compliance with the provisions of this section.

**History:** 1953 Comp., § 11-2-33, enacted by Laws 1977, ch. 136, § 1; 1981, ch. 332, § 15; 1983, ch. 191, § 1; 1987, ch. 79, § 15; 1997, ch. 123, § 2; 2007, ch. 228, § 1.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1977, ch. 136, § 1, repealed 11-2-33, 1953 Comp., relating to county and municipal moneys to be deposited in county, and enacted a new 6-10-36 NMSA 1978.

**Cross references.** — For Internal Revenue Code, *see* 26 U.S.C. § 1 et seq.

**The 2007 amendment,** effective July 1, 2007, amended Subsection C to change the formula for distribution of deposits of public funds by providing that deposits shall be made only to banks and savings and loan associations that desire a deposit of public money pursuant to this section and eliminated the definition of "net worth".

**The 1997 amendment,** effective June 20, 1997, inserted "technical and vocational institutes" in Subsection A and substituted "pursuant to the provisions of the Internal Revenue Code of 1986, as amended" for "under Section 103 of the United States Internal Revenue Code of 1954, as amended" in Subsection E.

**The 1987 amendment,** effective June 19, 1987, inserted "or credit union" following "savings and loan association" in the penultimate sentence of Subsection B and in the first sentence of Subsections E and F; in Subsection B inserted the present second sentence and the present fourth sentence, and in the third sentence substituted "checking depository" for "bank or savings and loan association" near the beginning; in Subsection C inserted "in banks and savings and loan associations" following "placed in interest-bearing deposits" near the beginning of the first sentence and in the penultimate sentence substituted "regulation and licensing" for "commerce and industry" following "the director of the financial institutions division of the" at the beginning; inserted Subsection D and relettered the subsequent subsections accordingly; and made minor changes in language throughout the section.

**Deposits in credit unions.** — Sections 6-10-36(D) and 6-10-44 NMSA 1978 do not give the county treasurer and the county board of finance co-equal powers with respect to deposits in federally insured credit unions. These sections do not alter the relative authority of the county treasurer and the county board of finance as stated in 6-10-8 NMSA 1978. Sections 6-10-36(D) and 6-10-44.1 NMSA 1978 were intended to permit deposits in credit unions by treasurers and boards of finance of various public bodies, not just counties, leaving to other statutory provisions the question of the relative responsibilities of the two in making an investment decision. *Board of Cnty. Comm'rs v. Padilla*, 1990-NMCA-125, 111 N.M. 278, 804 P.2d 1097.

**Certificates of deposit** are deposits for purposes of this section. 1987 Op. Att'y Gen. No. 87-50.

**"School activity funds" of public schools** are considered to be public funds so as to require that they be deposited in the same manner as other public funds. 1962 Op. Att'y Gen. No. 62-71.

**Any moneys derived from tax levies** and used to support a county hospital are public funds. 1969 Op. Att'y Gen. No. 69-76.

**County funds must be deposited within county if banks are qualified.** — County funds must be deposited by the county treasurer or board in control in one or more banks within his county if there are banks qualified to accept the funds. 1957 Op. Att'y Gen. No. 57-25.

**Branch bank within a county is a compulsory depository.** — The New Mexico statutes which authorize branch banking do not, however, define the relations between the parent organization and its branches. Although the weight of authority for most purposes indicates that branch banks do not have a distinct corporate existence and authority independent of the parent bank, and that a bank and its branches, for most purposes, exist as one corporation, a branch bank located within a county is a compulsory depository of the moneys of that county. 1957 Op. Att'y Gen. No. 57-25.

The branch of a bank incorporated within this state is a proper depository for public funds, providing it qualifies as a depository under the terms of this section. 1963 Op. Att'y Gen. No. 63-20.

**Subsection E limitation inapplicable if rate not paid because of federal law or regulation.** — The requirement in Subsection E that a financial institution forfeit a deposit of public money for failure to pay the rate of interest set by the state board of finance does not apply in the event that the rate is not paid because of federal law or regulation. 1982 Op. Att'y Gen. No. 82-06.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 63C Am. Jur. 2d Public Funds §§ 5 to 12.

26A C.J.S. Depositaries § 8.

## 6-10-36.1. Receipts of public money; disposition by certain municipalities.

A municipality or village having within its boundaries no suitable banking facility in which to deposit collected receipts of public money shall deposit receipts within a period not to exceed five days from the date of collection, except when inclement weather or natural disaster conditions exist, in which case the period is extended to ten days; provided the municipality or village adopts a reasonable administrative policy approved by the local government division of the department of finance and administration establishing procedures for the safeguarding of the public funds prior to deposit.

**History:** Laws 1997, ch. 161, § 1; 2007, ch. 130, § 1.

**ANNOTATIONS**

**Cross references.** — For deposit and investment of funds, *see* 6-10-10 NMSA 1978.

**The 2007 amendment,** effective June 15, 2007, increased the time for deposit of funds to ten days when inclement weather or natural disaster conditions exist.

## 6-10-37. State treasurer to make deposits.

The state treasurer shall deposit all money in his custody equitably among bank and savings and loan association depositories and, at his discretion in credit unions applying therefor when qualifying under the terms of this Act subject to the control and regulation of the state board of finance as otherwise in this Act provided.

**History:** Laws 1923, ch. 76, § 12; C.S. 1929, § 112-112; 1941 Comp., § 7-231; 1953 Comp., § 11-2-34; Laws 1987, ch. 79, § 16.

**ANNOTATIONS**

**Compiler's notes.** — The term "this Act," which appears twice in this section, refers to Laws 1923, ch. 76, presently compiled as 6-1-1, 6-10-2, 6-10-3, 6-10-20, 6-10-29, 6-10-37 to 6-10-42, 6-10-44, 6-10-46, 6-10-47, 6-10-50, 6-10-52 to 6-10-54, 6-10-58 and 6-10-61 NMSA 1978.

**The 1987 amendment,** effective June 19, 1987, substituted "among bank and savings and loan association depositories and, at his discretion in credit unions" for "bank depository" and made a minor change in language.

**State board of finance has no authority to distribute funds in various depository banks,** nor to specify the amount each should receive. Nor has it, nor any other state agency, the right to use public funds in payment of services in making collections from other state depositories. 1922 Op. Att'y Gen. No. 22-3272.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 26A C.J.S. Depositaries § 11.

## 6-10-38. Bonds of state treasurer, municipal treasurers and treasurers of boards in control.

The state treasurer shall give an official bond in the sum of five hundred thousand dollars ($500,000). Municipal treasurers and treasurers of any board in control shall give bond in a sum equal to twenty percent of the public moneys received by them during the preceding fiscal year, but in no instance shall the bond of a municipal treasurer be required in excess of fifty thousand dollars ($50,000).

The state treasurer shall appoint a deputy treasurer who shall take the oath of office required of the treasurer and shall receive salary as provided by law. In case of the death of the state treasurer, his deputy shall, unless removed, continue in office and perform the duties of the treasurer until a treasurer is appointed and qualified as required by law.

The state board of finance may enforce the collection of any bond given by any defaulting public official or depository of the state or any of its agencies or political subdivisions. In the case of officers or depositories other than the state, at least four months must have elapsed after the ascertainment of any default by any officer or depository without collection of the amount of the default by the county, municipality or other political subdivision or board in control concerned. The state board of finance may employ attorneys and agents to enforce the collection and to pay them compensation out of any money appropriated for the board of finance.

**History:** Laws 1923, ch. 76, § 16; 1925, ch. 123, § 5; C.S. 1929, § 112-116; Laws 1933, ch. 36, § 1; 1941 Comp., § 7-233; 1953 Comp., § 11-2-36; Laws 1967, ch. 238, § 3.

**ANNOTATIONS**

**Legislature has right to require bond** of public officers handling the public moneys. *Board of Comm'rs v. District Court*, 1924-NMSC-009, 29 N.M. 244, 223 P. 516.

**Treasurers may give more than one official bond,** if together they meet the requirements of the statute. 1918 Op. Att'y Gen. 18-2140.

**Separate bond not required for additional duties.** — No separate official bond is required of the treasurer for his duties as treasurer of irrigation district. 1920 Op. Att'y Gen. 20-2737.

**Bond intended to protect all municipal funds handled by treasurer.** — The fact that the city treasurer handles funds derived from special revenue bond or general obligation bond issues has no bearing upon the type of bond required of that official. There is nothing in the statutory provisions regarding bond issues which would indicate that the surety bond prescribed by this section is not meant to protect all municipal funds, from whatsoever source, handled by the treasurer. 1961 Op. Att'y Gen. No. 61-125.

**Amount of municipal treasurer's bond.** — Except in cases involving personal sureties, the bond of the municipal treasurer should be in a sum equal to 20% of the public moneys received by such treasurer during the preceding fiscal year, with a maximum of $50,000. 1961 Op. Att'y Gen. No. 61-125.

**Reduction of treasurers' bonds** is not impairment of contract with surety company, and such companies should not object thereto. 1924 Op. Att'y Gen. No. 24-3752.

**All moneys handled by state institutions are public funds and must be protected.** — All moneys coming into the hands of various boards of state institutions are to be protected and accurately accounted for by their officers as public funds, including tuition of the state military institute. 1931 Op. Att'y Gen. No. 31-278.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 63C Am. Jur. 2d Public Officers and Employees §§ 41 to 130.

62 C.J.S. Municipal Corporations §§ 336, 359; 81A C.J.S. States §§ 85, 91.

## 6-10-39. [Official bonds; payment of premiums; form.]

If any state, county, city or town officer or treasurer of any board in control required to give bond by the laws of this state, shall furnish such bond with an authorized surety company as surety thereon, the premium on such bond shall be paid by the state, in the case of state officers, and by the county, city or town in the case of county, city or town officers, and by the board in control in the case of their treasurers. Such bonds shall be in substantially the following form:

BOND

AMOUNT $ ......

Know all men by these presents, that we ......, of ..., as principal, and ......, as surety, are held and firmly bound unto the state of New Mexico, in the penal sum of ... dollars, lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the said ...... was on the ... day of ...... duly elected (or appointed) to the office of treasurer of ......:

NOW, THEREFORE, if the above bounden ...... shall, from the ...... day of ... well and faithfully perform all his duties as such treasurer during his term of office, and until his successor is elected or appointed, and qualified, and shall exercise all possible diligence and care in the collection of all money which it is his duty by law to collect and shall render true accounts of his office and his doings therein as required by law and pay over all moneys that may come into his hands by virtue of his said office, to the officers and persons authorized by law to receive the same and carefully keep and preserve all books and papers and other property appertaining to his office and deliver same to his successor in office when duly qualified, then this obligation to be void, otherwise to remain in full force and effect, provided however that the surety shall have the right to terminate its suretyship under this obligation by serving notice of its election so to do upon the ... thirty days prior to the date of such termination of suretyship, and thereafter the said surety shall be discharged from any liability hereunder for any default of the principal occurring after such termination of liability.

IN WITNESS WHEREOF, the said principal hath hereunto set his hand and seal and the said surety has caused this bond to be sealed with its corporate seal, attested by the signature of its attorney in fact, this ... day of ......, 19 ....

......................................................(Seal)
Principal
......................................................(Seal)
Surety

Approved

.....................

Acknowledgments of principal and surety.

In event of the giving of bonds with personal sureties the bond shall be substantially in the foregoing form.

**History:** Laws 1923, ch. 76, § 17; C.S. 1929, § 112-117; 1941 Comp., § 7-234; 1953 Comp., § 11-2-37.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material in the catchline was inserted by the compiler and is not part of the law.

**"Official bond" is one made payable to state** for its indemnification in case of wrongdoing on the part of the bonded person, and not one made payable to a private individual. *Keeter v. Board of Cnty. Comm'rs*, 1960-NMSC-070, 67 N.M. 201, 354 P.2d 135. 1963 Op. Att'y Gen. No. 63-60.

**Blanket position surety bond cannot be written to meet statutory bond** requirements of several county officials of a particular county in lieu of individual surety bonds by each of said county officials. 1961 Op. Att'y Gen. No. 61-33.

**County treasurer liable on official bond for embezzlement.** — If the county treasurer embezzles securities legally deposited with him for protection of public moneys, he is liable on his official bond which requires him faithfully to perform the duties of his office, including keeping of such securities. 1933 Op. Att'y Gen. No. 33-596.

**Liability for hiding investment losses.** — The law does not proscribe specifically the practice of "adjusted trading." However, engaging in adjusted trades for the purpose of hiding a loss is inconsistent with rendering a true account of the county's investments, and a county treasurer thus may be liable on his bond. 1988 Op. Att'y Gen. No. 88-11.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Liability on bond of public officer for loss of public funds due to insolvency of bank in which they were deposited, 155 A.L.R. 436.

Public officer's bond as subject to forfeiture for malfeasance in office, 4 A.L.R.2d 1348.

20 C.J.S. Counties § 100; 62 C.J.S. Municipal Corporations § 491; 81A C.J.S. States § 91; 87 C.J.S. Towns § 82.

## 6-10-40. Officials receiving consideration for placing loan or deposit; misusing funds; failure to deposit; penalty.

Any person holding the office of state treasurer or the office of treasurer of any county, city, town or board in control in this state or any public officer or employee having in his custody or under his control any public money, who directly or indirectly receives from any person or persons or body of persons, association or corporation for himself or otherwise than in behalf of the state, county, city, town or board in control, whose money is so in his custody or under his control, any reward, compensation or profit, either in money or other property or thing of value, in consideration of a loan to or a deposit with any such person or persons or body of persons, association or corporation, of any of the public money so in his custody or under his control, or in consideration of any other agreement or arrangement touching the use of the money or any part thereof or who shall use or permit the use of any of the money for any purpose not authorized by law or who shall willfully neglect or refuse to deposit the money in his custody as required by this act or shall willfully deposit the money in his custody in any bank, federally insured savings and loan association or federally insured credit union not qualified to receive it under the provisions of this act or in excess of the amount for which the bank, federally insured savings and loan association may have qualified shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars ($5,000) or by imprisonment for not more than ten years or both.

**History:** Laws 1923, ch. 76, § 18; C.S. 1929, § 112-118; 1941 Comp., § 7-235; 1953 Comp., § 11-2-38; Laws 1975, ch. 157, § 7; 1987, ch. 79, § 17.

### ANNOTATIONS

**Compiler's notes.** — The term "this act," which appears twice in this section, refers to Laws 1923, ch. 76, presently compiled as 6-1-1, 6-10-2, 6-10-3, 6-10-20, 6-10-29, 6-10-37 to 6-10-42, 6-10-44, 6-10-46, 6-10-47, 6-10-50, 6-10-52 to 6-10-54, 6-10-58 and 6-10-61 NMSA 1978.

**The 1987 amendment,** effective June 19, 1987, inserted "or federally insured credit union" following "federally insured savings and loan association" in the last third of the section and made minor changes in language throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 63C Am. Jur. 2d Public Officers and Employees §§ 369 to 376.

20 C.J.S. Counties § 142; 62 C.J.S. Municipal Corporations § 549; 81A C.J.S. States § 129; 87 C.J.S. Towns §§ 84, 88.

## 6-10-41. Suspense account unearned money; transfer.

All unearned moneys deposited in a suspense account with the state treasurer by any state officer or state agency shall, as soon as the same shall become the absolute property of the state of New Mexico, be transferred out of said suspense account to the proper fund by the warrant of the secretary of finance and administration based upon a voucher of the proper state official or agency, as the case may be.

Whenever it shall be finally determined that any moneys so deposited in a suspense account should be returned, repaid or refunded to the person, firm or corporation from whom the same were received, such moneys shall be paid out of the suspense account of the state treasurer upon a warrant drawn by the secretary of finance and administration based upon a voucher from the proper state official or agency, as the case may be.

**History:** Laws 1923, ch. 76, § 22; C.S. 1929, § 112-122; 1941 Comp., § 7-236; 1953 Comp., § 11-2-39; Laws 1977, ch. 247, § 108.

**ANNOTATIONS**

**Funds are not state property until deposited in state treasury.** — Where purchase price of state land was not deposited in state treasury, the money did not become the property of the state and the purchaser did not acquire an interest in the land. *Laguna Gatuna, Inc. v. U.S.* 50 Fed.Cl. 336 (2001).

**Constitutional provisions not applicable to suspense funds.** — New Mexico Const., art. IV, § 30 does not apply to suspense funds provided for in this section. 1930 Op. Att'y Gen. No. 30-66.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 63C Am. Jur. 2d Public Funds §§ 1, 3, 4; 72 Am. Jur. 2d States, Territories, and Dependencies §§ 75 to 86.

81A C.J.S. States § 226.

## 6-10-42. Authorizing fund transfers to address delays in revenue; restrictions.

The state board of finance shall have power when there is a shortage of money in the funds appropriated by the legislature for any purpose, due to delay in the collection of revenues provided therefor, to direct the transfer from any available fund in the state

treasury in which there may be a surplus over current requirements of a sufficient sum to meet the shortage, the same to be replaced as soon as possible from receipts of revenues for such purpose. A transfer from any available fund to the general fund may include an amount not to exceed fifty-five percent of the balance in the tax administration suspense fund.

It is unlawful for any state official or board or officer of any state institution or agency to borrow any money for or on behalf of the state or such institution or agency unless directly authorized by law.

**History:** Laws 1923, ch. 76, § 25; C.S. 1929, § 112-125; 1941 Comp., § 7-237; 1953 Comp., § 11-2-40; Laws 1987, ch. 132, § 1; 1988, ch. 50, § 1.

## ANNOTATIONS

**Cross references.** — For the tax administration suspense fund, *see* 7-1-6 NMSA 1978.

**The 1988 amendment,** effective May 18, 1988, added the last sentence in the first paragraph.

**The 1987 amendment,** effective June 19, 1987, rewrote the first paragraph and, in the second paragraph, substituted "is unlawful" for "shall be unlawful" and deleted "except as herein provided" following "agency."

**Transfer of funds may be made in emergency cases only, and must be repaid.** — One state department cannot transfer its funds or property for use of another, except that in emergency cases where there is a shortage of money in current funds, appropriated funds from one department may be used by another to defray current expenses, upon order of the state board of finance, to be repaid as soon as sufficient revenues are received by the latter department. 1931 Op. Att'y Gen. No. 31-04.

**Transfer or borrowing of funds for auditing by state.** — When an audit must be performed by the state comptroller and funds are not available in the public auditing fund to pay the cost thereof, an emergency exists and any shortage in that fund may be alleviated by the state board of finance by transferring or borrowing, as provided in this section. 1952 Op. Att'y Gen. No. 52-5615.

**Amounts needed in excess of appropriation must be taken care of through deficiency appropriation.** — Any amount necessary for transportation and extradition of prisoners in excess of the sum specifically appropriated cannot legally be set up into these accounts from the general appropriation act, but must be taken care of by a deficiency appropriation by the legislature. 1937 Op. Att'y Gen. No. 37-1668.

**Grants to wind-erosion districts may not be used for administrative purposes.** — The entire grant made to wind-erosion districts must be placed in the revolving fund, and no direct grant of any kind can be made by the regents for administrative purposes,

nor can the state board of finance allocate any of the grant for such purposes, nor any expenses for such purposes be paid by borrowing money by anticipating revenues from the two-mill levy, but they are payable out of the general funds of the county. 1937 Op. Att'y Gen. No. 37-1809.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 63C Am. Jur. 2d Public Funds § 4.

81A C.J.S. States § 133.

## 6-10-43. Interest and sinking-fund balances.

If a balance remains in an interest or sinking fund of any county, municipality, school district or other political subdivision after the retirement and payment in full of the bonded indebtedness for which the interest and sinking fund was created, upon request of the governing body in charge of the expenditure of the funds, the secretary of finance and administration may approve the transfer of the balance to the fund requested by the county, municipality, school district or other political subdivision. Any balance transferred under this section shall be used for nonrecurring expenditures only.

**History:** 1953 Comp., § 11-2-40.1, enacted by Laws 1971, ch. 105, § 1; 1977, ch. 247, § 109.

## 6-10-44. Temporary investment of excess funds; federal bonds or treasury certificates eligible.

If at any time the state treasurer, or the treasurer of any county, incorporated municipality or board in control has on hand more money than can be divided equitably and ratably among qualified depositories, such treasurer may, with the approval of the proper board of finance, temporarily invest such excess funds in United States bonds or treasury certificates under such rules and regulations as may be prescribed by the state board of finance.

**History:** Laws 1923, ch. 76, § 26; 1925, ch. 123, § 10; C.S. 1929, § 112-126; 1941 Comp., § 7-238; 1953 Comp., § 11-2-41; Laws 1975, ch. 211, § 4.

**ANNOTATIONS**

**Authority to invest.** — The words "with the approval of" establish an advice-and-consent relationship between the county treasurer and the board of finance with respect to investments in U.S. bonds or treasury certificates so that decisions concerning the investment of county funds in government securities are, in the first instance, a matter for the county treasurer. The county board of finance has no veto power, but does not have the power of choice itself. *Board of Cnty. Comm'rs v. Padilla*, 1990-NMCA-125, 111 N.M. 278, 804 P.2d 1097.

**Funds of contractors' licensing board must be deposited with state treasurer.** — The contractors' licensing board is created as a state agency whose funds must be deposited with the state treasurer. The board is not specifically authorized to invest its surplus funds, and all such funds must be handled by the state treasurer. 1953 Op. Att'y Gen. No. 53-5719.

## 6-10-44.1. Deposits in credit unions.

Notwithstanding the provisions of Sections 6-10-36 or 6-10-44 NMSA 1978 requiring equitable or ratable deposits in banks and savings and loan associations, a treasurer or board of finance, in its discretion may deposit its public money in one or more credit unions as long as each deposit is insured by an agency of the United States.

**History:** 1978 Comp., § 6-10-44.1, enacted by Laws 1987, ch. 79, § 18.

**ANNOTATIONS**

**Deposits in credit unions.** — Sections 6-10-36(D) and 6-10-44 NMSA 1978 do not give the county treasurer and the county board of finance co-equal powers with respect to deposits in federally insured credit unions. These sections do not alter with the relative authority of the county treasurer and the county board of finance as stated in 6-10-8 NMSA 1978. Sections 6-10-36(D) and 6-10-44.1 NMSA 1978 were intended to permit deposits in credit unions by treasurers and boards of finance of various public bodies, not just counties, leaving to other statutory provisions the question of the relative responsibilities of the two in making an investment decision. *Board of Cnty. Comm'rs v. Padilla*, 1990-NMCA-125, 111 N.M. 278, 804 P.2d 1097.

## 6-10-45. [Deposit of local funds with state treasurer to match allotments.]

The local governing authorities of counties, cities, towns and villages are hereby authorized to deposit with the state treasurer so much of their funds, within the limits of existing statutes, as may be necessary to match allotments of money to the state of New Mexico from public or private sources; provided, that said deposits with the state treasurer are expended entirely for the benefit of, and within the jurisdiction of, the counties, cities, towns and villages making such deposits.

**History:** Laws 1925, ch. 140, § 1; C.S. 1929, § 33-4601; 1941 Comp., § 7-239; 1953 Comp., § 11-2-42.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material in the catchline was inserted by the compiler and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 72 Am. Jur. 2d States § 77.

81A C.J.S. States § 155.

## 6-10-46. Disbursement of state funds; vouchers and warrants.

All payments and disbursements of public funds of the state shall be made upon warrants drawn by the secretary upon the treasury of the state based upon itemized vouchers in a form approved by the secretary.

**History:** Laws 1923, ch. 76, § 24; C.S. 1929, § 112-124; 1941 Comp., § 7-240; 1953 Comp., § 11-2-43; Laws 1957, ch. 252, § 6; 1977, ch. 247, § 110; 2003, ch. 273, § 15.

**ANNOTATIONS**

**The 2003 amendment,** effective July 1, 2003, substituted "in a form approved by the secretary" for "as provided by law" at the end.

**Funds from specific tax levies to be paid by state treasurer on orders of proper boards.** — Funds collected from special tax levies made for cattle, hogs, and sheep should be paid out upon warrants drawn by the state treasurer on orders of the respective boards. 1937 Op. Att'y Gen. No. 37-1661.

**There is no statutory provision for the invalidation of warrants** which have been duly issued and outstanding. The legislature has made specific provision for the situation in which a warrant duly issued and outstanding may be lost or destroyed, and the conditions under which a duplicate warrant may be issued in such situation. 1958 Op. Att'y Gen. No. 58-05.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 81A C.J.S. States § 226.

## 6-10-47. [Safekeeping and insurance of money and securities in state treasury; payment of cost.]

The state board of finance shall have power to contract for the safekeeping and insurance of all monies or securities in the state treasury, the cost of such safekeeping and insurance to be paid out of the interest on deposit fund upon warrants drawn by the state auditor.

**History:** Laws 1923, ch. 76, § 28; C.S. 1929, § 112-128; 1941 Comp., § 7-244; 1953 Comp., § 11-2-47.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material in the catchline was inserted by the compiler and is not part of the law.

## 6-10-48. Insolvency of depository institution; profit and loss account.

Whenever any state funds have been deposited with any depository institution of this state and the depository institution has or will become insolvent at the time the deposit of state funds or any part thereof remains on deposit in that institution and the state board of finance determines that all or any part of the deposit of state funds is uncollectible or the deposit or any part thereof has been rendered uncollectible by reason of compromise or settlement thereof by the state board of finance, under order of court, the state board of finance shall order the state treasurer to transfer the balances of the amounts so deemed to be uncollectible to a profit and loss account and to close the accounts upon his books, specifying in the order the amounts to be credited to the profit and loss account.

**History:** Laws 1929, ch. 67, § 1; C.S. 1929, § 13-1201; 1941 Comp., § 7-245; 1953 Comp., § 11-2-48; Laws 1987, ch. 79, § 19.

**ANNOTATIONS**

**The 1987 amendment,** effective June 19, 1987, substituted "any depository institution of this state and the depository institution" for "any banking institution of this state and such banking institution" and made minor changes in language throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 26A C.J.S. Depositaries § 12(4).

## 6-10-49. [Insolvency of banks; state funds; right to recover deposits not impaired.]

That the provisions of this act [6-10-48, 6-10-49 NMSA 1978], or action thereon by the state board of finance shall in no way prevent, interfere with or prejudice the right of the state of New Mexico to proceed with the collection of said amounts against the said depository or the sureties upon the bond of said depository nor shall the provisions of this act or actions thereunder by the said state board of finance, prevent, interfere with or prejudice the right of the said state board of finance to proceed with an action or actions to recover said amounts from said depository or the sureties upon the bond of said depository.

**History:** Laws 1929, ch. 67, § 2; C.S. 1929, § 13-1202; 1941 Comp., § 7-246; 1953 Comp., § 11-2-49.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material in the catchline was inserted by the compiler and is not part of the law.

**Prorating liability of depository bonds.** — Prorating of liability was ordered for depository bonds and public securities given by a bank subsequently insolvent. *Gregg v. Hinkle*, 1924-NMSC-030, 29 N.M. 576, 224 P. 1025.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 11 Am. Jur. 2d Banks §§ 1028 to 1143.

Right, in absence of statute, to preference in respect of deposits or public funds in insolvent bank, 103 A.L.R. 621.

Liability on bond of public officer for loss of public funds due to insolvency of bank in which they were deposited, 155 A.L.R. 436.

26A C.J.S. Depositaries § 13.

## 6-10-50. Loss of money deposited in qualified banks, savings and loan associations or credit unions; treasurers relieved of liability.

No treasurer is liable for the loss of public money deposited by him in any bank, savings and loan association or credit union qualified to receive it under the provisions of this article due to the failure of the depository to repay the money except in cases where the loss could have been avoided by the exercise of reasonable care on the part of the treasurer.

Nothing in this section shall be construed as relieving from liability any security given by any bank or savings and loan association under the provisions of this article.

**History:** Laws 1923, ch. 76, § 30; C.S. 1929, § 112-130; 1941 Comp., § 7-247; 1953 Comp., § 11-2-50; Laws 1981, ch. 332, § 16; 1987, ch. 79, § 20.

**ANNOTATIONS**

**The 1987 amendment,** effective June 19, 1987, inserted "or credit union" following "savings and loan association" near the middle of the first paragraph, substituted "this article" for "this act" in both places it appears and made minor changes in language throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 63C Am. Jur. 2d Public Officers and Employees § 348.

26A C.J.S. Depositaries § 12(4).

## 6-10-51. To cover all moneys lawfully intrusted to treasurers.

All moneys, whether belonging to the state of New Mexico or to any county thereof, or to any city, town, village, municipal school district, union high school district, independent rural school district, rural school district or to any other special or other

district, board of [or] institution, when lawfully in the possession or custody or under the control of the state treasurer, or of any county, city, town or village treasurer, or of any person acting as treasurer of any board in control, shall be considered to be moneys of and belonging to the state of New Mexico, or of the county, city, town, village or board in control for which such treasurer or person so in possession lawfully acts.

**History:** Laws 1933, ch. 175, § 11; 1941 Comp., § 7-248; 1953 Comp., § 11-2-51.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-10-52. [Failure to comply with specific requirements; penalty.]

Any person who shall willfully or knowingly fail to perform any act required, and as required by Section 2 [6-10-3 NMSA 1978] or Section 25 [6-10-42 NMSA 1978] hereof, or who shall commit any act in violation of either of said sections, shall be guilty of a felony and upon conviction shall be punished by a fine of not to exceed two thousand dollars ($2,000), or by imprisonment in the penitentiary for a term of not more than three years, or by both such fine and imprisonment.

**History:** Laws 1923, ch. 76, § 29; C.S. 1929, § 112-129; 1941 Comp., § 7-249; 1953 Comp., § 11-2-52.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-10-53. [Bribery of public treasurers and employees; penalty.]

Any person or persons who shall directly or indirectly pay or give, or offer to pay or give, to any one holding the office of state treasurer or the office of treasurer of any county, city or town, or board in control, in this state, or to any person or persons under such officer's direction for the profit of any such officer or other person or persons, any reward or compensation either in money or other property or thing of value, in consideration of a loan to or deposit with any such person or persons, or body of persons, association or corporation, of any public monies in the custody or under the control of such state treasurer, or the treasurer of any county, city or town, or board in control, or in consideration of any other agreement or arrangement touching the use of such monies or any part thereof, for any purpose not authorized by law, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine of not more than five thousand dollars [($5,000)] or by imprisonment for not more than ten years or both.

**History:** Laws 1923, ch. 76, § 31; C.S. 1929, § 112-131; 1941 Comp., § 7-250; 1953 Comp., § 11-2-53.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For bribery of public officer or employee, *see* 30-24-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 12 Am. Jur. 2d Bribery §§ 15 to 18.

11 C.J.S. Bribery §§ 15 to 19.

## 6-10-54. [Institutions exempted from paying over money to state treasurer; liability for failure to make authorized deposit.]

The several educational, charitable and penal institutions of the state shall be exempt from the provisions of Section 2 [6-10-3 NMSA 1978] of this act; provided, however, that any treasurer of the board in control of any such institution who shall fail, neglect or refust [refuse] to deposit all the funds, earned or unearned, of such institution in a qualified depository under an agreement to pay interest at the rate specified in Section 10 hereof on daily balances, shall be liable on his official bond for the amount of loss occasioned by the failure to so deposit such funds under an agreement to pay interest at such rate.

**History:** Laws 1923, ch. 76, § 23; 1925, ch. 123, § 9; C.S. 1929, § 112-123; 1941 Comp., § 7-251; 1953 Comp., § 11-2-54.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Laws 1923, ch. 76, § 10, which is referred to in this section, was repealed by Laws 1933, ch. 175, § 13. For present provision, *see* 6-10-35 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 81A C.J.S. States §§ 223, 224.

## 6-10-55. Short title.

This act [6-10-55 to 6-10-57 NMSA 1978] may be cited as the "Warrant Cancellation Act".

**History:** 1953 Comp., § 11-2-43.1, enacted by Laws 1963, ch. 233, § 1.

## 6-10-56. Definitions.

As used in the Warrant Cancellation Act:

A. "fiscal officer" means:

(1) for the state, the state treasurer, or, for all warrants issued by the department of finance and administration, the secretary of that department, or, for all warrants issued by agencies and institutions other than the department of finance and administration, the legally authorized disbursing officer of the agency or institution;

(2) for a county, the county treasurer;

(3) for a municipality, the municipal treasurer;

(4) for a school district, the legally authorized disbursing officer for the local board of education; and

(5) for a special district, the legally authorized disbursing officer; and

B. "warrant" means any warrant or check issued by the state, its agencies, institutions and political subdivisions.

**History:** 1953 Comp., § 11-2-43.2, enacted by Laws 1963, ch. 233, § 2; 1965, ch. 51, § 1; 1977, ch. 247, § 111.

## 6-10-57. Cancellation of warrants.

A. Whenever any warrant issued by the state, county, municipality, school district or special district is unpaid for one year after it becomes payable, the fiscal officer shall cancel it.

B. The fiscal officer shall keep a register of all canceled warrants. The register shall show the number, date and amount of each warrant, the name of the person in whose favor it was drawn, the fund out of which it was payable and the date of cancellation.

C. The face amount of each warrant canceled shall revert and be credited to the fund against which the warrant was drawn.

D. Warrants canceled under Subsection A of this section are void and the indebtedness evidenced thereby is extinguished, which is hereby declared to be an express condition of every contract under which state warrants are issued except that:

(1) the department of finance and administration may issue a new warrant on a voucher issued by the commissioner of revenue [director of the revenue division of the taxation and revenue department] if a claim for refund was approved under Section 7-1-

26 NMSA 1978, and if a warrant was issued and that warrant canceled under Subsection A of this section on or after January 1, 1970; and

(2) any fiscal officer may issue a new warrant for a canceled payroll warrant upon a voucher issued by the responsible employing authority certifying that the services for which the canceled payroll warrant had been issued were in fact rendered and that payment therefor had not been made, if:

(a) there is sufficient money in the fund from which the original payroll warrant was drawn to cover the new warrant; or

(b) if a suspense fund has been established in accordance with the provisions of Subsection E of this section and there is sufficient money in the suspense fund to cover the new warrant.

E. If any payroll warrant payable from an account which reverts at the end of a fiscal year to a general fund is canceled, the fiscal officer shall create a suspense fund in the amount of the total canceled payroll warrants and withhold that amount from reversion. Canceled payroll warrants shall be paid from the suspense fund.

F. Each warrant issued by the state, county, municipality or school district shall have printed on its face the words, "void after one year from date."

**History:** 1953 Comp., § 11-2-43.3, enacted by Laws 1963, ch. 233, § 3; 1971, ch. 29, § 1; 1977, ch. 123, § 1.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and it is not part of the law. The position of the commissioner of revenue, referred to in Subsection D(1), no longer exists. Laws 1977, ch. 249, § 5, abolished the bureau of revenue. Section 9-11-4 NMSA 1978 created the taxation and revenue department and the revenue division therein. Section 9-11-8 NMSA 1978 provided that each division in this department shall be headed by a "director."

**Subsection D means** that indebtedness as evidenced by the warrant alone is extinguished, and not the indebtedness provable by an underlying contract. 1980 Op. Att'y Gen. No. 80-15.

**Federal portion of money involved in canceled warrant** does not revert to state general fund. While certain outstanding warrants drawn against the vocational rehabilitation account should properly have been canceled under state law, because the services which they represented in fact cost the state nothing, the federal portion of the money in question was never the property of the state and should not have reverted to the general fund. 1964 Op. Att'y Gen. No. 64-04.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 804, 830; 72 Am. Jur. 2d States § 77.

20 C.J.S. Counties § 211; 64 C.J.S. Municipal Corporations § 1899; 79 C.J.S. Schools and School Districts § 351; 81A C.J.S. States § 242.

## 6-10-58. Signing checks for state funds.

From and after the taking effect of this act, all checks drawn against any funds in the hands of the state treasurer shall be signed by the state treasurer or his duly authorized deputy.

**History:** Laws 1923, ch. 76, § 27; C.S. 1929, § 112-127; Laws 1937, ch. 133, § 1; 1941 Comp., § 7-241; 1953 Comp., § 11-2-44.

**ANNOTATIONS**

**Compiler's notes.** — The phrase "after the taking effect of this act" means after March 9, 1923, the effective date of Laws 1923, Chapter 76.

## 6-10-59. Loss or destruction of state or political subdivision warrant or order for money; issue of duplicate.

In case of the loss or destruction of any warrant, draft, check or order for the payment of money out of the treasury of the state, or of any political subdivision of the state, the officer who drew the original instrument, or his successors in office, shall issue a duplicate as provided in Section 6-10-60 NMSA 1978.

**History:** Laws 1874, ch. 20, § 1; C.L. 1884, § 187; C.L. 1897, § 399; Code 1915, § 791; C.S. 1929, § 27-303; 1941 Comp., § 7-242; 1953 Comp., § 11-2-45; Laws 1965, ch. 50, § 1.

**ANNOTATIONS**

**State or county obligated to pay debt when warrant lost.** — Where a state or county warrant is issued in payment of a debt and that warrant is lost, the county or state is under some form of duty to pay the debt. 1956 Op. Att'y Gen. No. 56-6450.

**Lost warrants** must be issued in name of original payee. 1966 Op. Att'y Gen. No. 66-10.

**Owner of negotiable bond entitled to duplicate, but must pay cost of issuance.** — The owner of a negotiable bond or coupon is generally entitled to the issuance of a duplicate thereof, where he has satisfactorily shown by affidavit to the county issuing authority that such negotiable security has been in fact lost, mutilated or destroyed. The

claimant should pay the county the reasonable expense of issuing the duplicate. 1962 Op. Att'y Gen. No. 62-139.

**A municipality has an obligation to issue a duplicate check that was lost.** — Where the city of Las Cruces (city) issued a check in the year 2000 to a vendor for payment of services rendered, but where the vendor apparently lost the check, but discovered the uncashed check upon closing her business in 2009, and where the vendor returned the uncashed check to the city and requested that the city re-issue the check, the provisions of this section authorize the city to re-issue the check on the condition that, when the vendor requests the city to issue a duplicate check, she file an affidavit stating that the check was lost. Municipalities have an obligation regarding debts that they incur, and in this case, as long as the vendor was never paid for services rendered to the city, the obligation of the city has not ceased. *Legality of issuing a duplicate check in 2021 for a check that was originally issued, but never cashed, in the year 2000* (8/18/21), Att'y Gen. Adv. Ltr. 2021-06.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 20 C.J.S. Counties §§ 208 to 217; 64 C.J.S. Municipal Corporations §§ 1892, 1893; 79 C.J.S. Schools and School Districts §§ 346, 347; 81A C.J.S. States §§ 242, 243.

## 6-10-60. Issuance of duplicate; affidavit; bond to save state or political subdivision harmless.

A. If the original warrant, draft, check or order has not cleared the treasury of the state or the fiscal agent of any political subdivision of the state and a stop payment has been filed with the treasury or with the fiscal agent by the officer before any duplicate is issued as provided in Section 6-10-59 NMSA 1978, the party applying for the duplicate shall file with the officer an affidavit which shall state that the original warrant, draft, check or order has been lost or destroyed or was never received.

B. If the original warrant, draft, check or order has been paid by the treasurer before any duplicate is issued as provided in Section 6-10-59 NMSA 1978, the party applying for the duplicate shall file with the officer a bond payable to the state or political subdivision, as the case may be in a penalty in the amount of the original warrant, draft, check or order conditioned to save harmless the state or political subdivision from all loss in consequence of the loss of the original warrant, draft, check or order, and the issuing of the duplicate, if the loss to the state or political subdivision is a result of the fraud or negligence of the original payee or a holder in due course. If the bond is a personal surety bond, it shall be sufficient if:

(1) there is one surety for each bond for one hundred dollars ($100) and under, and there are two sureties for each bond over one hundred dollars ($100); no surety for any of these bonds may be proprietor as surety for his proprietorship or partner as surety for his partnership as principal; and

(2) each surety swears in writing that he owns real property in New Mexico having a net value equal to the amount of the bond, and that this net value is not exempt from execution and forced sale over and above all his just debts and liabilities.

**History:** 1953 Comp., § 11-2-46, enacted by Laws 1977, ch. 69, § 1.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1977, ch. 69, § 1, repealed 11-2-46, 1953 Comp., relating to issuance of duplicates and bond to save state or political subdivision harmless, and enacted the above section.

**Applicant for duplicate must file bond.** — If the last holder of the warrant is the party applying for issuance of the duplicate, the law provides that the party so applying is the one upon whom falls the burden of filing a satisfactory bond. 1953 Op. Att'y Gen. No. 53-5789.

**Bond mandatory before duplicate issued.** — The word "shall" is mandatory. Therefore, before a duplicate warrant, draft, check or order is issued by the state or a political subdivision thereof, the party applying for the duplicate must file a bond meeting the requirements of this section. 1968 Op. Att'y Gen. No. 68-39.

**Bond not required of federal government.** — Nothing in this section indicates an intention to include the federal government within its purview. Requirement of a bond from the United States government in these circumstances directly affects the relationship between this state and the federal government. In this area, general policy dictates that everything possible should be done to avert the placing of burdens by one upon the other. 1956 Op. Att'y Gen. No. 56-6450.

## 6-10-61. [Permanent fund investment laws not affected.]

Nothing in this act shall be construed to prevent the investment in such manner as may be provided by law, of any permanent funds of the state, or of any county, city, town or board in control in the state.

**History:** Laws 1923, ch. 76, § 32; C.S. 1929, § 112-132; 1941 Comp., § 7-252; 1953 Comp., § 11-2-55.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The term "this act," which appears in this section, refers to Laws 1923, ch. 76, presently compiled as 6-1-1, 6-10-2, 6-10-3, 6-10-20, 6-10-29, 6-10-37 to

6-10-42, 6-10-44, 6-10-46, 6-10-47, 6-10-50, 6-10-52 to 6-10-54, 6-10-58 and 6-10-61 NMSA 1978.

### 6-10-62. Destruction of documentary evidence of extinguished debt; certificates of destruction; retention.

A. When a debt in the form of a bond, note, certificate of indebtedness or interest coupon, incurred by the state, a state agency or institution, or by a political subdivision of the state (hereinafter called the "debtor agency"), has been extinguished by the full payment thereof, the documentary evidence of the debt may be destroyed. When the payment has been made by a bank, savings and loan association or other third-party paying agent, the bank, savings and loan association or other third-party paying agent shall forward to the governing authority of the debtor agency a certificate of destruction on which shall be specified:

(1) the number and maturity date of the bond, note, certificate or coupon;

(2) the date paid; and

(3) any other information required by the debtor agency. The debtor agency shall retain all such certificates of destruction for six years.

B. If the debtor agency is the paying agent, the bond, note, certificate of indebtedness or interest coupon shall be retained for a period of two years following payment, at which time the documentary evidence of the debt may be destroyed and a certificate of destruction prepared containing the same information as that required in Subsection A of this section. The certificate of destruction shall be retained by the debtor agency for six years.

**History:** 1953 Comp., § 11-2-75, enacted by Laws 1975, ch. 117, § 1; 1981, ch. 332, § 17.

### 6-10-63. Electronic fund transfers.

Notwithstanding any other provision of law, any public money may be transferred by means of electronic funds transfer between any public body and a public or private entity. The state board of finance shall adopt rules and regulations to carry out the purpose of this section.

**History:** 1978 Comp., § 6-10-63, enacted by Laws 1989, ch. 48, § 1.

## ARTICLE 11
## Acceptance and Disbursement of United States Funds

## 6-11-1. [Funds from forest reserves; acceptance.]

That the terms and conditions of the acts of congress providing for the distribution among the states and territories of the United States of a portion of the revenues derived from forest reserves be, and the same are hereby accepted.

**History:** Laws 1909, ch. 119, § 1; Code 1915, § 1350; C.S. 1929, § 33-5801; 1941 Comp., § 7-301; 1953 Comp., § 11-3-1.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The federal law providing for the distribution of a portion of the funds received from forest reserves (now national forests) is compiled as 16 U.S.C.S. § 500.

## 6-11-2. [Transmission of money to counties.]

The treasurer of the state of New Mexico shall transmit to the treasurers of the various counties in which forest reserves are situated, the proportion of money in his hands from the source mentioned which shall be due such county, such proportion to be based upon the number of acres of forest reserve in such county.

**History:** Laws 1909, ch. 119, § 2; Code 1915, § 1351; C.S. 1929, § 33-5802; 1941 Comp., § 7-302; 1953 Comp., § 11-3-2.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-11-3. Application of money to forest reserve school purposes fund and county road fund; expenditure upon roads; building of roads.

A. Money received under Section 6-11-2 NMSA 1978 shall be applied in the different counties to which it is transmitted as follows:

(1) one-half to the credit of the forest reserve school purposes fund, hereby created; and

(2) one-half to the credit of the county road fund.

B. One-half of the money accruing to any county and duly remitted to the county treasurer to be credited to the county road fund under Subsection A of this section may be expended by the board of county commissioners upon roads within forest reserves in those counties and upon those other roads in the counties deemed by the boards of county commissioners to be necessary or convenient to the public.

**History:** 1953 Comp., § 11-3-3, enacted by Laws 1978, ch. 128, § 2.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1978, ch. 128, § 2, repealed 11-3-3, 1953 Comp. (former 6-11-3 NMSA 1978), relating to application of money to forest reserve school purposes fund and county road fund, expenditure upon roads and building of roads, and enacted a new section.

**Method of distribution provided here is exclusive and must be followed,** and school districts of the county must share in the distribution according to that method whether or not forest land is located within their boundaries. 1955 Op. Att'y Gen. No. 55-6224 (decided under former law).

## 6-11-4. [Officer not to receive compensation; misapplication of funds; penalty; removal.]

No officer shall receive any compensation for the receipt, handling or disbursement of said funds, and any officer who shall apply said funds to any other purpose than the purpose mentioned in this article and in the acts of congress referred to, shall forfeit treble the amount so misapplied and shall be immediately removed from office.

**History:** Laws 1909, ch. 119, § 4; Code 1915, § 1353; C.S. 1929, § 33-5805; 1941 Comp., § 7-304; 1953 Comp., § 11-3-4.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-11-5. [Taylor Grazing Act funds; distribution.]

That all funds received by the state of New Mexico as its distributive share of the amount collected by the United States government under the provisions of the Act of Congress of June 28, 1934 (48 Stat. 1269) Public [Law] No. 482, 73rd Congress, known as the Taylor Grazing Act and any act amendatory thereof, shall be deposited with the state treasurer. Upon receipt of said money, including any such money as may now be on hand, the state treasurer shall ascertain from the records of the proper United States officers having the records of the grazing districts or lands from which such monies are derived the area of each such grazing district or lands, and the area of each thereof in

each county in which the same is located or into which it extends, and the amount of money so derived from each such grazing district or lands, and thereupon shall distribute to each of the counties of the state from such monies a sum equal to that proportion of the money derived from each grazing district or lands which the area of such district or lands within the county bears to the total area of such district or lands. If any grazing district shall lie partly in this state and partly in another, for the purpose of the computation and apportionment herein prescribed, the area thereof within this state shall be considered as one district.

**History:** Laws 1939, ch. 125, § 1; 1941 Comp., § 7-305; 1953 Comp., § 11-3-5.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For the Taylor Grazing Act, *see* 43 U.S.C. § 315 et seq.

**Injunction against expenditure of funds.** — A resident taxpayer of a county, on behalf of himself and others similarly situated, is entitled to an injunction against a board of county commissioners to prevent payment of moneys of the county under a contract in violation of a statute governing purchases involving expenditures in excess of $500, and requiring that such purchases be made from the lowest responsible bidder after advertisement for bids, though the moneys about to be expended were not realized under any process of taxation or through any collection from the taxpayers of the state or of the county, but came into the hands of the board by means of and through process set up by the Taylor Grazing Act, and under this section and 6-10-9 NMSA 1978. *Shipley v. Smith*, 1940-NMSC-074, 45 N.M. 23, 107 P.2d 1050, 131 A.L.R. 1225 .

**Section complies with intent of congress.** — This section complies with the intent of congress expressed in the Taylor Grazing Act, since conservation of soil and water, control of rodents and predatory animals, extermination of poisonous and noxious weeds and construction and maintenance of secondary roads within the county are a direct benefit to the county situated within the exterior boundaries of a grazing district. 1939 Op. Att'y Gen. No. 39-3135.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 3 Am. Jur. 2d Agriculture § 19 et seq.

Constitutionality and construction of state farm aid laws, 92 A.L.R. 768.

Federal and state agricultural adjustment acts, 92 A.L.R. 1482, 98 A.L.R. 1195, 102 A.L.R. 937, 114 A.L.R. 136.

3 C.J.S. Agriculture § 25 et seq.

## 6-11-6. [Farm and range improvement fund; approval of expenditures.]

All money so received by any county shall be placed in a special fund known and designated "the farm and range improvement fund" and shall be expended by the county as herein prescribed for the benefit of the county in the conservation of soil and water, the control of rodents and predatory animals and the extermination of poisonous and noxious weeds, the construction of dipping vats, spraying machines and other structures to control parasites on livestock, and for repair and maintenance of said vats, machines and structures and for the construction and maintenance of secondary roads. In the administration and expenditure of said special fund, the county commissioners shall seek the advice of and may cooperate with state and federal agencies and officials having knowledge of or engaged in activities similar to those for which said special fund may be expended as herein prescribed. Any payment made from said special fund shall first have the approval of the president of the New Mexico college of agriculture and mechanic arts [New Mexico state university], and shall be based on a voucher whereon the items and purposes of the proposed expenditure are stated in detail, and which shall bear in its face the written approval of the president of the New Mexico college of agriculture and mechanic arts [New Mexico state university], or the person who for the time being is performing the duties of that office; provided, however, that such approving officer may designate, by written designation, filed in the office of the county clerk, some person in the county to give, endorse and sign such approval in his name.

**History:** Laws 1939, ch. 125, § 2; 1947, ch. 57, § 1; 1941 Comp., § 7-306; 1953 Comp., § 11-3-6.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was added by the compiler and is not part of the law.

**Compiler's notes.** — The state school formerly known as the New Mexico college of agriculture and mechanic arts is now the New Mexico state university. *See* N.M. Const., art. XII, § 11.

**Cross references.** — For county roads, *see* 67-4-1 NMSA 1978 et seq.

For noxious weed control, *see* 76-7-1 NMSA 1978 et seq.

For rodent pests and predatory animals, *see* 77-15-1 NMSA 1978 et seq.

**Congress and legislature did not intend that use of money be restricted to range land or ranches.** — It was not the intent of congress in the Taylor Grazing Act, or of the legislature in this section, that the use of money for the purposes named therein should be limited to the range lands of the government being leased and from which the revenues are derived or to the individual ranches, but that it should be used for the

benefit of the whole county wherever needed in the county, even to the exclusion of the federal ranges if the use of the funds should be deemed more necessary elsewhere. Secondary roads mean roads other than state highways anywhere in the county. 1939 Op. Att'y Gen. No. 39-3165.

**Purchase of road machinery proper use of farm and range improvement fund.** — Since this section prescribes that the farm and range improvement fund shall be expended for certain purposes including the construction and maintenance of secondary roads, in complying with it, the purchase of some road machinery for the purpose of improving secondary roads would be a proper expenditure by the county. 1939 Op. Att'y Gen. No. 39-3088.

**Funds may be used to maintain central office for three grazing districts.** — Whereas a central office for three grazing districts would help materially in furthering the objectives of this section, a portion of the moneys in the farm and range improvement fund may legally be used in maintaining such a district grazing office. 1946 Op. Att'y Gen. No. 46-4930.

**Responsibility for the administration of the moneys rests squarely upon the county commissioners.** — State and federal officials connected with the class of work mentioned in this section may outline and recommend procedure for the county commissioners, but it rests within the sound discretion of the latter whether they should follow such program. The only limitation on the commissioners is that the money must be expended in carrying out one or more of the purposes mentioned in this section. 1940 Op. Att'y Gen. No. 40-3446.

**President of New Mexico state university cannot refuse approval of vouchers for proper use of money.** — Since no moneys can be paid by the county treasurer from the fund established by this section, except on vouchers approved by the president of New Mexico state university, or by some person selected by him in writing, and since the responsibility for the administration of the fund is left to the county commissioners, it is clear that the legislature contemplated that said president would act in the capacity of an auditing official for the fund. But so long as the money is expended in the conservation of soil and water, the control of rodents and predatory animals, the extermination of poisonous and noxious weeds or the construction and maintenance of secondary highways, said president or his representative cannot refuse approval of vouchers listing the items and purposes of the proposed expenditure in detail. 1940 Op. Att'y Gen. No. 40-3446.

## 6-11-7. Short title.

This act [6-11-7 to 6-11-9 NMSA 1978] may be cited as the "Public Works Grant-in-Aid Act."

**History:** Laws 1979, ch. 307, § 1.

## 6-11-8. Public works grant-in-aid fund.

There is created in the state treasury the "public works grant-in-aid fund."

**History:** Laws 1979, ch. 307, § 2.

## 6-11-9. Administration; limitations.

A. The secretary of the department of finance and administration shall administer the public works grant-in-aid fund and shall process all applications for grants from that fund. Grants may be made from the fund for the purpose of meeting the state matching requirement in public works projects in accordance with the provisions of Section 304, Title 3 of the federal Public Works and Economic Development Act of 1965, as amended.

B. The commerce and industry department shall develop standards and criteria for awarding grants for public works projects for the approval of the governor. Incorporated municipalities or counties sponsoring projects of unincorporated communities, including, but not limited to, Indian communities, shall be entitled to receive funds from the public works grant-in-aid fund. Projects proposed must be in accordance with the provisions of the federal Public Works and Economic Development Act of 1965, as amended. All terminology contained in that act relating to nonprofit organizations shall be disregarded as such entities are not eligible for state financial assistance.

**History:** Laws 1979, ch. 307, § 3; 1983, ch. 296, § 22.

**ANNOTATIONS**

**Cross references.** — For public works contracts, *see* 13-4-1 NMSA 1978 et seq.

For Section 304, Title 3 of the federal Public Works and Economic Development Act of 1965, *see* 42 U.S.C. § 3153. For the act generally, *see* 42 U.S.C. § 3121 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64 Am. Jur. 2d Public Works and Contracts §§ 2, 3.

# ARTICLE 12
# State Indebtedness

## 6-12-1. [Borrowing or investing permanent funds to pay interest on state bonds.]

The state treasurer is authorized by this article [6-12-1, 6-12-2 NMSA 1978] in order to provide for the prompt payment of interest on the bonded indebtedness of the state,

to borrow money upon the best terms possible, but at a rate of interest not to exceed six percent, and for the shortest practicable time, in quantity sufficient to pay any interest as it accrues, whenever the money in the state treasury, applicable to such payment is insufficient to meet interest coupons as they mature, unless there should be in any one or more of the funds in which are placed the proceeds of the administration of public lands donated to the territory or state of New Mexico by congress, money which is not needed for immediate use for the purposes for which such lands were donated and which is to be invested in accordance with the requirements of the acts of congress and of the constitution, or funds in the permanent school fund, in which case the state treasurer may invest so much of such fund, or funds, as may be necessary for the purpose of meeting the interest-bearing obligations, in an interest-bearing obligation to be executed by him, the interest thereon to run until both principal and interest can be paid back to the fund or funds from which it may have been borrowed.

**History:** Laws 1913, ch. 45, § 1; Code 1915, § 4582; C.S. 1929, § 109-302; 1941 Comp., § 7-501; 1953 Comp., § 11-5-1.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The term "this article," referred to near the beginning of this section, appears in Code 1915, § 4582, and refers to Article III of Chapter XCI of that code. That article consisted of §§ 4581 and 4582, which are presently compiled as 6-12-1 and 6-12-2 NMSA 1978.

**Cross references.** — For destruction of documentary evidence of extinguished debt, *see* 6-10-62 NMSA 1978.

For the Short-Term Cash Management Act, *see* Chapter 6, Article 12A NMSA 1978.

**Authority to borrow.** — The state treasurer is authorized by this act (article) to borrow money for the payment of interest on bonds for the benefit of a territorial county. This is a debt of the state assumed in N.M. Const., art. IX, § 1. 1913 Op. Att'y Gen. No. 13-1095.

**Transfer may be made from one fund to another** to meet interest on state debts. 1914 Op. Att'y Gen. No. 14-1367.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64 Am. Jur. 2d Public Securities and Obligations § 375.

81A C.J.S. States §§ 213, 214, 261.

## 6-12-2. Certificates of indebtedness and interest; treasurer may borrow to pay.

Whenever the money in the funds is insufficient to meet the outstanding certificates of indebtedness and interest coupons as they mature, it shall be the duty of the state treasurer to borrow temporarily a sufficient sum to make such payment, and for such purposes the said treasurer is hereby authorized and empowered to make and negotiate the necessary loan on the best terms obtainable, at a rate of interest not to exceed six per centum per annum; provided, that any surplus money in the interest on deposits fund and any surplus of any other fund on hand not otherwise appropriated shall be first used to pay said deficit before borrowing money to make such payments. The secretary of finance and administration shall countersign any and all necessary papers for the negotiation of such loan, and charge the proceeds to the treasurer, and the treasurer shall redeem such paper out of the interest fund whenever there shall be money in such fund available.

**History:** Laws 1913, ch. 83, § 1; Code 1915, § 4581; C.S. 1929, § 109-301; 1941 Comp., § 7-502; 1953 Comp., § 11-5-2; Laws 1977, ch. 247, § 133.

**ANNOTATIONS**

**Compiler's notes.** — This section was a proviso to § 1 of the 1913 Appropriation Act, and the reference to "the funds" in the first clause evidently referred to the appropriation for payment of interest on the bonded indebtedness and for interest and principal on certificates of indebtedness for 1909 and 1912 which preceded it.

**Authority to pay interest on county bonds.** — The state treasurer is authorized to pay interest on Grant county bonds, as a part of the state indebtedness under this section. 1913 Op. Att'y Gen. No. 13-1014.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 81A C.J.S. States §§ 213, 214, 261.

## 6-12-3. Repealed.

**History:** 1941 Comp., § 7-503, enacted by Laws 1941, ch. 172, § 1; 1953 Comp., § 11-5-3; 1978 Comp., § 6-12-3, repealed by Laws 2004, ch. 73, § 1.

**ANNOTATIONS**

**Repeals.** — Laws 2004, ch. 73, § 1 repealed 6-12-3 NMSA 1978, as enacted by Laws 1941, ch. 172, § 1, relating to bonds, debentures and certificates of indebtedness authorized in 1941 and investment of the state's permanent funds, effective May 19, 2004. For provisions of former section, *see* the 2003 NMSA 1978 on *NMOneSource.com.*

## 6-12-4. [Public sale of securities.]

Such bonds, debentures and certificates shall, notwithstanding the provisions of any other law, bear the lowest rates of interest obtainable but not exceeding four percent per annum, and shall be sold for not less than par and accrued interest; and if sold to persons other than the state treasurer shall be sold for cash and only to the bidder or bidders offering the highest price, not less than par and accrued interest, or offering to purchase the same at par and accrued interest, or offering to purchase said debentures at par and accrued interest at the lowest rate of interest, and only after advertising the time and place of sale by notice published for two consecutive weeks in one newspaper published in the city of Santa Fe, New Mexico, and one newspaper published in the city of New York, the first publication to be not less than fifteen days prior to the date of sale.

**History:** 1941 Comp., § 7-504, enacted by Laws 1941, ch. 172, § 2; 1953 Comp., § 11-5-4.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64 Am. Jur. 2d Public Securities and Obligations §§ 202 to 203.

## 6-12-5. [Application of act.]

The provisions of this act [6-12-4, 6-12-5 NMSA 1978] shall be applicable to the bonds, debentures or certificates of indebtedness which have been or may be authorized by the fifteenth legislature to be issued by the state of New Mexico, the New Mexico insane asylum [Las Vegas medical center], the 1941 compilation commission, the state office building commission of New Mexico, the New Mexico normal university [New Mexico highlands university] and other state institutions.

**History:** 1941 Comp., § 7-505, enacted by Laws 1941, ch. 172, § 3; 1953 Comp., § 11-5-5.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. An amendment to N.M. Const., article XIV § 1, adopted September 20, 1955, changed the name of the New Mexico insane asylum to the New Mexico state hospital. The New Mexico state hospital is now known as the Las Vegas medical center. *See* 23-1-13 NMSA 1978.

The state school formerly known as the New Mexico normal university is now the New Mexico highlands university. *See* N.M. Const., art. XII, § 11. As to bonds, debentures or certificates of indebtedness of the university, *see* §§ 21-3-13 to 21-3-28 NMSA 1978.

**Compiler's notes.** — The state office building commission was created by Laws 1941, ch. 62, § 3 (compiled as 6-216, 1941 Comp.). That act was ruled unconstitutional in State Office Bldg. Comm'n v. Trujillo, 1941-NMSC-051, 46 N.M. 29, 120 P.2d 434.

## 6-12-6. State refunding bonds; authorized; purpose.

The state treasurer may, with the approval of the state board of finance, issue bonds in such form as the state treasurer shall determine to be designated refunding bonds for the purpose of refunding any of the bonded indebtedness of the state now existing or hereafter created which has or may hereafter become due and payable at the option of the state or by consent of the bondholders or by any lawful means and for the payment or redemption of which there are insufficient funds available in the state treasury.

**History:** Laws 1935, ch. 4, § 1; 1941 Comp., § 7-506; 1953 Comp., § 11-5-6; Laws 1983, ch. 265, § 23.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64 Am. Jur. 2d Public Securities and Obligations § 38.

81A C.J.S. States § 259.

## 6-12-7. Refunding bond issuance; procedure.

Whenever the state treasurer deems it expedient to issue refunding bonds under the provisions of Sections 6-12-6 through 6-12-14 NMSA 1978, he shall present to the state board of finance in writing a statement of the outstanding bonds proposed to the [be] refunded, setting out in full and in detail in the statement all data and information necessary to a full and clear understanding of the proposal to refund, whereupon the state board of finance if it considers the proposal to be in the best interest of the state and elects to act favorably upon it shall adopt a resolution which shall be recorded in its permanent records, which resolution shall set out the facts making the issuance of the refunding bonds necessary or advisable, the determination of the necessity or advisability by the board and the amount of the refunding bonds which it is deemed necessary and advisable to issue. The resolution shall fix the rate of interest on the refunding bonds, the dates of the refunding bonds, the denomination or denominations thereof, the maturity dates which shall not be more than twenty years from the date of the refunding bonds, the place or places of payment within or without the state of both principal and interest and shall further set out in full the form of the refunding bonds and coupons, if any; provided that where bonds are issued to refund existing and outstanding bonds which may be redeemed prior to their maturity, as set out in the

bonds to be refunded, the date of maturity of those refunding bonds shall not extend beyond the date of final maturity of the bonds to be so refunded.

In the event bonds which may be redeemed prior to their maturity are to be called for refunding prior to their maturity date, the state treasurer shall call the bonds for payment on the dates, under the conditions and in the manner provided in the bonds.

**History:** Laws 1935, ch. 4, § 2; 1941 Comp., § 7-507; 1953 Comp., § 11-5-7; Laws 1983, ch. 265, § 24.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-12-8. Refunding bonds; formal requisites; registration.

All refunding bonds issued under Sections 6-12-6 through 6-12-14 NMSA 1978 shall recite the title of the act under which they are issued, shall, except for bonds issued in book entry or similar form without the delivery of physical securities, be executed in the name of the state, signed by the governor, attested by the secretary of state under the seal of the state and countersigned by the state treasurer and shall be registered by the state auditor or other authorized registrar in a book or other record to be kept by the state auditor or such other authorized registrar for that purpose, which book or other record shall state the date, number, amount and maturity of each bond. The interest accruing on the refunding bonds shall be payable semiannually and may be evidenced by semiannual interest coupons attached, bearing the facsimile signature of the state treasurer in office at the time the bonds and coupons are prepared and ordered to be engraved or lithographed and, when so executed, such coupons, if any, shall be the binding obligation of the state according to their import. The refunding bonds may also be in registered or other form as provided in the Supplemental Public Securities Act [6-14-8 to 6-14-11 NMSA 1978], as hereinafter amended and supplemented.

**History:** Laws 1935, ch. 4, § 3; 1941 Comp., § 7-508; 1953 Comp., § 11-5-8; Laws 1983, ch. 265, § 25.

**ANNOTATIONS**

**Cross references.** — For facsimile signatures of public officials, *see* 6-9-1 NMSA 1978 et seq.

## 6-12-9. [Manner of payment of principal and interest; maturity in annual installment; schedule of maturities.]

Both principal and interest of said bond[s] shall be payable in lawful money of the United States, at the office of the state treasurer, or at such other place as may be

designated in said bonds and in the coupons attached thereto, at the option of the holder. The principal of said bonds shall be made to mature in annual installments, to begin not later than two years from the date of said bonds.

The state board of finance shall, by resolution duly adopted, fix the schedule of maturities of principal to the end that total annual principal and interest requirements shall be approximately equal in each year when any of the said bonds mature, except that the total requirement for principal and interest in the last year in which any of said bonds mature, may exceed the average of the annual requirements for principal and interest in prior years during which bonds mature, by not exceeding twenty-five percent.

**History:** Laws 1935, ch. 4, § 4; 1941 Comp., § 7-509; 1953 Comp., § 11-5-9.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-12-10. [Validity.]

The said bonds signed, countersigned, endorsed and sealed as provided in this act [6-12-6 to 6-12-14 NMSA 1978], and coupons thereto attached, when sold, shall constitute a valid and binding obligation upon the state of New Mexico, although the sale thereof be made at a date or dates after the persons so signing, countersigning and endorsing same shall have ceased to be the incumbents of their respective offices.

**History:** Laws 1935, ch. 4, § 5; 1941 Comp., § 7-510; 1953 Comp., § 11-5-10.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-12-11. [Exchange for bonds to be refunded; sale; disposition of proceeds.]

All such refunding bonds may be exchanged dollar for dollar for the bonds to be refunded, or they may be sold as directed by the state board of finance, and the proceeds thereof shall be applied only to the purpose for which said refunding bonds were issued. When refunding bonds are sold the proceeds shall be deposited in the proper sinking fund, and the state treasurer shall immediately transfer the same to the bank in the city of New York, state of New York, designated as paying agent of the issue maturing or called for redemption prior to maturity, to be held by such bank and to be applied solely to the payment of the principal of and matured interest upon the bonds maturing or called for payment prior to maturity; provided, that any such funds remaining in the bank in the city of New York, state of New York, named as paying

agent, at the expiration of two years from the date fixed by the call as date of payment of said bonds shall be returned to the state treasurer and by him held in a special fund for such purposes.

**History:** Laws 1935, ch. 4, § 6; 1941 Comp., § 7-511; 1953 Comp., § 11-5-11.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-12-12. [Irrepealable contract; irregularities and defects waived; tax exemption.]

The provisions of this act [6-12-6 to 6-12-14 NMSA 1978] shall constitute an irrepealable contract with the holders of any of the bonds and coupons issued pursuant to this act, for the faithful performance of which the full faith and credit of the state of New Mexico is hereby pledged. The bonds issued under this act and the coupons thereto attached shall have all the qualities of negotiable paper under the Uniform Commercial Code [Chapter 55 NMSA 1978], except that bonds, with attached coupons, issued prior to the passage of that code shall have the qualities of negotiable paper under the existing law at the time of issue. Bonds issued under this act and the attached coupons shall not be invalid for any irregularity or defect in the proceedings for the issue and sale thereof, and shall be incontestable in the hands of bona fide purchasers or holders thereof for value. All bonds issued under the provisions of this act shall be exempt from taxation.

**History:** Laws 1935, ch. 4, § 7; 1941 Comp., § 7-512; 1953 Comp., § 11-5-12; Laws 1961, ch. 96, § 11-102.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-12-13. [Tax levy for payment; continuance of levies for bonds to be refunded; application of receipts.]

To provide for the payment of the interest and principal of any bonds issued pursuant to the provisions of this act [6-12-6 to 6-12-14 NMSA 1978], the state tax commission [property tax division of the taxation and revenue department] is hereby authorized and directed during each year any of said bonds shall be outstanding to levy on all property in the state of New Mexico which is subject to taxation for state purposes, an annual ad valorem tax sufficient to produce an amount equal to the interest and principal requirements of that year, to be levied, assessed and collected at

the same times and in the same manner that other taxes for state purposes are levied, assessed and collected, and provided that the provisions contained in any statute authorizing the issuance of bonds which are refunded by the issuance of bonds under this act and which direct the levy of taxes on any particular property or in any particular manner for the payment of the bonds so refunded, shall not be repealed by the provisions of this act, and any refunding bonds issued to refund such bonds shall be payable from taxes to be levied, assessed and collected in the manner above set forth, in addition to which any other taxes now pledged for the payment of outstanding bonds to be refunded hereunder, shall continue to be pledged for the payment of the refunding bonds authorized to be issued by this act, in the manner provided in the statutes authorizing the issuance of the bonds refunded, and provided further, that the refunding bonds issued under the provisions of this act shall in any event be obligations for the payment of which the full faith and credit of the state of New Mexico are pledged.

**History:** Laws 1935, ch. 4, § 8; 1941 Comp., § 7-513; 1953 Comp., § 11-5-13.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1970, ch. 31, § 3 (repealed by Laws 1974, ch. 92, § 34) transferred the authority, powers and duties of the state tax commission to the property appraisal department, and Laws 1973, ch. 258, § 3, transferred the functions of the property appraisal department to the property tax department. However, Laws 1977, ch. 249, § 5, abolished the property tax department, and Laws 1977, ch. 249, § 4, established the property tax division of the taxation and revenue department. *See* 7-2-2 and 9-11-4 NMSA 1978.

## 6-12-14. [Bonds surrendered for refunding; entries; destruction.]

Upon the surrender of any bonds refunded under the provisions of this act [6-12-6 to 6-12-14 NMSA 1978], there shall be entered on the records of the state auditor the fact of such surrender and the number, amount, date and character of the bonds so surrendered; and such bonds shall be destroyed by the state board of finance and the fact of such destruction shall be likewise entered on such record.

**History:** Laws 1935, ch. 4, § 9; 1941 Comp., § 7-514; 1953 Comp., § 11-5-14.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Refunded or redeemed bonds in agency's possession should be surrendered** to the state auditor as hereinbefore specified, and the bonds destroyed by the state finance board (state board of finance) as herein provided, the fact of such destruction being entered in the records of the board of finance. 1953 Op. Att'y Gen. No. 53-5780.

## 6-12-15. State bond guarantee fund; creation; purposes.

A. There is created within the state treasury the "state bond guarantee fund". The fund is established as an additional source for payments of principal and interest due on state general obligation indebtedness already incurred or incurred in the future or for payments of any other obligations arising in connection with that indebtedness. The fund shall be drawn upon only in the event ad valorem taxes or other revenues of the state available for the described payments are either insufficient or are not received by the state at the time due or anticipated.

B. If it is determined by the department of finance and administration or the state treasurer that there are insufficient ad valorem taxes or other state revenues to meet a payment of principal or interest due on state general obligation indebtedness or to meet any other obligation arising in connection with that indebtedness lawfully payable from ad valorem taxes, or that the receipt of ad valorem taxes or other revenues to be used to make any such payment will be delayed and not be available to make the payment when due, the department of finance and administration or the state treasurer may request the state board of finance to direct a temporary transfer of a sufficient amount of money from the general fund operating reserve, or any other available fund in the state treasury in which there may be a surplus over current requirements, to the state bond guarantee fund so that the payment becoming due may be made and a default avoided. If such a transfer is directed by the state board of finance, the state treasurer shall use the amount transferred to the state bond guarantee fund to make the payment. The amount transferred to the state bond guarantee fund shall be repaid to the fund from which transferred from ad valorem taxes or other revenues of the state that are available for the repayment and which are not otherwise required for subsequent payments of state general obligation indebtedness.

C. Nothing in this section prevents the application of any other funds of the state available for that purpose to the payment of general obligation indebtedness of the state or other obligations arising in connection with that indebtedness.

**History:** Laws 1989, ch. 124, § 1.

## Appendix A to Article 12

**Appendix A to Article 12. General Obligation Bonds**

The following laws have authorized the issuance of general obligation bonds in the specified amounts for the specified purposes.

Laws 1953, ch. 159: $4,500,000, state building and state institution bonds for constructing, improving, and equipping buildings for the state, state agencies, state departments and state institutions, not including political subdivisions.

Laws 1959, ch. 315: $8,000,000, state educational institution bonds for erecting, constructing and equipping buildings of certain state educational institutions and the purchase of land for those institutions.

Laws 1963, ch. 228: $8,000,000, state educational institution bonds for erecting, constructing, purchasing, and equipping buildings, land, and utility facilities for certain state educational institutions.

Laws 1965, ch. 238: $6,000,000 in 1967, $8,000,000 in 1969, $9,500,000 in 1971, $9,000,000 in 1973, and $10,000,000 in 1975, state educational institution bonds for erecting, constructing, purchasing, and equipping buildings, land, and utility facilities of the state educational institutions.

Laws 1972, ch. 13: $2,000,000 in 1973, $2,000,000 in 1974, $2,000,000 in 1975, $2,000,000 in 1976, and $2,000,000 in 1977, state educational institution library bonds for providing funds for capital expenditures of the libraries at state educational institutions.

Laws 1984 (S.S.), ch. 6: $64,000,000, educational bonds for capital expenditures at certain state educational institutions and certain post-secondary and public schools.

Laws 1988 (S.S.), ch. 2: capital projects general obligation bonds, $50,550,000 for educational capital improvement and acquisition, $425,000 for land acquisition to the energy, minerals and natural resources department, $1,155,000 for senior citizens' facilities, and $1,525,000 for purchase of books and audio-visual materials for public libraries.

Laws 1990, ch. 133: capital projects general obligation bonds, $45,720,000 for state public educational capital improvements and acquisitions, $625,000 for land acquisition and planning for a new state library, $775,000 for acquisition and improvement of an additional building for the New Mexico museum of natural history, $225,000 for acquisition of unique and ecologically significant habitat lands for rare or endangered species, $275,000 for expansion of the convention center at Red Rock state park, and $1,925,000 for senior citizens' facilities.

Laws 1992, ch. 103: capital projects general obligation bonds, $2,841,700 for senior citizens' facilities, $76,923,700 for state public educational capital improvements, $2,050,000 for hardware, software and equipment for statewide automation of the district and magistrate courts, $1,550,000 to purchase and renovate a building for the New Mexico museum of natural history and to purchase books and audio-visual material for public libraries, $825,000 for health facility improvements and acquisition, $3,050,000 for water rights capital improvements and acquisition in the Pecos river basin, $2,050,000 for construction and modification of wastewater facilities, $1,550,000 for rehabilitation of state parks, and $1,550,000 for state fair renovation and improvements.

Laws 1994, ch. 142: capital projects general obligation bonds, $3,704,732 for senior citizens' facility improvements, $61,251,200 for state public educational improvements and acquisitions, $2,530,000 for public library acquisitions, and $730,000 for hospital equipment acquisition.

Laws 1996, ch. 6, § 3, as amended by Laws 2003, ch. 306, § 8: $1,000,000, for the purpose of financing information and communication equipment, including computer hardware and software, for the department of insurance.

Laws 1996, ch. 13: capital projects general obligation bonds, $2,544,105 to the state agency on aging for senior citizen facility construction, equipment and improvements, $58,861,337 for public educational capital improvements and acquisitions, $915,105 for state fairgrounds renovations and improvements, $5,025,000 for juvenile correctional and rehabilitative facilities, and $1,015,105 for land acquisition for Petroglyph national monument.

Laws 1998, ch. 87: capital projects general obligation bonds, $6,180,100 to the state agency on aging for senior citizen facility improvements, $72,857,000 for public educational capital improvements and acquisitions, $600,000 to the energy, minerals and natural resources department, for ecologically significant land acquisition, $1,000,000 to the office of cultural affairs for the El Camino Real international heritage center, and $2,225,000 for the state's radio communications system upgrade.

Laws 2000 (2nd S.S.), ch. 21: $5,669,967 to the state agency on aging for senior citizen facility improvements and acquisitions, $58,100,000 for state public educational capital improvements and acquisitions, and $23,144,000 for state facilities and equipment.

Laws 2002, ch. 93: $10,703,668 to the state agency on aging for senior citizen facility improvements and acquisitions, $93,177,707 for state public educational capital improvements and acquisitions, $15,980,000 to the office of cultural affairs for public library acquisitions, $6,500,000 for state facilities improvement and equipment, and $13,011,000 to the office of the state engineer for water projects.

Laws 2004, ch. 117: $6,063,000 to make capital expenditures for certain senior citizen facility improvements and construction projects; $94,892,000 to make capital expenditures for certain higher educational capital improvements; $16,315,000 to make capital expenditures for public library acquisitions; and $5,100,000 kindergarten classroom construction and renovation bonds to make capital expenditures for certain construction and renovation projects.

## Appendix B to Article 12

### Appendix B to Article 12. Revenue Bonds

The following laws have authorized the issuance of revenue bonds for projects other than state institutions or state roads and highways in the specified amounts for the specified purposes.

Laws 1929, ch. 4: in amounts to be determined, debentures for reimbursement of Grant, Luna, Hidalgo, and Santa Fe counties and Silver City of principal and interest on bonds issued by those localities.

Laws 1941, ch. 7: $750,000, certificates of indebtedness to provide for cooperation with the federal government in matters relating to national defense involving the state.

Laws 1961, ch. 127: $1,250,000, voting machine bonds for the voting machine finance fund.

Laws 1964 (1st S.S.), ch. 10 (as amended by Laws 1967, ch. 142, § 1): $550,000, motor boat fuel revenue bonds for construction, improvement, and furnishing of boating and related facilities.

Laws 1964 (1st S.S.), ch. 18 (as amended by Laws 1968, ch. 47, §§ 1-4 and by Laws 1976 (S.S.), ch. 52): $2,000,000, game and fish bonds for fish hatcheries and rearing facilities, habitat acquisition, development and improvement projects and other similar capital outlay projects.

Laws 1964 (1st S.S.), ch. 20: $800,000, debentures for acquiring, constructing, improving, furnishing, and improving buildings and land for use by the Supreme Court, other state courts, the administrative office of the courts, Supreme Court law library, and department of justice.

Laws 1965, ch. 280: in amounts to be determined, state park and recreation bonds for developing, operating, and maintaining state parks.

Laws 1993, ch. 367, § 73, as amended by Laws 1994, ch. 91: $3,500,000, finance authority revenue bonds for a new building for the Workers' Compensation Administration.

Laws 1995, ch. 214, § 2: $50,000,000 to the department of corrections for purposes specified in Paragraphs (1) and (2) of Subsection B of 33-1-17 NMSA 1978.

Laws 1996, ch. 41, § 9: $8,500,000, finance authority revenue bonds for financing court automation systems.

Laws 1996, ch. 52, § 3: $25,000,000, finance authority revenue bonds for the wastewater facility construction loan fund, the rural infrastructure revolving loan fund, and the solid waste facility grant fund.

Laws 1997, ch. 125: authorizing the issuance of New Mexico Finance Authority revenue bonds for financing the taxation and revenue information management systems project, not to exceed $33,709,800.

Laws 1997, ch. 178, § 1: one time revenue bonds for repairing, remodeling, constructing and equipping the New Mexico state library and for relocation-associated renovations in the state capitol of $10,155,000.

Laws 1999, ch. 180, § 1: amending Laws 1996, ch. 41, § 9 to provide after July 1, 1999, an additional amount not exceeding $3,500,000 for the purpose of financing court automation systems, including acquisition, development and installation of computer hardware and software, for the administrative office of the courts.

Laws 1999, ch. 192, § 1: amending Laws 1997, ch. 125, § 12 by additionally authorizing the New Mexico finance authority to make an interim cash loan in an amount not to exceed $5,000,000 to the taxation and revenue department to implement the taxation and revenue information management systems project.

Laws 2000, ch. 25, § 3: not to exceed $5,000,000 for the water and wastewater project.

Laws 2000, ch. 79, § 2: not to exceed $2,500,000 for planning, designing, acquiring, constructing, equipping, and furnishing and administration building for the retire health care authority.

Laws 2001, ch. 95, § 3 amends Laws 2000, ch. 5, § 2: $11,400,000 to design, construct, furnish, and equip a parking facility adjacent to the Bernalillo county metropolitan court building.

Laws 2001, ch. 166, § 2: not to exceed $75,000,000 for the aquisition of properties to be used as state office buildings in Santa Fe county. Laws 2004, ch. 123, § 7, effective May 19, 2004, amends Laws 2001, ch. 166, § 2 effective May 19, 2004, to add Subsection B appropriating $250,000 to the legislative council service for supporting the work of the capitol buildings planning commission.

Laws 2002, ch. 26, § 3: not to exceed $1,000,000 for the water and wastewater planning fund.

Laws 2003, ch. 341, § 3: not to exceed sixty million dollars ($60,000,000) for the purpose of designing, constructing, equipping and furnishing additions and improvements to the university of New Mexico hospital and the cancer research and treatment center at the university of New Mexico health sciences center.

Laws 2003, ch. 372, § 1: not to exceed not to exceed five million seven hundred sixty thousand dollars ($5,760,000) to issue and sell state museum tax revenue bonds in compliance with the State Building Bonding Act.

Laws 2005, ch. 319, § 1, effective April 7, 2005, amends Laws 2003, ch. 341, § 3 to change the term of the revenue bonds in Subsection A from fifteen years to twenty years; adds Subsection B to provide that the New Mexico finance authority may issue supplemental revenue bonds for a term not exceeding twenty years in an amount not exceeding $15,000,000 to design, construct, equip and furnish additions and improvements to the university of New Mexico hospital and cancer research and treatment center; and provides in Subsection G that the cigarette tax laws shall not be changed to reduce debt coverage for any outstanding bonds.

Laws 2005, ch. 320, § 7, effective June 17, 2005, amends Laws 2003, ch. 341, § 4 to provide in Subsection A that the finance authority may issue and sell revenue bonds for land acquisition and the planning, designing, construction and equipping and improving department of health facilities; to provide in Subsection F that the cigarette tax laws shall not be changed to reduce debt coverage for any outstanding bonds; and to add subsection H to provide that the finance authority may purchase revenue bonds issued pursuant to this section with money in the public project revolving fund pursuant to the provisions of Section 6-21-6 NMSA 1978.

Laws 2005, ch. 320, § 8, effective June 17, 2005, provides that pursuant to Laws 2003, ch. 341, § 4, as amended by Laws 2005, ch. 320, § 7, the New Mexico finance authority may issue and sell revenue bonds in an amount not to exceed $39,000,000 plus an amount equal to the cost of issuing the revenue bonds to be allocated as follows: $10,300,000 for improvements at the southern New Mexico rehabilitation center, $11,000,000 for improvements at the Las Vegas medical center, $4,000,000 for improvements at Fort Bayard medical center, and $13,700,000 for use by the property control division of the general services department for land acquisition and the planning, designing, construction and equipping of a state laboratory facility in Bernalillo county for use by the department of health.

Laws 2006, ch. 67, § 1, effective March 6, 2006, amends Laws 2005, ch. 320, § 8 to change "improvements" to "capitol outlay projects" in Subsections A, B and C, and to change "Las Vegas medical center" to "New Mexico behavioral health institute at Las Vegas" in Subsection B.

Laws 2006, ch. 89, §1, effective May 17, 2006, authorizes the New Mexico finance authority to issue and sell revenue bonds for the purpose of designing, constructing, equipping and furnishing additions and improvements to a regional cancer treatment center at the Gila regional medical center in Grant county and subsequently rural cancer treatment facilities in class B counties.

Laws 2007, ch. 64, § 4, effective March 29, 2007, appropriates $600,000 of the state office building tax revenue bonds to the legislative council service for funding the capitol buildings planning commission master plan process.

# ARTICLE 12A
# Short-Term Cash Management

## 6-12A-1. Short title.

This act [6-12A-1 to 6-12A-15 NMSA 1978] may be cited as the "Short-Term Cash Management Act".

**History:** Laws 1997, ch. 111, § 1.

**ANNOTATIONS**

**Cross references.** — For creation of general fund, *see* 6-4-2 NMSA 1978.

For state indebtedness generally, *see* Chapter 6, Article 12 NMSA 1978.

For institutional bonds, *see* Chapter 6, Article 13 NMSA 1978.

## 6-12A-2. Purpose.

The purpose of the Short-Term Cash Management Act is to ensure an orderly and uninterrupted flow of money to the general fund by anticipating the receipt of taxes and other state revenues into the general fund and authorizing the state treasurer to issue short-term notes payable from those anticipated receipts.

**History:** Laws 1997, ch. 111, § 2.

## 6-12A-3. Definitions.

As used in the Short-Term Cash Management Act:

A. "anticipated revenue" means tax receipts and other state revenues that are to be credited by law to the general fund;

B. "anticipation notes" means state of New Mexico tax and revenue anticipation notes; and

C. "general fund" means the fund created in Section 6-4-2 NMSA 1978 to which the state treasurer credits all revenue not otherwise allocated by law.

**History:** Laws 1997, ch. 111, § 3.

## 6-12A-4. State treasurer certification.

Whenever the state treasurer deems it necessary to issue anticipation notes pursuant to the Short-Term Cash Management Act, the state treasurer shall certify that:

A. the issuance of anticipation notes is necessary to regulate cash flow in the general fund;

B. the issuance of anticipation notes will not have an adverse impact on the general fund;

C. the issuance of anticipation notes is in the best interest of the state;

D. the amount of anticipation notes proposed for issuance is reasonable under existing and anticipated market conditions and complies with the requirements of the Internal Revenue Code of 1986, as amended, to the extent applicable; and

E. the payment of all interest and principal on anticipation notes can be made on a timely basis.

**History:** Laws 1997, ch. 111, § 4.

**ANNOTATIONS**

**Cross references.** — For the federal Internal Revenue Code, *see* 26 U.S.C.S. § 1 et seq.

## 6-12A-5. Anticipation notes; authorization; state board of finance approval.

A. In order to anticipate the collection and receipt of anticipated revenue and after certifying the need to issue anticipation notes as provided in the Short-Term Cash Management Act, the state treasurer may issue and sell one or more anticipation notes. The anticipation notes shall mature not later than the end of the fiscal year in which the anticipation notes are issued and shall bear interest at rates permitted in the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978].

B. The state treasurer shall pledge the anticipated revenue to secure the payment of the principal of and interest on the anticipation notes.

C. Anticipation notes may be sold at a public or negotiated sale at, above or below par. Any negotiated sale shall be made with one or more investment bankers whose services are obtained through a competitive proposal process. For any sale, the state treasurer shall also procure through a competitive proposal process the services of any financial adviser and bond counsel, unless the state treasurer contracts with the state board of finance to employ the services of the board's financial adviser or bond counsel under contracts the board may have, from time to time, with those professionals.

D. Anticipation notes may be issued in an aggregate principal amount not to exceed fifty percent of the anticipated revenue that the state treasurer anticipates will be collected by the state and credited to the general fund in the fiscal year in which the notes are issued and will be available to pay the principal of and interest on the anticipation notes.

E. Anticipation notes shall be issued by the state treasurer pursuant to the Short-Term Cash Management Act only upon approval by the state board of finance at a public meeting held prior to the delivery of the anticipation notes.

**History:** Laws 1997, ch. 111, § 5.

## 6-12A-6. Source of repayment.

Principal of and interest on anticipation notes shall be payable solely from that portion of anticipated revenue pledged for that purpose and collected by the state for credit to the general fund in the fiscal year in which the anticipation notes are issued.

**History:** Laws 1997, ch. 111, § 6.

## 6-12A-7. Anticipation notes debt service fund created.

The "anticipation notes debt service fund" is created in the state treasury. Upon collection of anticipated revenue that has been pledged for the payment of principal of and interest on the outstanding anticipation notes, the state treasurer shall deposit into the fund that portion of the pledged revenue necessary for payment of the principal of and interest on anticipation notes. Anticipated revenue in the fund is appropriated to the state treasurer for the payment of anticipation notes with interest at maturity. Money in the fund shall be held for the benefit of the registered owner or owners of the anticipation notes and for no other purpose.

**History:** Laws 1997, ch. 111, § 7.

## 6-12A-8. Proceeds from anticipation notes; anticipation notes fund created; investment.

The "anticipation notes fund" is created in the state treasury. All proceeds from the sale of anticipation notes shall be deposited in the fund. The state treasurer shall invest the proceeds of anticipation notes as provided in Section 6-10-10 NMSA 1978.

**History:** Laws 1997, ch. 111, § 8.

## 6-12A-9. Anticipation notes; legal investment; tax exemption.

Anticipation notes issued by the state treasurer pursuant to the Short-Term Cash Management Act are legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, fiduciaries, trustees and guardians and for the sinking funds of political subdivisions, departments, institutions and agencies of the state. Anticipation notes are sufficient security for all deposits of state funds and of all funds of any board in control of public money at the par value of the anticipation notes.

**History:** Laws 1997, ch. 111, § 9.

## 6-12A-10. Expenses.

The expenses incurred by the state treasurer related to the issuance and sale of anticipation notes shall be paid out of the proceeds from the sale of the anticipation notes, and all rebate, penalty, interest and other obligations of the state related to the anticipation notes and anticipation notes proceeds under the Internal Revenue Code of 1986, as amended, shall be paid from the earnings on anticipation notes proceeds or any money of the state legally available for such payment.

**History:** Laws 1997, ch. 111, § 10.

**ANNOTATIONS**

**Cross references.** — For the federal Internal Revenue Code, *see* 26 U.S.C.S. § 1 et seq.

## 6-12A-11. State treasurer; duty to make payments and keep records.

The state treasurer shall pay the principal of and interest on outstanding anticipation notes and shall keep a complete register showing the interest paid and principal outstanding on all anticipation notes and such other records as he deems appropriate.

**History:** Laws 1997, ch. 111, § 11.

## 6-12A-12. Authority for issuance.

The Short-Term Cash Management Act, without reference to any other statute, shall be full authority for the issuance and sale of anticipation notes and shall have all the qualities of investment securities under the Uniform Commercial Code [Chapter 55 NMSA 1978].

**History:** Laws 1997, ch. 111, § 12.

## 6-12A-13. Action to compel performance of officers.

Any holder of anticipation notes or any person who is a party in interest may bring an action to enforce and compel the performance of the provisions of the Short-Term Cash Management Act.

**History:** Laws 1997, ch. 111, § 13.

## 6-12A-14. Anticipation notes exempt from taxation.

Anticipation notes are exempt from taxation by the state or any of its political subdivisions.

**History:** Laws 1997, ch. 111, § 14.

## 6-12A-15. Anticipation notes not a general obligation of the state.

Anticipation notes are not a general obligation of the state, but are payable solely out of anticipated revenues that have been pledged for their payment.

**History:** Laws 1997, ch. 111, § 15.

# ARTICLE 13
# Institution Bonds

## 6-13-1. Short title.

Sections 6-13-1 through 6-13-26 NMSA 1978 may be cited as the "Institution Bond Act."

**History:** 1953 Comp., § 11-9-1, enacted by Laws 1963, ch. 298, § 1.

**ANNOTATIONS**

**Effect of presenting coupons maturing subsequent to redemption date.** — Under the express provisions of the bonds to be redeemed and the bond resolution, it is necessary that the institution pay the principal and accrued interest to date of the redemption of such bonds, only when the appurtenant coupons maturing subsequent to the redemption date are presented. 1965 Op. Att'y Gen. No. 65-61.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Validity, under state constitution and laws, of issuance by state or state agency of revenue bonds to finance or refinance construction projects at private religious-affiliated colleges or universities, 95 A.L.R.3d 1000.

## 6-13-2. State institutions.

The state institutions, within the meaning of Chapter 6, Article 13 NMSA 1978, are the university of New Mexico, the New Mexico state university, the New Mexico institute of mining and technology, the New Mexico military institute, the New Mexico highlands university, the western New Mexico university, the northern New Mexico state school, the New Mexico school for the deaf, the New Mexico school for the blind and visually impaired, the eastern New Mexico university, the Los Lunas medical center, the penitentiary of New Mexico, the New Mexico behavioral health institute at Las Vegas, the New Mexico boys' school and the miners' hospital.

**History:** 1941 Comp., § 6-254, enacted by Laws 1949, ch. 121, § 1; 1953 Comp., § 11-9-2, compiled by Laws 1963, ch. 298, § 2; 2005, ch. 313, § 1.

## ANNOTATIONS

**Compiler's notes.** — The name of New Mexico college of agriculture and mechanic arts was changed to New Mexico state university pursuant to N.M. Const., art. XII, § 11. The name of New Mexico school of mines was changed to New Mexico institute of mining and technology pursuant to N.M. Const., art. XII, § 11. The name of New Mexico normal university was changed to New Mexico highlands university pursuant to N.M. Const., art. XII, § 11. The name of New Mexico normal school was changed to western New Mexico university pursuant to N.M. Const., art. XII, § 11. The name of the Spanish-American school was changed to northern New Mexico state school pursuant to N.M. Const., art. XII, § 11. The name of the New Mexico institute for the blind was changed to the New Mexico school for the visually handicapped pursuant to N.M. Const., art. XII, § 11. The name of eastern New Mexico normal school was changed to eastern New Mexico university pursuant to N.M. Const., art. XII, § 11. The name of the New Mexico home and training school for mental defectives was changed to Los Lunas medical center pursuant to 23-1-13 NMSA 1978. The name of the New Mexico insane asylum was changed to Las Vegas medical center pursuant to 23-1-13 and 23-5-1 NMSA 1978. The name of the New Mexico reform school was changed to the New Mexico boys' school pursuant to N.M. Const., art. XIV, § 1.

**The 2005 amendment,** effective June 17, 2005, added the statutory reference to the act; deleted references to the locations of state institutions; changed the name of the New Mexico college of Agriculture and Mechanic Arts to New Mexico state university; changed the name of the New Mexico School of Mines to New Mexico institute of mining and technology; changed the name of the New Mexico Normal university at Las Vegas to the New Mexico highlands university; changed the name of the New Mexico Normal School at Silver City to the western New Mexico university; changed the name of Spanish-American School, New Mexico to the northern New Mexico state school; changed the name of the New Mexico institute for the Blind to the New Mexico school for the blind and visually impaired; changed the name of the eastern New Mexico Normal School to the eastern New Mexico university; changed the name of the New Mexico Home and Training School for Mental Defectives to the Los Lunas medical center; changed the name of the New Mexico Insane Asylum to the New Mexico

behavioral health institute at Las Vegas and changed the name of the New Mexico Reform School to the New Mexico boy's school.

## 6-13-3. General borrowing authority.

For the purpose of erecting, purchasing or otherwise acquiring, altering, improving, furnishing and equipping any necessary buildings or structures at any state institution, or acquiring any necessary land for use of the institution, or for retiring the whole or any part of any series of bonds previously issued by any state institution under the provisions of law, or for any of these purposes, the governing board of the state institution may borrow money in conformity with the terms of the Institution Bond Act.

**History:** 1941 Comp., § 6-255, enacted by Laws 1949, ch. 121, § 2; 1953 Comp., § 11-9-3, compiled and amended by Laws 1963, ch. 298, §§ 2, 3.

**ANNOTATIONS**

**Cross references.** — For the Short-Term Cash Management Act, *see* Chapter 6, Article 12A NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64 Am. Jur. 2d Public Securities and Obligations §§ 101, 120.

81A C.J.S. States § 213.

## 6-13-4. General bonding authority.

Whenever the governing board of any state institution, by affirmative vote of a majority of its members duly entered in the minutes of the board, determines by resolution that it is necessary to erect, purchase or otherwise acquire, alter, improve, furnish or equip any buildings or structures at the institution, or acquire land for its use, or to retire the whole or any part of any series of bonds previously issued in conformity with law, or for any of these purposes, the board may issue and sell bonds of the state institution as provided by the Institution Bond Act.

**History:** 1941 Comp., § 6-256, enacted by Laws 1949, ch. 121, § 3; 1953 Comp., § 11-9-4, compiled and amended by Laws 1963, ch. 298, §§ 2, 4.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64 Am. Jur. 2d Public Securities and Obligations § 36.

81A C.J.S. States § 252.

## 6-13-5. Bonds; form; terms.

Bonds issued under the Institution Bond Act shall be payable not later than fifty years from the date of issue and in consecutive order commencing not later than two years from the date of issue. They shall be in denominations determined by the governing board of the state institution. The form of the bonds shall be determined by the governing board of the state institution and signatures may be affixed in compliance with the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978].

**History:** 1953 Comp., § 11-9-5, enacted by Laws 1963, ch. 298, § 5; 1983, ch. 265, § 26.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1963, ch. 298, § 5, repealed former 11-9-5, 1953 Comp., relating to denominations of negotiable coupon bonds and their forms, and enacted a new 6-13-5 NMSA 1978.

## 6-13-6. [Sale of bonds.]

That said bonds may be sold at public or private sale, in the discretion of the governing board, provided, however, that no sale shall be made for less than the par value of the bonds, plus accrued interest from the last preceding interest date to the date of delivery of said bonds. Before delivery of the bonds to the purchaser all matured interest coupons shall be detached and cancelled. The state treasurer may, with the approval of the state board of finance and other officials whose approval may be required by law for the investment of public funds, purchase such bonds at par and accrued interest to date of delivery of such investment. Such bonds may be accepted at their par value by all public officials in this state as security for the repayment of all deposits of public moneys of this state, or of any county, municipality or public institution thereof, and as security for the faithful performance of any obligations or duty to guarantee the performance of which such officials are now authorized by law to accept a deposit of the bonds of this state or of the United States of America.

**History:** 1941 Comp., § 6-258, enacted by Laws 1949, ch. 121, § 5; 1953 Comp., § 11-9-6, compiled by Laws 1963, ch. 298, § 2.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-13-7. [Proceeds from sale of bonds; building and improvement fund; expenditures.]

That the proceeds from the sale of said bonds shall be paid to the secretary and treasurer of the board issuing same, and shall by such secretary and treasurer be placed in a separate fund to be known as "building and improvement fund" to be used

and paid out only for the specific purposes in this act enumerated upon order of the board, or checks signed by the president or vice-president of the board and by the secretary and treasurer thereof, except such portion thereof as may have been received on account of accrued interest of said bonds to date of delivery, which amount shall be placed in the "interest and retirement fund" for the liquidation of said bonds as hereinafter provided. The cost of preparing, advertising and selling said bonds, including any necessary expense for legal opinions thereon, shall be paid out of the proceeds of the sale of said bonds.

**History:** 1941 Comp., § 6-259, enacted by Laws 1949, ch. 121, § 6; 1953 Comp., § 11-9-7, compiled by Laws 1963, ch. 298, § 2.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-13-8. [Interest and retirement fund; establishment; purpose.]

That the governing board issuing said bonds shall, at the time of issuing said bonds, establish for the payment of the principal and interest thereof a fund to be known as "interest and retirement fund" into which fund said board shall immediately place a sum not less than the amount necessary to pay the interest and maturing principal of said bonds for the ensuing twelve months, and annually thereafter shall continue to place in said fund a sufficient amount to pay principal and interest maturing in the succeeding twelve months.

**History:** 1941 Comp., § 6-260, enacted by Laws 1949, ch. 121, § 7; 1953 Comp., § 11-9-8, compiled by Laws 1963, ch. 298, § 2.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-13-9. [Pledge of income from permanent funds of state institutions.]

That for the faithful and prompt payment of all interest and principal of said bonds as and when the same shall mature according to the tenor thereof, the issue thereof shall constitute an irrevocable pledge by said board of so much of each year's income from the permanent funds of such state institution, so issuing bonds hereunder, in the hands of the treasurer as shall be needed to provide the "interest and retirement fund" herein mentioned, for the ensuing year, and at all times fully and faithfully to keep the same in not less than the amount necessary to pay the interest and principal maturing as aforesaid; and in addition thereto the issue of said bonds shall constitute an irrevocable

pledge by said board of so much of each year's income from the income and current fund derived from the lease of such of said institution's lands as remain unsold, as may be necessary to fully protect the "interest and retirement fund" for the ensuing year, and keep the same at all times in proper amount as herein provided.

**History:** 1941 Comp., § 6-261, enacted by Laws 1949, ch. 121, § 8; 1953 Comp., § 11-9-9, compiled by Laws 1963, ch. 298, § 2.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-13-10. [Permanent funds from disposition of lands held in trust for state institutions; investment.]

That from and after the passage and approval of this act [6-13-1 to 6-13-26 NMSA 1978], all permanent funds thereafter derived from the sale or disposition of the lands held in trust for any of said institutions shall be invested in bonds of the United States or of the state of New Mexico, the income from which shall likewise form a part of the pledged income for the payment of the principal and interest on bonds issued by the board of any such institution under the provisions of this act.

**History:** 1941 Comp., § 6-262, enacted by Laws 1949, ch. 121, § 9; 1953 Comp., § 11-9-10, compiled by Laws 1963, ch. 298, § 2.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-13-11. Bond payment.

It is the duty of the secretary and treasurer of the governing board, where bonds have been issued pursuant to the Institution Bond Act, to forward to the bank at which the bonds are payable, prior to the date on which any installment of interest or any principal amount of any bonds matures, out of the interest and retirement fund, a sufficient sum of money to meet the installment of interest and maturing principal as they become due, plus any service charge which the bank is entitled to receive for its services.

**History:** 1941 Comp., § 6-263, enacted by Laws 1949, ch. 121, § 10; 1953 Comp., § 11-9-11, compiled by Laws 1963, ch. 298, § 2; 1983, ch. 265, § 27.

**ANNOTATIONS**

**Cross references.** — For destruction of documentary evidence of extinguished public debt, *see* 6-10-62 NMSA 1978.

## 6-13-12. [Income from permanent funds of institutions; payment to interest and retirement fund; duties of state treasurer.]

That it is hereby made the duty of the state treasurer of the state of New Mexico, upon receiving written notice from the secretary and treasurer of any governing board of any state institution that such board has issued bonds as herein provided, forthwith to forward and pay over to the secretary and treasurer of such board out of the income from the permanent funds of such institution, a sum sufficient to make and establish the interest and retirement fund, as herein provided, and annually thereafter to pay over a sufficient amount for said purpose, to the end that said interest and retirement fund shall at all times be kept in the proper amount. In the event there should not be sufficient undistributed income from permanent funds of such institution, then said state treasurer shall use so much of the income and current fund of such institution in his hands and shall be necessary to establish and at all times maintain said interest and retirement fund.

**History:** 1941 Comp., § 6-264, enacted by Laws 1949, ch. 121, § 11; 1953 Comp., § 11-9-12, compiled by Laws 1963, ch. 298, § 2.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-13-13. [Bonds issued in series.]

That in the event the board of any of the institutions aforesaid should find it advisable to issue bonds under this act [6-13-1 to 6-13-26 NMSA 1978] in more than one series, or at different times, for any of the purposes aforesaid, then each series of said bonds shall be designated by the letter "A," "B" or in some other designation to the end that each series shall be kept separate, and all of the requirements of this act shall apply to and be faithfully followed, done and carried out as to each of said series.

**History:** 1941 Comp., § 6-265, enacted by Laws 1949, ch. 121, § 12; 1953 Comp., § 11-9-13, compiled by Laws 1963, ch. 298, § 2.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-13-14. [Limitation on amount of issue.]

None of such boards of any state institution shall have power to issue bonds under this act [6-13-1 to 6-13-26 NMSA 1978], the aggregate interest and principal requirements for which, for any year, together with the aggregate interest and principal requirements for all outstanding bonds of such board of such institution for such year, shall exceed the amount of the income from the permanent fund and from the aforesaid income and current fund of such institution received by the state treasurer for the fiscal year next preceding the fiscal year in which any bonds of such board of such institution are authorized to be issued by resolution of the board pursuant to this act.

**History:** 1941 Comp., § 6-266, enacted by Laws 1949, ch. 121, § 13; 1953 Comp., § 11-9-14, compiled by Laws 1963, ch. 298, § 2.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-13-15. [Exemption from taxation.]

That bonds issued under the provisions of this act [6-13-1 to 6-13-26 NMSA 1978], and the income thereupon, being for the sole purpose specified in Section 2 [6-13-3 NMSA 1978] hereof, shall forever be and remain free and exempt from taxation by the state of New Mexico or any subdivision thereof.

**History:** 1941 Comp., § 6-267, enacted by Laws 1949, ch. 121, § 14; 1953 Comp., § 11-9-15, compiled by Laws 1963, ch. 298, § 2.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-13-16. [Funds derived from sale of bonds; restrictions on use.]

That none of the funds derived from the sale of bonds issued under the provisions of this act [6-13-1 to 6-13-26 NMSA 1978], except so much thereof as shall be necessary to defray the costs of the issuance of such bonds and the accrued interest from the date thereof to the time of delivery, shall ever be used or expended for any purpose other than those for which the authority to issue the same by this act is given.

**History:** 1941 Comp., § 6-268, enacted by Laws 1949, ch. 121, § 15; 1953 Comp., § 11-9-16, compiled by Laws 1963, ch. 298, § 2.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-13-17. [Issuance and sale of bonds; approval of state board of finance.]

That no bonds shall be finally issued and sold under the provisions of this act [6-13-1 to 6-13-26 NMSA 1978] until the approval of such issue shall have been had by the unanimous vote of the state board of finance in a regular or called meeting.

**History:** 1941 Comp., § 6-269, enacted by Laws 1949, ch. 121, § 16; 1953 Comp., § 11-9-17, compiled by Laws 1963, ch. 298, § 2.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-13-18. Security; priority of liens.

A. All bonds of the same issue under the Institution Bond Act have a prior and paramount lien upon income from the permanent fund and upon the income and current fund of the institution issuing the bonds. This lien is ahead of all bonds of any series secured by a pledge of this income and fund which may be subsequently authorized, and is ahead of any claims or other obligations of any nature against this income and fund subsequently arising or incurred.

B. The bonds are subject to any prior and superior rights of any outstanding bonds, claims or other obligations previously issued, arising or incurred, but the resolution authorizing issuance of bonds under the Institution Bond Act may provide for subsequent authorization of bonds having a lien for payment on income from the permanent fund and on the income and current fund of the institution at a parity with the lien of earlier bonds upon conditions provided in the resolution.

C. Except as otherwise expressly provided in the resolution, all bonds of the same series issued under the Institution Bond Act shall be equally and ratably secured without priority by reason of number, date or [of] bonds, sale, execution or delivery, by a lien on income from the permanent fund and on the income and current fund of the issuing state institution in accordance with the terms of the Institution Bond Act.

**History:** 1941 Comp., § 6-270, enacted by Laws 1949, ch. 121, § 17; 1953 Comp., § 11-9-18, compiled and amended by Laws 1963, ch. 298, §§ 2, 6.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-13-19. Refunding; purposes.

Any bonds issued under the Institution Bond Act, or under any other act permitting payment of state institution bonds from income from the permanent fund and from the income and current fund of a state institution, may be refunded under the terms of resolutions adopted by the governing board of the state institution, subject to any contractual limitations involved with any outstanding bonds, claims or other obligations. The refunding is:

A. to retire and refund all, or any part, of the institution's outstanding bonds, including any interest in arrears or about to become due;

B. to reduce interest costs or effect other economies;

C. to modify or eliminate restrictive contractual limitations relating to issuance of additional bonds or to income from the permanent fund and the income and current fund of the institution; or

D. for any combination of the reasons stated in Subsections A through C of this section.

**History:** 1953 Comp., § 11-9-19, enacted by Laws 1963, ch. 298, § 7.

## 6-13-20. Refunding; issuance of bonds.

A. Any bonds issued under the Institution Bond Act for refunding purposes may be:

(1) delivered in exchange for the outstanding bonds authorized to be refunded; or

(2) sold at public or private sale for not less than the par value of the bonds, plus accrued interest from the last interest date or, if there is no previous interest date, from the bond date, to the date of delivery of the bonds.

B. The proceeds shall immediately:

(1) be applied to retirement of the bonds to be retired or refunded; or

(2) be placed in escrow to be applied to payment of the bonds upon presentation for payment by the holders.

**History:** 1953 Comp., § 11-9-20, enacted by Laws 1963, ch. 298, § 8.

## 6-13-21. Refunding; conditions of bonds.

Under the Institution Bond Act:

A. no bonds may be retired and refunded unless:

(1) they mature or are callable for prior redemption under their terms within ten years from the date of issuance of the refunding bonds; or

(2) the holders voluntarily surrender them for exchange or payment;

B. no maturity of any bonds refunded may be extended over fifteen years, or interest increased to any rate exceeding six percent a year; and

C. nothing requires the principal amount of the refunding bonds to equal the amount of the outstanding bonds to be retired and refunded as long as the principal amount of the refunding bonds, together with any interest to be derived from investment of the principal, is sufficient for payment of the outstanding bonds, including the principal, interest, any prior-redemption premium and any escrow agent charges, as they become due.

**History:** 1953 Comp., § 11-9-21, enacted by Laws 1963, ch. 298, § 9.

## 6-13-22. Refunding; escrowed proceeds.

Under the Institution Bond Act, any escrowed proceeds may be invested or reinvested in bonds or notes of the United States or any of its agencies or instrumentalities, or in bonds or notes where the principal and interest is unconditionally guaranteed by the United States. The escrowed proceeds and investments, together with any interest to be derived from the investments, shall always be sufficient for payment of the bonds, refunded as they become due at their respective maturities, or at prior-redemption dates, including the principal, any prior-redemption premium and any escrow agent charges.

**History:** 1953 Comp., § 11-9-22, enacted by Laws 1963, ch. 298, § 10.

## 6-13-23. Refunding; payment of bonds.

Refunding bonds issued under the Institution Bond Act may be made payable from income from the permanent fund and from the income and current fund of the issuing institution, regardless of any modification thereby effected of the pledge of these sources for payment of the outstanding bonds to be retired and refunded.

**History:** 1953 Comp., § 11-9-23, enacted by Laws 1963, ch. 298, § 11.

## 6-13-24. Refunding; bonds retired.

Under the Institution Bond Act, outstanding bonds of more than one issue may be retired and refunded by bonds of one issue. Bonds for refunding and bonds for any other purposes authorized by the Institution Bond Act may be issued separately or in combination in one series or more.

**History:** 1953 Comp., § 11-9-24, enacted by Laws 1963, ch. 298, § 12.

## 6-13-25. Refunding; priority of liens.

Whenever bonds for refunding and bonds for any other purposes allowed by the Institution Bond Act are issued in combination, the lien of the refunding bonds on income from the permanent fund and on the income and current fund is not prior or superior to any lien on these sources to secure payment of the bonds retired and refunded, or to any lien on them to secure payment of any outstanding bonds payable from them, except as provided in each resolution authorizing issuance of the outstanding bonds which are not being retired and refunded.

**History:** 1953 Comp., § 11-9-25, enacted by Laws 1963, ch. 298, § 13.

## 6-13-26. Refunding; procedures.

Except as changed or necessarily implied with reference to refunding, all provisions of the Institution Bond Act apply to the authorization and issuance of refunding bonds, including their terms and security, the bond resolution, taxes, the method of bond payment and other provisions. The determination of the governing board of the institution issuing the refunding bonds that the provisions of the Institution Bond Act have been complied with is conclusive in the absence of fraud or arbitrary and gross abuse of discretion.

**History:** 1953 Comp., § 11-9-26, enacted by Laws 1963, ch. 298, § 14.

## Appendix to Article 13

### Appendix to Article 13. State Institution Bonds.

The following laws have authorized the issuance of state institution revenue bonds in the specified amounts for the specified purposes.

Laws 1935, ch. 104 (as amended by Laws 1937, ch. 226; Laws 1941, ch. 175): in amounts to be determined, state institution bonds for building and improving designated state institutions.

Laws 1947, ch. 46: $150,000, bonds or debentures for erecting and improving buildings and acquiring equipment for New Mexico insane asylum.

Laws 1949, ch. 111: $250,000, bonds or debentures for erecting and improving buildings and acquiring equipment for New Mexico insane asylum.

Laws 1949, ch. 121: in amounts to be determined, state institution bonds for building, improving and equipping designated state institutions or retiring previously issued bonds.

Laws 1953, ch. 99: $250,000, bonds or debentures for erecting, improving and furnishing buildings and grounds and acquiring equipment at the New Mexico industrial school.

Laws 1953, ch. 149: $3,000,000, bonds or debentures for erecting, improving or furnishing buildings and grounds and acquiring land and equipment for the penitentiary of New Mexico.

Laws 1953, ch. 159: $4,500,000, state building and state institution bonds for constructing, improving, and equipping buildings for the state, state agencies, state departments and state institutions, not including political subdivisions.

Laws 1953, ch. 169: $2,000,000, bonds or debentures for erecting, improving and furnishing buildings and acquiring equipment at the insane asylum of New Mexico.

Laws 1953, ch. 170: $150,000, bonds or debentures for erecting, improving and furnishing buildings and acquiring equipment at the Los Lunas mental hospital.

Laws 1955, ch. 203: $9,500,000, building and institution severance tax bonds to retire all outstanding severance tax bonds previously issued and for erecting, improving, furnishing, and equipping buildings or structures at the New Mexico insane asylum, the penitentiary of New Mexico, the New Mexico reform school, and the Los Lunas mental hospital.

Laws 1959, ch. 315: $8,000,000, state educational institution bonds for erecting, constructing and equipping buildings of certain state educational institutions and the purchase of land for those institutions.

Laws 1961, ch. 89: $1,500,000, bonds for erecting, improving and furnishing buildings at the Los Lunas mental hospital and training school.

Laws 1984 (S.S.), ch. 6: $64,000,000, educational bonds to provide funds for capital expenditures at certain state educational institutions and certain post-secondary and public schools.

# ARTICLE 14
# Public Securities

## 6-14-1. Short title.

Sections 6-14-1 through 6-14-3 NMSA 1978 may be cited as the "Public Securities Act."

**History:** 1953 Comp., § 11-10-1, enacted by Laws 1970, ch. 10, § 1.

## 6-14-2. Definitions.

As used in the Public Securities Act:

A. "net effective interest rate" means the interest rate of public securities, compounded semiannually, necessary to discount the scheduled debt service payments of principal and interest to the date of the public securities and to the price paid to the public body for the public securities, excluding any interest accrued to the date of delivery and based upon a year with the same number of days as the number of days for which interest is computed on the public securities;

B. "public body" means this state or any department, board, agency or instrumentality of the state, any county, city, town, village, school district, other district, educational institution or any other governmental agency or political subdivision of the state; and

C. "public securities" means any bonds, notes, warrants or other obligations now or hereafter authorized to be issued by any public body pursuant to the provisions of any general or special law enacted by the legislature, but does not include bonds, notes, warrants or other obligations issued pursuant to:

(1) the Industrial Revenue Bond Act [Chapter 3, Article 32 NMSA 1978];

(2) the County Improvement District Act [Chapter 4, Article 55A NMSA 1978];

(3) Sections 3-33-1 through 3-33-43 NMSA 1978;

(4) the Pollution Control Revenue Bond Act [3-59-1 to 3-59-14 NMSA 1978];

(5) the County Pollution Control Revenue Bond Act [4-60-1 to 4-60-15 NMSA 1978];

(6) the County Industrial Revenue Bond Act [Chapter 4, Article 59 NMSA 1978];

(7) the Metropolitan Redevelopment Code [3-60A-1 to 3-60A-13, 3-60A-14 to 3-60A-48 NMSA 1978];

(8) the Supplemental Municipal Gross Receipts Tax Act [7-19-10 to 7-19-18 NMSA 1978];

(9) the Hospital Equipment Loan Act [Chapter 58, Article 23 NMSA 1978]; or

(10) the New Mexico Finance Authority Act [Chapter 6, Article 21 NMSA 1978].

**History:** 1953 Comp., § 11-10-2, enacted by Laws 1970, ch. 10, § 2; 1975, ch. 239, § 1; 1979, ch. 56, § 1; 1979, ch. 270, § 2; 1980, ch. 106, § 5; 1981, ch. 44, § 1; 1986, ch. 60, § 1; 1992, ch. 61, § 33; 1999, ch. 232, § 1.

**ANNOTATIONS**

**The 1999 amendment,** effective, June 18, 1999, in Subsection A, substituted "the interest rate of public securities, compounded semiannually, necessary to discount the scheduled debt service payments of principal and interest to the date of the public securities and to the price paid to the public body for the public securities, excluding any interest accrued to the date of delivery and based upon a year with the same number of days as the number of days for which interest is computed on the public securities" for "the interest rate based on the actual price paid to a public body for its public securities, calculated to maturity according to standard tables of bond values".

**The 1992 amendment,** effective March 9, 1992, added Subsection C(10).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64 Am. Jur. 2d Public Securities and Obligations §§ 2, 3.

11 C.J.S. Bonds § 2.

## 6-14-3. Public securities; price.

A. A public body may issue and sell its public securities at, above or below par and at any net effective interest rate as the public body may determine subject to the remaining provisions of this section.

B. A public body may not issue its public securities as provided in Subsection A of this section at any net effective interest rate in excess of twelve percent a year, except for general obligation bonds which shall have a net effective interest rate of not more than ten percent a year, unless the state board of finance at any time prior to delivery of the public securities approves such higher net effective interest rate in writing, based upon the determination of the state board of finance that the higher rate is reasonable under existing or anticipated bond market conditions.

C. Any such approval of any such net effective interest rate in excess of twelve percent or not more than ten percent for general obligation bonds shall constitute conclusive authority for the affected public body to issue its public securities at the higher net effective interest rate.

**History:** 1953 Comp., § 11-10-3, enacted by Laws 1970, ch. 10, § 3; 1981, ch. 44, § 2.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64 Am. Jur. 2d Public Securities and Obligations §§ 374 to 377.

## 6-14-4. Short title.

This act [6-14-4 to 6-14-7 NMSA 1978] may be cited as the "Public Securities Limitation of Action Act."

**History:** 1953 Comp., § 11-11-1, enacted by Laws 1975, ch. 350, § 1.

## 6-14-5. Definitions.

As used in the Public Securities Limitation of Action Act [6-14-4 to 6-14-7 NMSA 1978];

A. "public security" means a bond, note, certificate of indebtedness or other obligation for the payment of money, issued by this state or by any public body thereof;

B. "state" means the state of New Mexico and any board, commission, department, corporation, instrumentality or agency thereof; and

C. "public body" of the state means any state educational institution or other state institution, its board of regents or other governing body thereof constituting a body corporate, any county, city, town, village, school district, irrigation district, drainage district, conservancy district, sanitation district, water district, commission, authority or other political subdivision of the state constituting a body corporate.

**History:** 1953 Comp., § 11-11-2, enacted by Laws 1975, ch. 350, § 2.

## 6-14-6. Publication of notice after adoption of resolution or ordinance.

A public body, or the state, after having adopted a resolution or ordinance authorizing the issuance of public securities, shall publish notice of the adoption of such resolution once in a newspaper of general circulation within the political subdivision, or in the case of the state, of general statewide circulation. Compliance with the Municipal

Code [Chapter 3 NMSA 1978, except Article 66] requirements for the publication of ordinances shall constitute compliance by municipalities of the requirements of the Public Securities Limitation of Action Act [6-14-4 to 6-14-7 NMSA 1978].

**History:** 1953 Comp., § 11-11-3, enacted by Laws 1975, ch. 350, § 3.

**ANNOTATIONS**

**Cross references.** — For publication of ordinances, *see* 3-17-3 and 3-17-5 NMSA 1978.

## 6-14-7. Validation; limitation of action.

After the passage of thirty days from the publication required by Section 3 [6-14-6 NMSA 1978] of the Public Securities Limitation of Action Act, any action attacking the validity of any proceedings had or taken by the state or any public body preliminary to and in the authorization and issuance of the public securities described in the notice is perpetually barred.

**History:** 1953 Comp., § 11-11-4, enacted by Laws 1975, ch. 350, § 4.

**ANNOTATIONS**

**Attacking validity of proceedings.** — The plaintiff's attack on the legality of the bond issue ordinance is an attack on the validity of the proceedings in which the ordinance was enacted, and thus is subject to the statute of limitations. *Bolton v. Board of Cnty. Comm'rs*, 1994-NMCA-167, 119 N.M. 355, 890 P.2d 808.

**Reasonableness of thirty-day limitations period.** — In view of the need for issuance of bond issues by numerous public entities, the thirty-day statute of limitations imposed under the Public Securities Limitation of Action Act does not unreasonably restrict legitimate challenges to the validity of bond issues. *Bolton v. Board of Cnty. Comm'rs*, 1994-NMCA-167, 119 N.M. 355, 890 P.2d 808.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64 Am. Jur. 2d Public Securities and Obligations §§ 407 to 414.

## 6-14-8. Short title.

Sections 6-14-8 through 6-14-11 NMSA 1978 may be cited as the "Supplemental Public Securities Act."

**History:** 1978 Comp., § 6-14-8, enacted by Laws 1983, ch. 265, § 1.

## 6-14-9. Definitions.

As used in the Supplemental Public Securities Act:

A. "authorizing instrument" means the ordinance, resolution, other official action or any applicable combination thereof by which public securities are authorized to be issued by a public body;

B. "public body" means this state or any department, board, agency or instrumentality of the state, any county, city, town, village, school district, other district or educational institution or any other governmental agency or political subdivision of the state or the New Mexico finance authority;

C. "public securities" means any bonds, notes, loans, warrants or other obligations now or hereafter authorized to be issued by any public body pursuant to the provisions of any general or special statute, any constitutional or statutory charter or any other law; and

D. "registrar" means the treasurer or any other officer of the public body or of any other public body or any corporate or other trustee, registrar, paying agent, transfer agent, custodian or other financial intermediary within the United States as may be appointed or designated in the authorizing instrument.

**History:** 1978 Comp., § 6-14-9, enacted by Laws 1983, ch. 265, § 2; 2017, ch. 120, § 1.

**ANNOTATIONS**

**The 2017 amendment,** effective July 1, 2017, revised the definition of "public body" to include the New Mexico finance authority as used in the Supplemental Public Securities Act; in Subsection B, after "of the state", added "or the New Mexico finance authority".

## 6-14-10. Form; payment; registrar; transfer; authentication of public securities; records.

A. Public securities may be issued in book entry form, with or without the delivery of physical securities, any registered form or bearer form, with or without interest coupons, or in any combination thereof, with or without the right of conversion to another form, and in any denomination or denominations, with or without the right of conversion to any other denomination, subject to such conditions for transfer as may be provided in the authorizing instrument.

B. Any public body may appoint a registrar or registrars to perform such duties with respect to the registration, custody, conversion, exchange and transfer of its public securities as may be provided in the authorizing instrument.

C. Public securities may be made registrable, transferable and payable by the registrar under such terms and conditions as may be provided in the authorizing instrument. Payment at designated due dates or in installments may be made by check,

draft, warrant or other order for payment or medium of payment and under such other conditions as may be provided in the authorizing instrument.

D. The authorizing instrument may require that the public securities be authenticated with the manual or facsimile signature of an officer or other authorized person of the registrar or of any other officer or officers of the public body whose manual or facsimile signature is not otherwise required by law or by any combination thereof; provided that no manual or facsimile signature is required if the public securities are issued in book entry form without the delivery of physical securities. Any registrar may hold in custody any partially or fully executed public securities if provided by, and to the extent permitted by, the authorizing instrument.

E. Records with regard to the ownership or pledge of public securities are not subject to inspection or copying under any law of this state relating to the right of the public to inspect or copy public records. Registration records of the public body may be maintained at such locations within the United States as may be determined by the authorizing instrument.

**History:** 1978 Comp., § 6-14-10, enacted by Laws 1983, ch. 265, § 3.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64 Am. Jur. 2d Public Securities and Obligations §§ 167 to 182, 229 to 232.

20 C.J.S. Counties § 222; 64 C.J.S. Municipal Corporations §§ 1684 to 1693, 1699, 1700; 81A C.J.S. States §§ 255 to 258; 87 C.J.S. Towns § 215.

## 6-14-10.1. Investment of proceeds; compliance with Internal Revenue Code of 1986.

Notwithstanding any other provision of law to the contrary, and in addition to any other investments which may be authorized by the laws of New Mexico, a public body may invest the proceeds of public securities, and of any other securities now or hereafter authorized to be issued by any public body pursuant to the provisions of any general or special law enacted by the legislature or pursuant to the home rule powers of any public body in obligations the interest on which is excluded from gross income of the recipient for federal income tax purposes and in any other instrument which does not constitute "investment property" under Section 148 of the Internal Revenue Code of 1986. Any such obligation or instrument shall be rated in any of the three highest major rating categories, without regard to any modification of the rating by the addition of a plus or minus sign or numerical designation to show relative standing within a major rating category, by one or more nationally recognized rating agencies. Income from any such investments may be used to meet rebate, penalty, interest and other obligations of the public body under the code. As used in this section the term "proceeds" includes all amounts treated as proceeds or gross proceeds as defined in Section 148 of the

Internal Revenue Code of 1986, as amended, including any regulations applicable thereunder of tax exempt bonds as defined in Section 150 of that code.

**History:** 1978 Comp., § 6-14-10.1, enacted by Laws 1988, ch. 45, § 2.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1988, ch. 45, § 2 repealed former 6-14-10.1 NMSA, as enacted by Laws 1987, ch. 188, § 1, and enacted a new section, effective March 4, 1988.

**Cross references.** — For Section 148 of the Internal Revenue Code of 1986, *see* 26 U.S.C.S. § 148.

For Section 150 of the Internal Revenue Code of 1986, *see* U.S.C.S. § 150.

## 6-14-10.2. Delegation of authority by public body; authorizing instrument.

A. A public body may adopt an authorizing instrument that delegates to one or more members, officers or employees of the public body, acting in a fiduciary capacity within the scope of authority and the parameters and conditions for the public securities set forth by the public body in the authorizing instrument as described in Subsection B of this section, the authority to sign a contract for the purchase or sale of public securities or to accept a binding bid for public securities and to determine the final terms for public securities to be issued pursuant to Subsection C of this section. The authorizing instrument shall be effective for one hundred twenty days or for a specified shorter period.

B. An authorizing instrument delegating authority pursuant to Subsection A of this section shall establish the parameters and conditions for the public securities, including:

(1) the public purpose for which the public securities are to be issued;

(2) the maximum par amount of the public securities;

(3) the maximum term for which the public securities may be outstanding;

(4) the maximum interest rate that the public securities may bear;

(5) each tax or revenue source that is pledged to or that shall secure payment for the public securities;

(6) whether the public securities will be sold at a public or a private sale;

(7) the minimum sales price or the maximum sales price of the public securities;

(8) the maximum amount of underwriting discount, if any, as a percentage of the aggregate principal amount of the public securities;

(9) the form of the public securities, subject to the final terms described in Subsection C of this section;

(10) the public securities that may be refunded, if any; and

(11) the appointment of a trustee, paying agent, registrar, escrow agent, tender agent, remarketing agent, dissemination agent or any other agent or service provider required for the sale, issuance and delivery of the public securities and the form of agreement for each appointment.

C. Subject to the parameters and conditions established in Subsection B of this section, a delegatee may be authorized, pursuant to the authorizing instrument, to determine any or all of the following final terms of the public securities:

(1) the interest and principal payment dates;

(2) the principal amount, denominations and maturity amortization;

(3) the sale price;

(4) the interest rate;

(5) the interest payment periods;

(6) the redemption and tender provisions;

(7) the procurement of municipal bond insurance and any related covenants or agreements;

(8) the creation of any capitalized interest or debt service reserve funds, including the size and funding of the funds;

(9) the amount of underwriting discount, if any;

(10) the public securities to be refunded, if any; and

(11) the final terms of agreements, if any, with one or more trustee, paying agent, registrar, escrow agent, tender agent, remarketing agent, dissemination agent or any other agent or service provider required for the purchase, sale, issuance and delivery of the public securities.

D. The public body shall determine and approve any term not listed in Subsection C of this section.

E. The delegatee shall certify in writing, prior to the delivery of the public securities, that the final terms determined pursuant to Subsection C of this section comply with the parameters and conditions established in the authorizing instrument pursuant to Subsection B of this section. The delegatee shall present the written certification containing the final terms of the public securities to the public body in a timely manner, before or after the delivery of the public securities, at a regularly scheduled meeting of the public body held in compliance with the Open Meetings Act [Chapter 10, Article 15 NMSA 1978].

F. A public body need not approve a determination made by the delegatee pursuant to Subsection C of this section if the determination complies with the parameters and conditions established in the authorizing instrument pursuant to Subsection B of this section. A determination made by the delegatee pursuant to this section has the same force and effect as a determination made by the public body. The delegatee, while acting within the scope of the delegatee's authority and the parameters and conditions established in the authorizing instrument pursuant to Subsection B of this section, shall not be subject to any personal liability for any action taken or omitted within that scope of authority.

G. A public body's adoption of an authorizing instrument that includes a delegation of authority pursuant to this section constitutes final passage of the authorizing instrument for the purposes of any applicable general or special law or any constitutional or statutory provision or municipal charter related to any referendum or petition right.

**History:** Laws 2017, ch. 120, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 120, § 4 made Laws 2017, ch. 120, § 2 effective July 1, 2017.

## 6-14-11. Scope of act.

The Supplemental Public Securities Act [6-14-8 to 6-14-11 NMSA 1978] is cumulative of and in addition to all other laws concerning public securities, and any public body may issue public securities in the manner provided in the Supplemental Public Securities Act notwithstanding any conflict or inconsistency between the provisions of the Supplemental Public Securities Act and the provisions of any other law.

**History:** 1978 Comp., § 6-14-11, enacted by Laws 1983, ch. 265, § 4.

## 6-14-12. Legislative intent.

It is the intent of the legislature that the provisions of the Supplemental Public Securities Act [6-14-8 to 6-14-11 NMSA 1978] be applicable to all public securities of all public bodies of this state, notwithstanding any failure of this act or any other act of the legislature to expressly amend the applicable provisions of any other statute authorizing such public securities.

**History:** Laws 1983, ch. 265, § 63.

**ANNOTATIONS**

**Compiler's notes.** — The term, "this act," means Laws 1983, ch. 265, which is presently compiled as 3-32-7, 3-33-24, 3-33-41, 3-34-2, 3-34-3, 3-35-8, 3-39-9, 3-44-2, 4-34-3, 4-48A-15, 4-48A-22, 4-48B-20, 4-49-4, 4-55A-20, 4-55A-37, 4-59-5, 6-9-1, 6-9-2, 6-12-6 to 6-12-8, 6-13-5, 6-13-11, 6-14-8 to 6-14-10, 6-14-11, 6-14-12, 6-15-5, 6-15-11, 6-15-13, 7-27-16, 7-27-17, 16-2-23, 17-1-19, 21-3-15, 21-5-14, 21-7-15, 21-8-17, 21-11-17, 22-18-11, 72-4-4, 72-16-56, 72-16-58, 72-16-63, 72-16-71, 72-18-57, 73-7-37, 73-9-17, 73-11-1, 73-12-15, 73-12-16, 73-16-7, 73-16-50 and 73-21-26 NMSA 1978.

# ARTICLE 15
# Finances of Counties, Municipalities and School Districts

## 6-15-1. Bonds payable from ad valorem taxes; notice of proposed issuance.

When any county, city, town, village or school district of the state shall have in contemplation the issuance of any bonds payable in whole or in part from ad valorem taxes, the governing authority thereof shall, before initiating any proceedings for such issue, forward to the local government division, or public school finance division, of the department of finance and administration [office of education of the department of finance and administration], a notice of such proposal in writing.

**History:** Laws 1925, ch. 131, § 1; C.S. 1929, § 33-3801; Laws 1935, ch. 91, § 1; 1941 Comp., § 7-614; 1953 Comp., § 11-6-13; Laws 1959, ch. 127, § 1.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1977, ch. 246, § 69, abolished the public school finance division of the department of finance and administration, and Laws 1977, ch. 246, § 3, compiled as 9-4-3 NMSA 1978, established the public school finance division of the educational finance and cultural affairs department. Laws 1980, ch. 151, § 58, repealed 9-4-3 NMSA

1978, while Laws 1980, ch. 151, § 47, compiled as 22-8-3 NMSA 1978, established the public school finance division of the department of finance and administration. Laws 1983, ch. 301, § 69, amended 22-8-3 NMSA 1978 to create the office of education within the department of finance and administration.

**Failure of notice not sufficient to enjoin issue.** — Failure to notify state tax commission of proposed issue of school bonds and to obtain information as to valuation was not sufficient cause for enjoining the issue. *White v. Curry Cnty. Bd. of Educ.*, 1932-NMSC-026, 36 N.M. 177, 10 P.2d 590 (decided under former law).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64 Am. Jur. 2d Public Securities and Obligations § 124.

20 C.J.S. Counties § 221; 64 C.J.S. Municipal Corporations § 1658; 79 C.J.S. Schools and School Districts § 362; 87 C.J.S. Towns § 220.

## 6-15-2. Bond issues; local government division of the department of finance and administration or public education department to furnish information; transcripts of proceedings; disposition.

It is the duty of the local government division of the department of finance and administration or the public education department, upon the receipt of the notice mentioned in Section 6-15-1 NMSA 1978, to furnish the governing authorities with all necessary information with reference to the valuation, present outstanding bonded indebtedness, limitations as to tax rates and debt contracting power and other information as may be useful to the governing authorities and to the voters of the county, municipality or school district in the consideration of any proposal to issue bonds. Upon the adoption of a bond issue as provided by law by a county, municipality or school district, the governing authorities shall prepare a true and complete transcript of proceedings and three exact copies of the transcript of the proceedings had in connection with the bond issue. One copy of the transcript of the proceedings shall be immediately filed with the local government division or the department, one kept by the governing authorities and one copy to be furnished to the officer approving the bond issue as to its legality as provided by law.

**History:** Laws 1925, ch. 131, § 2; C.S. 1929, § 33-3802; 1941 Comp., § 7-615; 1953 Comp., § 11-6-14; 1959, ch. 127, § 2; 1978 Comp., § 6-15-2; 2024, ch. 10, § 1.

**ANNOTATIONS**

**The 2024 amendment,** effective July 1, 2024, amended an existing provision requiring the local government division of the department of finance and administration to furnish information to the governing authorities regarding bonded indebtedness to also require the public education department to furnish such information upon the receipt of notice; in the section heading, deleted "or public school finance division" and added "or public education department"; after "It" deleted "shall be" and added "is", after "local

government division" deleted "or public school finance division", after "department of finance and administration" added "or the public education department", deleted "city, town, village" and added "municipality", throughout the section, and after "local government division or" deleted "public school finance division of the department of finance and administration" and added "the department".

**No authority to limit proceeds to advertising.** — There is no authority in this section or related statutes which authorizes the state tax commission to limit proceeds of a fair bond sale to advertising purposes only. 1958 Op. Att'y Gen. No. 58-47 (rendered prior to 1959 amendment).

## 6-15-3. Bonds; forms; interest; maturities.

A. Hereafter all general obligation bonds, except refunding bonds, issued under lawful authority by any county, city, town, village or school district shall be issued in accordance with the provisions of Sections 6-15-3 through 6-15-8 NMSA 1978. As used in Sections 6-15-3 through 6-15-8 NMSA 1978, the term "bonds" means only such general obligations [obligation] bonds, other than refunding bonds, of any county, city, town, village or school district. The bonds shall mature not more than twenty years from their date and be numbered from one upwards consecutively. Interest on all such bonds shall be payable either annually or semiannually, as may be set forth in the act of the governing body of the issuing municipal corporation; provided, that the first installment of interest coming due may be for any period of time which shall not exceed one year from the date of the bonds.

B. The resolution or ordinance authorizing the bonds may provide for the creation of a sinking fund to secure payment of principal or principal and interest on the bonds and may provide for mandatory annual payments to be made to the sinking fund from the taxes levied and collected pursuant to Section 6-15-4 NMSA 1978.

**History:** Laws 1929, ch. 201, § 1; C.S. 1929, § 16-101; 1941 Comp., § 7-616; 1953 Comp., § 11-6-15; Laws 1973, ch. 393, § 1; 1975, ch. 326, § 1.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For limitation on life of bond, *see* 6-15-7 NMSA 1978.

For creation of sinking fund, *see* 6-15-22 NMSA 1978.

**Maturities at 20 to 30 years invalid.** — A preliminary resolution providing for a proposed bond issue for a hospital, fixing the maturities at 20 to 30 years, was invalid since under Section 6-15-7 NMSA 1978 such bonds cannot have a maturity longer than 20 years. *Mann v. City of Artesia*, 1938-NMSC-014, 42 N.M. 224, 76 P.2d 941.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64 Am. Jur. 2d Public Securities and Obligations §§ 165 to 182.

20 C.J.S. Counties § 222; 64 C.J.S. Municipal Corporations § 1684; 79 C.J.S. Schools and School Districts § 371; 87 C.J.S. Towns § 215.

## 6-15-4. Tax levy for payment of bonds.

The officials now or hereafter charged by law with the duty of levying general (ad valorem) taxes for the payment of bonds and interest shall, in the manner provided by law, make an annual levy sufficient to meet the annual or semiannual payments of principal and interest on the bonds maturing or the mandatory sinking fund payments as in this article provided. Nothing herein contained shall be so construed as to prevent the municipal corporation from applying any other funds that may be in the treasury or investment income actually received from sinking fund investments and available for that purpose to the payment of the interest on or the principal of or any prior redemption premium in connection with such bonds as the same become due; and upon such payments, the levy or levies herein provided may thereupon to that extent be diminished.

**History:** Laws 1929, ch. 201, § 2; C.S. 1929, § 16-102; 1941 Comp., § 7-617; 1953 Comp., § 11-6-16; Laws 1973, ch. 393, § 2; 1975, ch. 326, § 2.

**ANNOTATIONS**

**Cross references.** — For destruction of documentary evidence of extinguished public debt, *see* 6-10-62 NMSA 1978.

## 6-15-5. Sale of bonds.

A. All of the bonds shall be offered and sold at public sale pursuant to this section or at a negotiated sale on terms determined by the municipal corporation.

B. Bonds maturing in less than thirty days may be sold at private sale to the state at the price and upon such terms and conditions as a municipal corporation and the state may determine.

C. Notwithstanding any law requiring bonds to be sold at a public sale, the following bonds may be sold at a public or private sale:

(1) bonds designated as build America bonds pursuant to Section 1531 of the federal American Recovery and Reinvestment Act of 2009; and

(2) qualified school construction bonds issued pursuant to the Qualified School Construction Bonds Act [22-18B-1 to 22-18B-5 NMSA 1978] and Section 1521 of the federal American Recovery and Reinvestment Act of 2009.

D. Before any bonds issued by a municipal corporation are offered for public sale, the corporate authorities issuing the bonds shall designate the maximum net effective interest rate the bonds shall bear, which shall not exceed the maximum permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]. A notice calling for bids for the purchase of the bonds shall be published once at least one week prior to the date of the sale in a newspaper having local circulation. The notice shall specify a place and designate a day and hour subsequent to the date of the publication when bids shall be received and publicly opened for the purchase of the bonds. The notice shall specify the maximum net effective interest rate permitted for the bonds and the maximum discount if a discount is allowed by the governing body and shall require bidders to submit a bid specifying the lowest rate of interest and any premium or discount if allowed by the governing body at, above or below par at which the bidder will purchase the bonds. The bonds shall be sold to the responsible bidder making the best bid determined by the municipal corporation as set forth in the notice, subject to the right of the governing body to reject any and all bids and readvertise. All bids shall be sealed or sent by facsimile or other electronic transmission to the municipal corporation as set forth in the notice. Except for the bid of the state or the United States, if one is received prior to acceptance by the governing body of the best bid, the best bidder shall make a deposit of not less than two percent of the principal amount of the bonds, either in the form of a financial security bond or in cash or by cashier's or treasurer's check of, or by certified check drawn on, a solvent commercial bank or trust company in the United States, which deposit shall be returned if the bid is not accepted. The financial surety bond or the long-term debt obligations of the issuer or person guarantying the obligations of the issuer of the financial surety bond shall be rated in one of the top two rating categories of a nationally recognized rating agency, without regard to any modification of the rating, and the financial surety bond must be issued by an insurance company licensed to issue such a bond in New Mexico. If the successful bidder does not complete the purchase of the bonds within thirty days following the acceptance of the bidder's bid or within ten days after the bonds are made ready and are offered by the municipal corporation for delivery, whichever is later, the amount of the bidder's deposit shall be forfeited to the municipal corporation issuing the bonds, and, in that event, the governing body may accept the bid of the bidder making the next best bid. If all bids are rejected, the governing body may readvertise the bonds for sale in the same manner as for the original advertisement or sell the bonds at private sale to the state or the United States. If there are two or more equal bids and the bids are the best bids received, the governing body shall determine which bid shall be accepted.

E. Except as provided in this section, bonds to be issued by a municipal corporation for various purposes may be sold and issued as a single combined issue even though they may have been authorized by separate votes at an election or elections. Bonds authorized by any incorporated city, town or village for the construction or purchase of a system for supplying water, a sanitary sewer system or a storm sewer system may be combined with each other and sold and issued as a single issue but may not be combined with bonds to be issued for any other purpose that may be subject to the debt limitation of Article 9, Section 13 of the constitution of New Mexico.

F. The bond underwriter representing the municipal corporation in a negotiated bond sale pursuant to this section shall be selected pursuant to a request for proposals in accordance with the provisions of the Procurement Code.

G. When bonds are sold at a negotiated sale, the terms of the bonds and comparable sale results for similar bonds shall be presented at a public meeting of the governing body of the municipal corporation.

H. For purposes of this section, "negotiated sale" means a sale of the bonds to investors by a bond underwriter or a private placement of the bonds with a bank, financial institution, state instrumentality or other person, with interest rates, maturity dates and other terms that are satisfactory to the municipal corporation.

**History:** Laws 1929, ch. 201, § 3; C.S. 1929, § 16-103; Laws 1937, ch. 125, § 1; 1941 Comp., § 7-618; 1953 Comp., § 11-6-17; Laws 1969, ch. 217, § 1; 1973, ch. 393, § 3; 1983, ch. 265, § 28; 1996, ch. 30, § 1; 1999, ch. 232, § 2; 2005, ch. 158, § 1; 2009, ch. 154, § 5; 2011, ch. 92, § 1; 2013, ch. 158, § 1.

## ANNOTATIONS

**The 2013 amendment,** effective June 14, 2013, provided for the sale of general obligation bonds through negotiated sales; provided for the designation of interest rates; in Subsection A, deleted the former first sentence which required corporate authorities to designate the maximum net effective interest rate before any bonds were offered for sale, and after "sale pursuant to this section", added the remainder of the sentence; in Subsection D, added the first sentence; and added Subsections F through H.

**The 2011 amendment,** effective June 17, 2011, eliminated the requirement that all bids be accompanied by a deposit and required that the best bidder make a deposit before the governing body accepts the bid.

**The 2009 amendment,** effective April 7, 2009, added Subsection C.

**The 2005 amendment,** effective June 17, 2005, in Subsection A, provided that except as provided in Subsection B of this section and in Sections 6-18-6, 6-18-7 and 6-21-9 NMSA 1978, bonds shall be sold at public sale pursuant to this section; and added Subsection B to provide that bonds may be sold at private sale to the state of New Mexico at the price and upon terms and conditions as may be negotiated between the state and the political subdivision.

**The 1999 amendment,** effective June 18, 1999, in Subsection A, deleted "Except as provided in Subsection B of this section" preceding "Before any bonds", substituted "offered for public sale" for "offered for sale", deleted "rate of interest the bonds shall bear and shall designate the maximum" preceding "net effective interest rate", and inserted "the bonds shall bear"; redesignated the former ending of Subsection A as B, in Subsection B, substituted "published once at least one week prior to the date of the

sale" for "published once a week for two consecutive weeks" in the first sentence, deleted "sealed" preceding "bids" in the second sentence, deleted "rate of interest the bonds shall bear, the maximum" preceding "net effective interest rate" in the third sentence, substituted "responsible bidder making the best bid determined by the municipal corporation as set forth in the notice" for "bidder making the best bid" in the fourth sentence, substituted "All bids shall be sealed or sent by facsimile or other electronic transmission to the municipal corporation as set forth in the notice. Except for the bid of the state of New Mexico or the United States, if one is received, all bids shall be" for "All bids shall be sealed and, except the bid of New Mexico, if one is received, shall be" and inserted "in the form of a financial security bond or" in the fifth sentence, inserted the sixth sentence, and inserted "or sell the bonds at private sale to the state of New Mexico or the United States" in the eighth sentence.

**The 1996 amendment,** effective July 1, 1996, added the subsection designations; in Subsection A, added the proviso at the beginning, deleted the former fourth sentence relating to mailing a copy of the notice, and substituted "does not" for "fails or neglects to" in the seventh sentence; substituted "issued by a municipal corporation" for "or any part thereof" in Subsection B; inserted "by a municipal corporation" in the first sentence in Subsection C; and made stylistic changes throughout the section.

**No commission is allowed for sale of bonds,** in whatever guise attempted. 1930 Op. Att'y Gen. No. 30-80.

**Financial advisors entitled to fee.** — A firm acting as financial advisor on the issuance, sale and delivery of general obligation school bonds is entitled to a fee and such fee is a reasonable and legal expense incurred by the municipal school. 1965 Op. Att'y Gen. No. 65-207 (rendered prior to 1973 amendment).

**Effect of board of education advertising bonds.** — A board of education does not lose its right to sell bonds to the state treasurer by advertising them for sale, nor is such right lost when the state treasurer bids on them at the public offering. 1946 Op. Att'y Gen. No. 46-4929.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64 Am. Jur. 2d Public Securities and Obligations §§ 193 to 214.

Bond issue in excess of amount permitted by law, estoppel to deny validity of, within authorized debt, tax or voted limit, 175 A.L.R. 823.

20 C.J.S. Counties § 225; 64 C.J.S. Municipal Corporations § 1679; 79 C.J.S. Schools and School Districts § 370; 87 C.J.S. Towns §§ 216, 217.

## 6-15-6. [Bids for bonds refused; return of deposits.]

If a bid be accepted the deposits of all other bidders shall be thereupon returned; if all bids be rejected, then all deposits shall be returned forthwith.

**History:** Laws 1929, ch. 201, § 4; C.S. 1929, § 16-104; 1941 Comp., § 7-619; 1953 Comp., § 11-6-18.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-15-7. Maturity date of bonds; limitation.

Bonds issued hereunder shall never be issued to run for a longer period than twenty years from the date of the bonds.

**History:** Laws 1929, ch. 201, § 5; C.S. 1929, § 16-105; 1941 Comp., § 7-620; 1953 Comp., § 11-6-19; Laws 1973, ch. 393, § 4.

**ANNOTATIONS**

**Cross references.** — For limitation on issuance of bonds, *see* 6-15-9 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64 Am. Jur. 2d Public Securities and Obligations § 173.

20 C.J.S. Counties § 222; 64 C.J.S. Municipal Corporations §§ 1690 to 1693; 79 C.J.S. Schools and School Districts § 371; 87 C.J.S. Towns § 215.

## 6-15-8. ["Municipal corporation" as used in Sections 6-15-3 to 6-15-8 NMSA 1978 defined.]

The term municipal corporation shall, for the purpose of this act [6-15-3 to 6-15-8 NMSA 1978], be construed to mean county, incorporated city, incorporated town, incorporated village or school district.

**History:** Laws 1929, ch. 201, § 7; C.S. 1929, § 16-107; 1941 Comp., § 7-621; 1953 Comp., § 11-6-20.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Section limited to issuance and sale of bonds.** — The inclusion of school districts in the definition of the term "municipal corporation" is, by the wording of this section, limited to the purposes of the act, 6-15-3 to 6-15-8 NMSA 1978, said purposes having to do with the issuance and sale of bonds of political subdivisions. Being so limited, it is

not a general legislative declaration. *McWhorter v. Board of Educ.*, 1958-NMSC-015, 63 N.M. 421, 320 P.2d 1025.

## 6-15-9. Bonds authorized at election; time limit on issuance; exceptions.

Bonds shall not be issued or sold by a school district, county or municipality after the expiration of four years from the date of the election authorizing the issue, except for the purpose of refunding previous bond issues or in payment of judgments. The bonds may be sold to the United States or to the state in any case in which the state or the United States has made an offer to purchase the bonds and the offer was accepted prior to the expiration of the four-year period. Any period of time when the validity of bonds or the election therefor is in litigation shall be excluded from the four-year period.

**History:** Laws 1933, ch. 114, § 1; 1934 (S.S.), ch. 12, § 1; 1941 Comp., § 7-622; 1953 Comp., § 11-6-21; Laws 1959, ch. 358, § 1; 1975, ch. 224, § 1; 1987, ch. 172, § 1; 1999, ch. 232, § 3; 2003, ch. 188, § 1.

**ANNOTATIONS**

**Cross references.** — For limitation on maturity of bonds, *see* 6-15-7 NMSA 1978.

**The 2003 amendment,** effective June 20, 2003, deleted "No" from the beginning and inserted "not" following "shall", substituted "four" for "three" following "the expiration of", deleted "or if the issuance of the bonds has been authorized at a regular election for officers of any such school district, county or municipality or, where authorized by statute, at a special election held for that purpose" following "payment of judgments", deleted "of New Mexico" twice in the second sentence, and substituted "four-year period" for "three-year period" twice.

**The 1999 amendment,** effective June 18, 1999, deleted "initiation of proceedings for" following "three years from the date of" in the first sentence, and substituted "state of New Mexico in any case in which the state of New Mexico or the United States has made an offer" for "state in any case in which the state has made an offer" in the second sentence.

**The 1987 amendment,** effective June 19, 1987, substituted "three years" for "two years" and "has made" for "has heretofore made or shall hereafter make" and deleted "heretofore, or may be hereafter" preceding "authorized at a regular election", "of America" following "United States", "of New Mexico" following "to the state", and "heretofore, or hereafter shall be" preceding "accepted prior" in the first sentence; substituted "three-year period" for "two-year period" in the first and second sentences; and made other minor word changes in the first sentence.

**Section not applicable to revenue bonds.** — This statute is not applicable to revenue bonds as it is to general obligation bonds in view of provisions of Laws 1943, ch. 82,

relating to the purchase or construction of a utility by a municipality, and if the provisions of that act are complied with the revenue bonds are valid. 1951 Op. Att'y Gen. No. 51-5360 (rendered before 1959 and 1975 amendments).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64 Am. Jur. 2d Public Securities and Obligations §§ 183, 187.

20 C.J.S. Counties § 221; 64 C.J.S. Municipal Corporations § 1699; 79 C.J.S. Schools and School Districts § 371.

## 6-15-10. Unissued bonds authorized at election; when void; exceptions.

In all cases where bond issues by the school districts, counties or municipalities have been authorized by special election and the bonds have not been issued within four years, the time allowed in Section 6-15-9 NMSA 1978 from the date of the special election authorizing the proposed issue, the proposed bond issue is void, except where issued for refunding bonded debt or for payment of judgments against the school district, county or municipality. Such bonds may be sold to the United States or to the state at private sale in any case in which the state or the United States has made an offer to purchase the bonds and the offer was accepted prior to the expiration of the four-year period allowed in Section 6-15-9 NMSA 1978.

**History:** Laws 1933, ch. 114, § 2; 1934 (S.S.), ch. 12, § 2; 1941 Comp., § 7-623; 1953 Comp., § 11-6-22; Laws 1959, ch. 358, § 2; 1987, ch. 172, § 2; 1999, ch. 232, § 4; 2003, ch. 188, § 2.

**ANNOTATIONS**

**The 2003 amendment,** effective June 20, 2003, substituted "within four years, the time allowed in Section 6-15-9 NMSA 1978" for "and sold within three years" following "not been issued", inserted "school" following "judgments against the", deleted "and, except where the issuance of the bonds has been authorized at a regular election for officers of any school district, county or municipality or, where authorized by statute, at a special election held for those purposes" following "county or municipality", deleted "of New Mexico" twice in the last sentence, and substituted "the four-year period allowed in Section 6-15-9 NMSA 1978" for "the three-year period" at the end.

**The 1999 amendment,** effective, June 18, 1999, deleted "initiation of proceedings for the" preceding "special election authorizing the proposed issue" in the first sentence, and substituted "state of New Mexico at private sale in any case in which the state of New Mexico or the United States has made an offer" for "state in any case in which the state has made an offer" in the second sentence.

**The 1987 amendment,** effective June 19, 1987, deleted "or are hereafter" preceding "authorized by special election", "heretofore or may be hereafter" preceding "authorized

at a regular election" and substituted "three years" for "two years" and "is void" for "shall be null and void" in the first sentence; deleted "of America" following "United States", "of New Mexico" following "state", and "heretofore, or hereafter shall be" preceding "accepted prior" and substituted "has made" for "heretofore made or shall hereafter make" and "three-year period" for "two-year period" in the second sentence; and made other minor word changes throughout the section.

## 6-15-11. Refunding bonds of county, municipality or school district; approval of issuance; purpose.

The governing body of any county, municipality or school district in this state may, with the approval of the department of finance and administration, issue bonds in such form as the governing body may determine, to be denominated refunding bonds, for the purpose of refunding any of the general obligation bonded indebtedness of the county, municipality or school district which has or will become due and payable or which has or will become payable at the option of the county, municipality or school district or by consent of the bondholders or by any lawful means.

**History:** Laws 1927, ch. 128, § 1; C.S. 1929, § 90-1101; 1941 Comp., § 7-624; 1953 Comp., § 11-6-23; Laws 1963, ch. 234, § 1; 1983, ch. 265, § 29.

**ANNOTATIONS**

**Constitutionality.** — This act (Sections 6-15-11 to 6-15-19 NMSA 1978) does not violate the constitutional limitation (N.M. Const., art. IX, §§ 11, 15) where bonds are issued to refund a valid obligation. *Southwest Sec. Co. v. Board of Educ.*, 1936-NMSC-008, 40 N.M. 59, 54 P.2d 412.

**Municipality entitled to use discretion in refunding portion of issue.** — Where municipality issued 51/2% water bonds, part payable in 30 years and part optional in 20 years, it was entitled to refund a portion of the issue, amounting to about one-half, and to use its discretion in selecting the bonds to be refunded, and a bondholder had no right to insist that his bond be called or not called before maturity. *Town of Alamogordo v. Beall*, 1937-NMSC-003, 41 N.M. 93, 64 P.2d 384.

**Approval of form and interest rate included in initial approval.** — If the state tax commission approved the issuance of school district bonds, it necessarily approved the form thereof and the rate of interest. *Southwest Sec. Co. v. Board of Educ.*, 1936-NMSC-008, 40 N.M. 59, 54 P.2d 412 (decided under former law).

**Refunding indebtedness by issuing bonds exceeding amount of indebtedness.** — Code 1915, § 3646 (repealed) authorized a city to refund its indebtedness, evidenced by judgments on past-due bonds, by issuing 5% bonds in an amount exceeding the amount of the indebtedness sought to be refunded, so that a sale thereof at not less than 95 would produce a sufficient fund. *Padilla v. Socorro*, 1923-NMSC-003, 28 N.M. 354, 212 P. 337 (decided under former law).

**General obligation water refunding bonds may not be issued.** — Water revenue bonds may not be refunded in whole or in part by the issuance of general obligation water refunding bonds for the reason that the statutory grant of such power is lacking. 1960 Op. Att'y Gen. No. 60-161.

**Refunding bonds in amount that exceeds outstanding bonds.** — Subject to approval of the department of finance and administration, a board of education may issue general obligation refunding bonds in a principal amount that is greater than the principal amount of the outstanding bonds being refunded, provided the proceeds of the refunding bonds are used only for the purpose of refunding existing school district general obligation indebtedness and not for new capital outlay projects, operating costs of a school district or other purposes besides refunding. 2001 Op. Att'y Gen. No. 01-03.

**Water revenue bonds do not constitute "bonded indebtedness" of municipality** inasmuch as such revenue bonds are payable only from the net revenue of the water works system. 1960 Op. Att'y Gen. No. 60-161.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64 Am. Jur. 2d Public Securities and Obligations §§ 222 to 227.

Power of municipality or other governmental body to issue refunding bonds to retire obligation in respect of which the creation and maintenance of a sinking fund by taxation is required. 157 A.L.R. 794.

20 C.J.S. Counties §§ 218 to 226; 64 C.J.S. Municipal Corporations §§ 1651 to 1653; 79 C.J.S. Schools and School Districts § 360.

## 6-15-12. Ordinance or resolution for refunding bonds; contents; maturities.

Whenever such governing body shall deem it expedient to issue refunding bonds under the provisions of Sections 6-15-11 to 6-15-22 NMSA 1978, the governing body of a municipality shall adopt an ordinance, and the governing body of a county or school district shall adopt a resolution, which shall be spread on the records of the governing body, which ordinance or resolution shall set out the facts making the issuance of such refunding bonds necessary or advisable, the determination of such necessity or advisability by said governing body and the amount of such refunding bonds which it is deemed necessary and advisable to issue. Such ordinance or resolution shall fix the rate or rates of interest of such bonds, which shall not be in excess of the maximum coupon rate which is permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978], the date of said refunding bonds, the denomination or denominations thereof, the maturity date or dates, the last of which shall not be more than twenty-five years from the date of said refunding bonds, the place or places of payment within or without the state of New Mexico of both principal and interest, and shall further set out the form of said refunding bonds.

**History:** Laws 1927, ch. 128, § 2; C.S. 1929, § 90-1102; 1941 Comp., § 7-625; 1953 Comp., § 11-6-24; Laws 1963, ch. 234, § 2; 1975, ch. 326, § 3.

**ANNOTATIONS**

**Resolution minutes need not be certified.** — A resolution authorizing issuance of school refunding bonds complied with the statute by stating that the old bonds bore 6% interest, and that such bonds might be refunded with bonds at a lower interest. Failure to certify the minutes of such resolution does not invalidate the bonds. *Southwest Sec. Co. v. Board of Educ.*, 1936-NMSC-008, 40 N.M. 59, 54 P.2d 412.

**Placing proceeds in escrow does not increase indebtedness.** — Where proceeds of municipal refunding bonds were to be placed in escrow and invested in United States bonds for the sole purpose of paying off indebtedness on existing municipal bonds, the refunding bonds could not be considered as an increase in the city's indebtedness within N.M. Const., art. IX, § 12 and N.M. Const., art. IX, § 13, even though some 10 years would lapse between issuance of refunding bonds and final payment of original bonds, and though original bonds would not be paid immediately upon their initial callable date. *City of Albuquerque v. Gott*, 1964-NMSC-027, 73 N.M. 439, 389 P.2d 207.

**Maturity date.** — The maturity date of refunding bonds cannot be more than 25 years from their date, nor extend beyond the final maturity date of bonds to be refunded where these become due and payable at the option of the issuing body. 1936 Op. Att'y Gen. No. 36-1415.

**Principal amount greater than principal amount of outstanding bonds being refunded.** — Subject to the approval of the department of finance and administration, a board of education may issue general obligation refunding bonds in a principal amount that is greater than the principal amount of the outstanding bonds being refunded, provided the proceeds of the refunding bonds are used only for the purpose of refunding existing school district general obligation indebtedness, as provided by law, and not for new capital outlay projects, operating costs of a school district or other purposes besides refunding. 2001 Op. Att'y Gen. No. 01-03.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 20 C.J.S. Counties § 221; 64 C.J.S. Municipal Corporations § 1659; 79 C.J.S. Schools and School Districts § 363.

## 6-15-13. Execution of refunding bonds; interest coupons; mode of payment; installments.

The refunding bonds shall be in such form as the governing body may determine and, unless issued in book entry or similar form without the delivery of physical securities, shall refer to the act under which they are issued, be executed in the name of the county, municipality or school district, signed by the chairman or president of the governing body, sealed with the seal of the county, municipality or school district and

attested by the county, municipal or school district clerk or secretary. The interest accruing on the refunding bonds shall be payable semiannually or annually. Both principal and interest of the bonds shall be payable in lawful money of the United States at such place or places as may be determined by the governing body of the county, municipality or school district. The principal of the bonds shall mature on the date or dates set by the governing body, with or without option of prior redemption, not later than twenty-five years from the date of the bonds.

**History:** Laws 1927, ch. 128, § 3; C.S. 1929, § 90-1103; 1941 Comp., § 7-626; 1953 Comp., § 11-6-25; Laws 1963, ch. 234, § 3; 1975, ch. 326, § 4; 1983, ch. 265, § 30.

**ANNOTATIONS**

**Compiler's notes.** — The reference in the section heading to "interest coupons" is apparently irrelevant in light of the 1983 amendment, which deleted references to interest coupons.

**Cross references.** — For facsimile signatures of public officials, *see* 6-9-1 NMSA 1978 et seq.

**Payment of school refunding bonds.** — School refunding bonds payable in gold coin or its equivalent in lawful money did not invalidate bonds which were payable in gold coin equal to current standard of weight and fineness since such bonds were payable in lawful money of the United States. *Southwest Sec. Co. v. Board of Educ.*, 1936-NMSC-008, 40 N.M. 59, 54 P.2d 412 (decided under former law).

**Provision for seal on school district bonds is directory only** and is not essential to valid obligation. *Estancia Bd. of Educ. v. Woodmen of World*, 77 F.2d 31 (10th Cir. 1935).

**Legislative intent.** — Considering the purpose of the Uniform Facsimile Signature of Public Officials Act (Sections 6-9-1 to 6-9-6 NMSA 1978), it is the legislative intention that the provisions of such act be applicable to the signatures affixed to advance county, municipality or school district refunding bonds provided for in this section. 1965 Op. Att'y Gen. No. 65-67.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 20 C.J.S. Counties §§ 222, 226; 64 C.J.S. Municipal Corporations § 1684; 79 C.J.S. Schools and School Districts § 371.

## 6-15-14. Levy of taxes to pay annual installments and interest.

The governing body of any county, municipality or school district which shall have issued refunding bonds under the provisions of Sections 6-15-11 to 6-15-22 NMSA 1978, shall, during each year in which any of said bonds shall be outstanding, cause an annual tax to be levied on all property in the county, municipality or school district subject to taxation, sufficient to produce one year's interest on all of said bonds then

outstanding, and to pay the annual installment of the principal of said bonds that will become due and payable in the next ensuing year or the annual mandatory sinking fund requirement if the principal is to be paid from a sinking fund. Such taxes shall be levied, assessed and collected at the times and in the manner that other county, municipal or school district taxes are levied, assessed and collected, and the proceeds of such taxes shall be kept in a special fund or sinking fund to be used only for the payment of the interest on and for the redemption of such bonds.

**History:** Laws 1927, ch. 128, § 5; C.S. 1929, § 90-1105; 1941 Comp., § 7-628; 1953 Comp., § 11-6-27; Laws 1975, ch. 326, § 5.

**ANNOTATIONS**

**Cross references.** — For destruction of documentary evidence of extinguished public debt, *see* 6-10-62 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64 Am. Jur. 2d Public Securities and Obligations §§ 58 to 62, 344, 349, 376.

20 C.J.S. Counties § 226; 64 C.J.S. Municipal Corporations § 1706; 79 C.J.S. Schools and School Districts § 374.

## 6-15-15. Exchange for bonds to be refunded; sales.

All such refunding bonds may be exchanged dollar for dollar for the bonds to be refunded, or they may be sold as directed by the governing body, and the proceeds thereof shall be applied only to the purpose for which said refunding bonds were issued.

**History:** Laws 1927, ch. 128, § 6; C.S. 1929, § 90-1106; 1941 Comp., § 7-629; 1953 Comp., § 11-6-28; Laws 1963, ch. 234, § 4.

**ANNOTATIONS**

**Authority of school district.** — This act (Sections 6-15-11 to 6-15-19 NMSA 1978) authorizes a school district to issue refunding bonds for sale enforceable in the hands of the purchaser. *Southwest Sec. Co. v. Board of Educ.*, 1936-NMSC-008, 40 N.M. 59, 54 P.2d 412.

**Bona fide purchaser's right to rely on certificate.** — A bona fide purchaser of a bond purported to be a school refunding bond has a right to rely on the certificate that exchange of the bonds had been effectuated and refunded bonds destroyed, made by authorized officers, and the school board is estopped to assert falsity of certificate. *Estancia Bd. of Educ. v. Woodmen of World*, 77 F.2d 31 (10th Cir. 1935).

**Estoppel of school district raising invalidity of bond.** — A school district is estopped from setting up the invalidity of bonds as against a bona fide purchaser on ground that

the old bonds had not been canceled and record made of such acts where the bonds recited that all statutory requirements had been fulfilled and the board had certified to delivery and cancellation of old bonds. *Southwest Sec. Co. v. Board of Educ.*, 1936-NMSC-008, 40 N.M. 59, 54 P.2d 412.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Power of governmental unit to issue bonds as implying power to refund them, 1 A.L.R.2d 134.

20 C.J.S. Counties § 225; 64 C.J.S. Municipal Corporations § 1679; 79 C.J.S. Schools and School Districts § 370.

## 6-15-16. [Record of refunding bonds.]

The governing body of any county, municipality or school district issuing bonds under this act [6-15-11 to 6-15-19 NMSA 1978 NMSA 1978] shall keep a record thereof in a book to be kept for that purpose, showing the date, number, amount and maturity of such bonds and all payments of interest or principal of any such bonds.

**History:** Laws 1927, ch. 128, § 7; C.S. 1929, § 90-1107; 1941 Comp., § 7-630; 1953 Comp., § 11-6-29.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-15-17. [Retired refunding bonds to be destroyed.]

All such refunding bonds paid and retired shall be burned and destroyed by the governing body which retires the same, and a record of such destruction and the number and amount of bonds destroyed shall be entered on the records of such governing body.

**History:** Laws 1927, ch. 128, § 8; C.S. 1929, § 90-1108; 1941 Comp., § 7-631; 1953 Comp., § 11-6-30.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-15-18. [Bonds surrendered for refunding; record; destruction.]

Upon the surrender of any bonds refunded under the provisions of this act [6-15-11 to 6-15-19 NMSA 1978], there shall be entered on the records of the governing body to whom surrendered the fact of such surrender and the number, amount, date and

character of the bonds so surrendered; and such bonds shall be destroyed by such governing body and the fact of such destruction shall be likewise entered on such record.

**History:** Laws 1927, ch. 128, § 9; C.S. 1929, § 90-1109; 1941 Comp., § 7-632; 1953 Comp., § 11-6-31.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-15-19. [Definition of terms.]

The term "municipality" shall mean any incorporated city, town, or village in this state, whether the same shall have been incorporated by special character [charter] or under the general laws of this state. The term "school district" shall mean and include all municipal independent union high school or rural districts, whether the same shall be under the jurisdiction of a county board of education or municipal boards of education, and shall include districts organized for high school purposes. The term "governing body" shall mean the board of county commissioners, city council, board of trustees, board of commissioners or similar legislative bodies of municipalities, and shall mean the board of education or similar board having control of school affairs.

**History:** Laws 1927, ch. 128, § 10; C.S. 1929, § 90-1110; 1941 Comp., § 7-633; 1953 Comp., § 11-6-32.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-15-20. Application of bond proceeds; procedures; limitations.

A. The proceeds derived from the issuance of any refunding bonds under the provisions of Sections 6-15-11 through 6-15-22 NMSA 1978, shall first be either immediately applied to the payment, or redemption and retirement of the bonds to be refunded and the cost and expense incident to such procedures, or shall immediately be placed in escrow to be applied to the payment of said bonds upon their presentation therefor and the costs and expenses incident to such proceedings. Any money remaining after providing for the payment of the refunded bonds and any expenses and costs incident therewith shall be credited against the initial or subsequent levies required by Section 6-15-14 NMSA 1978 and deposited to the special fund of the political subdivision to be used to pay maturing principal and interest on the refunding bonds.

B. Any such escrowed proceeds, pending such use, may be invested or, if necessary, reinvested only in direct obligation [obligations] of the United States of America, or obligations guaranteed by the United States of America, maturing at such times as to ensure the prompt payment of the bonds refunded under the provisions of this article and the interest accruing thereon. For the purposes of this section, obligations guaranteed by the United States of America shall include but not be limited to the following: farmers home administration certificates of beneficial ownership, export-import bank certificates of beneficial interest, export-import bank participation certificates, export-import bank debentures, government national mortgage association participation certificates and debentures and small business administration debentures.

C. Such escrowed proceeds and investment [investments], together with any interest to be derived from such investments, shall be in an amount which at all times shall be sufficient to pay the bonds refunded as they become due at their respective maturities or as they are called for redemption and payment on prior redemption dates, as to principal, interest, any prior redemption premium due, and any charges of the escrow agent payable therefrom; the computations made in determining such sufficiency shall be verified by a certified or registered public accountant.

D. For the purpose of implementing the provisions of this article, the governing body shall have the power to enter into escrow agreements and to establish escrow accounts with any qualified depository located within the state of New Mexico, which is a member of the federal deposit insurance corporation, under protective covenants and agreements whereby such accounts shall be fully secured by direct obligations of the United States of America or obligations guaranteed by the United States of America or shall be invested in such direct obligations, or guaranteed obligations in such amounts as will be sufficient, and maturing at such times, so as to ensure the prompt payment of the bonds refunded, and the interest accruing thereon, under the provisions of Sections 6-15-11 through 6-15-22 NMSA 1978. All banks are authorized and directed to give such security.

E. In no event shall the aggregate amount of bonded indebtedness of any county, municipality or school district exceed the maximum allowable amount as determined pursuant to the statute applicable to such county, municipality or school district.

F. The issuance of refunding bonds by any county, municipality or school district for the purposes and in the manner authorized by this article or under the provisions of any other law thereunto enabling, shall never be interpreted or taken to be the creation of an indebtedness such that the same would require the approval of the qualified electors of the county, municipality or school district, and no such approval shall be required for the issuance of such refunding bonds except as is specifically required by the law under which said refunding bonds are sought to be issued or have been issued.

G. No bonds may be refunded under the provisions of Sections 6-15-11 through 6-15-22 NMSA 1978 unless the holders thereof voluntarily surrender said bonds for immediate exchange or immediate payment or unless said bonds either mature or are

callable for redemption prior to their maturity under their terms within twenty years from the date of issuance of the refunding bonds and provision shall be made for paying or redeeming and discharging all of the bonds refunded within said period of time.

**History:** 1953 Comp., § 11-6-34.1, enacted by Laws 1963, ch. 235, § 1; 1975, ch. 326, § 6; 1981, ch. 338, § 1.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "this article" refer to Chapter 11, Article 6, 1953 Comp., the operative provisions of which are presently compiled as 6-6-7 to 6-6-18 and 6-15-1 to 6-15-28 NMSA 1978.

**Placing proceeds in escrow does not increase indebtedness.** — Where proceeds of municipal bonds were to be placed in escrow and invested in United States bonds for the sole purpose of paying off indebtedness on existing municipal bonds, the refunding bonds could not be considered as an increase in the city's indebtedness within N.M. Const., art. IX, § 12 and N.M. Const., art. IX § 13, even though some 10 years would lapse between issuance of refunding bonds and final payment of original bonds, and though original bonds would not be paid immediately upon their initial callable date. *City of Albuquerque v. Gott*, 1964-NMSC-027, 73 N.M. 439, 389 P.2d 207.

**Principal amount greater than principal amount of outstanding bonds being refunded.** — Subject to the approval of the department of finance and administration, a board of education may issue general obligation refunding bonds in a principal amount that is greater than the principal amount of the outstanding bonds being refunded, provided the proceeds of the refunding bonds are used only for the purpose of refunding existing school district general obligation indebtedness, as provided by law, and not for new capital outlay projects, operating costs of a school district or other purposes besides refunding. 2001 Op. Att'y Gen. No. 01-03.

## 6-15-21. Contributions securing payment of bonds.

In order to provide for the payment of maturing principal and interest, or call premium if any, on any of its general obligation or general obligation refunding bonds a county, municipality or school district may contribute any available money to aid in the purchase of securities to be placed in a trust or escrow created pursuant to Section 6-15-20 NMSA 1978, or may create any such trust or enter into any such escrow agreement if such trust or escrow agreement is to be wholly funded with cash or securities transferred from any fund of such county, municipality or school district, or purchased with the proceeds of any available money from any fund of such county, municipality or school district.

**History:** 1953 Comp., § 11-6-34.2, enacted by Laws 1975, ch. 326, § 7.

## 6-15-22. Creation of sinking funds to secure payment of bonds.

A. Any bonds authorized pursuant to Sections 6-6-7 to 6-6-18 and 6-15-1 to 6-15-22 NMSA 1978 may be secured by a sinking fund which may be created by resolution or ordinance of the governing body either at or prior to the issuance of such bonds. The resolution or ordinance creating the sinking fund may also be combined with any resolution or ordinance pertaining to the issuance of such bonds. The resolution or ordinance may provide for annual mandatory payments to be made into the sinking fund and from the taxes to be issued for the payment of such bonds. When a sinking fund is created, payments into the sinking fund shall be made from the special fund created pursuant to Sections 6-15-4 or 6-15-14 NMSA 1978 at the times and in the manner specified by the governing body in the resolution or ordinance creating the sinking fund. Either principal or interest or both may be paid from the sinking fund but no interest shall be paid therefrom unless specifically provided for in the sinking fund's authorizing resolution or ordinance.

B. All sinking funds created pursuant to this article may be invested and reinvested in any of the following:

(1) bonds or other evidences of indebtedness of the United States of America or any of its agencies or instrumentalities when such obligations are guaranteed as to principal and interest by the United States of America or by any agency or instrumentality thereof; or

(2) bonds or other evidences of indebtedness of this state, or of any of the counties or incorporated cities, towns or duly organized school districts of the state.

C. The treasurer or other chief financial officer of the county, municipality or school district if designated, other than the treasurer, with the consent of the governing body, may enter into an irrevocable depository trust or escrow agreement with any bank doing business in this state. The depository trust agreement may contain any or all of the following provisions:

(1) for the safekeeping and handling of cash and securities of the sinking fund;

(2) such terms and conditions as shall secure the proper safeguarding, inventory, withdrawal and handling of the cash and securities;

(3) the investment and reinvestment or limitation on investment and reinvestment by trustee or escrow agent of all or any part of the sinking fund on a continuing basis, which may extend throughout the life of the agreement;

(4) the terms under which the sinking fund may be expanded to provide for the payment of additional or subsequent bond issues; or

(5) payment of the trustee fees and expenses either from bond proceeds or on a continuing basis.

D. No access to and no deposit or withdrawal of the securities from any place of deposit selected by such officers shall be permitted or made except as the terms of the agreement may provide. The agreement need not require that securities be physically located in New Mexico, if such securities are represented by safekeeping receipts issued for the account of or benefit of the treasurer by a federal reserve bank or any bank located in a reserve city whose combined capital and surplus on the date of the safekeeping receipt equal or exceed the total amount to be deposited in the sinking fund under the terms of the contract.

E. The depository trust agreement may be combined with an escrow agreement pertaining to the issuance of refunding bonds.

F. The trustee or escrow agent of the sinking fund may also be the paying agent on the bonds secured by the sinking fund or any other bonds of the county, municipality or school district.

**History:** 1953 Comp., § 11-6-34.3, enacted by Laws 1975, ch. 326, § 8.

**ANNOTATIONS**

**Compiler's notes.** — The words "this article" refer to Chapter 11, Article 6, 1953 Comp., the operative provisions of which are presently compiled as 6-6-7 to 6-6-18 and 6-15-1 to 6-15-28 NMSA 1978.

**Cross references.** — For authorizing resolution or ordinance providing for sinking fund, *see* 6-15-3 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64 Am. Jur. 2d Public Securities and Obligations § 364.

20 C.J.S. Counties § 226; 64 C.J.S. Municipal Corporations § 1704; 79 C.J.S. Schools and School Districts § 374; 87 C.J.S. Towns § 218.

## 6-15-23. Repealed.

**History:** 1953 Comp., § 11-6-35, enacted by Laws 1970, ch. 6, § 1; 1978 Comp., § 6-15-23, repealed by Laws 2019, ch. 212, § 284.

**ANNOTATIONS**

**Repeals.** — Laws 2019, ch. 212, § 284 repealed 6-15-23 NMSA 1978, as enacted by Laws 1970, ch. 6, § 1, relating to the short title of the Bond Election Act, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

## 6-15-24. Repealed.

**History:** 1953 Comp., § 11-6-36, enacted by Laws 1970, ch. 6, § 2; 1971, ch. 132, § 1; 1978 Comp., § 6-15-24, repealed by Laws 2019, ch. 212, § 284.

**ANNOTATIONS**

**Repeals.** — Laws 2019, ch. 212, § 284 repealed 6-15-24 NMSA 1978, as enacted by Laws 1970, ch. 6, § 2, relating to definitions of the Bond Election Act, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

## 6-15-25. Repealed.

**History:** 1953 Comp., § 11-6-37, enacted by Laws 1970, ch. 6, § 3; 1971, ch. 132, § 2; 1978 Comp., § 6-15-25, repealed by Laws 2019, ch. 212, § 284.

**ANNOTATIONS**

**Repeals.** — Laws 2019, ch. 212, § 284 repealed 6-15-25 NMSA 1978, as enacted by Laws 1970, ch. 6, § 3, relating to findings of the Bond Election Act, purpose of act, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

## 6-15-26. Repealed.

**History:** 1953 Comp., § 11-6-38, enacted by Laws 1971, ch. 132, § 3; 1975, ch. 36, § 1; 1985, ch. 208, § 120; 2018, ch. 79, § 75; 1978 Comp., § 6-15-26, repealed by Laws 2019, ch. 212, § 284.

**ANNOTATIONS**

**Repeals.** — Laws 2019, ch. 212, § 284 repealed 6-15-26 NMSA 1978, as enacted by Laws 1971, ch. 132, § 3, relating to bond elections, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

## 6-15-27. Repealed.

**History:** 1953 Comp., § 11-6-39, enacted by Laws 1970, ch. 6, § 5; 1978 Comp., § 6-15-27, repealed by Laws 2019, ch. 212, § 284.

**ANNOTATIONS**

**Repeals.** — Laws 2019, ch. 212, § 284 repealed 6-15-27 NMSA 1978, as enacted by Laws 1970, ch. 6, § 5, relating to scope of the Bond Election Act, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

## 6-15-28. Repealed.

**History:** 1953 Comp., § 11-6-40, enacted by Laws 1970, ch. 6, § 6; 1971, ch. 132, § 4; 1978 Comp., § 6-15-28, repealed by Laws 2019, ch. 212, § 284.

**ANNOTATIONS**

**Repeals.** — Laws 2019, ch. 212, § 284 repealed 6-15-28 NMSA 1978, as enacted by Laws 1970, ch. 6, § 6, relating to validation of the Bond Election Act, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

# ARTICLE 15A Education Technology Equipment

## 6-15A-1. Short title.

Chapter 6, Article 15A NMSA 1978 may be cited as the "Education Technology Equipment Act".

**History:** Laws 1997, ch. 193, § 1; 2015, ch. 68, § 1.

**ANNOTATIONS**

**Cross references.** — For restrictions on school district indebtedness, *see* N.M. Const., art. IX, § 11.

**The 2015 amendment,** effective July 1, 2015, changed the statutory reference of the Education Technology Equipment Act from "Sections 1 through 16 of this act" to "Chapter 6, Article 15A NMSA 1978".

## 6-15A-2. Purpose.

The purpose of the Education Technology Equipment Act is to implement the provision of Article IX, Section 11 of the constitution of New Mexico, as approved by the voters of the state of New Mexico at the general election held in November, 1996, which declares that a school district may create a debt under the constitution of New Mexico by entering into a lease-purchase arrangement to acquire education technology

equipment without submitting the proposition to a vote of the qualified electors of the school district.

**History:** Laws 1997, ch. 193, § 2.

## 6-15A-3. Definitions.

As used in the Education Technology Equipment Act:

A. "debt" means an obligation payable from ad valorem property tax revenues or the general fund of a school district and that may be secured by the full faith and credit of a school district and a pledge of its taxing powers;

B. "department" means the public education department;

C. "education technology equipment" means tools used in the educational process that constitute learning and administrative resources and may include:

(1) closed-circuit television systems; educational television and radio broadcasting; cable television, satellite, copper and fiber-optic transmission; computer network connection devices; digital communications equipment (voice, video and data); servers; switches; portable media such as discs and drives to contain data for electronic storage and playback; and purchase or lease of software licenses or other technologies and services, maintenance, equipment and computer infrastructure information, techniques and tools used to implement technology in schools and related facilities;

(2) improvements, alterations and modifications to, or expansions of, existing buildings, including teacher housing, or personal property necessary or advisable to house or otherwise accommodate any of the tools listed in Paragraph (1) of this subsection; and

(3) expenditures for technical support and training expenses of school district employees who administer education technology projects funded by a lease-purchase arrangement and may include training by contractors;

D. "eligible charter school" means a locally chartered or state-chartered charter school located within the geographic boundaries of a school district:

(1) that timely provides the information necessary to identify the lease-purchase education technology equipment needed in the charter school to be included in the local school board resolution for lease-purchase of education technology equipment; and

(2) for which the proposed lease-purchase of education technology equipment is included in the school district's approved technology master plan;

E. "lease-purchase arrangement" means a financing arrangement constituting debt of a school district pursuant to which periodic lease payments composed of principal and interest components are to be paid to the holder of the lease-purchase arrangement and pursuant to which the owner of the education technology equipment may retain title to or a security interest in the equipment and may agree to release the security interest or transfer title to the equipment to the school district for nominal consideration after payment of the final periodic lease payment. "Lease-purchase arrangement" also means any debt of the school district incurred for the purpose of acquiring education technology equipment pursuant to the Education Technology Equipment Act whether designated as a general obligation lease, note or other instrument evidencing a debt of the school district;

F. "local school board" means the governing body of a school district; and

G. "school district" means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes.

**History:** Laws 1997, ch. 193, § 3; 1999, ch. 89, § 1; 2011, ch. 149, § 1; 2015, ch. 68, § 2; 2021, ch. 52, § 1.

## ANNOTATIONS

**The 2021 amendment,** effective July 1, 2021, revised the definition of "education technology equipment" to include improvements, alterations and modifications to, or expansion of, teacher housing; and in Subsection C, Paragraph C(2), after "existing buildings", added "including teacher housing".

**The 2015 amendment,** effective July 1, 2015, added definitions for "department" and "eligible charter school" and clarified certain definitions in the Education Technology Equipment Act; added Subsection B; redesignated former Subsection B as Subsection C; in Subsection C, Paragraph (1), after "playback;", added "and purchase or lease of"; added Paragraph (3) of Subsection C; and added Subsection D and redesignated former Subsections C, D and E as Subsections E, F and G, respectively.

**The 2011 amendment,** effective April 7, 2011, eliminated video and audio laser, CD ROM discs video and audio tapes from the definition of "education technology equipment", and added network connection devices, digital communications equipment, servers, switches, portable media and software licenses.

**The 1999 amendment,** effective March 19, 1999, in Subsection B inserted "and administrative" in the introductory language, added the Paragraph (1) designation and substituted "schools and related facilities; and" for "classrooms and library and media centers" at the end, and added Paragraph (2).

**Definition of "lease-purchase arrangement" is invalid.** — The last sentence of Subsection C of Section 6-15A-3 NMSA 1978, which equates a lease-purchase arrangement with "any debt" incurred for the acquisition of educational technology equipment, improperly expands the exception for lease-purchase arrangements under Subsection C of Section 11 of Article IX of the New Mexico Constitution beyond what the drafters intended and is invalid. 2008 Op. Att'y Gen. No. 08-01.

## 6-15A-4. Notice of proposed lease-purchase arrangements.

When a school district contemplates entering into a lease-purchase arrangement payable in whole or in part from ad valorem taxes, the local school board, before initiating any proceedings for approval of such lease-purchase arrangement, shall forward to the school budget planning unit of the state department of public education, a written notice of the proposed lease-purchase arrangement.

**History:** Laws 1997, ch. 193, § 4.

## 6-15A-5. School budget planning unit of the state department of public education to furnish information, transcripts of proceedings and disposition.

The school budget planning unit of the state department of public education, upon the receipt of the notice mentioned in Section 4 [6-15A-4 NMSA 1978] of the Education Technology Equipment Act shall furnish all necessary information with reference to the valuation, present outstanding bonded indebtedness, present outstanding lease-purchase arrangements and limitations as to tax rates and debt contracting power and other information useful to the local school board in the consideration of a proposed lease-purchase arrangement. Upon entering into a lease-purchase arrangement, the local school board shall prepare two true and complete transcripts of proceedings relating to the lease-purchase arrangement, one to be immediately filed with the school budget planning unit of the [state] department of public education and one to be kept by the local school board.

**History:** Laws 1997, ch. 193, § 5.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-15A-6. Tax levy for payment of lease-purchase agreement.

The officials charged by law with the duty of levying ad valorem taxes for the payment of bonds and interest shall, in the manner provided by law, make an annual levy sufficient to meet the payments due on lease-purchase arrangements. Annual

payments due on lease-purchase arrangements may be combined with other school district general obligation debt when determining the annual debt service tax levy pursuant to Sections 7-37-8 and 22-18-12 NMSA 1978. Nothing in the Education Technology Equipment Act shall be so construed as to prevent a school district from applying any other legally available funds, including funds that may be in its general fund or investment income actually received from investments, to the payments due on or any prepayment premium payable in connection with such lease-purchase arrangements as the same become due, and upon such payments, the levy or levies provided for in this section may, to that extent, be reduced.

**History:** Laws 1997, ch. 193, § 6; 2001, ch. 349, § 1.

**ANNOTATIONS**

**The 2001 amendment,** effective June 15, 2001, added the current second sentence; substituted "in the Education Technology Equipment Act" for "herein contained"; inserted "legally available funds, including" following "applying any other"; deleted "and available for that purpose" preceding "to the payments"; and made stylistic changes.

## 6-15A-7. Lease-purchase arrangements; terms.

Lease-purchase arrangements may:

A. have interest, appreciated principal value, or any part thereof, payable at intervals or at maturity as may be determined by the local school board;

B. be subject to prior redemption or prepayment at the option of the local school board as [at] such time or times and upon such terms and conditions with or without the payment of such premium or premiums as may be determined by the local school board;

C. have a final payment date or mature at any time or times not exceeding five years after the date of issuance;

D. be payable at one time or in installments or may be in such other form as may be determined by the local school board;

E. be priced at, above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]; and

F. be sold or issued at public sale, negotiated sale or private sale to the New Mexico finance authority.

**History:** Laws 1997, ch. 193, § 7.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Definition invalid.** — Definition of "lease-purchase arrangement" is invalid to the extent it includes debt incurred for the acquisition of education technology equipment that is not a lease-purchase arrangement contemplated under N.M. Const., art. IX, § 11(C). 2008 Op. Att'y Gen. No. 08-01.

## 6-15A-8. Authorizing lease-purchase of education technology equipment; preliminary resolution; contents; notice; final resolution of approval.

A. If a local school board proposes to lease-purchase education technology equipment, it shall comply with the requirements of this section.

B. At a regular meeting or at a special meeting called for the purpose of considering the lease-purchase of education technology equipment, a local school board shall:

(1) make a determination of the necessity for lease-purchasing the education technology equipment;

(2) determine the estimated cost of the equipment needed;

(3) review a summary of the terms of the proposed lease-purchase agreement;

(4) identify the source of funds for the lease-purchase payments;

(5) if all or part of the funds needed requires or anticipates the imposition of a property tax, determine the estimated rate of the tax and what, if any, the percentage increase in property taxes for real property owners in the school district;

(6) set a date not more than four weeks and not less than three weeks in the future for a special meeting to consider a resolution granting final approval to the lease-purchase of education technology equipment; and

(7) direct that notice of the special meeting be published once each week for the two weeks immediately preceding the meeting in a newspaper having general circulation in the school district and that the notice include the information required in Paragraphs (1) through (5) of this subsection.

C. At the special meeting scheduled pursuant to Subsection B of this section, the local school board may adopt a final resolution approving the lease-purchase of

education technology equipment only by an affirmative vote of majority of all members of the board.

D. The local school board shall not adopt a resolution for or approve a lease-purchase agreement that exceeds five years.

**History:** 1978 Comp., § 6-15A-8, enacted by Laws 2001, ch. 203, § 1.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 2001, ch. 203, § 1 repealed 6-15A-8 NMSA 1978, as enacted by Laws 1997, ch. 193, § 8, and enacted a new section, effective April 3, 2001.

## 6-15A-9. Publication of notice; validation; limitation of action.

A. After adoption of a resolution approving a lease-purchase arrangement, the local school board shall publish notice of the adoption of the resolution once in a newspaper of general circulation in the school district.

B. After the passage of thirty days from the publication required by Subsection A of this section, any action attacking the validity of the proceedings taken by the local school board preliminary to and in the authorization of and entering into the lease-purchase arrangement described in the notice is perpetually barred.

**History:** Laws 1997, ch. 193, § 9.

## 6-15A-10. Refunding or refinancing lease-purchase arrangements.

School districts are authorized to enter into lease-purchase arrangements for the purpose of refunding or refinancing any lease-purchase arrangements then outstanding, including the payment of any prepayment of redemption premiums thereon and any interest accrued or to accrue to the date of purchase, prepayment, redemption or maturity of the outstanding lease-purchase arrangements. Until the proceeds of the lease-purchase arrangements issued for the purpose of refunding or refinancing outstanding lease-purchase arrangements are applied to the purchase, prepayment, redemption or retirement of the outstanding lease-purchase arrangements, the proceeds may be placed in escrow and invested and reinvested. The interest, income and profits, if any, earned or realized on any such investment may, in the discretion of the local school board, also be applied to the payment of the outstanding lease-purchase arrangements to be refunded or refinanced by purchase, prepayment, redemption or retirement, as the case may be. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, if any, earned or realized on the investments thereof may be returned to the local school board to be used for payment of the refunding or refinancing lease-purchase arrangement. All such refunding or refinancing lease-purchase arrangement [arrangements] shall be entered

into under, secured and subject to the provisions of the Education Technology Equipment Act in the same manner and to the same extent as any other lease-purchase arrangements entered into pursuant to that act.

**History:** Laws 1997, ch. 193, § 10.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 6-15A-11. Agreement of the state.

The state does hereby pledge to and agree with the holders of any lease-purchase arrangement entered into under the Education Technology Equipment Act that the state will not limit or alter the rights hereby vested in school districts to fulfill the terms of any lease-purchase arrangement or in any way impair the rights and remedies of the holders of lease-purchase arrangements until the payments due thereon, and all costs and expenses in connection with any action or proceedings by or on behalf of those holders, are fully met and discharged. School districts are authorized to include this pledge and agreement of the state in any lease-purchase arrangement.

**History:** Laws 1997, ch. 193, § 11.

## 6-15A-12. Legal investments for public officers and fiduciaries.

Lease-purchase arrangements entered into under the authority of the Education Technology Equipment Act shall be legal investments in which all insurance companies, banks and savings and loan associations organized under the laws of the state, public officers and public bodies and all administrators, guardians, executors, trustees and other fiduciaries may properly and legally invest funds.

**History:** Laws 1997, ch. 193, § 12.

## 6-15A-13. Tax exemption.

The state covenants with the purchasers and all subsequent holders and transferees of lease-purchase arrangements entered into by the local school boards, in consideration of the acceptance of and payment for the lease-purchase arrangements entered into pursuant to [the Education] Technology Equipment Act , that lease-purchase arrangements and the income from the lease-purchase arrangements shall at all times be free from taxation by the state, except for estate or gift taxes and taxes on transfers.

**History:** Laws 1997, ch. 193, § 13.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

## 6-15A-14. Cumulative and complete authority.

The Education Technology Equipment Act shall be deemed to provide an additional and alternative method for acquiring education technology equipment and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as a derogation of any powers now existing. The Education Technology Equipment Act shall be deemed to provide complete authority for acquiring education technology equipment and entering into lease-purchase arrangements. No other approval of any state agency or officer, except as provided in that act, shall be required with respect to any lease-purchase arrangements, and the local school board acting pursuant to provisions of that act need not comply with the requirements of any other law applicable to the issuance of debt by school districts; provided, however, that a local school board may submit to a vote of qualified electors of the school district the question of creating debt by entering into a lease-purchase arrangement; and provided further that the local school board shall abide by the vote of the majority of those persons voting on the question.

**History:** Laws 1997, ch. 193, § 14; 2015, ch. 68, § 4.

### ANNOTATIONS

**The 2015 amendment,** effective July 1, 2015, authorized local school boards to submit to a vote of qualified electors of the school district the question of creating debt by entering into a lease-purchase arrangement and required the local school board to abide by the vote of the majority of those persons voting on the question; after "acquiring education technology equipment", deleted "authorized thereby", after "now existing. The", added "Education Technology Equipment", after the first occurrence of "lease-purchase arrangements", deleted "contemplated thereby and", after "except as provided", deleted "therein" and added "in that act", after "local school board acting", deleted "thereunder" and added "pursuant to provisions of that act", and after "debt by school districts", added the remainder of the section.

## 6-15A-15. Liberal interpretation.

The Education Technology Equipment Act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to the effect of the purposes of the act.

**History:** Laws 1997, ch. 193, § 15.

## 6-15A-16. Severability.

If any part or application of the Education Technology Equipment Act is held invalid, the remainder or its application to other circumstances shall not be affected.

**History:** Laws 1997, ch. 193, § 16.

### 6-15A-17. Charter schools; receipt of education technology equipment.

On or after July 1, 2015, a school district that assumes a debt through a lease-purchase arrangement under the provisions of the Education Technology Equipment Act shall provide, to each eligible charter school in the school district, education technology equipment equal in value to an amount based upon the net proceeds from the debt after payment of the cost of issuing the debt through a lease-purchase arrangement prorated by the number of students enrolled in the school district and in eligible charter schools as reported on the first reporting date of the prior school year; provided that, in the case of an approved eligible charter school that had not commenced classroom instruction in the prior school year, the estimated full-time-equivalent enrollment in the first year of instruction, as shown in the approved charter school application, shall be used to determine the amount, subject to adjustment after the first reporting date.

**History:** Laws 2015, ch. 68, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 68, § 5 made Laws 2015, ch. 68, § 3 effective July 1, 2015.

## ARTICLE 16
## Public Securities Validation

### 6-16-1. Short title.

This act [6-16-1 to 6-16-5 NMSA 1978] may be cited as the "2005 Public Securities Validation Act".

**History:** Laws 2005, ch. 266, § 1.

**ANNOTATIONS**

**Compiler's notes.** — Similar validation acts have been enacted on a periodic basis. *See* Laws 1961, ch. 174; Laws 1965, ch. 15; Laws 1973, ch. 152; Laws 1975, ch. 37; Laws 1977, ch. 125; Laws 1980, ch. 80; Laws 1981, ch. 68; Laws 1983, ch. 43; Laws 1984, ch. 28; Laws 1986, ch. 70; Laws 1987, ch. 83; Laws 1987, ch. 186; Laws 1988, ch. 85, § 1.

**Effective dates.** — Laws 2005, ch. 266, § 6 made the act effective April 6, 2005.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64 Am. Jur. 2d Public Securities and Obligations §§ 318 to 327.

20 C.J.S. Counties § 222; 64 C.J.S. Municipal Corporations § 1696; 79 C.J.S. Schools and School Districts § 372; 81A C.J.S. States § 255; 87 C.J.S. Towns §§ 226 to 228.

## 6-16-2. Definitions.

As used in the 2005 Public Securities Validation Act:

A. "public body" of the state means any state educational institution or other state institution, its board of regents or other governing body thereof constituting a body corporate, any county, city, town, village, school district, irrigation district, drainage district, conservancy district, sanitation district, water district, commission, authority or other political subdivision of the state constituting a body corporate;

B. "public security" means a bond, note certificate of indebtedness or other obligation for the payment of money, issued by this state or by any public body thereof; and

C. "state" means the state of New Mexico and any board, commission, department, corporation, instrumentality or agency thereof.

**History:** Laws 1988, ch. 85, § 2; 2005, ch. 266, § 2.

**ANNOTATIONS**

**Compiler's notes.** — For citations to similar previous validation acts, *see* compiler's notes following 6-16-1 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 266, § 6 made the act effective April 6, 2005.

## 6-16-3. Validation.

All outstanding public securities of the state and of all public bodies thereof, and all acts and proceedings heretofore had or taken, or purportedly had or taken, by or on behalf of the state or any public body thereof under law or color of law preliminary to and in the authorization, execution, sale, issuance and payment, or any combination thereof, of all such public securities are hereby validated, ratified, approved and confirmed, including but not necessarily limited to, the terms, provisions, conditions and covenants of any resolution or ordinance appertaining thereto, the redemption or refunding of public securities before maturity and provisions therefor, including defeasance and discharge of liens arising from or existing by virtue of public securities redeemed or refunded, the levy and collection of rates, tolls and charges, special

assessments, and general and other taxes, and the acquisition and application of other revenues, the pledge and use of the proceeds thereof, and the establishment of liens thereon and funds therefore, appertaining to such public securities, except as hereinafter provided, notwithstanding any lack of power, authority or otherwise, and notwithstanding any defects and irregularities in such public securities, acts and proceedings, and in such authorization, execution, sale, issuance and payment, including, without limiting the generality of the foregoing, such acts and proceedings appertaining to such public securities all or any part of which have heretofore not been issued nor purportedly issued. Such outstanding public securities are and shall be, and such public securities heretofore not issued nor purportedly issued shall be, after their issuance, binding, legal, valid and enforceable obligations of the state or the public body issuing them in accordance with their terms and their authorizing proceedings, subject to the taking or adoption of acts and proceedings heretofore not had nor taken, nor purportedly had nor taken, but required by and in substantial and due compliance with laws appertaining to any such public securities heretofore not issued nor purportedly issued.

**History:** Laws 1988, ch. 85, § 3; 2005, ch. 266, § 3.

**ANNOTATIONS**

**Compiler's notes.** — For citations to similar previous validation acts, *see* compiler's notes following 6-16-1 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 266, § 6 made the act effective April 6, 2005.

## 6-16-4. Effect and limitations.

The 2005 Public Securities Validation Act shall operate to supply such legislative authority as may be necessary to validate any public securities heretofore issued and any such acts and proceedings heretofore taken that the legislature could have supplied or provided for or can now supply or provide for in the law under which such public securities were issued and such acts or proceedings were taken. The 2005 Public Securities Validation Act, however, shall be limited to the validation of public securities, acts and proceedings to the extent to which the same can be effectuated under the state and federal constitutions.

**History:** Laws 1988, ch. 85, § 4; 2005, ch. 266, § 4.

**ANNOTATIONS**

**Compiler's notes.** — For citations to similar previous validation acts, *see* compiler's notes following 6-16-1 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 266, § 6 made the act effective April 6, 2005.

## 6-16-5. Construction.

This act [6-16-1 to 6-16-5 NMSA 1978] being necessary to secure the public health, safety, convenience and welfare, it shall be liberally construed to effect its purposes.

**History:** Laws 1988, ch. 85, § 5; 2005, ch. 266, § 5.

**ANNOTATIONS**

**Compiler's notes.** — For citations to similar previous validation acts, *see* compiler's notes following 6-16-1 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 266, § 6 made the act effective April 6, 2005.

# ARTICLE 17
# Finances of State Educational Institutions

## 6-17-1. Income-producing buildings and improvements; authority to borrow funds.

A. Boards of education and boards of regents of the various educational institutions of this state are authorized to borrow money, in conformity with the provisions of this article, for the purpose of purchasing, erecting, altering, improving, repairing, furnishing or equipping any income-producing building, improvement or facility or any group of buildings, improvements or facilities, including any infrastructure improvements necessary for the buildings' improvements or facilities, at and for the use of any public school, state educational institution or any branch thereof already established or to be established or acquired in whole or in part under the provisions of this article and for the acquiring of any necessary and convenient lands for that purpose.

B. All buildings and facilities used in the conduct of any such educational institution, including specifically but without limitation, classroom buildings, administrative buildings, research facilities and development facilities, shall be considered to be within the scope of this article, and the board of regents of any such institution is authorized to impose and collect fees from all or specific classes of students of attendance as it may consider desirable to impose and collect for the use or availability or both of the buildings or facilities, and the proceeds of all such student fees shall be considered to be income and revenues derived from the operation of the buildings or facilities for all purposes of this article. The board of regents of an educational institution may charge fees to persons other than students for the use of the buildings or facilities, and any fees charged any person for the use of the buildings or facilities are considered income and revenue derived from the operation of the buildings or facilities for all purposes of this article.

C. All bonds issued pursuant to this article shall be fully negotiable instruments within the meaning of the Uniform Commercial Code [Chapter 55 NMSA 1978].

**History:** Laws 1939, ch. 177, § 1; 1941 Comp., § 55-2701 (1); Laws 1947, ch. 143, § 1; 1949, ch. 92, § 1; 1951, ch. 150, § 1; 1953 Comp., § 73-29-1; Laws 1989, ch. 265, § 1.

**ANNOTATIONS**

**The 1989 amendment,** effective April 5, 1989, added the subsection designations; in Subsection A deleted "The county, independent rural, union high and municipal" at the beginning of the subsection, deleted "dormitory, auditorium, dining hall, refectory, stadium, swimming pool or any type of" following "income-producing", and inserted "including any infrastructure improvements necessary for the buildings' improvements or facilities"; in Subsection B inserted "research facilities and development facilities" near the beginning of the first sentence and added the second sentence; in Subsection C substituted "the Uniform Commercial Code" for "and for all purposes of the negotiable instruments law as such law is now or may hereafter be in effect in this state"; and, throughout the section, substituted "this article" for "this act" and made minor stylistic changes.

**Legislative intent.** — The legislature had in mind the assessment of a specific fee for the use of certain buildings in the enactment of this section and did not authorize the pledge of a portion of receipts collected from all students for general instruction purposes. 1953 Op. Att'y Gen. No. 53-5834.

**Building financed by sale of bonds secured by pledges permitted.** — The New Mexico normal school at Silver City (now western New Mexico university) may finance the construction of a dormitory by the sale of an issue of dormitory revenue bonds secured by a pledge of the income to be derived therefrom under the provisions of this section, and a separate issue of building and improvement bonds secured by a pledge of a fixed amount of the school's income from trust lands under the provision of Laws 1949, ch. 121. 1957 Op. Att'y Gen. No. 57-167.

**State institution of higher education may operate bowling alley** which is open to the public, even though this may result in its competing with privately owned bowling alleys, only if public admittance is incidental to its primary use for the institution. 1966 Op. Att'y Gen. No. 66-90.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64 Am. Jur. 2d Public Securities and Obligations § 120.

14A C.J.S. Colleges and Universities § 8; 79 C.J.S. Schools and School Districts § 323.

## 6-17-1.1. Definitions.

As used in Chapter 6, Article 17 NMSA 1978, "state educational institution" means the following:

A. the university of New Mexico;

B. the New Mexico state university;

C. the New Mexico highlands university;

D. the western New Mexico university;

E. the eastern New Mexico university;

F. the New Mexico institute of mining and technology;

G. the northern New Mexico state school;

H. the New Mexico military institute;

I. the New Mexico school for the deaf;

J. the New Mexico school for the visually handicapped;

K. the San Juan college;

L. the New Mexico junior college;

M. the Santa Fe community college; and

N. any post-secondary technical, vocational and area vocational institutes as defined in Sections 21-16-2 and 21-17-2 [repealed] NMSA 1978.

**History:** 1978 Comp., § 6-17-1.1, enacted by Laws 1989, ch. 182, § 1.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Section 21-17-2 NMSA 1978 was repealed by Laws 1999, ch. 219, § 21, effective July 1, 1999.

**Eleventh Amendment immunity for New Mexico junior college.** — New Mexico junior college is not an arm of the state and is not entitled to Eleventh Amendment immunity. *Leach v. N.M. Junior Coll.*, 2002-NMCA-039, 132 N.M. 106, 45 P.3d 46.

## 6-17-2. Resolution for issuance of bonds for income-producing projects.

Whenever a county, independent rural, union high or municipal board of education or the board of regents of any state educational institution by the affirmative vote of a majority of its members, duly entered in the official minutes of such board, shall by resolution determine that it is necessary to purchase, erect, alter, improve, repair, furnish and/or equip any such income-producing building, improvement or facility or any group of buildings, improvements or facilities and that the same will produce sufficient income to repay all moneys so borrowed and pay off and discharge any and all bonds or other evidences of indebtedness to be issued for the repayment of such money, and the amount required to be borrowed therefor, and upon approval in writing of the board of finance of the state of New Mexico in the case of boards of regents of educational institutions, or the state board of education in the case of county, independent rural, union high and municipal boards of education, such boards of regents or boards of education may proceed to borrow such money and purchase or erect such building or buildings, improvement or improvements and facility or facilities, and make any such alteration, improvement, repair and furnish and equip same under the authority of this act [6-17-1 to 6-17-13 NMSA 1978, except 6-17-1.1 NMSA 1978].

**History:** Laws 1939, ch. 177, § 2; 1941 Comp., § 55-2702; Laws 1947, ch. 143, § 2; 1949, ch. 98, § 2; 1953 Comp., § 73-29-2.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Section 6-17-1.1 NMSA 1978 is apparently not encompassed within "this act", since Laws 1989, ch. 182, § 1 enacted that section separately.

## 6-17-3. Conditions of income-producing project bonds.

County, independent rural, union high and municipal boards of education or boards of regents may issue bonds or other evidence of indebtedness for the securing of the repayment of any and all money as borrowed, which shall not run for a longer period than forty years from their date and which shall bear interest at a rate not to exceed a net of six percent per year, interest payable semiannually, and which bonds or other evidence of indebtedness shall irrevocably pledge for the prompt payment of the principal and interest thereof, as and when due and payable, the net income from any dormitory, auditorium, dining hall, refectory, stadium, swimming pool or any type of building, improvement or facility or any group of buildings, improvements or facilities for the purchase, erection, alteration, improvement, repair, furnishing or equipment of which the money is borrowed. The form of the bonds or other evidence of indebtedness, the time for which same shall run and times when payment of principal thereof shall be made, which shall be in yearly amounts as to payment of principal beginning not later than two years from and after the time when the money is borrowed and continuing to the end of the time for which the same shall run, and the manner and amount for which the same shall be sold and whether to be sold at public or private sale and the amount which is to be so borrowed for each specific purpose shall be approved by the state board of finance or the state board of education in the case of county, independent

rural, union high and municipal boards of education. Despite anything elsewhere contained in this article, any such bonds may be sold at any price which does not result in an actual net interest cost to maturity, computed on the basis of standard tables of bond values, in excess of six percent.

County, independent rural, union high and municipal boards of education or boards of regents are hereby further authorized to execute a purchase-money mortgage or deed of trust or other security instrument constituting a purchase-money mortgage to further secure payment of any bonds issued under the provisions of this article for the purchase of any income-producing property. The purchase-money mortgage, deed of trust or other security instrument constituting a purchase-money mortgage shall limit the mortgagee for the satisfaction of the indebtedness secured solely to the property subject to the purchase-money mortgage, deed of trust or other security instrument.

The terms and conditions of any purchase-money mortgage, deed of trust or other security instrument constituting a purchase-money mortgage herein authorized shall be approved by the state board of finance in the case of a board of regents or by the state board of education in the case of a board of education.

A state educational institution operating a county hospital pursuant to the Hospital Funding Act [Chapter 4, Article 48B NMSA 1978] may, in connection with the issuance of bonds in accordance with the provisions of this article, execute a mortgage, deed of trust or other security instrument covering the state educational institution's ownership or leasehold interest in all or any part of the county hospital and other related health care facilities operated by the state educational institution to further secure payment of bonds issued under the provisions of this article to finance or refinance the purchase, erection, expansion, alteration, improvement, repair, furnishing or equipping of such county hospital or other related health care facilities. The mortgage, deed of trust or security instrument shall limit the right of the mortgagee or other secured party to seek a deficiency judgment against the state educational institution.

**History:** Laws 1939, ch. 177, § 3; 1941 Comp., § 55-2703; Laws 1947, ch. 143, § 3; 1949, ch. 98, § 3; 1951, ch. 44, § 1; 1953 Comp., § 73-29-3; Laws 1957, ch. 245, § 1; 2003, ch. 285, § 3.

## ANNOTATIONS

**The 2003 amendment,** effective April 8, 2003, substituted "the state board of finance" for "the board of finance of the state of New Mexico" following "be approved by", substituted "article" for "act" following "contained in this"; in the second paragraph, substituted "boards" for "board" following "high and municipal", substituted "article" for "act" following "provisions of this"; in the third paragraph substituted "the state board of finance" for "the board of finance of the state of New Mexico" following "be approved by", substituted "board of education" for "county, independent rural, union high or municipal board" at the end; added the last paragraph.

## 6-17-4. Determination of charges relating to income-producing projects.

Such board of regents shall be required to make such charges, including the imposition of student fees as above provided, for the use or availability of said building, improvement or facility purchased or erected hereunder and the furnishing of the services for which same is purchased or erected and used as will return annually a sufficient amount to pay the annual requirements for repayment of principal and interest on such bonds or other evidence or [of] indebtedness; and in addition thereto may make additional charges, including the imposition of student fees as above provided, for the use or availability of said building, improvement or facility and services to return a sufficient amount to pay all necessary costs and expenses of maintenance, upkeep and any required repairs thereto and all necessary costs and expenses of furnishing all services in connection therewith, and sufficient to create such reserves for the payment of principal and interest and for contingencies as may be provided in the proceedings authorizing such obligations; but said board of regents shall make no further or additional charges for the use or availability of said building, improvement or facility and the furnishing of the services for which the same is erected or purchased and used, to the members of the student body, faculty, instructors and other employees of such institution.

**History:** Laws 1939, ch. 177, § 4; 1941 Comp., § 55-2704 (1); Laws 1947, ch. 143, § 4; 1949, ch. 92, § 2; 1953 Comp., § 73-29-4.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Laws 1939, ch. 177, § 4, as amended, was originally codified as one section. However, after non-identical amendments by Laws 1949, ch. 92, § 2 and Laws 1949, ch. 98, § 4, the section was set out twice, as this section, with the ch. 92 amendments, and 6-17-5 NMSA 1978, with the ch. 98 amendments.

## 6-17-5. Determination of charges relating to income-producing projects.

Such county, independent rural, union high and municipal board of education or board of regents shall be required to make such charges for the use of said building, improvement or facility purchased or erected hereunder and the furnishing of the services for which same is purchased or erected and used as will return annually a sufficient amount to pay the annual requirement for repayment of principal and interest on such bonds or other evidence of indebtedness; and in addition thereto may make additional charges for the use of said building, improvement or facility and services to return a sufficient amount to pay all necessary costs and expenses of maintenance, upkeep and any required repairs thereto and all necessary costs and expenses of

furnishing all services in connection therewith, and sufficient to create a reserve fund not exceeding $10,000.00 to be used for repayment of said indebtedness; but said county, independent rural, union high and municipal board of education or board of regents shall make no further or additional charges for the use of said building, improvement or facility and the furnishing of the services for which the same is erected or purchased and used, to the members of the student body, faculty, instructors and other employees of such institution.

**History:** Laws 1939, ch. 177, § 4; 1941 Comp., § 55-2704 (2); Laws 1947, ch. 143, § 4; 1949, ch. 98, § 4; 1953 Comp., § 73-29-5.

**ANNOTATIONS**

**Compiler's notes.** — Laws 1939, ch. 177, § 4, as amended, was originally codified as one section. However, after non-identical amendments by Laws 1949, ch. 92, § 2 and Laws 1949, ch. 98, § 4, the section was set out twice, as this section, with the ch. 98 amendments, and 6-17-4 NMSA 1978, with the ch. 92 amendments.

## 6-17-6. Sale of income-producing project bonds; interest and retirement fund; separation of units.

No bonds or other evidence of indebtedness authorized hereunder shall be sold for less than the par value thereof, plus accrued interest, and the proceeds from sale of all of said bonds and all money otherwise borrowed hereunder shall be paid to such county, independent rural, union high and municipal board of education or board of regents of said institution and by the treasurer thereof placed in a separate fund to be used and paid out only for the specific purposes for which the same is borrowed, and any amount left after erecting or purchasing any such building, improvement or facility or making any such improvement for which said money is borrowed shall be converted into the "interest and retirement fund" hereinafter created; but all costs incident to issuing and selling any bonds, or otherwise borrowing any such money, the making and delivering of any other certificate or evidence of indebtedness, including legal expense, may be paid out of the money borrowed and provided for herein; and the county, independent rural, union high and municipal board of education or board of regents of such institution at the time of issuing any bonds or other evidence of indebtedness shall establish for the payment of the principal and interest of such bonds or the repayment of all money otherwise borrowed a separate fund to be known as "interest and retirement fund," into which fund shall be placed all net income from the use of any such building, facility or improvement erected, purchased or made with the money so borrowed, and the money so placed in said fund shall be used for the sole purpose of repaying the principal and interest of the money so borrowed, with any necessary service charges; and the issuance of any such bonds and other evidence of indebtedness shall constitute an irrevocable pledge of said county, independent rural, union high and municipal board of education or board of regents of all net income from the use of such building, facility and improvement for which such money was borrowed; provided, each separate building or group of buildings, facility and income-producing improvement erected or

purchased and made hereunder shall be a separate unit and all net income therefrom used solely for the repayment of the money borrowed therefor, used in erecting or purchasing such building or facility and making such improvement.

**History:** Laws 1939, ch. 177, § 5; 1941 Comp., § 55-2705; Laws 1947, ch. 143, § 5; 1949, ch. 98, § 5; 1953 Comp., § 73-29-6.

## 6-17-7. Net income, gross income and operating and maintenance expenses of income-producing projects; definitions.

The net income from the building, facility or improvement so erected, purchased or made shall be deemed to be the difference between the gross income derived from rentals, meals, charges for services and all other revenues from said buildings, improvements or facilities, less the reasonable operating and maintenance expenses thereof. The reasonable operating and maintenance expenses shall be deemed to include all costs of heating and lighting said buildings, improvements or facilities, insurance, the actual cost of services of employees operating and maintaining said buildings, improvements or facilities, costs of food, repairs, costs of reasonable replacements of equipment and any other incidental costs not herein specifically enumerated, but which are reasonably necessary in the operation and maintenance of said buildings, facilities, improvements and equipment.

**History:** Laws 1939, ch. 177, § 6; 1941 Comp., § 55-2706; Laws 1947, ch. 143, § 6; 1953 Comp., § 73-29-7.

## 6-17-8. Records and expenditures for income-producing projects.

The board shall cause to be kept separate and complete records of all income and revenues from the building, facility or improvements and the use thereof and services rendered therewith; and all of the operating and maintenance expenses thereof, and none of said income and revenues shall be expended except to pay the reasonable operating and maintenance expenses as hereinbefore provided, and to pay principal and interest on bonds issued under the authority of this act [6-17-1 to 6-17-13 NMSA 1978, except 6-17-1.1 NMSA 1978].

**History:** Laws 1939, ch. 177, § 7; 1941 Comp., § 55-2707; Laws 1947, ch. 143, § 7; 1949, ch. 98, § 6; 1953 Comp., § 73-29-8.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Section 6-17-1.1 NMSA 1978 is apparently not encompassed within "this act", since Laws 1989, ch. 182, § 1 enacted that section separately.

## 6-17-9. Procedure prior to issuance of income-producing project bonds; approval of state board of finance or state board of education.

Before any money is borrowed and any bonds or other evidence of indebtedness issued under this act [6-17-1 to 6-17-13 NMSA 1978, except 6-17-1.1 NMSA 1978], the board of regents of such institution shall submit to the board of finance of New Mexico, or in the case of county, independent rural, union high and municipal boards of education to the state board of education, a showing for the need for such building, facility or improvement, an estimate of the costs of the buildings, facilities or improvements to be erected, purchased, altered, improved, furnished and equipped and an estimate of the reasonable amount of income anticipated to be derived from the operation of any such, together with an estimate of all operating and maintenance costs thereof, and an estimate of the net income to be derived from the operation of any such, together with an estimate of all operating and maintenance costs thereof, and an estimate of the net income to be derived from the operation and maintenance of said building, facility or improvement so designated; and no bonds shall be issued or money borrowed hereunder until the state board of finance or the state board of education shall find upon proper investigation and showing that such building, facility or improvement is needed, that the cost thereof is reasonable and that the same should and probably will return sufficient net income to repay the money borrowed with interest as the same is due and payable, and shall approve the borrowing of such money and the amount to be borrowed.

**History:** Laws 1939, ch. 177, § 8; 1941 Comp., § 55-2708; Laws 1947, ch. 143, § 8; 1949, ch. 98, § 7; 1953 Comp., § 73-29-9.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler for clarity and is not part of the law. Section 6-17-1.1 NMSA 1978 is apparently not encompassed within "this act", since Laws 1989, ch. 182, § 1 enacted that section separately.

## 6-17-10. [Tax exemption of income-producing project bonds.]

Bonds and all other evidences of indebtedness issued under the provisions of this act [6-17-1 to 6-17-13 NMSA 1978, except 6-17-1.1 NMSA 1978], shall forever be and remain free and exempt from taxation of this state and any subdivision thereof.

**History:** Laws 1939, ch. 177, § 9; 1941 Comp., § 55-2709; 1953 Comp., § 73-29-10.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler for clarity and is not part of the law. Section 6-17-1.1 NMSA 1978 is apparently not encompassed within "this act", since Laws 1989, ch. 182, § 1 enacted that section separately.

## 6-17-11. Security for income-producing bonds; rules and regulations.

All money borrowed and bonds and other evidences of indebtedness issued under this act [6-17-1 to 6-17-13 NMSA 1978, except 6-17-1.1 NMSA 1978] shall be equally and ratably secured, without priority, by a lien on said net income in accordance with the terms of this act. In the event that such county, independent rural, union high and municipal board or the board of regents of any such institution issue any bonds or other evidences of indebtedness under the provisions of this act, they shall thereafter operate the buildings, facilities or improvements named in the resolution authorizing the issuance of said bonds or other evidences of indebtedness from which the income is to be used for the repayment of said bonds in a manner so as to ensure the prompt payment of the principal and interest of such indebtedness as the same becomes due. The said boards are hereby empowered to make such contracts, rules and regulations and to take such action as may be necessary to ensure the prompt payment of the principal and interest of all such bonds and indebtedness and properly to carry out the provisions of this act.

**History:** Laws 1939, ch. 177, § 10; 1941 Comp., § 55-2710; Laws 1947, ch. 143, § 9; 1949, ch. 98, § 8; 1953 Comp., § 73-29-11.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Section 6-17-1.1 NMSA 1978 is apparently not encompassed within "this act", since Laws 1989, ch. 182, § 1 enacted that section separately.

## 6-17-12. Debt against state not to be created by income-producing project bonds.

No obligation created under this article shall ever be or become a charge or debt against the state, but all such obligations, including principal and interest, shall be payable solely from the net income derived from the buildings, facilities and improvements as in this article specified; provided, however, that:

A. any purchase-money mortgage, deed of trust or other security instrument constituting a purchase-money mortgage may be foreclosed against the buildings, facilities or improvements so pledged without the right to a deficiency judgment; and

B. any mortgage, deed of trust or other security instrument given by a state educational institution operating a county hospital pursuant to the Hospital Funding Act

[Chapter 4, Article 48B NMSA 1978] may be foreclosed against the buildings, facilities or improvements so pledged without the right to a deficiency judgment.

**History:** Laws 1939, ch. 177, § 11; 1941 Comp., § 55-2711; Laws 1947, ch. 143, § 10; 1953 Comp., § 73-29-12; 2003, ch. 285, § 4.

**ANNOTATIONS**

**The 2003 amendment,** effective April 8, 2003, in the introductory paragraph, substituted "under this article" for "hereunder" near the beginning, deleted "of New Mexico" following "against the state", substituted "article" for "act" following "as in this"; added Subsection A designation; and added Subsection B.

## 6-17-13. [Institutional bond statutes not affected by income-producing bond law.]

This act [6-17-1 to 6-17-13 NMSA 1978, except 6-17-1.1 NMSA 1978] shall not be construed as amending or repealing any existing acts authorizing the issuance of bonds by the board of regents of any such institution.

**History:** Laws 1939, ch. 177, § 12; 1941 Comp., § 55-2712; 1953 Comp., § 73-29-13.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Section 6-17-1.1 NMSA 1978 is apparently not encompassed within "this act", since Laws 1989, ch. 182, § 1 enacted that section separately.

## 6-17-14. Pledge of additional revenue.

A. Any board of education or board of regents issuing bonds under Chapter 73, Article 29 NMSA 1953 may, in addition to the revenues from the buildings and facilities erected or purchased under authority of Sections 6-17-1 through 6-17-13 NMSA 1978, pledge as security for the bonds all or any part of revenues to be derived from buildings, improvements or other facilities already in existence and subject to the control of the board, whether or not the buildings or facilities are to be improved, extended or repaired with the proceeds of the bonds, and the proceeds of payments received or to be received by such board or an institution under its control from the United States or any of its agencies whether received as grants or otherwise, including, but not limited to payments received pursuant to Public Law 90-448, and any amendments thereto. Each such board is hereby authorized to enter into agreements with the United States whereby it or an institution under its control is to receive such payments. Any board of regents may, notwithstanding any other provisions of these sections, pledge to the payment of the bonds the gross revenues to be derived from the operation of any buildings and facilities, the revenues of which are otherwise authorized to be pledged. The board of regents may also pledge to the payment of the bonds any of its revenues

derived from sources other than the proceeds of ad valorem taxes, including land grant revenues, income from the permanent fund of the institution and income of the institution derived from the lease or rental of lands or other property of the institution. If gross revenues are so pledged, and if the revenues do not include land grant revenues or income from the permanent fund or income from leases and rentals, the board of regents may apply all or any part of these unpledged sources of revenue to the payment of the expense of maintaining and operating the buildings and facilities, the gross revenues of which are pledged, and may, in the proceedings authorizing the bonds, agree to apply to the payment of the maintenance and operation expenses as much of the revenues as is necessary for these purposes, or as is specified in the proceedings.

B. Where revenues are pledged under this section, the determination required by Section 6-17-2 NMSA 1978 need not be made. References appearing elsewhere in Chapter 73, Article 29 NMSA 1953, to the net revenues or income from buildings, facilities or improvements shall be construed to refer to all revenues pledged under the provisions of the proceedings authorizing the bonds.

C. The requirements of Sections 6-17-4 and 6-17-5 NMSA 1978, with respect to making charges sufficient to effect the purposes therein listed, shall be construed to refer to charges which will make the income and revenue therein referred to, together with additional revenues pledged in the proceedings, sufficient to effect the purposes, and the limitations on making further or additional charges appearing in those sections are not applicable.

D. The state board of finance, in determining whether to approve bonds under the provisions of Section 6-17-9 NMSA 1978, shall consider all revenues pledged to the bonds and to operation and maintenance.

**History:** 1941 Comp., § 55-2713, enacted by Laws 1947, ch. 143, § 11; Laws 1949, ch. 98, § 9; 1953 Comp., § 73-29-14; Laws 1957, ch. 245, § 2; 1963, ch. 297, § 1; 1969, ch. 49, § 1.

**ANNOTATIONS**

**Compiler's notes.** — Chapter 73, Article 29 NMSA 1953 is now compiled as 6-17-1, 6-17-2 to 6-17-19, 21-1-26 and 21-1-27 to 21-1-33 NMSA 1978.

**Cross references.** — For Public Law 90-448, 82 Stat. 476 of the Housing and Urban Development Act of 1968, *see* Titles 12, 15, 31 and 42 of the United States Code.

**Section provides flexibility in preventing default.** — Default on bond payments can be prevented by use of the procedures contained in this section, which permits all the flexibility that should be needed and all that is permitted. 1971 Op. Att'y Gen. No. 71-48.

## 6-17-15. Refunding bonds; convertibility.

A. In addition to all other powers granted, any board of education or board of regents may issue bonds for the purpose of refunding, for not less than the principal amount of any bonds issued by it under Chapter 73, Article 29 NMSA 1953, or under any other law. The board may also issue bonds in part for the purpose of refunding the bonds and in part for the purpose of providing additional funds to acquire or construct any building, facility, improvement, alteration, addition or extension or any combination, including furnishings and equipment, for which bonds are authorized to be issued by the board. Except as provided in this section, the bonds shall mature, bear interest, have such details and be authorized and issued in the manner provided for the authorization and issuance of other bonds. Refunding bonds issued may carry forward for the benefit of the refunding bonds the security and sources of payment as were pledged to the payment of the bonds refunded, or may make changes in security and sources of payment deemed advisable by the board. There shall not be pledged to the payment of the bonds any source of revenue not authorized in Chapter 73, Article 29 NMSA 1953, to be pledged to the payment of bonds issued under that chapter.

B. Any bonds issued for refunding purposes may be delivered in exchange for the outstanding bonds authorized to be refunded, or sold at public or private sale for not less than the par value of the bonds, or sold in part and exchanged in part. If sold, the proceeds shall be immediately applied to the retirement of the bonds to be refunded, or the proceeds, or the obligations in which they are invested as permitted by law, shall be placed in escrow to be held and applied to payment of the bonds to be refunded.

**History:** 1953 Comp., § 73-29-14.1, enacted by Laws 1957, ch. 245, § 3; 1963, ch. 297, § 2.

**ANNOTATIONS**

**Compiler's notes.** — Chapter 73, Article 29 NMSA 1953 is now compiled as 6-17-1, 6-17-2 to 6-17-19, 21-1-26 and 21-1-27 to 21-1-33 NMSA 1978.

## 6-17-16. [Validation.]

That all bonds heretofore issued under authority of the act hereby amended, and the proceedings adopted for the authorization and issuance of such bonds, are hereby validated, ratified and confirmed, and all such bonds and proceedings are hereby found and declared to be fully valid, effective and enforceable in accordance with the terms thereof.

**History:** 1953 Comp., § 73-29-14.2, enacted by Laws 1957, ch. 245, § 4.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — "The act hereby amended" seemingly refers to Laws 1939, ch. 177, compiled as 6-17-1 to 6-17-13 NMSA 1978, except 6-17-1.1 NMSA 1978.

## 6-17-17. Refunding bonds.

A. No bonds may be refunded under Section 6-17-14 through 6-17-18 NMSA 1978, unless they mature or are callable for prior redemption under their terms within fifteen years from the date of issuance of the refunding bonds, or unless the holders voluntarily surrender them for exchange or payment.

B. Outstanding bonds of more than one issue may be refunded by bonds of one or more issues. Bonds for refunding and bonds for any other purposes authorized in Chapter 73, Article 29 NMSA 1953, may be issued separately or in combination in one series or more.

C. If any officer whose signature or facsimile signature appears on any bonds or coupons ceases to hold his office before delivery of the bonds, his signature or its facsimile is valid for all purposes as if he had remained in office until the delivery.

D. Where refunding bonds are sold, the net proceeds may, in the discretion of the issuing board, be invested in obligations of the United States or any of its agencies, or in obligations fully guaranteed by the United States, but the obligations purchased must have maturities and bear rates of interest payable at times to ensure the existence of money sufficient to pay the bonds to be refunded when due or when redeemed pursuant to call for redemption, together with interest and redemption premiums, if any.

E. As used in this section, "net proceeds" means the gross proceeds of the bonds after deduction of all accrued interest and expenses incurred in connection with the authorization and issuance of the bonds and the refunding of the outstanding bonds, including fiscal agent fees and commissions and all discounts incurred in the resale of the refunding bonds by the original purchaser.

F. All obligations purchased with refunding bond proceeds shall be deposited in trust with a bank doing business in this state and a member of the federal deposit insurance corporation, to be held, liquidated and the proceeds of the liquidation paid out for payment of the bonds to be refunded, along with interest and redemption premiums, as the refunded bonds become due or subject to redemption under call for redemption previously made, or upon earlier voluntary surrender with the consent of the issuing board.

G. The determination of the board issuing refunding bonds that the conditions of Chapter 73, Article 29 NMSA 1953, upon the issuance of refunding bonds have been met is conclusive in the absence of fraud or arbitrary and gross abuse of discretion.

**History:** 1953 Comp., § 73-29-14.3, enacted by Laws 1963, ch. 297, § 3.

ANNOTATIONS

**Compiler's notes.** — Chapter 73, Article 29 NMSA 1953 is now compiled as 6-17-1, 6-17-2 to 6-17-19, 21-1-26 and 21-1-27 to 21-1-33 NMSA 1978.

## 6-17-18. Exchange of bonds.

In authorizing bonds, including refunding bonds, under Chapter 73, Article 29 NMSA 1953, any board may provide for exchange of any bonds issued for bonds of larger or smaller denominations in the authorizing resolution. Bonds in changed denominations shall be exchanged for the original bonds in the same aggregate principal amounts and so that no overlapping interest is paid. Bonds in changed denominations shall bear interest at the same rates, mature on the same dates, be in the same form, except for an appropriate recital as to the exchange, and in all other respects, except as to denominations and numbers, be identical with the original bonds surrendered for exchange. Where any exchange is made under this section, the bonds surrendered by the holders at the time of the exchange shall be cancelled. The exchange shall be made only at the request of the holders of the bonds to be surrendered, and the board may require all expenses incurred in connection with the exchange, including those of authorization and issuance of the new bonds, to be paid by the holders.

**History:** 1953 Comp., § 73-29-14.4, enacted by Laws 1963, ch. 297, § 4.

ANNOTATIONS

**Compiler's notes.** — Chapter 73, Article 29 NMSA 1953 is now compiled as 6-17-1, 6-17-2 to 6-17-19, 21-1-26 and 21-1-27 to 21-1-33 NMSA 1978.

## 6-17-19. Validation.

All bonds issued prior to the effective date of this section by any board of regents under authority of any law, and the proceedings for authorization and issuance of the bonds and the pledges made for their payment, are validated, ratified and confirmed. All such bonds and proceedings are declared fully valid, effective and enforceable in accordance with their terms.

**History:** 1953 Comp., § 73-29-14.5, enacted by Laws 1963, ch. 297, § 5.

# ARTICLE 18
# Public Securities Short-Term Interest Rates

## 6-18-1. Short title.

This act [6-18-1 to 6-18-16 NMSA 1978] may be cited as the "Public Securities Short-Term Interest Rate Act."

**History:** Laws 1983, ch. 161, § 1.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64 Am. Jur. 2d Public Securities and Obligations §§ 173, 175, 177, 375 to 377.

20 C.J.S. Counties §§ 222, 276; 64 C.J.S. Municipal Corporations §§ 1684 to 1693; 79 C.J.S. Schools and School Districts §§ 371, 374; 81A States §§ 255, 257, 261; 87 C.J.S. Towns §§ 215, 218.

## 6-18-2. Findings and declarations of necessity.

A. It is found and declared that there exists a substantial financial market for a public body's public securities structured for short-term interest rates which traditionally bear a lesser rate of interest than long-term public securities; that public bodies of this state have not been provided with statutory authority to take advantage of such lower interest rates which has resulted in public bodies paying higher interest rates on their public securities, exacting an unnecessary financial premium from the public bodies and the residents of this state, and impairing the public bodies' ability to obtain responsible, low cost financing for the promotion of the health, safety, security and general welfare of the citizens of the public bodies and of the peoples of the state of New Mexico; that it is a matter of state policy and concern that public bodies shall not continue to pay interest on their public securities at rates higher than those available on bonds issued under the Public Securities Short-Term Interest Rate Act, and that unnecessary consumption of the public bodies' revenue be prevented.

B. It is a matter of state policy and concern that public bodies be provided flexibility in structuring their public securities to take advantage of lower interest rates offered in financial markets for all types and kinds of public securities; that public bodies be authorized and empowered to issue public securities which provide for short-term interest rates, variable interest rates, renewals and refundings of such securities, giving holders the right to put the public security for repurchase before maturity, with related accompanying provisions, and other features which will enhance the marketability of public securities and result in a lower interest cost to the public body.

C. The legislature finds that the ability to take advantage of lower interest rates accorded to public securities structured for short-term interest rates is appropriate for the public bodies of this state because of the size and magnitude of the financing required to support the public bodies. The legislature further finds and declares that the strategies and methods for solving the financing problems of public bodies differ from those in other counties, cities, towns and villages of the state, and it is necessary to authorize public bodies additional powers and flexibility because of the nature and size of their problems and because the governments and governing bodies of such public bodies have sufficient staff to meet and deal with those problems.

**History:** Laws 1983, ch. 161, § 2; 1986, ch. 60, § 2.

## 6-18-3. Legislative intent.

A. It is the intent of the legislature by the passage of the Public Securities Short-Term Interest Rate Act to authorize public bodies to structure their public securities so as to take advantage of the lower interest rates accorded to public securities structured for short-term interest rates by providing for short-term maturities, variable interest rates, renewals and refundings of the public securities, giving holders the right to put the public securities for repurchase before maturity, and other features which will enhance the marketability of public securities and lower the interest cost; all of which will promote the health, safety, security and general welfare of the citizens thereof and of the people of the state of New Mexico.

B. It is the further intent of the legislature to vest public bodies with all powers that may be necessary to enable them to accomplish such purposes, which powers shall in all respects be exercised for the benefit of the inhabitants of this state and public bodies of this state for the promotion of their health, safety, security, welfare, convenience and prosperity.

C. It is the further intent of the legislature that the provisions of the Public Securities Short-Term Interest Rate Act be available for all bonds authorized to be issued pursuant to any law of this state, including general obligation bonds, revenue bonds or any other bonds however secured.

**History:** Laws 1983, ch. 161, § 3; 1986, ch. 60, § 3.

## 6-18-4. Definitions.

As used in the Public Securities Short-Term Interest Rate Act, unless the context otherwise requires:

A. "bond" means any bond, debenture, note, refunding or renewal bond or note, warrant or other security evidencing an obligation authorized to be issued by a public body pursuant to any provision of law of this state, including the Public Securities Short-Term Interest Rate Act;

B. "governing body" means the city council or other body or officer of a public body in which the legislative powers are vested;

C. "indebtedness" means any debt evidenced by a bond issued by a public body pursuant to any law of this state that constitutes a debt for the purposes of Section 12 or 13 of Article 9 of the constitution of New Mexico and the issuance of which must be submitted to a vote of the qualified electors of the public body pursuant to those sections and any bond issued for the purpose of paying or refunding any such bond;

D. "bond legislation" means an ordinance or a resolution or other appropriate enactment adopted by a governing body of a public body providing for the authorization or sale of bonds and any trust agreement, credit agreement, letter of credit, reimbursement agreement or other credit facility, dealer agreement, issuing or paying agent agreement, purchase commitment agreement, escrow agreement, remarketing agreement, index agent agreement or other agreement with respect to the bonds to which the public body or trustee for the bonds is a party; and

E. "public body" means any municipality, any county, any school district, any special district, any H class county located in New Mexico, the New Mexico hospital equipment loan council, state institutions enumerated in Section 6-13-2 NMSA 1978, the water quality control commission, the state board of finance, the New Mexico finance authority or the state.

**History:** Laws 1983, ch. 161, § 4; 1984, ch. 33, § 1; 1986, ch. 60, § 4; 1987, ch. 144, § 1; 1991, ch. 172, § 1; 1992, ch. 61, § 34; 1995, ch. 141, § 14.

**ANNOTATIONS**

**Cross references.** — For H class counties, *see* 4-44-3 NMSA 1978.

For New Mexico hospital equipment loan council, *see* 58-23-5 NMSA 1978 et seq.

**The 1995 amendment,** effective April 5, 1995, inserted "any county, any school district, any special district" in Subsection E.

**The 1992 amendment,** effective March 9, 1992, inserted "the New Mexico finance authority" in Subsection E.

**The 1991 amendment,** effective April 4, 1991, in Subsection E, added "the water quality control commission, the state board of finance or the state" at the end, made a related stylistic change, and made a minor stylistic change in Subsection C.

**The 1987 amendment,** effective June 19, 1987, in Subsection E, deleted "with a population in excess of twenty-five thousand according to the most recent federal decennial census, any home rule municipality" following "means any municipality" near the beginning of the subsection.

## 6-18-5. Applicability.

Every public body authorized to issue any bonds under any of the laws of the state for any purpose may use the provisions of the Public Securities Short-Term Interest Rate Act with respect to such bonds.

**History:** Laws 1983, ch. 161, § 5.

## 6-18-6. Short-term bonds.

A public body may authorize short-term bonds, including short-term general obligation bonds, that provide for any or all of the following in or pursuant to the bond legislation:

A. principal maturities may be for any one or more periods of two years or less from the respective dates of issuance;

B. interest may be payable on any one or more dates, or at principal maturity;

C. interest may but need not be represented by coupons;

D. the bonds may be in coupon form, in form registered as to principal or registered as to both principal and interest, or in book entry form, and provision may be made for exchange of one form for another;

E. the bonds may be in form with stated interest or in discount form without stated interest, or a combination thereof;

F. the bond legislation may provide for the renewal or refunding of such bonds, at or before maturity, by the issuance or successive issuance of renewal or refunding bonds under that bond legislation without necessity for further act by the governing body, provided that the maturities of such renewal or refunding bonds shall not exceed two years from their respective dates of issuance. In the bond legislation approved by the governing body, the governing body may authorize or direct one or more officers of the public body to:

(1) fix the interest rate or rates for each issue of bonds and renewal or refunding issues, subject to a maximum rate or rates as a stated interest rate or net effective interest rate, which maximum shall be set forth in such bond legislation or determined from time to time in accordance with a formula, index, data or procedure as provided for in the bond legislation, provided that, whether or not such a formula, index, data or procedure is provided for, bond legislation with respect to indebtedness shall set forth stated maximums of net effective interest rates;

(2) determine the discount for bonds with stated interest and for bonds without stated interest, subject to any limitations thereon provided in the bond legislation;

(3) fix the date of such bonds, which may be stated in such bond legislation as the date or dates of issue and which may be a date on or before the respective date or dates of issuance;

(4) fix the maturity date or dates of such bonds, which shall be within minimum and maximum periods described in such bond legislation; and

(5) designate the denomination of such bonds, subject to minimums and integral multiples of stated amounts provided in such bond legislation;

G. the public body may contract with agents or trustees for services in connection with the issuance, transfer, exchange, registration, record keeping for and the payment of such bonds and matters incidental thereto, and the public body has authority to act under such contracts. Without limiting the generality of the preceding sentence, such contracts may provide:

(1) for the maintenance of a supply of bond forms with the agent or trustee, which forms bear the facsimile of all signatures of officers of the public body necessary for the purpose and, if applicable, the facsimile of the seal of the public body, contain blanks as to owner, date, maturity, denomination, interest rates and original issue discount as appropriate, and provide a form of authentication by the agent or trustee upon issuance;

(2) for the officer or officers of the public body, authorized by the governing body to do so, to direct the agent or trustee with respect to the completion of such blanks and the delivery of the bonds, by oral, electronic or written communication prior to the authentication and delivery of such bonds, and that any such oral or electronic communication thereafter shall be confirmed in writing; and

(3) for the establishment with the agent or trustee of funds, in trust, for payment of the principal of and interest on the bonds and for payments by and on behalf of the public body into such funds, including payments thereto from the proceeds of renewal or refunding bonds;

H. notwithstanding any other provision of law to the contrary, the public body may contract with banks or investment bankers, or others with appropriate capabilities, to provide services, which may be on an exclusive basis, in the placement of the bonds with purchasers, or to purchase the bonds, or both, which contract may provide for all matters incidental thereto and may be a negotiated contract. Contracts pursuant to this subsection may include services for the placement or purchase of short-term general obligation bonds and, for purposes of Section 6-18-7 NMSA 1978, variable rate demand general obligation bonds;

I. the public body may covenant, in the bond legislation, to the holders or owners of the bonds and to the trustee, if any, for the benefit of such holders and owners, that it will issue bonds to renew, or fund or refund, the bonds and any accrued interest thereon, at or before maturity to the extent not provided for from money otherwise available for the purpose. In addition to other reductions permitted in the levy of property taxes for principal or interest on indebtedness, reduction may be made to the extent that principal or interest thereon is to be covered by the proceeds of refunding or renewal bonds;

J. in addition to the authority to issue bonds for such purposes under the Public Securities Short-Term Interest Rate Act, the public body may, to the extent not prohibited by the bond legislation, retire or provide for the payment at any time of the bonds authorized under that act by the issuance of bonds under authority of any other law consistent with the maturities and other terms authorized by such laws and without impediment or other effect thereunder by reason of previously having issued the bonds under the Public Securities Short-Term Interest Rate Act, except as stated in Subsection B of Section 6-18-10 NMSA 1978; and

K. the provisions of Section 6-18-7 NMSA 1978 may be used with respect to any bonds issued pursuant to this section.

**History:** Laws 1983, ch. 161, § 6; 1999, ch. 232, § 5; 2005, ch. 158, § 2.

**ANNOTATIONS**

**The 2005 amendment,** effective June 17, 2005, provided that a public body may authorize short-term general obligation bonds and in Subsection H that notwithstanding any other provision of law to the contrary, a public body may contract for services in the placement of bonds or to purchase bonds and that the contracts may include services for the placement or purchase or short-term general obligation bonds and variable rate demand general obligation bonds.

**The 1999 amendment,** effective June 18, 1999, in Subsection F, deleted "and no bonds may be issued under authority of a bond legislation more than three years following action of the governing body on that bond legislation unless the governing body further acts to extend such authorization within three years prior to the issuance of such renewal bonds" following "respective dates of issuance"; in Subsection J, substituted "6-18-10 NMSA 1978" for "10 of that act"; and in Subsection K, substituted "6-18-7 NMSA 1978" for "7 of the Public Securities Short-Term Interest Rate Act".

## 6-18-7. Variable rate demand bonds.

A public body may issue bonds, including variable rate demand general obligation bonds, with any of the following provisions:

A. the owners or holders of the bonds may be granted the right to demand payment of principal and accrued interest prior to the maturity of such bonds at a designated time or at designated times, or upon a specified period of notice by such owner or holder, at par or at such other amount as is provided for in or pursuant to the bond legislation;

B. the owners or holders of the bonds may be granted the right to deliver, or put, the bonds to the public body or to a designated party for purchase by the public body or such party at par and accrued interest or such other price as is provided for in or pursuant to the bond legislation;

C. the public body may contract with a bank, investment banker or other capable party for the remarketing of bonds as to which the owners or holders have exercised such demand or put rights;

D. the bond legislation may provide for variable interest rates to be paid on the bonds, changing from time to time in accordance with one or more formulas, indices, data or procedures as provided for in the bond legislation, provided that where variable interest rates are provided for with respect to indebtedness, the bond legislation shall also prescribe a stated maximum net effective interest rate or rates for different maturities and, if necessary, for credit facilities used pursuant to the authority granted by Section 6-18-8 NMSA 1978;

E. the public body may contract with a competent party to provide an index or indices in relation to which the interest rate of the bonds may be determined from time to time;

F. bonds with provisions under which the holders or owners may demand payment or put the bonds for purchase or repurchase at any time within one year from the date of such bonds, whether or not such rights may also be exercised after such period, may be sold by competitive or negotiated sale;

G. the public body may contract with others to provide to the public body or to the holders or owners of the bonds, or to a trustee or agent on their behalf, a standby or fixed commitment to purchase those bonds at prices provided in or pursuant to such contracts; and

H. the provisions of Subsections B, C, D, E, G, H, I and J of Section 6-18-6 NMSA 1978 are applicable to bonds issued under this section, notwithstanding such bonds may have maturities in excess of two years.

**History:** Laws 1983, ch. 161, § 7; 2005, ch. 158, § 3.

**ANNOTATIONS**

**The 2005 amendment,** effective June 17, 2005, permitted a public body to issue variable rate demand general obligation bonds.

## 6-18-8. Credit facilities.

With respect to any bonds issued under the provisions of Section 6 or 7 [6-18-6 or 6-18-7 NMSA 1978] of the Public Securities Short-Term Interest Rate Act, the public body may, by the use of credit facilities, provide for:

A. additional security for such bonds;

B. a primary or contingent source of payment of or reimbursement for the principal of, interest or any redemption premium on the bonds, or the purchase price upon a put or call, as the case may be, and related costs, with respect to such bonds; and

C. contracts for the purchase or repurchase of bonds.

In connection therewith, the public body may enter into reimbursement agreements, credit agreements, escrow agreements and such other contracts and agreements as are appropriate, pursuant to authorization by the governing body. The public body may do all things as are necessary or appropriate and permitted by law to carry out such agreements, arrangements and contracts, including the issuance of bonds under authority of law, including the Public Securities Short-Term Interest Rate Act, in consideration of advances made under such agreements, arrangements and contracts. The governing body may assign or direct the assignment of the right of the public body with respect to such credit facilities, and may authorize designated agents, or parties, or officers of the public body, to draw upon such credit facilities for the purposes stated in this section.

**History:** Laws 1983, ch. 161, § 8.

## 6-18-8.1. Contracts to exchange interest rates, cash flows or limit exposure.

A. A public body that has issued or proposes to issue bonds may enter into contracts authorized in this section if the governing body of that public issuer finds that such a contract would be in the best interests of that public body and, for contracts of the type described in Subsections D and E of this section, if the state board of finance reviews and approves the contract and determines, in its discretion, that the contract results in a long-term financial benefit for the public body.

B. A public body may enter into any contract that the governing body determines to be necessary or appropriate regarding the debt service payable on the bond obligations of the governing body, in whole or in part on the interest rate, cash flow or other basis desired by the governing body, including, without limitation, contracts commonly known as interest rate swap contracts, forward payment conversion contracts, futures, or contracts providing for payments based on levels of or changes in interest rates, or contracts to exchange cash flows or a series of payments, or contracts including, without limitation, options, puts or calls to hedge payment, rate, price spread or similar exposure. A public body may also enter into any contract that provides collateral for securities. Contracts shall be governed by the terms and conditions established by the governing body, subject to the provisions of Subsection C of this section.

C. A public body may enter into a contract pursuant to this section only if:

(1) the long-term obligations of the person with whom the public body enters the contract are rated in one of the two top rating categories of a nationally recognized rating agency, without regard to any modification of the rating; or

(2) the obligations pursuant to the contract of the person with whom the public body enters the contract are either:

(a) guaranteed by a person whose long-term debt obligations are rated in either of the two highest rating categories of a nationally recognized rating agency, without regard to any modification of the rating; or

(b) collateralized by obligations deposited with the public body or an agent of the public body that are rated in either of the two highest rating categories of a nationally recognized rating agency, without regard to any modification of the rating, and that have a market value at the time the contract is made of not less than one hundred percent of the principal amount upon which the exchange of interest rates or other contract permitted by this section is based.

D. A public body may agree, with respect to bonds that the public body has issued or proposes to issue bearing interest at a variable rate, to pay sums equal to interest at a fixed rate or rates or at a different variable rate determined pursuant to a formula set forth in the contract on an amount not to exceed the principal amount of the bonds with respect to which the contract is made in exchange for a contract to pay sums equal to interest on the same principal amount at a variable rate determined pursuant to a formula set forth in the contract. Such contracts may provide for a minimum rate or a maximum rate or both.

E. A public body may agree, with respect to bonds that the public body has issued or proposes to issue bearing interest at a fixed rate or rates, to pay sums equal to interest at a variable rate determined pursuant to a formula set forth in the contract on an amount not to exceed the outstanding principal amount of the bonds with respect to which the contract is made in exchange for a contract to pay sums equal to interest on the same principal amount at a fixed rate or rates set forth in the contract. Such contracts may provide for a minimum rate or a maximum rate or both.

F. The term of a contract shall not exceed the term of the bonds of the public body with respect to which the contract was made.

G. A contract entered into pursuant to this section is not an indebtedness of the public body, and in no case shall the principal amount of any outstanding indebtedness of the public body be increased as a result of the contract.

H. The terms of Section 6-18-14 NMSA 1978 regarding limitations of interest rates and net effective interest rates are applicable to interest rates and net effective interest rates required to be paid by a public body entering into a contract.

I. A public body that has entered into a contract may treat the amount or rate of interest on those bonds as the amount or rate of interest payable after giving effect to the contract for the purpose of calculating:

(1) rates and charges of a revenue-producing enterprise whose revenues are pledged to or used to pay the bonds of the public body;

(2) statutory requirements concerning revenue coverage that are applicable to bonds of the public body;

(3) tax levies and collections to pay debt service on bonds of the public body; and

(4) any other amounts that are based upon the rate of interest of bonds of the public body.

J. Any payments required to be made by the public body under the contract may be made from money pledged to pay debt service on the bonds with respect to which the contract was made or from any other legally available source.

K. Any contract entered into by a public body pursuant to this section shall not impair the contract of that public body with, or impair adversely, the owners of bonds issued by that public body.

**History:** 1978 Comp., § 6-18-8.1, enacted by Laws 1992, ch. 96, § 1; 1993, ch. 128, § 1; 2001, ch. 54, § 1.

**ANNOTATIONS**

**The 2001 amendment,** effective June 15, 2001, inserted "for contracts of the type described in Subsections D and E of this section" in Subsection A; inserted "the debt service payable on" towards the beginning of Subsection B; substituted "public body" for "municipality" in Subsection C(2); deleted "the rating of" preceding "a nationally recognized" in Subsection C(2)(a); and inserted the final sentences of Subsections D and E.

**The 1993 amendment,** effective June 18, 1993, inserted the language following the second occurrence of "public body" in Subsection A and substituted "and in no case shall" for "except to the extent, if any, that" in Subsection G.

## 6-18-9. Trust agreements.

The public body may, with respect to any bonds issued pursuant to the Public Securities Short-Term Interest Rate Act, enter into trust agreements for the better security of such bonds with any corporate trustee and provide therein for the rights and limitations on rights of the holders and owners of bonds.

**History:** Laws 1983, ch. 161, § 9.

## 6-18-10. General provisions.

A. The bond legislation for any bonds authorized under the Public Securities Short-Term Interest Rate Act may make or authorize provision for any of the following:

(1) the call of the bonds for redemption prior to maturity at the option of the public body or at the option of the owner or holder, the redemption prices to be paid on stated dates of redemption, and other terms and conditions of redemption;

(2) the use of facsimiles of the signatures of all officers of the public body required or permitted or sign the bonds if authentication of the bonds, by manual signature, by a trustee or other agent is provided for as a condition of the validity of the bonds, and no such bonds shall be valid unless authenticated, and, if applicable, for the use of a facsimile of the seal of the public body;

(3) the manner of giving notice by publication or otherwise, and the time and effect thereof;

(4) designating agents for receipt of notice or service in other states;

(5) the filing and renewal of any financing statements in any jurisdiction under the Uniform Commercial Code [Chapter 55 NMSA 1978] or comparable law; and

(6) any matter related or incidental to authority elsewhere granted in the Public Securities Short-Term Interest Rate Act and deemed by the legislative body to be necessary or convenient to carry out the purpose of that act.

B. The issuance of the initial bonds under the Public Securities Short-Term Interest Rate Act within the time periods provided for in Section 6-15-9 or Subsection F [Subsection J] of Section 3-31-1 NMSA 1978 or in any other applicable law relating to time limitations on the issuance of bonds shall constitute compliance with any such law as to such bonds and any renewal, refunding or remarketing of such bonds or of such renewal or refunding bonds, notwithstanding that the renewal or refunding bonds are issued or the remarketing of such bonds occurs after such period.

C. Any maximum maturities for bonds provided for by law which otherwise would be applicable to bonds issued under the Public Securities Short-Term Interest Rate Act shall limit the maturities of bonds issued under that act.

D. The remarketing of indebtedness after a demand for payment or delivery or put for purchase or repurchase shall not be deemed to be a new issuance of the indebtedness but shall constitute a continuance of the original indebtedness.

**History:** Laws 1983, ch. 161, § 10.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Following the amendment of 3-31-1 NMSA by Laws 1983, Chapter 57, Laws 1995, Chapter 141, and Laws 1998, Chapter 90, the reference to Subsection F of 3-31-1 NMSA 1978 should be to Subsection J of 3-31-1 NMSA 1978.

## 6-18-11. Costs.

The public body may pay the fees and expenses of, and costs for, agents, trustees, attorneys, credit facilities, placement and sale of bonds, and all other costs and expenses incurred in the authorization, issuance, sale, delivery, call, purchase, remarketing, registration, transfer, exchange, administration and payment of the bonds and interest thereon from the proceeds of the bonds, from sources lawfully available for payment of principal of and interest on the bonds, and from any other sources lawfully available for the purpose, subject to the provisions of the bond legislation and any applicable limitations on indebtedness.

**History:** Laws 1983, ch. 161, § 11.

## 6-18-12. Provisions for interest payments; tax levy.

A. Subject to any applicable limitations on indebtedness, with respect to refunding bonds, there may be included in the principal amount, and paid from the proceeds, of bonds issued pursuant to the Public Securities Short-Term Interest Rate Act capitalized interest for three years or such longer period as may otherwise be authorized by law. The proceeds of any levy of property taxes to the extent levied for interest on indebtedness for any period of time covered by such capitalized interest may be used to reimburse the improvement fund for the previous payment of interest from such fund.

B. To the extent that bonds issued pursuant to the Public Securities Short-Term Interest Rate Act constitute indebtedness, the officials now or hereafter charged by law with the duty of levying general (ad valorem) taxes for the payment of bonds and interest shall, in the manner provided by law, make an annual levy sufficient to meet the payments of principal and interest on such bonds maturing. Nothing herein contained shall be so construed as to prevent the municipal corporation from applying any other funds that may be in the treasury or investment income actually received from sinking fund investments and available for that purpose, or the proceeds of renewal or refunding bonds or any other funds lawfully available therefor to the payment of the interest on or the principal of or any prior redemption premium in connection with such bonds as the same become due; and the levy or levies of taxes may be diminished to the extent such other revenues are or will be available for the payment of principal and interest of the bonds. Any levy of property taxes for interest on indebtedness for any year may be for the maximum interest that may be payable under the applicable bond legislation in the year in which such levy is collected. If, after provision for payment of interest in that year, there is any amount remaining from the collection of property taxes

levied for such interest, it shall be used in succeeding years for the payment of interest on the bonds, and the levy for the succeeding years to provide money for the payment of principal of and interest on the bonds shall be reduced accordingly, except that any such remainder may be used at any time for payment of principal of the bonds if and to the extent permitted by the bond proceedings, provided that the bond legislation shall permit the eventual application of all money collected from such levies to the payment of principal of and interest on indebtedness.

**History:** Laws 1983, ch. 161, § 12.

## 6-18-13. Finding of necessity by local governments.

No public body shall exercise any of the powers conferred by the Public Securities Short-Term Interest Rate Act or issue any bonds pursuant hereto until after its local governing body shall have adopted a resolution finding that:

A. the issuance of bonds under that act will result in a savings in interest cost to the public body; and

B. the issuance by the public body of bonds under that act is necessary in the interest of the public health, safety, morals or welfare of the residents of the public body.

**History:** Laws 1983, ch. 161, § 13.

## 6-18-14. Interest; refunding; approval by local government; additional findings.

Bonds issued under the Public Securities Short-Term Interest Rate Act are not subject to any limitations on interest rates or net effective interest rates or interest rate approval requirements contained in any other laws of this state provided that:

A. the bond legislation shall contain findings by the governing body that any fixed rate or rates of interest or discount on the bonds, or in the case of a variable rate or rates of interest, that the maximum rate or method of determining the maximum rate, and that the maximum net effective interest rate on the bonds, are reasonable under existing or anticipated bond market conditions and necessary and advisable for the marketing and sale of the bonds. The bond legislation shall declare that the governing body has considered all relevant information and data in making its findings. The findings and declarations in the bond legislation shall constitute conclusive authority for the public body to issue the bonds within the interest rate limitations set forth herein and in the bond legislation; and

B. any bonds issued pursuant to the Public Securities Short-Term Interest Rate Act to renew, or fund or refund, any prior issue of bonds, in whole or in part, may be issued notwithstanding the provisions of any other laws of the state, provided that bond legislation pertinent to the bonds shall contain findings that the issuance of such bonds

is necessary or advisable, and the amount of such bonds which it is deemed necessary and advisable to issue. The determination of necessity or advisability contained in the bond legislation shall constitute conclusive authority for the public body to issue any such renewal, funding or refunding bonds and no additional approval of any department, board or other officer of the state or any other official approval is required.

**History:** Laws 1983, ch. 161, § 14.

### 6-18-15. Liberal construction; alternative authority.

The authority granted by the Public Securities Short-Term Interest Rate Act shall be liberally construed so that the purposes and powers provided for may be carried out in effective, efficient and convenient manners by public bodies. The authority granted by that act is supplemental to and provides alternatives for authority granted by other law, and a public body shall have the authority to exercise powers under that act notwithstanding inconsistent provisions of other laws, or may elect to use the authority of that act in part and the authority of other laws in part with respect to an issue of bonds. Home rule municipalities may, at their option, use the provisions of that act for any bonds they are authorized to issue, but nothing herein shall be deemed to restrict their home rule powers.

**History:** Laws 1983, ch. 161, § 15.

### 6-18-16. No action maintainable.

No action or proceeding, at law or in equity, to review any bond legislation, or to question the validity or enjoin the performance of any bond legislation, bond or act, or the issuance of any bond authorized by the Public Securities Short-Term Interest Rate Act, or for any other relief against the public body, the owners or holders of bonds or any party to any bond legislation, or against any acts or proceedings done or had under that act, whether based upon irregularities or jurisdictional defects, shall be maintained, unless commenced within thirty days after the initial authorization by the governing body of the bonds, or else be thereafter perpetually barred.

**History:** Laws 1983, ch. 161, § 16.

## ARTICLE 19
## Economic Advancement Districts

### 6-19-1. Short title.

This act [6-19-1 to 6-19-18 NMSA 1978] may be cited as the "Economic Advancement District Act".

**History:** Laws 1987, ch. 115, § 1.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 56 Am. Jur. 2d Municipal Corporations §§ 542, 543; 64 Am. Jur. 2d Public Securities and Obligations §§ 107 to 109.

64 C.J.S. Municipal Corporations §§ 1907 to 1909; 81A C.J.S. States §§ 205, 208, 212.

## 6-19-2. Definitions.

As used in the Economic Advancement District Act:

A. "board of trustees" means the governing board of the economic advancement district;

B. "district" means an economic advancement district which is composed of contiguous and compact areas whose boundaries coincide and are concurrent with the territorial areas of one or more school districts of the state lying wholly within any B or C class county;

C. "mortgage" means a mortgage or a mortgage and deed of trust or the pledge and hypothecation of any assets as collateral security;

D. "project" means any land and building or other improvements thereon, to be located within the district in whole or in part, and all real and personal properties deemed necessary in connection with a project, whether or not now in existence, which shall be suitable for use by the following or by any combination thereof:

(1) any industry for the manufacturing, processing or assembling of any agricultural or manufactured products;

(2) any commercial enterprise involved in storing, warehousing, distributing or selling products of agriculture, mining or industry, but which does not include facilities designed for the sale of goods or commodities at retail or distribution to the public of electricity, gas, water or telephone or other services commonly classified as public utilities;

(3) any business in which all or part of the activities of the business involves the supplying of services to the general public or to governmental agencies or to a specific industry or customer, but does not include establishments primarily engaged in the sale of goods or commodities at retail;

(4) any private institution of higher education or any nonprofit corporation engaged in health care services, including nursing homes; or

(5) any water distribution or irrigation system, including without limitation, pumps, distribution lines, transmission lines, towers, dams and similar facilities and equipment designed to provide water to any commercial agricultural activity;

E. "property" means any land, improvements thereon, buildings and any improvements thereto, machinery and equipment of any and all kinds necessary to the project; and

F. "qualified elector" means a natural person resident in a proposed or existing district who is registered to vote in state general elections.

**History:** Laws 1987, ch. 115, § 2; 1988, ch. 86, § 1.

**ANNOTATIONS**

**The 1988 amendment,** effective March 8, 1988, in Subsection B, substituted "within any B or C class county" for "within a B class county having a net taxable value in the 1986 property tax year or of any subsequent tax year of not less than one billion dollars ($1,000,000,000) nor more than one billion six hundred million dollars ($1,600,000,000)"; deleted "economic advancement" preceding "district" in Subsection F; and made a minor stylistic change.

## 6-19-3. Legislative intent.

It is the intent of the legislature by passage of the Economic Advancement District Act to authorize economic advancement districts to acquire, own, lease or sell projects for the purpose of promoting industry and trade, other than retail trade, for the enhancement of the economy of the area encompassed by the district and for the general economy of the state. It is the intent of the legislature that this be accomplished by the inducement of manufacturing, industrial and commercial enterprises to locate and expand in the district and in this state and by the promotion of agricultural products and natural resources of the district and the state.

**History:** Laws 1987, ch. 115, § 3.

## 6-19-4. Creation of economic advancement districts.

A. There may be created economic advancement districts for the purposes of the Economic Advancement District Act.

B. Petitions for the organization of a district shall designate the name of the proposed district and with particularity the proposed territorial area to be included within the district. The proposed district shall comprise and be concurrent with the territorial areas of one or more existing public school districts in the county, other than that area comprising another district; provided, however, that the territorial area encompassed by any proposed district shall in all cases be contiguous.

C. The petition calling for the organization of a district shall be signed by qualified electors residing in each school district within the area of the proposed district in a number equal to or in excess of ten percent of the votes cast for governor in the last preceding general election in each school district within the area of the proposed district. For the purpose of determining the votes cast in such school districts for governor in the last preceding general election, any portion of a precinct within any affected school district shall be construed to be wholly within the proposed district.

D. Upon receipt of the county clerk's certification of receipt of a petition meeting the requirements of Subsection C of this section, the board of county commissioners shall issue a proclamation calling for an election to be held not less than sixty or more than one hundred twenty days from the date of the receipt of the county clerk's certification. The election shall be for the purpose of determining whether the district shall be created and for the establishment of a tax rate of two dollars ($2.00) or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 on each one thousand dollars ($1,000) of net taxable value as that term is defined in the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978] for the funding of the district. The debt limitation specified in this section shall be in excess of other existing debt limitations provided by law. No more than ten percent of the funds produced by the imposition of the tax created shall be used for operations of the district. The balance shall be used for the purpose of paying the principal and interest on general obligation bonds authorized pursuant to the Economic Advancement District Act or any other activities authorized for districts. A separate election shall be called for the selection of members of the board of trustees.

E. Only qualified electors who reside in the territory of the proposed district may vote in the election.

F. The proclamation of the election shall be published by the county clerk once each week for four consecutive weeks in a newspaper of general circulation in the territory of the proposed district, the last notice being published not more than one week from the date of the election.

G. The election shall be conducted, counted and canvassed in substantially the same manner as school board elections are conducted, counted and canvassed.

H. A district shall be declared created by the board of county commissioners when a majority of the qualified electors voting on the issue in the area of each school district within the boundaries of the district are certified by the board of county commissioners to have voted in favor of establishing the district.

I. In the event a majority of the qualified electors voting on the issue in the area of a school district within the boundaries of the district shall not approve the creation of the district, the proposal shall fail as to the area of that school district, and no election upon the creation of a district encompassing the area of that school district shall be held within one year of such date.

J. The expense of calling and conducting the election shall be borne by the county in which an election is held; provided, if the election results in the creation of a district, the district shall reimburse the county for all expenditures made in the course of calling and conducting the election.

**History:** Laws 1987, ch. 115, § 4; 1988, ch. 86, § 2; 1989, ch. 268, § 1.

**ANNOTATIONS**

**The 1989 amendment,** effective June 16, 1989, in Subsection C substituted all of the present language of the first sentence beginning with "votes" for "qualified electors in each such school district", and added the second sentence.

**The 1988 amendment,** effective March 8, 1988, deleted "advancement" preceding "district" throughout Subsection B; in Subsection C, substituted "residing in each school district within the area of the proposed district in a number equal to or in excess of ten percent of the qualified electors in each such school district" for the former provisions requiring signatures in a number equal or in excess of five percent of the votes cast for governor in the last preceding general election; deleted "economic advancement" preceding "district" or "districts" throughout Subsections D, H and I; deleted "wherein the voters did not approve such creation" preceding "shall be held" near the end of Subsection I; and made minor stylistic changes.

## 6-19-5. Board of trustees; organization; terms; vacancies; removal.

A. If the required majority of votes were cast in favor of the organization of the district, then the county commission chairman shall declare the organization of the ".....economic advancement district." The county commission shall call for an election of a board of trustees, within not less than sixty days or more than one hundred twenty days, one from each school district participating in the district in the event there are three or more such participating areas, which shall be held at a time and at sites within the district selected by the county commissioners. In the event there are less than three participating areas, there shall be, in the case of a district with two participating areas, two trustees elected from each school district participating and, in the case of a district with one participating area, three trustees elected from the district.

B. Board of trustees members shall be over twenty-one years of age, qualified electors and residents of the district.

C. Persons desiring to be a candidate for a position on the board of trustees shall file a declaration of candidacy for one of the positions on the board of trustees with the county clerk not later than 5:00 p.m. on the thirtieth day after the issuance of the proclamation by the board of county commissioners. The declaration of candidacy shall be an affidavit as to the qualifications required by law of the declarant for such office. The declaration of candidacy shall be on a form prescribed and furnished by the county clerk. The candidates shall file for and be elected to a particular position number. The

candidate receiving the highest number of votes for a particular position shall be elected. To provide for staggered terms, either one-year and three-year terms or two-year and four-year terms shall be assigned by lot to the position numbers in such a manner that approximately half the terms expire in the first even-numbered year following the initial election and the remainder in the next succeeding even-numbered year. Board members shall be elected for terms beginning April 1 succeeding their election. Trustees shall thereafter be elected for four-year terms at elections to be held on the first Tuesday of March of each even-numbered year. The elections required by this section shall be held, conducted and canvassed in the same manner as municipal elections, unless otherwise specifically provided in the Economic Advancement District Act. All vacancies caused in any other manner than by expiration of the term of office shall be filled by appointment by the remaining members.

D. Immediately after the election of the members, the board of trustees shall select from its members a chairman and secretary-treasurer who shall serve in these offices until the next regular board of trustees election. After each board of trustees election, the members shall proceed to reorganize.

E. Members of the board of trustees shall be suspended or removed from office only as provided in Sections 10-4-1 through 10-4-29 NMSA 1978.

**History:** Laws 1987, ch. 115, § 5; 1988, ch. 86, § 3; 1989, ch. 268, § 2.

### ANNOTATIONS

**The 1989 amendment,** effective June 16, 1989, in Subsection A substituted all of the present language of the last sentence following "shall be" for "three trustees elected from the district at large".

**The 1988 amendment,** effective March 8, 1988, deleted "economic advancement" preceding "district" in Subsections A and B; inserted "county" preceding "commission chairman" in the first sentence of Subsection A; inserted "of trustees" following "Board" in Subsection B; substituted the present sixth and seventh sentences in Subsection C for the former sixth sentence which read "Board members shall be elected for a term of four years from April 1 succeeding their election or until the next presidential election year, whichever last occurs"; substituted "even-numbered year" for "presidential election year" at the end of the eighth sentence of Subsection C; substituted "by this section" for "hereby" and deleted "school" preceding "elections" in the next-to-last sentence of Subsection C; and substituted "board of trustees" for "economic advancement board" throughout Subsection D.

## 6-19-6. Board of trustees; compensation; payment authority; bond.

A. Each member of the board of trustees shall receive no compensation for the performance of his duties but shall be paid per diem and mileage for attendance at

meetings of the board as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] for nonsalaried public officials.

B. Each member of the board of trustees shall furnish a corporate surety bond in the penal sum of ten thousand dollars ($10,000) for the faithful performance of his duties and the accounting of all funds which shall come into his possession. The bond shall be paid for by and shall run to the benefit of the district.

C. All authorizations for the payment or expenditure of money in the possession of the district shall be signed by the chairman and the secretary-treasurer.

**History:** Laws 1987, ch. 115, § 6.

## 6-19-7. Board of trustees; powers.

The board of trustees may:

A. perform all functions consistent and necessary to carry out the provisions and purposes of the Economic Advancement District Act;

B. receive and expend all funds accruing to the district pursuant to the provisions of the Economic Advancement District Act from the sale of bonds, the levy of taxes, the lease or sale of property, from any gift or bequest or from any federal, state or private grant;

C. enter into contracts;

D. adopt and use a seal to authenticate its official transactions;

E. sue and be sued;

F. adopt rules and regulations for the governing of the district;

G. issue bonds in the manner set forth by the provisions of the Economic Advancement District Act for the purpose of defraying the cost of acquiring, by construction and purchase, or either, any project and to secure the payment of such bonds as provided in the Economic Advancement District Act;

H. acquire, whether by construction, purchase, gift or lease, one or more projects which shall be located within the district or partially within or partially without the district; provided, no district shall operate any project as a business or in any manner except as lessor thereof;

I. sell or lease or otherwise dispose of any or all of its projects upon such terms and conditions as the board of trustees may deem advisable;

J. refinance one or more projects; and

K. make secured loans for projects as defined in the Economic Advancement District Act.

**History:** Laws 1987, ch. 115, § 7.

## 6-19-8. Board of trustees; duties.

The board of trustees shall:

A. be the governing authority of the district;

B. comply with the provisions of law for local governments pertaining to the preparation and approval of budgets by the local government division of the department of finance and administration;

C. comply with the provisions of law pertaining to the audit of local governments by the state auditor; and

D. adopt rules and regulations for the operation of the district and comply with the provisions of the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** Laws 1987, ch. 115, § 8.

## 6-19-9. General obligation bonds.

A. The board of trustees may issue general obligation bonds of the district for the purposes of:

(1) constructing, acquiring or purchasing property for a project;

(2) equipping, furnishing, remodeling or renovating property for a project;

(3) purchasing or acquiring real property deemed necessary for a project; and

(4) refunding outstanding general obligation bonded indebtedness.

B. The board of trustees shall comply with the requirements and procedures set forth in Section 6-15-1 NMSA 1978 with respect to the proposed issuance of general obligation bonds. The local government division of the department of finance and administration shall apply the procedures set forth in Section 6-15-2 NMSA 1978 to the proposed issuance of general obligation bonds by the district.

**History:** Laws 1987, ch. 115, § 9.

## 6-19-10. General obligation bonds; interest; maturities.

A. General obligation bonds issued by a district shall mature not more than ten years from their date and be numbered from one upwards consecutively. Interest on all such bonds shall be payable either annually or semiannually as provided by resolution of the board of trustees; provided that the first installment of interest coming due may be for any period of time which shall not exceed one year from the date of the bonds.

B. The resolution authorizing the bonds may provide for the creation of a sinking fund to secure payment of principal and interest on the bonds and may provide for mandatory annual payments to be made to the sinking fund from the taxes levied and collected pursuant to the Economic Advancement District Act.

C. The board of trustees shall designate the maximum coupon rate of interest the general obligation bonds shall bear, which shall not be in excess of the maximum coupon rate which is permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978], and shall designate the maximum net effective interest rate, which shall not exceed the maximum permitted by the Public Securities Act.

D. The procedure which shall be followed by the board of trustees for the sale of general obligation bonds shall be the same as that set forth in Section 6-15-5 NMSA 1978 for political subdivisions.

**History:** Laws 1987, ch. 115, § 10; 1988, ch. 86, § 4.

**ANNOTATIONS**

**The 1988 amendment,** effective March 8, 1988, substituted "ten years" for "twenty years" in the first sentence of Subsection A.

## 6-19-11. General obligation bonds; imposition of tax.

A. The officials now or hereafter charged by law with the duty of levying ad valorem taxes for the payment of bonds and interest shall, in the manner provided by law, make an annual levy sufficient to meet the annual or semiannual payments of principal and interest on the maturing general obligation bonds or the refunding bonds or the mandatory sinking fund payments, if such fund is created by the board of trustees from the revenues derived from the tax created upon the formation of the economic advancement district.

B. The provisions of Subsection A of this section shall not be construed as to prevent the district from applying any other funds that it may have, or investment income actually received from sinking fund investments and available for that purpose, to the payment of the interest and principal of or any prior redemption premium in connection with the bonds as they become due.

**History:** Laws 1987, ch. 115, § 11.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 72 Am. Jur. 2d State and Local Taxation §§ 48 to 50.

84 C.J.S. Taxation §§ 13 to 17.

## 6-19-12. Refunding bonds.

A. The board of trustees may issue bonds in the form determined by the board of trustees for the purpose of refunding any of the general obligation bonded indebtedness of the district which has or may hereafter become payable at the option of the district or by consent of the bondholder or by any lawful means.

B. The procedures set forth in Sections 6-15-11 through 6-15-22 NMSA 1978 shall govern the board of trustees with respect to the issuance, sale and payment of principal and interest on refunding bonds of the district.

**History:** Laws 1987, ch. 115, § 12.

## 6-19-13. Revenue bonds.

A. The board of trustees may issue revenue bonds for the purpose of defraying the cost of acquiring, by construction and purchase, or either, any project and to secure the payment of the bonds as provided in Section 14 [6-19-14 NMSA 1978] of the Economic Advancement District Act.

B. Revenue bonds issued by a district shall not be the general obligation of the district within the meaning of Article 9, Sections 12 and 13 of the constitution of New Mexico. The bonds shall be payable solely out of the revenue derived from the projects for which the bonds are issued. Revenue bonds and interest coupons, if any, issued under authority of the Economic Advancement District Act shall never constitute an indebtedness of the district within the meaning of any state constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the district or a charge against its general credit or taxing powers, and such fact shall be plainly stated on the face of each bond.

C. The board of trustees may, in respect to such revenue bonds, determine:

(1) the time for execution and delivery of the bonds;

(2) the form and denomination of the bonds;

(3) the place or places where they are to be payable;

(4) the manner in which they should be evidenced;

(5) what provisions they shall contain, provided the provisions are not inconsistent with the Economic Advancement District Act; and

(6) whether they shall be sold at public or private sale.

**History:** Laws 1987, ch. 115, § 13.

## 6-19-14. Security for revenue bonds.

The principal or interest on any revenue bonds issued under authority of the Economic Advancement District Act shall be secured by a pledge of the revenues out of which such bonds shall be made payable, may be secured by a mortgage covering all or any part of the project from the revenues so pledged and may be derived and may be secured by a pledge of the lease of the project.

**History:** Laws 1987, ch. 115, § 14.

## 6-19-15. Requirements respecting lease.

Prior to the leasing of any project, the board of trustees shall determine and find the following:

A. the amount necessary in each year to pay the principal of and the interest on the revenue bonds proposed to be issued to finance the project; and

B. the amount necessary to be paid each year into any reserve funds which the board of trustees may deem it advisable to establish in connection with the retirement of the proposed revenue bonds and the maintenance of the project and, unless the terms under which the project is to be leased provide that the lessee shall maintain the project and carry all proper insurance with respect thereto, the estimated cost of maintaining the project in good repair and keeping it properly insured. The determinations and findings of the board of trustees required by this section shall be set forth in the proceedings under which the proposed revenue bonds are to be issued, and prior to the issuance of the bonds, the district shall lease or sell the project to a lessee or purchaser under an agreement conditioned upon completion of the project and providing for payment to the district of such rentals or payments as, upon the basis of the determinations and findings, will be sufficient to:

(1) pay the principal of and interest on the revenue bonds issued to finance the project;

(2) build up and maintain any reserve deemed by the board of trustees to be advisable in connection with the project; and

(3) pay the costs of maintaining the project in good repair and keeping it properly insured, unless the agreement of lease obligates the lessee to pay for the maintenance and insurance of the project.

**History:** Laws 1987, ch. 115, § 15.

## 6-19-16. Revenue bonds; refunding.

A. Any revenue bonds issued pursuant to the Economic Advancement District Act and at any time outstanding may at any time be refunded by a district by the issuance of refunding bonds, in the amount as the board of trustees may determine, to refund the principal of the revenue bonds, all unpaid accrued and unaccrued interest on the revenue bonds to their normal maturity date or to selected prior redemption dates, any redemption premiums, any commission and all estimated costs incidental to their issuance and to such refunding as may be determined by the board of trustees. The principal amount of the refunding bonds may be equal to, less than or greater than the principal amount of the bonds to be so refunded. Refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby or by exchange of the refunding bonds for the bonds to be refunded thereby; provided, that the holders of any bonds so to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are by terms subject to redemption. Any refunding bonds issued pursuant to this section shall be payable solely from the revenues out of which the bonds to be refunded may be payable or solely from those amounts derived from an escrow as provided in this section, including amounts derived from the investment of refunding bond proceeds and other legally available amounts or from any combination of the foregoing sources, and shall be secured in accordance with the provisions of the Economic Advancement District Act.

B. Proceeds of refunding bonds shall either be applied immediately to the retirement of the revenue bonds being refunded or be placed in escrow in a commercial bank or trust company which possesses and is exercising trust powers. Notwithstanding any provision to the contrary in any other statute, the escrowed proceeds may be invested in short-term securities, long-term securities or both.

**History:** Laws 1987, ch. 115, § 16.

## 6-19-17. Nature of all bonds issued pursuant to act.

Bonds issued pursuant to the authority of the Economic Advancement District Act:

A. shall be legal investments for savings banks and insurance companies organized under the laws of this state; and

B. shall be exempt from all taxation by the state or any political subdivision thereof.

**History:** Laws 1987, ch. 115, § 17.

## 6-19-18. Dissolution of district.

A district shall be dissolved in the following manner:

A. there shall be submitted a petition for dissolution to the board of county commissioners signed by at least ten percent of the qualified electors residing within the district. Upon receipt of a proper petition, the board of county commissioners shall call a special election for the purpose of referring to the qualified electors residing in the district the question of dissolution and the board of trustees shall submit a plan for the dissolution of the district to the board of county commissioners for their approval;

B. if the board of county commissioners finds that a majority of the qualified electors voting on the issue of the special election have authorized the dissolution, the board of trustees shall proceed with the approved plan. Upon completion of the plan, the board of trustees shall submit a full report to the board of county commissioners; and

C. upon receipt of the final report of the board of trustees, the board of county commissioners shall examine the report to determine whether or not any outstanding obligations still exist and whether the terms of the approved plan have been accomplished. If, upon determination by the board of county commissioners, no obligations are yet outstanding and the provisions of the plan have been fulfilled, they shall formally declare the district dissolved.

**History:** Laws 1987, ch. 115, § 18.

# ARTICLE 20
# Private Activity Bonds

## 6-20-1. Short title.

Sections 1 through 12 [6-20-1 to 6-20-11 NMSA 1978] of this act may be cited as the "Private Activity Bond Act".

**History:** Laws 1988, ch. 46, § 1.

**ANNOTATIONS**

**Applicability.** — Laws 1988, ch. 46, § 12, effective March 4, 1988, made the Private Activity Bond Act effective retroactive to January 1, 1988, and applicable to all private activity bonds issued after that date.

## 6-20-2. Definitions.

A. As used in the Private Activity Bond Act:

(1) "allocation" means an allocation of the state ceiling issued by the board to an issuing authority to issue private activity bonds;

(2) "allocation expiration date" means the expiration date for issuance of private activity bonds or making a mortgage credit certificate election set forth in the board allocation which shall be the earlier of one hundred twenty days from the date of issuance of the allocation or the bond issuance expiration date for the calendar year of the allocation; provided, however, that in the case of allocations issued pursuant to Subsection A or B of Section 3 [6-20-3 NMSA 1978] of the Private Activity Bond Act, "allocation expiration date" means July 1 of the calendar year of the allocation;

(3) "board" means the state board of finance;

(4) "bond counsel" means an attorney or a firm of attorneys listed in the most recently available "Directory of Municipal Bond Dealers of the United States", published by the Bond Buyer and commonly known as the "Red Book", in the section listing municipal bond attorneys of the United States or the successor publication thereto;

(5) "bond issuance expiration date" means the date not later than December 26 selected annually by the board upon which all unexpired allocations issued for the calendar year shall expire except to the extent that any unexpired allocation has been used by an issuing authority prior to such date to issue private activity bonds or make a mortgage credit certificate election;

(6) "carryforward election allocation" means an allocation of the state ceiling issued by the board pursuant to the Private Activity Bond Act which an issuing authority may elect to treat as a carryforward under Section 146 of the code;

(7) "carryforward purpose" means:

(a) the purpose of issuing exempt facility bonds;

(b) the purpose of issuing qualified mortgage bonds or mortgage credit certificates;

(c) the purpose of issuing qualified student loan bonds; and

(d) the purpose of issuing qualified redevelopment bonds;

(8) "code" means the Internal Revenue Code of 1986, as amended;

(9) "confirmation" means the confirmation of bond issuance furnished to the board;

(10) "inducement resolution" means a resolution expressing an intent to issue private activity bonds for a project;

(11) "issuing authority" means the state, state agencies, counties and incorporated municipalities;

(12) "mortgage credit certificate election" means an election pursuant to Section 25(c)(2)(A)(ii) of the code, by an issuing authority not to issue qualified mortgage bonds which the issuing authority is otherwise authorized to issue, in exchange for the authority under Section 25 of the code to issue mortgage credit certificates in connection with a qualified mortgage credit certificate within the meaning of Section 25(c)(2) of the code;

(13) "private activity bond" means:

(a) any bond or other obligation which is a qualified private activity bond under Section 141 of the code which is not excluded by Section 146(g), (h) and (i) of the code or a bond or other obligation issued under Section 1312 or 1313 of the Tax Reform Act of 1986; and

(b) the private activity portion of government use bonds allocated by an issuing authority to an issue under Section 141(b)(5) of the code;

(14) "project" means any facilities which can be financed with private activity bonds which are not qualified student loan bonds or qualified mortgage bonds;

(15) "qualified mortgage bond" means a bond or obligation which is issued as part of a qualified mortgage issue under Section 143 of the code;

(16) "qualified student loan bond" means any bond issued as part of an issue of which the applicable percentage or more of the net proceeds thereof are to be used directly or indirectly to make or finance student loans under programs identified by Section 144(b) of the code;

(17) "regulations" means the regulations promulgated by the internal revenue service under the code or under the Internal Revenue Code of 1954, as amended;

(18) "request for allocation" means the request of an issuing authority pursuant to the Private Activity Bond Act;

(19) "request for carryforward election allocation" means the request of an issuing authority pursuant to the Private Activity Bond Act;

(20) "state" means the state of New Mexico;

(21) "state agency" means the New Mexico industrial and agricultural finance authority, the New Mexico educational assistance foundation, the New Mexico mortgage finance authority and any other agency, authority, instrumentality, corporation or body, now existing or hereafter created, which under state law can issue private activity bonds on behalf of the state;

(22) "state ceiling" means, for any calendar year, the greater of an amount equal to fifty dollars ($50.00) multiplied by the state population as shown by the most recent census estimate of the resident population of the state released by the United States bureau of census before the beginning of such calendar year, or one hundred fifty million dollars ($150,000,000) or such different amount as may be provided by Section 146(d) of the code;

(23) "state private activity bond fund" means the fund into which the unallocated and unused state ceiling is set aside on July 1 in each calendar year and from which issuing authorities may receive carryforward election allocations and allocations to fund the issuance of private activity bonds and the making of mortgage credit certificate elections; and

(24) "user" means the user of proceeds of private activity bonds for a project.

B. The word "issue" or "issued" when used in the context of an issuing authority issuing a private activity bond means the physical delivery of the evidences of indebtedness in exchange for the amount of the purchase price.

C. References in the Private Activity Bond Act to particular sections of the code or the regulations shall be deemed also to refer to any successor or recodification sections.

**History:** Laws 1988, ch. 46, § 2.

**ANNOTATIONS**

**Cross references.** — For the Internal Revenue Code of 1986, *see* Title 26 of the United States Code. For Sections 25, 141, 143, 144, and 146 of that code, *see* 26 U.S.C.S. §§ 25, 141, 143, 144, and 146, respectively.

For Sections 1312 and 1313 of the Tax Reform Act of 1986, *see* notes following 26 U.S.C.S. § 103.

**Applicability.** — Laws 1988, ch. 46, § 12, effective March 4, 1988, made the Private Activity Bond Act effective retroactive to January 1, 1988, and applicable to all private activity bonds issued after that date.

## 6-20-3. Allocation of state ceiling.

A. Until July 1 in any calendar year, forty percent of the state ceiling for the calendar year shall be allocated to state agencies as a group; provided, however, that such allocation shall be made in accordance with directives, rules or regulations governing the distribution of allocations to be established by the board.

B. Until July 1 in any calendar year, sixty percent of the state ceiling for the calendar year shall be allocated to issuing authorities that are not state agencies, as a group; provided, however, that such allocations shall be made in accordance with directives, rules or regulations governing the distribution of allocations to be established by the board.

C. On July 1 of each calendar year, the amount of any allocation issued by the board pursuant to Subsection A or B of Section 3 [this section] of the Private Activity Bond Act shall expire and shall be automatically set aside into the state private activity bond fund, except to the extent that an allocation has been used by an issuing authority prior to July 1 to issue private activity bonds or to make a mortgage credit certificate election.

D. From July 1 through December 31 in any calendar year the board shall prescribe the allocation of the state ceiling.

**History:** Laws 1988, ch. 46, § 3.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Applicability.** — Laws 1988, ch. 46, § 12, effective March 4, 1988, made the Private Activity Bond Act effective retroactive to January 1, 1988, and applicable to all private activity bonds issued after that date.

## 6-20-4. Issuance of private activity bonds.

A. Except as otherwise provided in the Private Activity Bond Act, all private activity bonds issued by any issuing authority and all mortgage credit certificate elections made by an issuing authority on or after the effective date of the Private Activity Bond Act shall be issued or made pursuant to an unexpired allocation. An issuing authority may issue private activity bonds or make a mortgage credit certificate election using an allocation which has been carried forward from a prior year pursuant to Section 146(f) of the code without obtaining an allocation from the board; provided, however, that the issuing authority shall furnish the board with a confirmation stating that the private activity bonds were issued or the mortgage credit certificate election was made using volume cap which was carried forward from a prior year pursuant to Section 146(f) of the code.

B. At any time in any calendar year any issuing authority may submit to the board a request for allocation seeking an allocation from the state private activity bond fund with respect to a proposed issue of private activity bonds or a proposed mortgage credit certificate election.

**History:** Laws 1988, ch. 46, § 4.

**ANNOTATIONS**

**Compiler's notes.** — The phrase "effective date of the Private Activity Bond Act" means March 4, 1988, the effective date of Laws 1988, Chapter 46.

The phrase "Section 146(f) of the code" means 26 U.S.C.S. § 146(f) in the Internal Revenue Code of 1986. *See* 6-20-2 NMSA 1978.

**Applicability.** — Laws 1988, ch. 46, § 12, effective March 4, 1988, made the Private Activity Bond Act effective retroactive to January 1, 1988, and applicable to all private activity bonds issued after that date.

## 6-20-5. Request for allocation.

A request for allocation may be submitted to the board at any time and shall consist of the following:

A. a letter from the issuing authority or, in the case of a project, a letter from bond counsel for the issuing authority or the user stating the amount of the state ceiling requested in dollars;

B. in the case of a project, a copy of the inducement resolution, certified by an official of the issuing authority, and a statement of bond counsel for the issuing authority or the user that the bonds to be issued are private activity bonds;

C. with respect to a request submitted on or after July 1 in any calendar year, in the case of a project, a project plan containing the following, if applicable:

(1) a description of the project and its specific location;

(2) the estimated number of jobs, both construction and permanent, that can be filled by persons who are residents of the state at the time of submission of the request for allocation;

(3) the current use or conditions of the project site;

(4) the maximum amount of the bonds to be issued;

(5) a proposed starting date and estimated completion date of the construction project;

(6) information relating to the feasibility of the proposed project, showing that the project will generate revenues and cash flow sufficient to make payments under the lease or installment sale agreement;

(7) the amount and source of private capital that will be used for the project in addition to bond financing;

(8) conceptual site plans for the project and a map locating the project area;

(9) in the case of qualified residential rental projects, so-called multifamily housing, an explanation of why the housing needs of individuals whose income will make them eligible under Section 142(d) of the code are not being met by existing multifamily housing;

(10) any other information that the user believes will aid the board in considering the request for allocation; and

(11) any other information specifically requested by the board;

D. in the case of a project, a commitment letter from the proposed purchaser or underwriter of the bonds;

E. in the case of a mortgage credit certificate election, a letter from the issuing authority stating that a qualified mortgage credit certificate program has been adopted by the issuing authority; and

F. such applicable application, allocation and extension fees as are required by rule of the board.

**History:** Laws 1988, ch. 46, § 5; 2005, ch. 153, § 1.

**ANNOTATIONS**

**Compiler's notes.** — The phrase "Section 142(d) of the code" means 26 U.S.C.S. § 142(d). *See* 6-20-2 NMSA 1978.

**The 2005 amendment,** effective June 17, 2005, added Subsection F to provide that a request for allocation shall include the applicable fees required by rule of the board.

## 6-20-6. Allocation.

After considering a request for allocation, the board may within a reasonable time, as determined by the board, issue an allocation; provided, however, that an allocation

requested by an issuing authority pursuant to Subsection A or B of Section 3 [6-20-3 NMSA 1978] of the Private Activity Bond Act shall be issued by the board within a reasonable time after a request for allocation is submitted to the board. An allocation shall state the amount, in dollars, of the state ceiling allocated, and shall state the allocation expiration date.

**History:** Laws 1988, ch. 46, § 6.

**ANNOTATIONS**

**Applicability.** — Laws 1988, ch. 46, § 12, effective March 4, 1988, makes the Private Activity Bond Act effective retroactive to January 1, 1988, and applicable to all private activity bonds issued after that date.

## 6-20-7. Carryforward election allocations.

An issuing authority may submit to the board a request for carryforward election allocation with respect to private activity bonds proposed to be issued to finance bonds for a specified carryforward purpose. The date for submission of such requests shall be established by the board annually. A separate request must be submitted for each carryforward purpose, except that a request for carryforward election allocation with respect to qualified student loan bonds or qualified mortgage bonds may cover all proposed issuances of student loan bonds and qualified mortgage bonds. Not later than December 26 of a calendar year or the next business day if December 26 is a holiday, the board shall issue carryforward election allocations in amounts determined by the board, to the extent that sufficient amounts are available in the state private activity bond fund and the requirements of the Private Activity Bond Act are satisfied. A request for carryforward election allocation shall contain the same information and materials required to be included in a request for allocation.

**History:** Laws 1988, ch. 46, § 7.

**ANNOTATIONS**

**Applicability.** — Laws 1988, ch. 46, § 12, effective March 4, 1988, makes the Private Activity Bond Act effective retroactive to January 1, 1988, and applicable to all private activity bonds issued after that date.

## 6-20-8. Confirmation of issuance of private activity bonds and mortgage credit certificate election.

Within seven business days after an issuing authority issues any private activity bonds or makes a mortgage credit certificate election, the issuing authority or, in the case of a project, bond counsel for the issuing authority or the user, shall advise the board by letter of the date the bonds were issued and the total aggregate amount of the

issue or, in the case of a mortgage credit certificate election, the date and the amount of the election.

**History:** Laws 1988, ch. 46, § 8.

**ANNOTATIONS**

**Applicability.** — Laws 1988, ch. 46, § 12, effective March 4, 1988, makes the Private Activity Bond Act effective retroactive to January 1, 1988, and applicable to all private activity bonds issued after that date.

## 6-20-9. Assignments of allocations and carryforward election allocations.

Allocations and carryforward election allocations are not assignable by an issuing authority.

**History:** Laws 1988, ch. 46, § 9.

**ANNOTATIONS**

**Applicability.** — Laws 1988, ch. 46, § 12, effective March 4, 1988, makes the Private Activity Bond Act effective retroactive to January 1, 1988, and applicable to all private activity bonds issued after that date.

## 6-20-10. Extensions.

The allocation expiration date may be extended by the board for each allocation; provided, however, that the allocation expiration date for any allocation shall automatically be extended for thirty days with respect to that part of the allocation used by an issuing authority for private activity bonds which have been sold but not issued on or before the allocation expiration date.

**History:** Laws 1988, ch. 46, § 10.

**ANNOTATIONS**

**Applicability.** — Laws 1988, ch. 46, § 12, effective March 4, 1988, makes the Private Activity Bond Act effective retroactive to January 1, 1988, and applicable to all private activity bonds issued after that date.

## 6-20-11. Administrative duties of the board.

The board:

A. shall maintain the official state records pertaining to the state ceiling, requests for allocation submitted, requests for carryforward election allocations submitted, allocations issued, carryforward election allocations issued, confirmations submitted and any other records required for administration of the Private Activity Bond Act;

B. may issue, on behalf of the governor, any certification required by the code or the regulations setting forth information concerning the state ceiling and Section 146 of the code; and

C. may, by rule, require a reasonable application fee, allocation deposit and extension fee to be paid by the issuing authority. Application and extension fees collected by the board shall be deposited in the general fund. Allocation deposits shall be held by the board in a liability suspense account and after a determination has been made by the board that the allocation has been used for the intended purpose, may, at the discretion of the board, be refunded in whole or in part to the applicant. Otherwise, the allocation deposit shall be deposited in the general fund.

**History:** Laws 1988, ch. 46, § 11; 2005, ch. 153, § 2.

**ANNOTATIONS**

**Compiler's notes.** — The phrase "Section 146 of the code" means 26 U.S.C.S. § 146. *See* 6-20-2 NMSA 1978.

**The 2005 amendment,** effective June 17, 2005, added Subsection C to require the board to require by rule for application and extension fees and an allocation deposit; to require that fees be deposited in the general fund and that allocation deposits be held in a liability suspense fund which may be refunded to the applicant when the board determines that the allocation has been used for its intended purpose.

# ARTICLE 21
# Finance Authority

## 6-21-1. Short title.

Chapter 6, Article 21 NMSA 1978 may be cited as the "New Mexico Finance Authority Act".

**History:** Laws 1992, ch. 61, § 1; 2003, ch. 325, § 1.

**ANNOTATIONS**

**Compiler's notes.** — The New Mexico Finance Authority Act, enacted by Laws 1992, ch. 61, is compiled as 6-21-1 to 6-21-5, 6-21-6, and 6-21-7 to 6-21-31 NMSA 1978.

**The 2003 amendment,** effective June 20, 2003, substituted "Chapter 6, Article 21 NMSA 1978" for "Sections 1 through 29 of this act".

## 6-21-2. Legislative findings; declaration of purpose.

A. The legislature finds that:

(1) there are necessary state and local capital improvement and infrastructure needs that cannot be met with existing capital financing methods and funding sources;

(2) there is no coordinating entity or process for accomplishing long-term state and local capital planning, needs assessment or inventory of needs; setting priorities; and making more effective use of existing capital financing methods and funding sources;

(3) the uncertain nature of revenues available from the proceeds of severance tax bonds and other state and local revenues have frustrated state and local government efforts to finance needed state and local capital projects; and

(4) in order to meet public capital and infrastructure needs, a central state mechanism to coordinate the planning and financing of public projects is necessary.

B. It is the purpose of the New Mexico Finance Authority Act to create a governmental instrumentality to coordinate the planning and financing of state and local public projects, to provide for long-term planning and assessment of state and local capital needs and to improve cooperation among the executive and legislative branches of state government and local governments in financing public projects.

C. It is the further purpose of the New Mexico Finance Authority Act to provide financing for public projects in a manner that will not impair the capacity of the public project revolving fund to provide future financing to qualified entities for public projects. Funding shall not be provided from the public project revolving fund unless revenues in an amount sufficient to avoid a negative impact on the financing capacity of the public project revolving fund are contemporaneously pledged or dedicated for deposit to the public project revolving fund. Pursuant to Section 6-21-6.1 NMSA 1978, the authority may provide funding from the public project revolving fund for the purposes of the Wastewater Facility Construction Loan Act [Chapter 74, Article 6A NMSA 1978], the Rural Infrastructure Act [Chapter 75, Article 1 NMSA 1978], the Solid Waste Act [74-9-1 to 74-9-42 NMSA 1978] or the Drinking Water State Revolving Loan Fund Act [6-21A-1 to 6-21A-9 NMSA 1978].

**History:** Laws 1992, ch. 61, § 2; 2000, ch. 80, § 1.

**ANNOTATIONS**

**The 2000 amendment,** effective March 7, 2000, added Subsection C.

## 6-21-3. Definitions.

As used in the New Mexico Finance Authority Act:

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

B. "bond" means any bonds, notes, certificates of participation or other evidence of indebtedness;

C. "bondholder" or "holder" means a person who is the owner of a bond, whether registered or not;

D. "emergency public project" means a public project:

(1) made necessary by an unforeseen occurrence or circumstance threatening the public health, safety or welfare; and

(2) requiring the immediate expenditure of money that is not within the available financial resources of the qualified entity as determined by the authority;

E. "public project" means the acquisition, construction, improvement, alteration or reconstruction of assets of a long-term capital nature by a qualified entity, including land; buildings; water rights; water, sewerage and waste disposal systems; streets; housing; airports; municipal utilities; public recreational facilities; public transportation systems; parking facilities; and machinery, furniture and equipment. "Public project" includes all proposed expenditures related to the entire undertaking. "Public project" also includes the acquisition, construction or improvement of real property, buildings, facilities and other assets by the authority for the purpose of leasing the property;

F. "qualified entity" means the state or an agency or institution of the state or a county, municipality, school district, two-year public post-secondary educational institution, charter school, land grant corporation, acequia association, public improvement district, federally chartered college located in New Mexico, intercommunity water or natural gas supply association or corporation, special water, drainage, irrigation or conservancy district or other special district created pursuant to law, nonprofit foundation or other support organization affiliated with a public university, college or other higher educational institution located in New Mexico, including a university research park corporation, a nonprofit housing developer, an Indian nation, tribe or pueblo located wholly or partially in New Mexico, including a political subdivision or a wholly owned enterprise of an Indian nation, tribe or pueblo or a consortium of those Indian entities or a consortium of any two or more qualified entities created pursuant to law; and

G. "security" or "securities", unless the context indicates otherwise, means bonds, notes or other evidence of indebtedness issued by a qualified entity or leases or certificates or other evidence of participation in the lessor's interest in and rights under a

lease with a qualified entity and that are payable from taxes, revenues, rates, charges, assessments or user fees or from the proceeds of funding or refunding bonds, notes or other evidence of indebtedness of a qualified entity or from certificates or evidence of participation in a lease with a qualified entity.

**History:** Laws 1992, ch. 61, § 3; 1995, ch. 141, § 15; 1996, ch. 75, § 1; 1997, ch. 90, § 1; 1999, ch. 4, § 1; 2001, ch. 294, § 1; 2003, ch. 25, § 1; 2006, ch. 65, § 1; 2009, ch. 223, § 1; 2024, ch. 15, § 1.

## ANNOTATIONS

**The 2024 amendment,** effective May 15, 2024, revised the definitions of "public project" and "qualified entity"; in Subsection E, after "streets" added "housing"; and in Subsection F, after "university research park corporation" added "a nonprofit housing developer".

**The 2009 amendment,** effective July 1, 2009, in Subsection E, after "municipal utilities", added "public recreational facilities; public transportation systems"; and in Subsection F, after "public post-secondary educational institution", added "charter school"; after "association or corporation, special", deleted "district or community water association" and added "water, drainage, irrigation or conservancy district or other special district created pursuant to law"; after "New Mexico", added "including a university research park corporation"; and after "Indian entities", added "or a consortium of any two or more qualified entities created pursuant to law".

**The 2006 amendment,** effective March 6, 2006, in Subsection F, included nonprofit foundation or other support organization affiliated with a public university, college or other higher educational institution located in New Mexico as "qualified entity".

**The 2003 amendment,** effective July 1, 2003, in Subsection F inserted "acequia association, public improvement district, federally chartered college located in New Mexico," following "land grant corporation," near the middle and added "or a consortium of those Indian entities" near the end.

**The 2001 amendment,** effective April 5, 2001, added the last sentence of Subsection E.

**The 1999 amendment,** effective February 27, 1999, added Subsection D and redesignated former Subsections D through F as present Subsections E through G, made stylistic changes in Subsections F and G, and inserted "two-year public post-secondary institution" in Subsection F.

**The 1997 amendment,** effective April 8, 1997, inserted "land grant corporation, intercommunity water or natural gas supply associations or corporations, special district" in Subsection E.

**The 1996 amendment,** effective March 5, 1996, in Subsection E, added the language beginning with "or an Indian nation" at the end and made a stylistic change.

**The 1995 amendment,** effective April 5, 1995, inserted "certificates of participation" and substituted "evidence of indebtedness" for "obligation" in Subsection B, inserted "water rights" in Subsection D, and inserted "or community water association" and made a minor stylistic change in Subsection E.

## 6-21-4. New Mexico finance authority created; membership; qualifications; quorum; meetings; compensation; bond.

A. There is created a public body politic and corporate, separate and apart from the state, constituting a governmental instrumentality to be known as the "New Mexico finance authority" for the performance of essential public functions.

B. The authority shall be composed of eleven members. The secretary of finance and administration, the secretary of economic development, the secretary of energy, minerals and natural resources, the secretary of environment, the executive director of the New Mexico municipal league and the executive director of the New Mexico association of counties or their designees shall be ex-officio members of the authority with voting privileges. The governor, with the advice and consent of the senate, shall appoint to the authority the chief financial officer of a state higher educational institution and four members who are residents of the state. The appointed members shall serve at the pleasure of the governor.

C. The appointed members of the authority shall be appointed to four-year terms. The initial members shall be appointed to staggered terms of four years or less, so that the term of at least one member expires on January 1 of each year. Vacancies shall be filled by appointment by the governor for the remainder of the unexpired term. Any member of the authority shall be eligible for reappointment.

D. Each appointed member before entering upon the member's duty shall take an oath of office to administer the duties of the member's office faithfully and impartially. A record of the oath shall be filed in the office of the secretary of state.

E. The governor shall designate an appointed member of the authority to serve as chair. The authority shall elect annually one of its members to serve as vice chair. The authority shall appoint and prescribe the duties of such other officers, who need not be members, as the authority deems necessary or advisable, including chief executive officer and a secretary, who may be the same person. The authority may delegate to one or more of its members, officers, employees or agents such powers and duties as it may deem proper and consistent with the New Mexico Finance Authority Act.

F. The chief executive officer of the authority shall direct the affairs and business of the authority, subject to the policies, control and direction of the authority. The secretary of the authority shall keep a record of the proceedings of the authority and shall be

custodian of all books, documents and papers filed with the authority, the minute book or journal of the authority and its official seal. The secretary shall make copies of all minutes and other records and documents of the authority and give certificates under the official seal of the authority to the effect that the copies are true copies, and all persons dealing with the authority may rely upon the certificates.

G. Meetings of the authority shall be held at the call of the chair or whenever three members shall so request in writing. A majority of members then serving constitutes a quorum for the transaction of any business. The affirmative vote of at least a majority of a quorum present shall be necessary for any action to be taken by the authority. An ex-officio member may designate in writing another person to attend meetings of the authority and to the same extent and with the same effect act in the ex-officio member's stead. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all rights and perform all duties of the authority.

H. Each member of the authority shall give bond as provided in the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978]. All costs of the surety bonds shall be borne by the authority.

I. The authority is not created or organized, and its operations shall not be conducted, for the purpose of making a profit. No part of the revenues or assets of the authority shall benefit or be distributable to its members, officers or other private persons. The members of the authority shall receive no compensation for their services, but shall be reimbursed for actual and necessary expenses at the same rate and on the same basis as provided for public officers in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

J. The authority shall not be subject to the supervision or control of any other board, bureau, department or agency of the state except as specifically provided in the New Mexico Finance Authority Act. No use of the terms "state agency" or "instrumentality" in any other law of the state shall be deemed to refer to the authority unless the authority is specifically referred to in the law.

K. The authority is a governmental instrumentality for purposes of the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978].

**History:** Laws 1992, ch. 61, § 4; 2001, ch. 294, § 2; 2006, ch. 65, § 2; 2011, ch. 51, § 1.

## ANNOTATIONS

**The 2011 amendment,** effective July 1, 2011, decreased the number of members of the authority from twelve to eleven and removed the state investment officer as a member of the authority.

**The 2006 amendment,** effective March 6, 2006, in Subsections E and F, changed "executive director" to "chief executive officer".

**The 2001 amendment,** effective April 5, 2001, added "separate and apart from the state" to Subsection A.

## 6-21-5. Powers of the authority.

The authority is granted all powers necessary and appropriate to carry out and effectuate its public and corporate purposes, including the following powers:

A. to sue or be sued;

B. to adopt and alter an official seal;

C. to make and alter bylaws for its organization and internal management and to adopt, subject to the review and approval of the New Mexico finance authority oversight committee, such rules as are necessary and appropriate to implement the provisions of the New Mexico Finance Authority Act;

D. to appoint officers, agents and employees, prescribe their duties and qualifications and fix their compensation;

E. to make, enter into and enforce all contracts, agreements and other instruments necessary, convenient or desirable in the exercise of the authority's powers and functions and for the purposes of the New Mexico Finance Authority Act;

F. to acquire, construct, hold, improve, grant mortgages of, accept mortgages of, sell, lease, convey or dispose of real and personal property for its public purposes;

G. to acquire, construct or improve real property, buildings and facilities for lease and to pledge rentals and other income received from such leases to the payment of bonds;

H. to make loans, leases and purchase securities and contract to make loans, leases and purchase securities;

I. to make grants to qualified entities to finance public projects; provided that such grants are not made from the public project revolving fund;

J. to procure insurance to secure payment on any loan, lease or purchase payments owed to the authority by a qualified entity in such amounts and from such insurers, including the federal government, as it may deem necessary or desirable and to pay any premiums for such insurance;

K. to fix, revise from time to time, charge and collect fees and other charges in connection with the making of loans, leases and any other services rendered by the authority;

L. to accept, administer, hold and use all funds made available to the authority from any sources;

M. to borrow money and to issue bonds and provide for the rights of the holders of the bonds;

N. to establish and maintain reserve and sinking fund accounts to insure against and have funds available for maintenance of other debt service accounts;

O. to invest and reinvest its funds and to take and hold property as security for the investment of such funds as provided in the New Mexico Finance Authority Act;

P. to employ attorneys, accountants, underwriters, financial advisers, trustees, paying agents, architects, engineers, contractors and such other advisers, consultants and agents as may be necessary and to fix and pay their compensation;

Q. to apply for and accept gifts or grants of property, funds, services or aid in any form from the United States, any unit of government or any person and to comply, subject to the provisions of the New Mexico Finance Authority Act, with the terms and conditions of the gifts or grants;

R. to maintain an office at any place in the state it may determine;

S. subject to any agreement with bondholders, to:

(1) renegotiate any loan, lease or agreement;

(2) consent to any modification of the terms of any loan, lease or agreement; and

(3) purchase bonds, which may upon purchase be canceled; and

T. to do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in the New Mexico Finance Authority Act.

**History:** Laws 1992, ch. 61, § 5; 2000, ch. 80, § 2; 2001, ch. 294, § 3.

**ANNOTATIONS**

**Cross references.** — For public project revolving fund, *see* 6-21-6 NMSA 1978.

For the power of the authority to issue revenue bonds payable from loan repayments made into the water project fund, *see* 72-4A-9 NMSA 1978.

**The 2001 amendment,** effective April 5, 2001, substituted "grant mortgages of, accept mortgages of" for "mortgage" in Subsection F; added Subsection G, redesignating the

subsequent subsections; added "leases" to present Subsections H and K; and inserted "lease" in Subsections S(1) and S(2).

**The 2000 amendment,** effective March 7, 2000, deleted "but not limited to" preceding "the following" in the introductory language of the section, substituted "rules" for "regulations" in Subsection C, and added "provided that such grants are not made from the public project revolving fund" at the end of Subsection H.

## 6-21-5.1. Bonds for county correctional facility loans.

The authority may issue bonds for a county to design, construct, equip, furnish and otherwise improve a county correctional facility pursuant to the County Correctional Facility Gross Receipts Tax Act only after a majority of the qualified electors of the county has voted to allow the county to impose a county correctional facility gross receipts tax in the amount needed to repay bonds issued by the authority for the purpose of designing, constructing, equipping, furnishing and otherwise improving a county correctional facility.

**History:** Laws 1998, ch. 65, § 1; 2019, ch. 212, § 208.

**ANNOTATIONS**

**The 2019 amendment,** effective April 3, 2019, deleted "registered" preceding "qualified electors".

## 6-21-5.2. Report to legislature; authorizing instrument; delegation of authority for public securities issuances.

By September 30 of each year, the authority shall report to the New Mexico finance authority oversight committee about the authority's public securities issuances, completed in the prior twelve months, that involved a delegation of authority through an authorizing instrument pursuant to Section 2 [6-14-10.2 NMSA 1978] of this 2017 act.

**History:** Laws 2017, ch. 120, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 120, § 4 made Laws 2017, ch. 120, § 3 effective July 1, 2017.

## 6-21-6. Public project revolving fund; purpose; administration.

A. The "public project revolving fund" is created within the authority. The fund shall be administered by the authority as a separate account, but may consist of such subaccounts as the authority deems necessary to carry out the purposes of the fund.

The authority may establish procedures and adopt rules as required to administer the fund in accordance with the New Mexico Finance Authority Act.

B. Except as otherwise provided in the New Mexico Finance Authority Act, money from payments of principal of and interest on loans and payments of principal of and interest on securities held by the authority for public projects authorized specifically by law shall be deposited in the public project revolving fund. The fund shall also consist of any other money appropriated, distributed or otherwise allocated to the fund for the purpose of financing public projects authorized specifically by law.

C. Money appropriated to pay administrative costs, money available for administrative costs from other sources and money from payments of interest on loans or securities held by the authority, including payments of interest on loans and securities held by the authority for public projects authorized specifically by law, that represents payments for administrative costs shall not be deposited in the public project revolving fund and shall be deposited in a separate account of the authority and may be used by the authority to meet administrative costs of the authority.

D. Except as otherwise provided in the New Mexico Finance Authority Act, money in the public project revolving fund is appropriated to the authority to pay the reasonably necessary costs of originating and servicing loans, grants or securities funded by the fund and to make loans or grants and to purchase or sell securities to assist qualified entities in financing public projects in accordance with the New Mexico Finance Authority Act and pursuant to specific authorization by law for each project.

E. Money in the public project revolving fund not needed for immediate disbursement, including money held in reserve, may be deposited with the state treasurer for short-term investment pursuant to Section 6-10-10.1 NMSA 1978 or may be invested in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States, obligations issued by agencies of the United States, obligations of this state or any political subdivision of the state, interest-bearing time deposits, commercial paper issued by corporations organized and operating in the United States and rated "prime" quality by a national rating service, other investments permitted by Section 6-10-10 NMSA 1978 or as otherwise provided by the trust indenture or bond resolution, if money is pledged for or secures payment of bonds issued by the authority.

F. The authority shall establish fiscal controls and accounting procedures that are sufficient to assure proper accounting for public project revolving fund payments, disbursements and balances.

G. Money on deposit in the public project revolving fund may be used to make interim loans for a term not exceeding two years to qualified entities for the purpose of providing interim financing for any project approved or funded by the legislature.

H. Money on deposit in the public project revolving fund may be used to acquire securities or to make loans to qualified entities in connection with the small loan program. As used in this subsection, "small loan program" means the program of the authority designed to provide financing for public projects in amounts not to exceed one million dollars ($1,000,000) per project. A public project financed pursuant to the small loan program shall not require specific authorization by law.

I. Money on deposit in the public project revolving fund may be designated as a reserve for any bonds issued by the authority, including bonds payable from sources other than the public project revolving fund, and the authority may covenant in any bond resolution or trust indenture to maintain and replenish the reserve from money deposited in the public project revolving fund after issuance of bonds by the authority.

J. Money on deposit in the public project revolving fund may be used to purchase bonds issued by the authority, which are payable from any designated source of revenues or collateral. Purchasing and holding the bonds in the public project revolving fund shall not, as a matter of law, result in cancellation or merger of the bonds notwithstanding the fact that the authority as the issuer of the bonds is obligated to make the required debt service payments and the public project revolving fund held by the authority is entitled to receive the required debt service payments.

K. Money on deposit in the public project revolving fund may be used to capitalize other financing programs of the authority authorized by law, either directly or from proceeds of bonds issued by the authority and secured by money in the public project revolving fund.

**History:** Laws 1992, ch. 61, § 6; 1994, ch. 145, § 3; 1995, ch. 141, § 16; 1996, ch. 28, § 1; 2000, ch. 80, § 3; 2000, ch. 93, § 1; 2002, ch. 53, § 1; 2003, ch. 25, § 2; 2006, ch. 65, § 3.

**ANNOTATIONS**

**Cross references.** — For appropriations from the public project revolving fund to other funds, *see* 6-21-6.1 NMSA 1978.

For distributions to the public projects revolving fund from the governmental gross receipts tax, *see* 7-1-6.38 NMSA 1978.

For wastewater facility construction loan fund, *see* 74-6A-4 NMSA 1978.

For solid waste facility grant fund, *see* 74-9-41 NMSA 1978.

For rural infrastructure revolving loan fund, *see* 75-1-3 NMSA 1978.

For the water project fund, *see* 72-4A-9 NMSA 1978.

**Appropriations.** — Laws 2015, ch. 80, § 1, effective July 1, 2015, provided that three million dollars ($3,000,000) is appropriated from the public project revolving fund to the local government planning fund administered by the New Mexico finance authority for expenditure in fiscal year 2016 and subsequent fiscal years to make grants to qualified entities to evaluate and estimate the costs of implementing the most feasible alternatives for infrastructure, water or wastewater public projects or to develop water conservation plans, long-term master plans, economic development plans or energy audits and to pay the administrative costs of the local government planning program. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the public project revolving fund.

**Compiler's notes.** — Laws 2009, ch. 148, § 3, effective April 7, 2009, provided that if a qualified entity listed in Laws 2009, ch. 148, §§ 1 and 2 has not certified to the New Mexico finance authority by the end of fiscal year 2012 its desire to continue to pursue a loan from the public project revolving fund for a public project listed in that section, the legislative authorization granted to the New Mexico finance authority by Laws 2009, ch. 148, §§ 1 and 2 to make a loan from the public project revolving fund to that qualified entity for that public project is void.

**The 2006 amendment,** effective March 6, 2006, in Subsection H, changed "equipment program" to "small loan program"; deleted the provisions that related to the acquisition of equipment and acquisition, construction and improvement of fire stations; and provided that the small loan program means the program to provide financing for public projects in amounts not to exceed one million dollars and to provide that a project financed through the small loan program shall not require specific authorization by law; deleted Subsection I, which provided a limit on the amount of securities acquired from, or the loan made to, a qualified entity and required authorization by law for a project; and added Subsection L, which provides that money on deposit in the fund may be used to capitalize other programs authorized by law.

**The 2003 amendment,** effective July 1, 2003, substituted "seven hundred fifty thousand dollars ($750,000)" for "five hundred thousand dollars ($500,000)" at the end of the first sentence of Subsection I.

**The 2002 amendment,** effective March 4, 2002, added Subsection K.

**2000 amendments.** — Laws 2000, ch. 80, § 3, effective March 7, 2000, adding the designations in former Subsection H and making stylistic changes, was approved March 7, 2000. However, Laws 2000, ch. 93, § 1, effective March 7, 2000, substituting "rules" for "regulations" in Subsection A; inserting "to pay the reasonably necessary costs of originating and servicing loans, grants or securities funded by the fund and" in Subsection D, substituting "not exceeding two years" for "not exceeding one year" in Subsection G, rewriting former Subsection H as present Subsections H and I, and redesignating former Subsection I as present Subsection J, was approved later on March 7, 2000. This section is set out as amended by Laws 2000, ch. 93, § 1. *See* 12-1-8 NMSA 1978.

**The 1996 amendment,** effective March 4, 1996, deleted "but not limited to" following "including" in Subsections A and I, substituted "other investments permitted by Section 6-10-10 NMSA 1978" for "prime bankers' acceptances issued by money center banks" near the end of Subsection E, inserted "public project revolving" in Subsection F, added Subsection H, and redesignated former Subsection H as Subsection I.

**The 1995 amendment,** effective April 5, 1995, inserted "Except as otherwise provided in the New Mexico Finance Authority Act" and substituted "payments of principal of and interest on loans and payments of principal of and interest" for "repayments of loans or payments" in Subsection B, added Subsection C, redesignated former Subsections C through E as Subsections D through F, inserted "interest-bearing time deposits, commercial paper issued by corporations organized and operating in the United States and rated 'prime' quality by a national rating service, prime bankers' acceptances issued by money center banks" in Subsection E, and added Subsections G and H.

**The 1994 amendment,** effective May 18, 1994, inserted "Except as otherwise provided in the New Mexico Finance Authority Act" at the beginning of Subsection C.

## 6-21-6.1. Public project revolving fund; appropriations to other funds.

A. At the end of each fiscal year, after all debt service charges, replenishment of reserves and administrative costs on all outstanding bonds, notes or other obligations payable from the public project revolving fund are satisfied, an aggregate amount not to exceed thirty-five percent of the governmental gross receipts tax proceeds distributed to the public project revolving fund in the preceding fiscal year less all debt service charges and administrative costs of the authority paid in the preceding fiscal year on bonds issued pursuant to this section may be appropriated by the legislature from the public project revolving fund to:

(1) the following funds for local infrastructure financing:

(a) the wastewater facility construction loan fund for purposes of the Wastewater Facility Construction Loan Act [Chapter 74, Article 6A NMSA 1978];

(b) the rural infrastructure revolving loan fund for purposes of the Rural Infrastructure Act [Chapter 75, Article 1 NMSA 1978];

(c) the solid waste facility grant fund for purposes of the Solid Waste Act [74-9-1 NMSA 1978];

(d) the drinking water state revolving loan fund for purposes of the Drinking Water State Revolving Loan Fund Act [6-21A-1 to 6-21A-9 NMSA 1978];

(e) the water and wastewater project grant fund for purposes specified in the New Mexico Finance Authority Act; or

(f) the local government planning fund for purposes specified in the New Mexico Finance Authority Act; or

(2) the cultural affairs facilities infrastructure fund.

B. The authority and the department of finance and administration in coordination with the New Mexico finance authority oversight committee may recommend annually to each regular session of the legislature amounts to be appropriated to the funds listed in Subsection A of this section.

**History:** Laws 1994, ch. 145, § 2; 1995, ch. 141, § 17; 1996, ch. 52, § 2; 1997, ch. 144, § 11; 1999, ch. 186, § 1; 2002, ch. 26, § 1; 2020, ch. 42, § 1.

## ANNOTATIONS

**Cross references.** — For distributions to the public projects revolving fund from the governmental gross receipts tax, *see* 7-1-6.38 NMSA 1978.

For solid waste facility grant fund, *see* 74-9-41 NMSA 1978.

For rural infrastructure revolving loan fund, *see* 75-1-3 NMSA 1978.

For water and wastewater planning fund, *see* 6-21-6.4 NMSA 1978.

For water and wastewater project grant fund, *see* 6-21-6.3 NMSA 1978.

**The 2020 amendment,** effective May 20, 2020, deleted certain outdated provisions of the section, and authorized appropriations from the public project revolving fund to the cultural affairs facilities infrastructure fund; deleted former Subsections A and B and redesignated the succeeding subsections accordingly; in Subsection A, added new paragraph designation "(1)" and redesignated former Paragraphs (1) through (6) as Subparagraphs A(1)(a) through A(1)(f), in Subparagraph A(1)(f), replaced "water and wastewater" with "local government", and added Paragraph A(2); and in Subsection B, after "department of", deleted "environment" and added "finance and administration", after "Subsection", deleted "C" and added "A", and after "of this section", deleted "for local infrastructure financing".

**Appropriations.** — Laws 2020, ch. 42, § 3 provided that five million dollars ($5,000,000) is appropriated from the public project revolving fund to the cultural affairs facilities infrastructure fund for expenditure in fiscal year 2021 and subsequent fiscal years to carry out the purposes of the fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert.

**The 2002 amendment,** effective March 4, 2002, added "water and wastewater planning fund and the" in the last sentence of Subsection A and added Subsection C(6).

**The 1999 amendment,** effective April 6, 1999, in Subsection A added the next-to-last sentence and in the last sentence inserted the language beginning "the water" and ending "purposes of", and in Subsection C added Paragraph (5) and made related stylistic changes.

**The 1997 amendment,** effective June 20, 1997, inserted "or the Drinking Water State Revolving Loan Fund Act" following "the Solid Waste Act" in Subsections A and B; added Subsection C(4); and made minor stylistic changes throughout the section.

**The 1996 amendment,** effective May 15, 1996, rewrote Subsection A.

**The 1995 amendment,** effective April 5, 1995, added Subsections A and B, redesignated former Subsections A and B as Subsections C and D, substituted the language beginning "At the end of the end of each fiscal year" for "In any fiscal year" and substituted "the preceding fiscal year less all debt service charges and administrative costs of the authority paid in the preceding fiscal year on bonds issued pursuant to this section may be appropriated" for "that fiscal year shall be available for appropriation" in Subsection C, and inserted "and the department of environment" and substituted "Subsection C" for "Subsection A" in Subsection D.

## 6-21-6.2. Expired.

**History:** Laws 1999, ch. 4, § 2; 2002, ch. 52, § 1.

**ANNOTATIONS**

**Expired provisions.** — The provisions of 6-21-6.2 NMSA 1978, as enacted by Laws 1999, ch. 4, § 2, relating to the public project revolving fund and emergency public projects, expired on June 30, 2005. For provisions of the former section, *see* the 2019 NMSA on *NMOneSource.com*.

## 6-21-6.3. Water and wastewater project grant fund; creation; administration; purposes.

A. There is created in the authority the "water and wastewater project grant fund", which shall be administered by the authority. The authority shall adopt, in accordance with the New Mexico Finance Authority Act, rules necessary to administer the fund.

B. The following shall be deposited directly into the water and wastewater project grant fund:

(1) the net proceeds from the sale of bonds issued pursuant to the provisions of Section 6-21-6.1 NMSA 1978 for the purposes of the water and wastewater project grant fund and payable from the public project revolving fund;

(2) money appropriated by the legislature to implement the provisions of this section; and

(3) any other public or private money dedicated to the fund.

C. Money in the water and wastewater project grant fund is appropriated to the authority to make grants to qualified entities for water or wastewater public projects pursuant to specific authorization by law for each project and to pay administrative costs of the water and wastewater project grant program.

D. The authority shall adopt rules governing the terms and conditions of grants made from the water and wastewater project grant fund. Except in the circumstances set forth in Subsection F of this section, grants may be made from the fund only with participation from the qualified entity in the form of a local match, which shall be determined by a sliding scale based on the qualified entity's financial capacity to pay a portion of the project from local resources. Grants from the water and wastewater project grant fund may be made only as all or part of financing for a complete project after the authority has determined that the financing for the complete project is cost effective.

E. The authority may make grants from the water and wastewater project grant fund to qualified entities for emergency public projects without specific authorization by law. Each emergency public project shall be designated as such by the authority prior to making the grant. The aggregate amount of grants for emergency public projects in fiscal years 2003, 2004 and 2005 shall not exceed six million dollars ($6,000,000) for each fiscal year. The aggregate amount of grants for emergency public projects in fiscal year 2006 and subsequent fiscal years shall not exceed three million dollars ($3,000,000) for each fiscal year.

F. To encourage consolidation of water or wastewater systems and to discourage proliferation of multiple water or wastewater systems, the authority may determine the local match requirement based on the financial capacity of:

(1) the residents of the geographic area benefiting from the improvements to be financed with the proceeds of the grant received on their behalf by the qualified entity; or

(2) the qualified entity benefiting from the improvements to be financed with the proceeds of the grant when the benefiting qualified entity agrees to consolidate with the qualified entity receiving the grant.

**History:** Laws 1999, ch. 186, § 2; 2000, ch. 24, § 1; 2002, ch. 23, § 1; 2003, ch. 61, § 1.

**ANNOTATIONS**

**The 2003 amendment,** effective March 20, 2003 substituted "fiscal years 2003, 2004 and 2005 shall not exceed six million dollars ($6,000,000) for each fiscal year. The aggregate amount of grants for emergency public projects in fiscal year 2006 and subsequent fiscal years shall not exceed three million dollars ($3,000,000) for each fiscal year" for "any one fiscal year shall not exceed three million dollars ($3,000,000) for each fiscal year" at the end of Subsection E.

**The 2002 amendment,** effective March 4, 2002, in the first sentence of Subsection D, added "Except in the circumstances set forth in Subsection F of this section" and added Subsection F.

**The 2000 amendment,** effective March 6, 2000, in Subsection A, substituted "The authority shall adopt" for "The authority is authorized to establish procedures required to administer the fund" and added "rules necessary to administer the fund", and added Subsection E.

## 6-21-6.4. Local government planning fund; creation; administration; purposes.

A. The "local government planning fund" is created within the authority and shall be administered by the authority. The authority shall adopt rules necessary to administer the fund.

B. The following shall be deposited directly into the local government planning fund:

(1) the net proceeds from the sale of bonds issued pursuant to the provisions of Section 6-21-6.1 NMSA 1978 for the purposes of the local government planning fund and payable from the public project revolving fund;

(2) money appropriated by the legislature to implement the provisions of this section; and

(3) any other public or private money dedicated to the fund.

C. Money in the local government planning fund is appropriated to the authority to make grants to qualified entities; to evaluate and to estimate the costs of implementing the most feasible alternatives for infrastructure, water and wastewater public project needs or to develop water conservation plans, long-term master plans, economic development plans, affordable housing plans, energy audits or flood inundation maps; to obtain archaeological clearances; and to pay the administrative costs of the local government planning program.

D. The authority shall adopt rules governing the terms and conditions of grants made from the local government planning fund.

E. The authority may make grants from the local government planning fund to qualified entities without specific authorization by law for each grant.

**History:** Laws 2002, ch. 26, § 2; 2005, ch. 180, § 1; 2012, ch. 49, § 1; 2024, ch. 15, § 2.

**ANNOTATIONS**

**The 2024 amendment,** effective May 15, 2024, authorized the New Mexico finance authority to provide financing from the local government planning fund to develop affordable housing plans and flood inundation maps and to obtain archaeological clearances; and in Subsection C, after "development plans" added "affordable housing plans" and after "energy audits" added "or flood inundation maps; to obtain archaeological clearances".

**The 2012 amendment,** effective March 6, 2012, expanded the purpose of the local government planning fund to include infrastructure and energy audits; removed the requirement that certain grants be repaid; in Subsection C, after "feasible alternatives for", deleted "meeting" and added "infrastructure" and after "economic development plans", added "or energy audits"; and in Subsection D, deleted the former second sentence, which provided that the qualified entity had to agree to reimburse the fund when financing from any other source was received by the qualified entity.

**The 2005 amendment,** effective July 1, 2005, changed the name of the "water and wastewater planning fund" to the "local government planning fund"; provided in Subsection C that money in the fund is appropriated for grants to evaluate and estimate the costs to develop water conservation plans, long-term master plans or economic development plans; and provided in Subsection D that the qualified entity must agree to reimburse the fund when financing from any source other than the authority is received by the entity.

## 6-21-6.5. New Mexico finance authority revenue bonds; purposes.

The New Mexico finance authority may issue and sell revenue bonds payable from the public project revolving fund in compliance with the New Mexico Finance Authority Act in installments or at any one time in an amount not to exceed one million dollars ($1,000,000), the net proceeds of which shall be deposited in the water and wastewater planning fund and used for the purposes of the fund.

**History:** Laws 2002, ch. 26, § 3.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2002, ch. 26, § 4 contained an emergency clause and was approved March 4, 2002.

## 6-21-6.6. Repealed.

**History:** Laws 2003, ch. 325, § 3; repealed by Laws 2006, ch. 65, § 4.

**ANNOTATIONS**

**Repeals.** — Laws 2006, ch. 65, § 4, repealed 6-21-6.6 NMSA 1978, as enacted by 2003, ch. 325, § 3, relating to authorization for urgent economic development public projects, effective June 30, 2009. For provisions of former section, *see* the 2005 NMSA 1978 on *NMOneSource.com.*

## 6-21-6.7. Credit enhancement account created; use of account; release of money to the general fund.

A. The "credit enhancement account" is created as a separate account within the authority for use only as provided in this section.

B. All cigarette tax proceeds distributed each month to the authority pursuant to Subsection D of Section 7-1-6.11 NMSA 1978 shall be deposited in the credit enhancement account.

C. Amounts deposited in the credit enhancement account may be pledged irrevocably as additional security for the payment of the principal, interest, premiums and expenses on bonds issued by the authority for:

(1) designing, constructing, equipping and furnishing additions and improvements to the university of New Mexico hospital and the comprehensive cancer center at the university of New Mexico health sciences center; and

(2) land acquisition and the planning, designing, construction and equipping of department of health facilities or improvements to such facilities.

D. The authority shall determine monthly upon receipt of cigarette tax proceeds if the individual amounts of cigarette tax proceeds distributed pursuant to Subsection B or C, respectively, of Section 7-1-6.11 NMSA 1978 are sufficient to meet the monthly amount required for immediate payment or designation for payment of principal, interest, premiums and expenses on bonds additionally secured by the credit enhancement account. Any insufficient amount shall be paid immediately from the credit enhancement account. A payment from the credit enhancement account shall be reimbursed in succeeding months from the individual amount of cigarette tax proceeds distributed pursuant to Subsection B or C, as applicable, of Section 7-1-6.11 NMSA 1978 in excess of the amount required for immediate payment or designation for payment of principal, interest, premiums and expenses on bonds. All money in the credit enhancement account in excess of the monthly amount required for immediate payment or designation for payment of principal, interest, premiums and expenses on bonds shall be transferred monthly by the authority to the general fund.

E. Any law authorizing the imposition, collection or distribution of the cigarette tax or that affects the cigarette tax shall not be amended, repealed or otherwise directly or indirectly modified so as to impair or reduce debt service coverage for any outstanding revenue bonds that may be secured by a pledge of those cigarette tax proceeds distributed to the credit enhancement account, unless the revenue bonds have been discharged in full or provisions have been made for a full discharge.

**History:** Laws 2003, ch. 341, § 5; 2005, ch. 320, § 5; 2017, ch. 63, § 1; 2021, ch. 72, § 1.

**ANNOTATIONS**

**The 2021 amendment,** effective June 18, 2021, removed a provision related to discontinuing the distribution of cigarette tax proceeds to the New Mexico finance authority upon payment of all principal, interest, premiums and expenses on bonds, and made corrections to references to sections of law; in Subsection B, after "Subsection", changed "E" to "D"; and in Subsection D, after each occurrence of "Subsection", added "B or", and after each occurrence of "C", deleted "or Subsection D"; and deleted former Subsection E and redesignated former Subsection F as Subsection E.

**The 2017 amendment,** effective June 16, 2017, amended a provision that designated funds from the credit enhancement account to reflect the comprehensive designation and new name of the cancer center at the university of New Mexico health sciences center, and made technical changes to conform to amendments to Section 7-1-6.11 NMSA 1978; in Subsection B, after "Subsection", changed "G" to "E"; in Subsection C, Paragraph C(1), after "hospital and the", added "comprehensive", and after "cancer", deleted "research and treatment"; in Subsection D, after "Subsection", changed "E" to "C", after the second occurrence of "Subsection", changed "F" to "D", after the third occurrence of "Subsection", changed "E" to "C", and after the fourth occurrence of "Subsection" changed "F" to "D"; and in Subsection E, after "Subsection", changed "G" to "E".

**The 2005 amendment,** effective June 17, 2005, provided in Subsection C(2) that amounts in the credit enhancement account may be pledged for land acquisition and the planning, designing, construction and equipping and making improvements to department of health facilities; and provided in Subsection F that the cigarette tax laws shall not be changed to reduce debt coverage for any outstanding bonds.

## 6-21-6.8. Local transportation infrastructure fund; creation; purpose; administration.

A. The "local transportation infrastructure fund" is created within the authority. For the purposes of this section, "fund" means the local transportation infrastructure fund. The fund shall be administered by the authority as a separate account, but may consist of subaccounts if the authority deems them necessary to carry out the purposes of the

fund. The authority shall adopt rules in accordance with the New Mexico Finance Authority Act necessary to administer the fund.

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

(1) beginning July 1, 2005, one-half of the annual administrative fee received by the authority for issuing state transportation bonds pursuant to Sections 67-3-59.3 and 67-3-59.4 NMSA 1978;

(2) money from the payment of principal and interest on loans and payments of principal and interest on securities held by the authority for local transportation projects;

(3) money appropriated by the legislature to implement the provisions of this section; and

(4) other public or private money appropriated, dedicated or allocated to the fund for the purpose of financing local transportation projects.

C. For the purposes of this section, "local transportation projects" means local transportation projects of qualified entities submitted to the authority by the secretary of transportation as provided in Subsection F of this section. The authority may provide grants or other funding support to qualified entities' local transportation projects pursuant to this section without the specific authorization by law for each project otherwise required by the New Mexico Finance Authority Act.

D. Money in the fund is appropriated to the authority to pay the reasonable and necessary costs of originating and servicing loans, grants or securities funded by the fund and to make loans or grants and to purchase or sell securities to assist qualified entities in financing local transportation projects in accordance with the New Mexico Finance Authority Act.

E. The authority may make grants from the fund to qualified entities for local transportation projects when:

(1) a grant is not more than twenty-five percent of the total project cost; and

(2) a qualified entity demonstrates that it has available or a binding commitment from another person to make available for a project the portion of the total project cost not provided by the grant. The qualified entity may enter into a loan agreement or an agreement to sell the qualified entity's securities with the authority, or the qualified entity may use another source of money available for the project, to provide the costs not covered by the grant.

F. Each May, the secretary of transportation, using the department of transportation's metropolitan planning organization and regional planning organization

planning process, shall submit a prioritized list of local transportation projects to the authority that the metropolitan planning organizations and regional planning organizations have determined are appropriate for grants or other funding support pursuant to this section. The authority shall act on local transportation projects in the priority presented by the secretary of transportation; provided that the authority, based on the availability of money in the fund, may determine that a qualified entity shall receive a grant or other funding support for a project out of the order of priority it would otherwise have had or that no grant or other funding support be provided for the project. The rules of the authority for administration of the fund may set a maximum amount of grant or other funding support for a local transportation project.

G. Money in the local transportation infrastructure fund not needed for immediate disbursement, including money held in reserve, may be deposited with the state treasurer for short-term investment pursuant to Section 6-10-10.1 NMSA 1978 or may be invested in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States, obligations issued by agencies of the United States, obligations of this state or any political subdivision of the state, interest-bearing time deposits, commercial paper issued by corporations organized and operating in the United States and rated "prime" quality by a national rating service, other investments permitted by Section 6-10-10 NMSA 1978 or as otherwise provided by the trust indenture or bond resolution, if money is pledged for or secures payment of bonds issued by the authority.

H. The authority shall establish fiscal controls and accounting procedures that are sufficient to assure proper accounting for local transportation infrastructure fund payments, disbursements and balances.

**History:** Laws 2005, ch. 262, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 262 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 6-21-6.9. Local transportation project revenue bonds; issuance.

A. The authority may issue and sell local transportation project revenue bonds in compliance with the New Mexico Finance Authority Act in an amount outstanding at any one time of not more than twenty million dollars ($20,000,000) payable from the local transportation infrastructure fund. The bonds may be issued at times and on terms established by the authority.

B. The net proceeds from the sale of local transportation project revenue bonds are appropriated to the local transportation infrastructure fund for local transportation projects described in Section 6-21-6.8 NMSA 1978.

C. As security for the payment of the principal, interest or premium, if any, on local transportation project revenue bonds issued by the authority, the authority is authorized to pledge, transfer and assign:

(1) any obligation that is payable to the authority for deposit into the local transportation infrastructure fund;

(2) money in the local transportation infrastructure fund or a subaccount of that fund; and

(3) one-half of the annual administrative fee received by the authority for issuing state transportation bonds pursuant to Sections 67-3-59.3 and 67-3-59.4 NMSA 1978.

D. All local transportation project revenue bonds issued by the authority shall be obligations of the authority payable solely from the revenues, income and money of the authority deposited into the local transportation infrastructure fund. The bonds shall not create an obligation, debt or liability of the state and no breach of any pledge, obligation or agreement of the authority shall impose a pecuniary liability or charge upon the general credit or taxing power of the state or any political subdivision of the state.

E. Any law authorizing or affecting the imposition or distribution of the annual administrative fee received by the authority for issuing state transportation revenue bonds pursuant to Sections 67-3-59.3 and 67-3-59.4 NMSA 1978 or that affects the annual administrative fee shall not be amended, repealed or otherwise directly or indirectly modified so as to impair or reduce debt service coverage for any outstanding local transportation project revenue bonds that may be secured by a pledge of those annual administrative fee revenues, unless the local transportation project revenue bonds have been discharged in full or provisions have been made for a full discharge.

F. The authority may purchase local transportation project revenue bonds with money in the public project revolving fund pursuant to the provisions of Section 6-21-6 NMSA 1978.

**History:** Laws 2005, ch. 262, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 262 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 6-21-6.10. New Mexico finance authority revenue bonds; purpose; appropriation.

A. The authority may issue and sell revenue bonds in compliance with the New Mexico Finance Authority Act in an amount not exceeding two million five hundred thousand dollars ($2,500,000) for the behavioral health capital fund to make loans to eligible entities for capital projects pursuant to the Behavioral Health Capital Funding Act [6-26-1 to 6-26-8 NMSA 1978].

B. The net proceeds from the sale of the bonds are appropriated to the behavioral health capital fund for the purposes described in Subsection A of this section.

C. The authority may issue and sell revenue bonds in compliance with the New Mexico Finance Authority Act in an amount not to exceed five million dollars ($5,000,000) for acquiring land for and planning, designing, constructing and equipping department of health facilities or improvements to those facilities, upon certification from the secretary of health that such projects are needed. The costs associated with issuing the bonds shall be paid from the net proceeds from the sale of the bonds, and the remainder is appropriated to the facilities management division of the general services department for the projects certified pursuant to this subsection.

D. The cigarette tax proceeds distributed to the authority pursuant to Subsection D [C] of Section 7-1-6.11 NMSA 1978:

(1) are appropriated to the authority to be pledged irrevocably for the payment of the principal, interest, premiums and related expenses of the bonds and for payment of the expenses incurred by the authority related to the issuance, sale and administration of the bonds; and

(2) shall be deposited in a separate fund or account of the authority.

E. Any law authorizing the imposition, collection or distribution of the cigarette tax or that affects the cigarette tax shall not be amended, repealed or otherwise directly or indirectly modified so as to impair or reduce debt service coverage for any outstanding revenue bonds that may be secured by a pledge of those cigarette tax revenues, unless the revenue bonds have been discharged in full or provisions have been made for a full discharge.

F. The authority may secure the revenue bonds issued pursuant to this section by a pledge of money in the public project revolving fund with a lien priority on the money in the public project revolving fund as determined by the authority.

**History:** Laws 2005, ch. 58, § 1; 2016, ch. 75, § 1; 2017, ch. 34, § 1; 2017, ch. 63, § 2.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

In Subsection D, the reference to "Subsection D of Section 7-1-6.11 NMSA 1978" is incorrect as a result of multiple amendments enacted by Laws 2017, ch. 63, § 9 and Laws 2017, ch. 34, § 2. The correct subsection reference is inserted in brackets.

**2017 Multiple Amendments.** — Laws 2017, ch. 34, § 1, effective February 1, 2018, and Laws 2017, ch. 63, § 2, effective June 16, 2017, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2017, ch. 63, § 2, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2017, ch. 34, § 1 and Laws 2017, ch. 63, § 2 are described below. To view the session laws in their entirety, *see* the 2017 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2017, ch. 34, § 1, eliminated a distribution of the cigarette tax to the New Mexico finance authority and made a technical change to conform to amendments to Section 7-1-6.11 NMSA 1978, and Laws 2017, ch. 63, § 2, made technical changes to conform to amendments to Section 7-1-6.11 NMSA 1978.

**Laws 2017, ch. 63, § 2,** effective June 16, 2017, made technical changes to conform to amendments to Section 7-1-6.11 NMSA 1978; in Subsection C, after "Subsection", deleted "D" and added "B"; and in Subsection E, after "Subsection", deleted "F" and added "D".

**Laws 2017, ch. 34, § 1,** effective February 1, 2018, eliminated a distribution of the cigarette tax to the New Mexico finance authority; deleted Subsection C and redesignated the succeeding subsections accordingly; and in Subsection D, after "Subsection", deleted "F" and added "C".

**Contingent effective date.** — Laws 2017, ch. 34, § 3 provided that the provisions of this act is the later of:

A. November 1, 2017; or

B. the first day of the month following the day the chief executive officer of the New Mexico finance authority certifies to the secretary of taxation and revenue, the secretary of finance and administration, the legislative council service and the New Mexico compilation commission that the bonds issued pursuant to Section 6-21-6.10 NMSA 1978 have been discharged in full and the distribution pursuant to Subsection D of Section 7-1-6.11 NMSA 1978 is no longer needed to pay debt service, as that subsection was in effect prior to the effective date of this act.

Pursuant to Laws 2017, ch. 34, § 3, the effective date of Laws 2017, ch. 34, §§ 1 and 2 is February 1, 2018. On January 30, 2018, the New Mexico finance authority certified that the bonds issued pursuant to Section 6-21-6.10 NMSA 1978 have been discharged in full and the distribution pursuant to Subsection D of Section 7-1-6.11 NMSA 1978 is no longer needed to pay debt service.

**The 2016 amendment,** effective May 18, 2016, authorized the issuance of revenue bonds secured by a pledge of cigarette tax distributions or public project revolving fund money for department of health facilities; in Subsection A, after "The", deleted "New Mexico finance"; in Subsection C, after "distributed to the", deleted "New Mexico finance", after "Section 7-1-6.11 NMSA 1978", added the paragraph designation "(1)", and after "administration of the bonds", added "and"; deleted the subsection designation "D", and in former Subsection D, deleted "the cigarette tax proceeds appropriated and distributed to the authority pursuant to Subsection D of Section 7-1-6.11 NMSA 1978", designated the remaining language of former Subsection D as Paragraph (2) of Subsection C, and in Paragraph (2) of Subsection C, after "account of the authority", added "provided that"; added new Subsections D and E and redesignated former Subsection E as Subsection F; and added new Subsection G.

## 6-21-6.11. Rural county cancer treatment fund created; purpose; appropriation.

The "rural county cancer treatment fund" is created in the New Mexico finance authority. The fund is composed of appropriations, donations, distributions pursuant to Section 7-1-6.11 NMSA 1978 and money earned from investment of the fund and otherwise accruing to the fund. Money in the fund is appropriated to the New Mexico finance authority to provide a revenue stream to finance the design, construction, equipping and furnishing of additions and improvements to cancer treatment facilities in class B counties. Balances remaining in the fund at the end of a fiscal year shall not revert. The New Mexico finance authority shall administer the fund, and money from the fund may be drawn only on warrants signed by the executive director of the New Mexico finance authority pursuant to vouchers signed by the chief financial officer or the officer's authorized representative.

**History:** Laws 2006, ch. 89, § 4; 2013, ch. 14, § 2.

**ANNOTATIONS**

**The 2013 amendment,** effective June 14, 2013, authorized the use of funds to finance the design, equipping and furnishing of additions and improvements to cancer treatment facilities in class B counties; in the third sentence, after "to finance the", added "design" and after "construction", deleted "of" and added "equipping and furnishing of additions and improvements"; and in the fifth the sentence, after "pursuant to vouchers signed by the", deleted "executive director" and added "chief financial officer or the officer’s authorized representative".

**Bond authorization.** — Laws 2013, ch. 14, § 1, effective June 14, 2013, amended Laws 2006, ch. 89, § 1, as amended by Laws 2007, ch. 215, § 1, to authorize the New Mexico finance authority to issue revenue bonds for the regional cancer treatment center at the Gila regional medical center in Grant county and the Nor-Lea General Hospital in Lea county.

Laws 2008, ch. 60, § 1, effective May 14, 2008, amended Laws 2006, ch. 89, § 1, as amended by Laws 2007, ch. 215, § 1, to authorize the New Mexico finance authority to issue additional revenue bonds for the regional cancer treatment center at the Nor-Lea General Hospital in Lea county.

Laws 2007, ch. 215, § 1, amended laws 2006, ch. 89, §1, to increase the authorization to sell revenue bonds for the cancer treatment center at the Gila regional medical center from $2,500,000 to $3,000,000.

Laws 2006, ch. 89, §1, effective May 17, 2006, authorized the New Mexico finance authority to issue and sell revenue bonds for the propose of designing, constructing, equipping and furnishing additions and improvements to a regional cancer treatment center at the Gila regional medical center in Grant county and subsequently rural cancer treatment facilities in class B counties.

## 6-21-6.12. Local government transportation fund; created; distributions.

A. The "local government transportation fund" is created within the authority. The fund shall be administered by the authority as a separate account, but may consist of subaccounts if the authority deems them necessary to carry out the purpose of the fund. The fund shall consist of general fund appropriations and severance tax bond proceeds appropriated to the fund and, except as provided in Subsection E of this section, all earnings of the fund.

B. Except as provided in Subsection D of this section, upon certification by the department of transportation that a project has been approved for payment and upon compliance with the requirements of this section, money in the fund shall be distributed to local governments for projects specifically authorized by the legislature. The authority shall issue payment to the local government named in the project application and certification or to the federal department of transportation, acting as the fiscal agent for the local government.

C. Except as provided in Subsection D of this section, distributions from the fund shall be made pursuant to the following criteria:

(1) projects shall be funded in the order that a completed application from a local government is received if the application shows, to the satisfaction of the department, that the project is ready to proceed and that the local government has, or will timely have, the required match for the distribution;

(2) distributions from the fund shall be used to pay no more than the state's portion of the total cost necessary to develop and construct the project as presented in the approved application;

(3) to qualify for funding, a local government shall apply for funding through the department of transportation's regional or metropolitan planning organizations;

(4) a local government shall show, to the satisfaction of the department of transportation, that it will match the distribution from the local government transportation fund in the following amounts:

(a) for a project with a total cost of less than five hundred thousand dollars ($500,000), the local government shall contribute ten percent of the total project cost;

(b) for a project with a total cost of five hundred thousand dollars ($500,000) or greater, but less than or equal to one million dollars ($1,000,000), the local government shall contribute twenty percent of the total project cost;

(c) for a project with a total cost greater than one million dollars ($1,000,000), but less than or equal to six million dollars ($6,000,000), the local government shall contribute thirty-five percent of the total project cost; and

(d) for a project with a total project cost greater than six million dollars ($6,000,000), the local government shall contribute forty-five percent of the total project cost; and

(5) in determining the sufficiency of a local government's matching contribution, the department shall consider actual funds, in-kind contributions, preconstruction design and development costs and other related expenditures made in the furtherance of the project. Matching fund sources may be any money available to the local government for the project, including:

(a) grants or loans by the authority from the local transportation infrastructure fund;

(b) appropriations from local government road funds;

(c) community development block grants; and

(d) available federal funds.

D. Notwithstanding the requirements of Subsections B and C of this section, up to five hundred thousand dollars ($500,000) of the fund may be expended by the department of transportation for engineering and design services to develop the projects funded with distributions from the fund without a requirement for a local match.

E. Earnings from investing the fund are subject to appropriation by the legislature to the department of transportation to be used for payment of administrative costs associated with the fund, including payment for engineering costs.

F. As used in this section:

(1) "fund" means the local government transportation fund; and

(2) "local government" means a municipality acting within its planning and platting jurisdiction, a county or an Indian nation, tribe or pueblo.

**History:** Laws 2007 (1st S.S.), ch. 3, § 2; 2008, ch. 35, § 1.

**ANNOTATIONS**

**The 2008 amendment,** effective February 28, 2008, in Subsection B, authorized payment to the federal department of transportation, acting as the fiscal agent for the local government.

## 6-21-6.13. Metropolitan court bond guarantee fund.

A. The "metropolitan court bond guarantee fund" is created in the authority. The fund is comprised of appropriations, donations, transfers pursuant to Section 3-18-17 NMSA 1978 and money earned from investment of the fund and otherwise accruing to the fund. Money in the fund is appropriated to the authority as a credit enhancement to the distributions from the court facilities fund in order to guarantee and secure the payment of principal, interest, premiums and expenses on bonds issued pursuant to Section 34-9-16 NMSA 1978 and Laws 2000, Chapter 5, Section 2. Balances remaining in the fund at the end of a fiscal year shall not revert. The authority shall administer the fund, and money from the fund may be drawn only on warrants signed by the chief executive officer of the authority pursuant to vouchers signed by the chief executive officer.

B. Before each due date for payments of principal, interest, premiums or expenses on bonds issued pursuant to Section 34-9-16 NMSA 1978 and Laws 2000, Chapter 5, Section 2, the authority shall determine if the distributions from the court facilities fund will be sufficient to meet the amount due. If the authority determines that distributions from the court facilities fund are not sufficient to meet the total amount due, any insufficient amount shall be paid immediately from the metropolitan court bond guarantee fund. After each due date for a payment on the bonds, the authority shall determine the amount necessary to reserve in the metropolitan court bond guarantee fund as security for future payments and transfer any balance, above the amount reserved, to the traffic safety bureau of the department of transportation. The amounts transferred are appropriated to the bureau for expenditure on statewide efforts to prevent or reduce incidents of driving while intoxicated.

C. Upon payment of all principal, interest, premiums and expenses on bonds guaranteed and secured by amounts in the metropolitan court bond guarantee fund, the authority shall certify to the administrative office of the courts that all obligations for bonds have been fully discharged. Upon the certification, the director of the

administrative office of the courts shall cease transferring amounts to the metropolitan court bond guarantee fund and transfer those amounts to the traffic safety bureau of the department of transportation. Such amounts are appropriated to the bureau for the purposes specified in Subsection B of this section.

**History:** Laws 2008, ch. 91, § 2.

**ANNOTATIONS**

**Temporary provisions.** — Laws 2008, ch. 91, § 3 provided that the provisions of Laws 2008, ch. 91 apply prospectively to all municipal ordinances enacted before or after July 1, 2008.

**Effective dates.** — Laws 2008, ch. 91, § 4 made this section effective July 1, 2008.

## 6-21-6.14. Lease purchase revenue bonds; lease purchase agreements.

A. If specifically authorized by law, the authority may issue and sell lease purchase revenue bonds in compliance with the New Mexico Finance Authority Act and enter into a lease purchase agreement pursuant to the provisions of this section.

B. Lease purchase revenue bonds may be issued at times and on terms established by the authority and shall be paid exclusively from a debt service fund created pursuant to this section. The net proceeds from the sale of lease purchase revenue bonds are appropriated to the authority for the purpose of acquiring by construction or purchase the buildings, land or infrastructure specified in the authorizing law; provided that, if authorized by law, the net proceeds may also be used for debt service payments due before sufficient lease payments have been deposited into the applicable debt service fund.

C. All lease purchase revenue bonds issued by the authority shall be obligations of the authority payable solely from the separate debt service fund created for those bonds. The bonds shall not create an obligation, debt or liability of the state, and no breach of any pledge, obligation or agreement of the authority shall impose a pecuniary liability or charge upon the general credit or taxing power of the state or any political subdivision of the state.

D. The authority may purchase lease purchase revenue bonds with money in the public project revolving fund pursuant to the provisions of Section 6-21-6 NMSA 1978.

E. A debt service fund shall be created in the authority for each authorized issuance of lease purchase revenue bonds. Each fund shall consist of transfers to the fund, legislative appropriations, lease payments made by the facilities management division of the general services department or other lessee pursuant to the authorized lease purchase agreement and money earned from investment of the fund. Balances

remaining in a fund at the end of a fiscal year shall not revert. Money in each fund is appropriated to the authority for:

(1) the payment of principal, interest, premiums and expenses on the specific lease purchase revenue bonds that are issued pursuant to the bond authorization; and

(2) if authorized by law, required maintenance and repairs of the building, land or infrastructure if the authority determines that money in the fund is sufficient to meet the requirements of Paragraph (1) of this subsection plus any required reserve.

F. Upon the certification of the authority that all debt service on a specific issuance of lease purchase revenue bonds has been paid in full, any remaining balance of the debt service fund created for those bonds shall be transferred to the general fund.

G. The authority may enter into an agreement with the facilities management division of the general services department or other agency specified by law for the lease purchase of the building acquired with the lease purchase revenue bond proceeds. The agreement shall provide the lessee with an option to purchase for a price that is reduced according to the lease payments made and shall also provide that:

(1) there is no legal obligation for the state to continue the lease from year to year or to purchase the building;

(2) the lease shall be terminated if sufficient appropriations are not available to meet the current lease payments;

(3) if authorized by the legislature, the lease payments include a maintenance component that may escalate annually and, over the length of the agreement, approximate the amount that will be needed for the maintenance and repair of the building; and

(4) if the lessee is the facilities management division of the general services department or an agency under the jurisdiction of the facilities management division, the title to the building shall be issued in the name of the facilities management division if the building is purchased.

H. The provisions of this section apply to state buildings specifically authorized by law to be acquired pursuant to this section through lease purchase agreements with the authority. Nothing in this section limits or otherwise affects the power that the authority has under other laws to incur debt, acquire and dispose of property or enter into agreements.

**History:** 1978 Comp., § 6-21-6.14, as enacted by Laws 2009, ch. 145, § 2; 2013, ch. 115, § 1.

## ANNOTATIONS

**The 2013 amendment,** effective June 14, 2013, changed the name of the property control division of the general services department to the facilities management division; and in Subsection E, in the second sentence, in Subsection G, in the introductory paragraph, in the first sentence, and in Paragraph (4) of Subsection G, deleted "property control" and added "facilities management" before "division".

## 6-21-6.15. New Mexico finance authority revenue bonds; authorized; university of New Mexico hospital and university of New Mexico health sciences center.

A. The New Mexico finance authority may issue and sell revenue bonds in compliance with the New Mexico Finance Authority Act for a term not exceeding twenty years in an amount not exceeding eighty-two million dollars ($82,000,000) for the purpose of designing, constructing, equipping and furnishing additions and improvements to the university of New Mexico hospital and the comprehensive cancer center at the university of New Mexico health sciences center.

B. The New Mexico finance authority may issue and sell additional revenue bonds in compliance with the New Mexico Finance Authority Act for a term not exceeding twenty years in an amount not exceeding fifteen million dollars ($15,000,000) for the purpose of supplementing the proceeds of the bonds issued pursuant to Subsection A of this section to design, construct, equip and furnish additions and improvements to the university of New Mexico hospital and the comprehensive cancer center at the university of New Mexico health sciences center.

C. The New Mexico finance authority may issue and sell revenue bonds authorized by this section when the vice president for health sciences of the university of New Mexico certifies the need for issuance of the bonds. The net proceeds from the sale of the bonds are appropriated to the health sciences center of the university of New Mexico for the purposes described in Subsections A and B of this section.

D. The cigarette tax proceeds distributed to the New Mexico finance authority pursuant to Subsection B of Section 7-1-6.11 NMSA 1978 shall be pledged irrevocably for the payment of the principal, interest, premiums and related expenses on the bonds and for payment of the expenses incurred by the authority related to the issuance, sale and administration of the bonds.

E. The cigarette tax proceeds distributed to the New Mexico finance authority pursuant to Subsection B of Section 7-1-6.11 NMSA 1978 shall be deposited each month in a separate fund or account of the authority. Money in the separate fund or account in excess of the monthly amount necessary for immediate payment or designation for payment of principal and interest due on the bonds is appropriated to the university of New Mexico health sciences center for the programs and operations of its comprehensive cancer center and shall be transferred each month to the university of New Mexico health sciences center for the comprehensive cancer center.

F. Upon payment of all principal, interest and other expenses or obligations related to the bonds, the New Mexico finance authority shall certify to the secretary of taxation and revenue that all obligations for the bonds issued pursuant to this section have been fully discharged and shall direct the secretary of taxation and revenue and the state treasurer to cease distributing cigarette tax proceeds to the authority pursuant to Subsection B of Section 7-1-6.11 NMSA 1978.

G. Any law authorizing the imposition, collection or distribution of the cigarette tax or that affects the cigarette tax shall not be amended, repealed or otherwise directly or indirectly modified so as to impair or reduce debt service coverage for any outstanding revenue bonds that may be secured by a pledge of those cigarette tax revenues, unless the revenue bonds have been discharged in full or provisions have been made for a full discharge.

H. The New Mexico finance authority may additionally secure the revenue bonds issued pursuant to this section by a pledge of money in the public project revolving fund with a lien priority on the money in the public project revolving fund as determined by the authority.

I. The New Mexico finance authority may purchase revenue bonds issued pursuant to this section with money in the public project revolving fund pursuant to the provisions of Section 6-21-6 NMSA 1978.

**History:** Laws 2021, ch. 72, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2021, ch. 72 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

## 6-21-6.16. Charter school facility loans; charter school facility revolving fund; created; reports.

A. The New Mexico finance authority may receive and review applications for charter school facility loans pursuant to this section. The authority shall adopt rules to govern the application procedures and requirements for disbursing charter school facility loans and for determining the eligibility of charter schools for loans. The authority may make loans to a charter school for the purchase, construction, expansion or renovation of facilities or to pay off lease-purchase agreements; provided that an application shall include:

(1) evidence that any lease-purchase agreements are in accordance with the Public School Lease Purchase Act [Chapter 22, Article 26A NMSA 1978];

(2) evidence that a charter school's charter has been renewed at least once; and

(3) a review of the last two audits of the charter school.

B. The authority may consult with the applicant's authorizer in evaluating applications; provided that a final determination shall be made solely by the authority.

C. Receipts from the repayment of principal or interest accrued on the charter school facility loans made and other fees or charges paid to the New Mexico finance authority in connection with charter school facility loans shall be deposited in the charter school facility revolving fund.

D. The "charter school facility revolving fund" is created within the New Mexico finance authority. The fund consists of appropriations, gifts, grants, donations and money otherwise accruing to the fund. The fund shall be administered by the authority as a separate account and may consist of such subaccounts as the authority deems necessary to carry out the purposes of the fund. The authority may establish procedures for administering the fund in accordance with the provisions of this section. Balances in the fund at the end of a fiscal year shall not revert to any other fund.

E. Money in the charter school facility revolving fund is appropriated to the New Mexico finance authority to make charter school facility loans and to pay the reasonably necessary administrative and other costs incurred by the authority in evaluating, processing, originating and servicing loans.

F. Money in the charter school facility revolving fund that is not needed for immediate disbursement, including money held in reserve, may be deposited or invested in the same manner as other funds administered by the New Mexico finance authority.

G. Prior to December 1, 2023 and each December 1 thereafter, the New Mexico finance authority shall submit a report to the New Mexico finance authority oversight committee. The report shall provide details regarding any loans made pursuant to this section.

H. The New Mexico finance authority may exercise any power provided to the authority in the New Mexico Finance Authority Act to assist in the administration of this section; provided that the power is consistent with the provisions of that act.

**History:** Laws 2022, ch. 19, § 1.

## ANNOTATIONS

**Compiler's notes.** — Laws 2022, ch. 19, § 1 was not enacted as part of the New Mexico Finance Authority Act, but was compiled there for the convenience of the user.

**Effective dates.** — Laws 2022, ch. 19 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

## 6-21-7. Public project finance program; duties of authority.

The authority has the following duties:

A. to develop and administer a program to assist qualified entities individually or jointly in financing public projects;

B. to establish a process and procedures for review and assessment of public project needs in the state and report to the New Mexico finance authority oversight committee, the legislature and the governor the authority's public project financing and repayment agreement recommendations; and

C. to cooperate with and exchange services and information with any federal, state or local governmental agency.

**History:** Laws 1992, ch. 61, § 7.

## 6-21-8. Public project finance program; loans; purchase or sale of securities.

To implement a program to assist qualified entities in financing public projects, the authority has the powers specified in this section; provided that the authority shall take no action concerning a project financed with money in the public project revolving fund unless the project is specifically authorized by law or authorized pursuant to other provisions of the New Mexico Finance Authority Act. The authority may:

A. make loans to qualified entities that establish one or more dedicated sources of revenue to repay the loan from the authority;

B. make, enter into and enforce all contracts necessary, convenient or desirable for the purposes of the authority or pertaining to:

(1) a loan to a qualified entity;

(2) a grant to a qualified entity from money available to the authority except money in the public project revolving fund;

(3) a purchase or sale of securities individually or on a pooled basis; or

(4) the performance of its duties and execution of its powers under the New Mexico Finance Authority Act;

C. purchase or hold securities at prices and in a manner the authority considers advisable, giving due consideration to the financial capability of the qualified entity, and sell securities acquired or held by it at prices without relation to cost and in a manner the authority considers advisable;

D. prescribe the form of application or procedure required of a qualified entity for a loan or purchase of its securities, fix the terms and conditions of the loan or purchase and enter into agreements with qualified entities with respect to loans or purchases;

E. charge for its costs and services in review or consideration of a proposed loan to a qualified entity or purchase by the authority of securities, whether or not the loan is made or the securities purchased;

F. fix and establish terms and provisions with respect to:

(1) a purchase of securities by the authority, including date and maturities of the securities;

(2) redemption or payment before maturity; and

(3) any other matters that in connection with the purchase are necessary, desirable or advisable in the judgment of the authority;

G. to the extent permitted under its contracts with the holders of bonds of the authority, consent to modification of the rate of interest, time and payment of installment of principal or interest, security or any other term of a bond, contract or agreement of any kind to which the authority is a party;

H. in connection with the purchase of any securities, consider the ability of the qualified entity to secure financing from other sources and the costs of that financing and the particular public project or purpose to be financed or refinanced with the proceeds of the securities to be purchased by the authority;

I. acquire fee simple, leasehold, mortgagor's or mortgagee's interests in real and personal property and to sell, mortgage, convey or lease that property for authority purposes; and

J. in the event of default by a qualified entity, enforce its rights by suit or mandamus or may use all other available remedies under state law.

**History:** Laws 1992, ch. 61, § 8; 2000, ch. 80, § 4; 2001, ch. 294, § 4; 2003, ch. 325, § 2.

## ANNOTATIONS

**The 2003 amendment,** effective June 20, 2003, substituted "has the powers specified in this section; provided that the authority shall take no action concerning a project financed with money in the public project revolving fund unless the project is specifically authorized by law or authorized pursuant to other provisions of the New Mexico Finance Authority Act. The authority" for "subject to specific authorization by law for projects financed with money in the public project revolving fund" following "financing public projects, the authority" in the first paragraph of the section.

**The 2001 amendment,** effective April 5, 2001, in Subsection I, substituted "fee simple" for "and hold title to or", "mortgagor's or mortgagee's interests" for "interest", added "mortgage", and substituted "authority purposes" for "the purpose of satisfying a default or enforcing the provisions of a loan agreement".

**The 2000 amendment,** effective March 7, 2000, added "from money available to the authority except money in the public project revolving fund" at the end of Subsection B(2).

## 6-21-9. Public project financing; powers of qualified entities.

A qualified entity may:

A. obligate itself to pay to the authority at periodic intervals a sum sufficient to pay all or part of debt service or other obligation, including fees and other charges imposed by the authority with respect to bonds issued by the authority to fund a public project, and to make such payments to the authority for deposit in the fund or account designated by the authority;

B. fulfill any obligation to pay the authority by the issuance of bonds in accordance with the laws authorizing such issuance by the qualified entity; provided that notwithstanding the provisions of any law to the contrary, such bonds may be sold at private sale to the authority at the price and upon the terms and conditions the qualified entity shall determine;

C. levy, collect and pay to the authority and obligate itself to continue to levy, collect and pay to the authority the proceeds from one or more sources of funds or revenues, including but not limited to charges, licenses, permits, taxes, user or other fees, special assessments or other funds or revenue available to the qualified entity, in accordance with the laws authorizing imposition or levy thereof by the qualified entity;

D. undertake and obligate itself to pay its contractual obligation to the authority solely from the proceeds from any of the sources specified in Subsection C of this section or, in accordance with the laws authorizing issuance of bonds by a qualified entity, impose upon itself a general obligation to impose a property tax to pay bonds held by the authority which may be additionally secured by a pledge of any of the sources specified in Subsection C of this section; provided, however, that any general

obligation involving property tax revenues is subject to applicable constitutional debt requirements;

E. lease buildings, facilities and other real and personal property from the authority; and

F. enter into agreements, perform acts and delegate functions and duties that the qualified entity determines are necessary or desirable to enable the authority to assist the qualified entity in financing a public project.

**History:** Laws 1992, ch. 61, § 9; 2001, ch. 294, § 5.

**ANNOTATIONS**

**The 2001 amendment,** effective April 5, 2001, added Subsection E and redesignated the subsequent subsection.

## 6-21-10. Purchases in name of authority; documentation.

A. All tangible and intangible property, real and personal property and securities purchased, held or owned at any time by the authority shall at all times be purchased and held in the name of the authority or may be mortgaged, assigned or otherwise encumbered as security for the repayment of bonds issued by the authority.

B. All securities purchased at any time by the authority, upon delivery to the authority, shall be accompanied by all documentation required by the authority and shall include an approving opinion of recognized bond counsel and certification and guarantee of signatures and disclosure of any pending litigation.

**History:** Laws 1992, ch. 61, § 10; 2001, ch. 294, § 6; 2010, ch. 16, § 1.

**ANNOTATIONS**

**The 2010 amendment,** effective May 19, 2010, in Subsection B, after "certification and guarantee of signatures", deleted "and certification as to no litigation pending as of the date of delivery of the securities challenging the validity or issuance of such securities" and added "and disclosure of any pending litigation".

**The 2001 amendment,** effective April 5, 2001, in Subsection A, added "tangible and intangible property, real and personal property and" near the beginning of the subsection, and the language beginning "or may be mortgaged" to the end of the subsection.

## 6-21-11. Bonds of the authority; use; security.

A. The authority may issue and sell bonds in principal amounts it considers necessary to provide sufficient money for any purpose of the New Mexico Finance Authority Act, including:

(1) purchase of securities;

(2) making loans through the purchase of securities;

(3) making grants for public projects from money available to the authority except money in the public project revolving fund;

(4) the acquisition, construction or improvement of public projects, including real and personal property;

(5) the payment, funding or refunding of the principal of or interest or redemption premiums on bonds issued by the authority, whether the bonds or interest to be paid, funded or refunded have or have not become due;

(6) the establishment or increase of reserves or sinking funds to secure or to pay principal, premium, if any, or interest on bonds; and

(7) all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers.

B. Except as otherwise provided in the New Mexico Finance Authority Act, all bonds or other obligations issued by the authority shall be obligations of the authority payable solely from the revenues, income, fees, charges or funds of the authority that may, pursuant to the provisions of the New Mexico Finance Authority Act, be pledged to the payment of such obligations, and the bonds or other obligations 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 or a charge upon the general credit or taxing power of the state or any political subdivision of the state.

C. As security for the payment of the principal, interest or premium, if any, on bonds issued by the authority, the authority is authorized to pledge, transfer and assign:

(1) any obligation that is payable to the authority, including rents and lease payments owing to the authority in connection with the leasing of real or personal property;

(2) the security for the qualified entity's obligations;

(3) money in the public project revolving fund or a subaccount of that fund subject to the provisions of Subsection C of Section 6-21-6 NMSA 1978;

(4) any grant, subsidy or contribution from the United States or any of its agencies or instrumentalities; or

(5) any income, revenues, funds or other money of the authority from any other source authorized for such pledge, transfer or assignment other than from the public project revolving fund under the New Mexico Finance Authority Act.

**History:** Laws 1992, ch. 61, § 11; 2000, ch. 80, § 5; 2001, ch. 294, § 7.

**ANNOTATIONS**

**The 2001 amendment,** effective April 5, 2001, in Subsection A(4), added "acquisition", "or improvement" and "including real and personal property"; in Subsection C(1), deleted "of a qualified entity" and added the language beginning "including rents and lease payments" to the end of the paragraph.

**The 2000 amendment,** effective March 7, 2000, added "from money available to the authority fund except money in the public project revolving fund" at the end of Subsection A(3) and updated the internal reference in Subsection C(3).

## 6-21-12. Bonds; authorization for issuance; terms and conditions.

A. Bonds of the authority shall be authorized by resolution of the authority and may be issued in one or more series. The bonds shall bear the dates, be in the form, be issued in the denominations, have terms and maturities, bear interest at rates and be payable and evidenced in the manner and times as the resolution of the authority or the trust agreement securing the bonds provides. The bonds may be redeemed with or without premiums prior to maturity, may be ranked or assigned priority status and may contain provisions not inconsistent with this subsection.

B. The bonds issued by the authority may be sold at any time at private or public sale at prices agreed upon by the authority.

C. Bonds may be issued pursuant to the New Mexico Finance Authority Act without obtaining the consent of any agency of the state and without any other proceeding or condition other than the proceedings or conditions specified in that act.

D. The bonds issued by the authority are negotiable instruments for all purposes of the Uniform Commercial Code [Chapter 55 NMSA 1978], subject only to the provisions of the bonds for registrations.

E. Any resolution for the issuance of bonds shall provide that each bond authorized shall recite that it is issued by the authority. The recital shall clearly state that the bonds are in full compliance with all of the provisions of the New Mexico Finance Authority Act.

**History:** Laws 1992, ch. 61, § 12.

## 6-21-13. Bonds secured by trust indenture.

The bonds may be secured by a trust indenture between the authority and a corporate trustee which may be either a bank having trust powers or a trust company. The trust indenture may contain reasonable provisions for protecting and enforcing the rights and remedies of bondholders, including covenants setting forth the duties of the authority in relation to the exercise of its powers and the custody, use and investment of the money. The authority may provide by the trust indenture for the payment of the proceeds of the bonds and the revenue to the trustee under the trust indenture or other depository for disbursement with such safeguards as the authority determines are necessary.

**History:** Laws 1992, ch. 61, § 13.

## 6-21-14. Publication of notice; validation; limitation of action.

A. After adoption of a resolution authorizing issuance of bonds, the authority shall publish notice of the adoption of the resolution once in a newspaper of general statewide circulation.

B. After the passage of thirty days from the publication required by Subsection A of this section, any action attacking the validity of the proceedings had or taken by the authority preliminary to and in the authorization and issuance of the bonds described in the notice is perpetually barred.

**History:** Laws 1992, ch. 61, § 14.

## 6-21-15. Refunding bonds.

The authority is authorized to issue its bonds for the purpose of refunding any bonds then outstanding, including the payment of any redemption premiums thereon and any interest accrued or to accrue to the date of redemption of the outstanding bonds. Until the proceeds of the bonds issued for the purpose of refunding outstanding bonds are applied to the purchase or retirement of the outstanding bonds or the redemption of the outstanding bonds, the proceeds may be placed in escrow and be invested and reinvested. The interest, income and profits, if any, earned or realized on any such investment may, in the discretion of the authority, also be applied to the payment of the outstanding bonds to be refunded by purchase, retirement or redemption, as the case may be. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, if any, earned or realized on the investments thereof may be returned to the authority for use by it in any lawful manner. All such bonds shall be issued and secured and shall be subject to the provisions of the New Mexico Finance Authority Act in the same manner and to the same extent as any other bonds issued pursuant to the New Mexico Finance Authority Act.

**History:** Laws 1992, ch. 61, § 15.

## 6-21-16. Bond anticipation notes.

The authority is authorized to issue negotiable bond anticipation notes and may renew the same from time to time, but the maximum maturity of such notes, including renewals of such notes, shall not exceed ten years from the date of issue of the original notes. The notes shall be payable from any money of the authority available for them and not otherwise pledged from loans to or securities issued by a qualified entity or from the proceeds of sale of the bonds of the authority, the state or a qualified entity in anticipation of which such notes were issued. The notes may be issued for any purpose of the authority. All such notes shall be issued and secured and shall be subject to the provisions of the New Mexico Finance Authority Act in the same manner and to the same extent as bonds issued pursuant to the New Mexico Finance Authority Act.

**History:** Laws 1992, ch. 61, § 16; 1995, ch. 141, § 18.

**ANNOTATIONS**

**The 1995 amendment,** effective April 5, 1995, inserted "from loans to or securities issued by a qualified entity" and inserted "the state or a qualified entity" in the second sentence.

## 6-21-17. Remedies of bondholders.

Any holder of bonds issued pursuant to the New Mexico Finance Authority Act or a trustee under a trust indenture entered into pursuant to that act, except to the extent that his rights are restricted by any bond resolution or trust indenture authorized pursuant to the bond resolution, may protect and enforce, by any suitable form of legal proceedings, any rights under the laws of this state or granted by the bond resolution or trust indenture authorized pursuant to the bond resolution. Such rights include the right to compel the performance of all duties of the authority required by the New Mexico Finance Authority Act or the bond resolution and to enjoin unlawful activities.

**History:** Laws 1992, ch. 61, § 17.

## 6-21-18. Agreement of the state.

The state does hereby pledge to and agree with the holders of any bonds or notes issued under the New Mexico Finance Authority Act that the state will not limit or alter the rights hereby vested in the authority to fulfill the terms of any agreements made with the holders thereof or in any way impair the rights and remedies of those holders until the bonds or notes together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of those holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state in any agreement with the holders of the bonds or notes.

**History:** Laws 1992, ch. 61, § 18.

## 6-21-19. Bonds; legal investments for public officers and fiduciaries.

The bonds issued under the authority of the New Mexico Finance Authority Act shall be legal investments in which all insurance companies, banks and savings and loan associations organized under the laws of the state, public officers and public bodies and all administrators, guardians, executors, trustees and other fiduciaries may properly and legally invest funds.

**History:** Laws 1992, ch. 61, § 19.

## 6-21-20. Tax exemption.

A. It is hereby determined that the creation of the authority is in all respects for the benefit of the people of the state, for the improvement of their health and welfare and for the promotion of proposed projects or facilities pursuant to the New Mexico Finance Authority Act, and that these purposes are public purposes and the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by the New Mexico Finance Authority Act. The state covenants with the purchasers and all subsequent holders and transferees of bonds issued by the authority, in consideration of the acceptance of and payment for the bonds, that the bonds issued pursuant to that act and the income from the bonds shall at all times be free from taxation by the state, except for estate or gift taxes and taxes on transfers.

B. The property, income and operations of the authority shall be exempt from taxation of every kind and nature.

**History:** Laws 1992, ch. 61, § 20.

## 6-21-21. Money of the authority; expenses; audit; annual report.

A. All money of the authority, except as otherwise authorized or provided in the New Mexico Finance Authority Act or in a bond resolution, trust indenture or other instrument under which bonds are issued, shall be deposited as soon as practical in a separate account or accounts in banks or trust companies organized under the laws of this state. All deposits of money shall be secured, if required by the authority, in such a manner as the authority determines to be prudent. Banks or trust companies are authorized to give security for deposits of the authority.

B. Subject to the provisions of any contract with bondholders, the authority shall prescribe a system of accounts.

C. Money held by the authority that is not needed for immediate disbursement, including any funds held in reserve, may be deposited with the state treasurer for short-term investment pursuant to Section 6-10-10.1 NMSA 1978 or may be invested in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States, obligations issued by agencies of the United States, obligations of this state or any political subdivision of the state, interest-bearing time deposits, commercial paper issued by corporations organized and operating within the United States and rated "prime" quality by a national rating service, other investments permitted by Section 6-10-10 NMSA 1978 or as otherwise provided by the trust indenture or bond resolution, if the funds are pledged for or secure payment of bonds issued by the authority.

D. The authority shall have an audit of its books and accounts made at least once each year by the state auditor or by a certified public accounting firm whose proposal has been reviewed and approved by the state auditor. The cost of the audit shall be an expense of the authority. Copies of the audit shall be submitted to the governor and the New Mexico finance authority oversight committee and made available to the public.

E. The authority shall submit a report of its activities to the governor and to the legislature not later than December 1 of each year. Each report shall set forth a complete operating and financial statement covering its operations for that year.

**History:** Laws 1992, ch. 61, § 21; 1995, ch. 141, § 19; 1996, ch. 28, § 2.

**ANNOTATIONS**

**The 1996 amendment,** effective March 4, 1996, substituted "other investments permitted by Section 6-10-10 NMSA 1978" for "prime bankers' acceptances issued by money center" in Subsection C.

**The 1995 amendment,** effective April 5, 1995, inserted "interest-bearing time deposits, commercial paper issued by corporations organized and operating within the United States and rated 'prime' quality by a national rating service, prime bankers' acceptances issued by money center" in Subsection C.

## 6-21-22. Corporate existence.

The authority and its corporate existence shall continue until terminated by law, provided that no such law shall take effect so long as the authority has bonds or other obligations outstanding, unless adequate provision has been made for the payment of such obligations. Upon termination of the existence of the authority, all its rights and properties in excess of its obligations shall pass to and be vested in the state.

**History:** Laws 1992, ch. 61, § 22.

## 6-21-23. Prohibited actions.

The authority shall not:

A. lend money or make a grant other than to a qualified entity;

B. purchase securities other than from a qualified entity or other than for investment as provided in the New Mexico Finance Authority Act;

C. lease a public project to any entity other than a qualified entity; except that the authority may lease a public project to any entity following termination of a lease of the public project to a qualified entity if leasing the public project to an entity other than a qualified entity is necessary to avoid forfeiture or impairment of the public project or a default on bonds whose payment is secured, in whole or in part, by the public project or by lease rentals from the public project;

D. deal in securities within the meaning of or subject to any securities law, securities exchange law or securities dealers law of the United States or of the state or of any other state or jurisdiction, domestic or foreign, except as authorized in the New Mexico Finance Authority Act;

E. issue bills of credit or accept deposits of money for time on demand deposit or administer trusts or engage in any form or manner, or in the conduct of, any private or commercial banking business, or act as a savings bank or savings and loan association or any other kind of financial institution except as authorized in the New Mexico Finance Authority Act;

F. engage in any form of private or commercial banking business except as authorized in the New Mexico Finance Authority Act;

G. lend money, issue bonds, including public-private partnership project bonds, or make a grant for the promotion of gaming or a gaming enterprise or for development of infrastructure for a gaming facility; or

H. after December 31, 2005, except in case of an emergency, accept an application for financial assistance from a municipality, county or other covered entity for a water or wastewater project unless it is submitted with a water conservation plan or a water conservation plan is on file with the state engineer in accordance with the provisions of Section 3 [72-14-3.2 NMSA 1978] of this 2003 act.

**History:** Laws 1992, ch. 61, § 23; 1995, ch. 141, § 20; 1996, ch. 75, § 2; 2001, ch. 294, § 8; 2003, ch. 138, § 4.

## ANNOTATIONS

**The 2003 amendment,** effective June 20, 2003, added Subsection H.

**The 2001 amendment,** effective April 5, 2001, added the exception to Subsection C.

**The 1996 amendment,** effective March 5, 1996, added Subsection G and made a stylistic change.

**The 1995 amendment,** effective April 5, 1995, inserted "except as authorized in the New Mexico Finance Authority Act" in Subsections E and F.

## 6-21-24. Conflicts of interest; penalty.

A. If any member, officer or employee of the authority has an interest, either direct or indirect, in any contract to which the authority is or is to be a party, such interest shall be disclosed to the authority in writing and shall be set forth in the minutes of the authority. The member, officer or employee having such interest shall not participate in any action by the authority with respect to such contract.

B. Any person who has a conflict of interest as defined in this section and participates in any transaction involving such conflict of interest or fails to notify the authority of such conflict is guilty of a misdemeanor and upon conviction shall be sentenced to imprisonment in the county jail for a definite term of less than one year or to the payment of a fine of not more than one thousand dollars ($1,000), or to both.

**History:** Laws 1992, ch. 61, § 24.

## 6-21-25. Limitation of liability.

Neither any member of the authority nor any person acting in its behalf, while acting within the scope of his authority, shall be subject to any personal liability for any action taken or omitted within that scope of authority.

**History:** Laws 1992, ch. 61, § 25.

## 6-21-26. Court proceedings; preference; venue.

Any action or proceeding to which the authority or the people of the state may be a party in which any question arises as to the validity of the New Mexico Finance Authority Act or project or transaction undertaken by the authority pursuant to that act shall be preferred over all other civil cases in all courts of the state and shall be heard and determined in preference to all other civil business pending therein irrespective of position on the calendar. The same preference shall be granted upon application of counsel to the authority in any action or proceeding seeking a judicial declaration of the validity of the New Mexico Finance Authority Act or any project or transaction undertaken by the authority pursuant to that act. The venue of any such action or proceeding or any other action or proceeding against the authority shall be in the county in which the principal office of the authority is located.

**History:** Laws 1992, ch. 61, § 26; 2001, ch. 294, § 9.

**ANNOTATIONS**

**The 2001 amendment,** effective April 5, 2001, added "or project or transaction undertaken by the authority pursuant to that act" after the first occurrence of "New Mexico Finance Authority Act"; substituted "seeking a judicial declaration of" for "questioning"; substituted "or any project or transaction undertaken by the authority pursuant to that act" for "in which he may be allowed to intervene" after the second occurrence of "New Mexico Finance Authority Act".

## 6-21-27. Cumulative authority.

The New Mexico Finance Authority Act shall be deemed to provide an additional and alternative method for the doing of things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing; provided that the issuance of bonds under the provisions of the New Mexico Finance Authority Act need not comply with the requirements of any other law applicable to the issuance of bonds.

**History:** Laws 1992, ch. 61, § 27.

## 6-21-28. Liberal interpretation.

The New Mexico Finance Authority Act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes of that act.

**History:** Laws 1992, ch. 61, § 28.

## 6-21-29. Severability.

If any part or application of the New Mexico Finance Authority Act is held invalid, the remainder or its application to other situations shall not be affected.

**History:** Laws 1992, ch. 61, § 29.

## 6-21-30. New Mexico finance authority oversight committee.

There is created a joint interim legislative committee that shall be known as the "New Mexico finance authority oversight committee". The legislative council shall determine the membership of the committee and shall appoint the members and designate the chairman and the vice chairman in accordance with legislative council policies. The staff for the committee shall be provided by the legislative council service.

**History:** Laws 1992, ch. 61, § 30.

**ANNOTATIONS**

**Cross references.** — For powers and duties of the New Mexico finance authority oversight committee over the border authority, *see* 58-27-26 NMSA 1978.

## 6-21-31. Powers and duties.

The New Mexico finance authority oversight committee shall:

A. monitor and oversee the operation of the New Mexico finance authority;

B. meet on a regular basis to receive and review reports from the authority on implementation of the provisions of the New Mexico Finance Authority Act and to review and approve regulations proposed for adoption pursuant to that act;

C. monitor and provide assistance and advice on the public project financing program of the New Mexico finance authority;

D. oversee and monitor state and local government capital planning and financing and take testimony from state and local officials on state and local capital needs;

E. provide advice and assistance to the New Mexico finance authority and cooperate with the executive branch of state government and local governments on planning, setting priorities for and financing of state and local capital projects;

F. undertake an ongoing examination of the statutes, constitutional provisions, regulations and court decisions governing state and local government capital financing in New Mexico; and

G. report its findings and recommendations, including recommended legislation or necessary changes, to the governor and to each session of the legislature. The report and proposed legislation shall be made available on or before December 15 each year.

**History:** Laws 1992, ch. 61, § 31.

# ARTICLE 21A
# Drinking Water State Revolving Loan Fund

## 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.

**ANNOTATIONS**

**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 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:

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.

**ANNOTATIONS**

**Cross references.** — For the federal Safe Drinking Water Act, *see* 42 U.S.C.S. 300f et seq.

**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".

## 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 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.

**ANNOTATIONS**

**Cross references.** — For the federal Safe Drinking Water Act, *see* 42 U.S.C.S. 300f et seq.

**Appropriations.** — Laws 2014, ch. 52, § 1, effective July 1, 2014, appropriated two million dollars ($2,000,000) from the public project revolving fund to the local government planning fund administered by the New Mexico finance authority for expenditure in fiscal year 2015 and subsequent fiscal years to make grants to qualified entities to evaluate and estimate the costs of implementing the most feasible alternatives for infrastructure, water or wastewater public projects or to develop water conservation plans, long-term master plans, economic development plans or energy audits and to pay the administrative costs of the local government planning program. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the public project revolving fund.

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

## 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, 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 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.

**ANNOTATIONS**

**Cross references.** — For the federal Safe Drinking Water Act, *see* 42 U.S.C.S. 300f et seq. For Section 1452 of that act, *see* 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 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.

**ANNOTATIONS**

**Cross references.** — For the federal Safe Drinking Water Act, *see* 42 U.S.C.S. 300f et seq. For Section 1452(a)(3) of that act, *see* 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 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.

**ANNOTATIONS**

**Cross references.** — For the federal Safe Drinking Water Act, *see* 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 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 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 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 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 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.

## ARTICLE 21B
## General Services Aviation Equipment Project Fund

### 6-21B-1. General services aviation equipment project fund; purpose; administration.

A. The "general services aviation equipment project fund" is created in the state treasury. The fund shall be administered by the general services department and shall consist solely of money received by the general services department pursuant to a lease agreement between the general services department and the physical sciences laboratory of New Mexico state university. No money derived from property taxes, state

general fund revenues or general appropriations shall be deposited in the fund. Money in the fund shall not revert to the general fund at the end of a fiscal year.

B. Money in the general services aviation equipment project fund is appropriated for expenditure by the general services department for the purpose of repaying a loan or loans to purchase a research airplane and related equipment.

C. The general services department is authorized to enter into loan agreements and loans payable from the general services aviation equipment project fund with the physical sciences laboratory of New Mexico state university and with the New Mexico finance authority on such terms and conditions deemed necessary or desirable by the general services department.

D. Money in the general services aviation equipment project fund shall be expended only on warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of general services or his authorized representative.

E. The legislature shall not repeal, amend or otherwise modify any law that affects or impairs the deposit in the general services aviation equipment project fund until all loans payable from the fund are fully paid and discharged or provisions have been made for their full payment and discharge.

**History:** Laws 1998, ch. 66, § 1.

# ARTICLE 21C
# State Building Bonding

## 6-21C-1. Short title.

Chapter 6, Article 21C NMSA 1978 may be cited as the "State Building Bonding Act".

**History:** Laws 2001, ch. 199, § 1; 2003, ch. 371, § 1.

### ANNOTATIONS

**The 2003 amendment,** effective June 20, 2003, rewrote the section which read "Sections 1 through 11 of this act may be cited as the 'State Office Building Acquisition Bonding Act"'.

## 6-21C-2. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 2003, ch. 371, § 13 repealed 6-21C-2 NMSA 1978, as enacted by Laws 2001, ch. 199, § 2, relating to findings and purpose, effective June 20, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 6-21C-2.1. Findings and purpose.

A. The legislature finds that the expense of leasing office space for state occupancy has grown to the point that the state would be better served if more state-owned facilities were acquired. The legislature further finds that the state's overall occupancy costs could be reduced even after taking into account the payments necessary on bonds issued to acquire additional facilities and that, therefore, it is economically advantageous for the state to own additional office space and related facilities. Further, in anticipation of the state's future office space needs, the legislature finds it prudent to establish an office acquisition program.

B. The legislature also finds that, in extreme circumstances, it is advantageous for the state to fund certain critical facilities to avoid the need for leasing or paying emergency rents.

C. The purpose of the State Building Bonding Act is to acquire additional state office buildings and related facilities, or critical facilities located within the master planning jurisdiction of the capitol buildings planning commission, by issuing bonds paid for with distributions of gross receipts tax revenue that reflect a portion of the savings that will result from the conversion to more state-owned facilities.

**History:** Laws 2004, ch. 123, § 1; 2005, ch. 320, § 2.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2004, ch. 123, § 1 enacted this section as a new Section 6-21C-2 NMSA 1978, however, since that section was previously repealed, it was compiled as Section 6-21C-2.1 NMSA 1978.

**The 2005 amendment,** effective June 17, 2005, provided in Subsection A that it is advantageous for the state to own related facilities; adds Subsection B to provide that it is advantageous for the state to fund critical facilities to avoid leasing or paying emergency rents; and provided in Subsection C that the purpose of the act is to acquire related facilities or critical facilities located within the master planning jurisdiction of the capitol buildings planning commission.

## 6-21C-3. Definitions.

As used in the State Building Bonding Act:

A. "acquiring" or "acquisition" includes acquiring or acquisition by purchase, construction or renovation; and

B. "building bonds" means state office building tax revenue bonds.

**History:** Laws 2001, ch. 199, § 3; 2003, ch. 371, § 2; 2004, ch. 123, § 2.

**ANNOTATIONS**

**The 2004 amendment,** effective May 19, 2004, amended Subsection B to delete from the definition of "building bonds" "or state museum tax revenue bonds".

**Applicability.** — Laws 2004, ch. 123, § 8 provided that:

"Nothing in this act shall be deemed to impair state museum tax revenue bonds outstanding on the effective date of this act. For the purposes of the obligations incurred with respect to those bonds:

A. the bonds shall be deemed to be "building bonds" pursuant to the provisions of the State Building Bonding Act;

B. money in the state building bonding fund is pledged for the payment of principal and interest on those bonds to the same extent as the fund was pledged prior to the effective date of this 2004 act; and

C. the state further pledges that any law authorizing the distribution of taxes or other revenues to the state building bonding fund or authorizing expenditures from the fund shall not be amended or repealed or otherwise modified so as to impair those bonds."

## 6-21C-4. New Mexico finance authority shall issue building bonds; appropriation of proceeds.

A. The New Mexico finance authority is authorized to issue and sell revenue bonds, known as "state office building tax revenue bonds", payable solely from the state building bonding fund, in compliance with the State Building Bonding Act for the purpose of acquiring state office buildings and related facilities and other critical state facilities within the master planning jurisdiction of the capitol buildings planning commission when the acquisition has been reviewed by the capitol buildings planning commission and has been authorized by legislative act and the director of the facilities management division of the general services department has certified the need for the issuance of the bonds; provided that the total amount of state office building tax revenue bonds outstanding at any one time shall not exceed one hundred fifteen million dollars ($115,000,000).

B. The net proceeds from the building bonds are appropriated to the facilities management division of the general services department for the purpose of acquiring state office buildings and related facilities and other critical state facilities within the master planning jurisdiction of the capitol buildings planning commission, the acquisition

of which shall be consistent with the State Building Bonding Act and the authorizing legislation.

**History:** Laws 2001, ch. 199, § 4; 2003, ch. 371, § 3; 2004, ch. 123, § 3; 2005, ch. 320, § 3; 2009, ch. 114, § 1; 2013, ch. 115, § 2.

**ANNOTATIONS**

**Cross references.** — For the New Mexico finance authority, *see* 6-21-1 NMSA 1978.

**The 2013 amendment,** effective June 14, 2013, changed the name of the property control division of the general services department to the facilities management division; and in Subsections A and B, deleted "property control" and added "facilities management" before "division".

**The 2009 amendment,** effective April 6, 2009, in Subsection A, added the exception at the end of the sentence.

**Compiler's notes.** — Laws 2009, ch. 114, § 4, effective April 6, 2009, amended Laws 2001, ch. 166, § 2, to delete the provision in Subsection A, which provided that the total amount of state office building tax revenue bonds outstanding at any one time shall not exceed one hundred million dollars; in Subsection C, to extend the period for expenditure of funds from the end of fiscal year 2009 to the end of fiscal year 2012; and extended the time for reversion of unexpended or unencumbered balances from the end of fiscal year 2009 to the end of fiscal year 2012.

Laws 2009, ch. 114, § 5, effective April 6, 2009, authorized the New Mexico finance authority to issue and sell state office building tax revenue bonds to design and build a new executive office building in the main capitol campus in Santa Fe.

Laws 2007, ch. 64, § 4, effective March 29, 2007, amended Laws 2001, ch. 166, § 2 to limit the total amount of bonds outstanding to not more than $100,000,000; deleted the provision for the sale of bonds for purposes specified in Laws 2001, ch. 166, §1; and appropriated $350,000 to the legislative council service for master planning for state facilities.

**The 2005 amendment,** effective June 17, 2005, provided in Subsection A that the finance authority may sell bonds to acquire related facilities and other critical facilities located within the master planning jurisdiction of the capitol buildings planning commission and provided in Subsection B that net proceeds from bonds are appropriated to acquire related facilities and other critical facilities located within the master planning jurisdiction of the capitol buildings planning commission.

**The 2004 amendment,** effective May 19, 2004, deleted Subsection B, redesignated Subsection C as Subsection B, amended Subsection B to delete "state office" preceding "building" and "tax revenue" preceding "bonds" and deleted Subsection D.

**The 2003 amendment,** effective June 20, 2003, substituted "State Building Bonding Act" for "State Office Building Acquisition Bonding Act" in the section heading and Subsection A; redesignated former Subsection B as present Subsection C and added Subsections B and D.

## 6-21C-5. State building bonding fund created; money in the fund pledged.

A. The "state building bonding fund" is created as a special fund within the New Mexico finance authority. The fund shall be administered by the New Mexico finance authority as a special account. The fund shall consist of money appropriated and transferred to the fund and gross receipts tax revenues distributed to the fund by law. Earnings of the fund shall be credited to the fund. Balances in the fund at the end of any fiscal year shall remain in the fund, except as provided in this section.

B. Money in the state building bonding fund is pledged for the payment of principal and interest on all building bonds issued pursuant to the State Building Bonding Act. Money in the fund is appropriated:

(1) to the New Mexico finance authority for the purpose of paying debt service, including redemption premiums, on the building bonds and the expenses incurred in the issuance, payment and administration of the bonds; and

(2) if specifically authorized in the law authorizing the acquisition of a building, to the facilities management division of the general services department for expenditures for required maintenance and repairs of that building but only if the authority determines that money in the fund is sufficient to meet the requirements of Paragraph (1) of this subsection.

C. On the last day of January and July of each year, the New Mexico finance authority shall estimate the amount needed to make debt service and other payments during the next twelve months from the state building bonding fund on the building bonds issued pursuant to the State Building Bonding Act plus the amount that may be needed for any required reserves and, if specifically authorized in the law authorizing the acquisition of a building, the amount that may be needed for required maintenance and repairs of that building. The New Mexico finance authority shall transfer to the general fund any balance in the state building bonding fund above the estimated amounts.

D. Any balance remaining in the state building bonding fund shall be transferred to the general fund upon certification by the New Mexico finance authority that:

(1) the director of the facilities management division of the general services department and the New Mexico finance authority have agreed that the building bonds issued pursuant to the State Building Bonding Act have been retired, that no additional

obligations of the state building bonding fund exist and that no additional expenditures from the fund are necessary; or

(2) a court of jurisdiction has ruled that the building bonds have been retired, that no additional obligations of the state building bonding fund exist and that no additional expenditures from the fund are necessary.

E. The building bonds issued pursuant to the State Building Bonding Act shall be payable solely from the state building bonding fund or, with the approval of the bondholders, such other special funds as may be provided by law and do not create an obligation or indebtedness of the state within the meaning of any constitutional provision. No breach of any contractual obligation incurred pursuant to that act shall impose a pecuniary liability or a charge upon the general credit or taxing power of the state, and the bonds are not general obligations for which the state's full faith and credit is pledged.

F. The state does hereby pledge that the state building bonding fund shall be used only for the purposes specified in this section and pledged first to pay the debt service on the building bonds issued pursuant to the State Building Bonding Act. The state further pledges that any law authorizing the distribution of taxes or other revenues to the state building bonding fund or authorizing expenditures from the fund shall not be amended or repealed or otherwise modified so as to impair the bonds to which the state building bonding fund is dedicated as provided in this section.

**History:** Laws 2001, ch. 199, § 5; 2003, ch. 371, § 4; 2004, ch. 123, § 4; 2009, ch. 114, § 2; 2013, ch. 115, § 3.

## ANNOTATIONS

**Cross references.** — For the New Mexico finance authority, *see* 6-21-1 NMSA 1978.

**The 2013 amendment,** effective June 14, 2013, changed the name of the property control division of the general services department to the facilities management division; and in Paragraph (2) of Subsection B and Paragraph (1) of Subsection D, deleted "property control" and added "facilities management" before "division".

**The 2009 amendment,** effective April 6, 2009, added Subsection B(2) and in Subsection C, in the first sentence, after "required reserves", added the remainder of the sentence.

**The 2004 amendment,** effective May 19, 2004, amended Subsection D(1) to delete "in the case of state office building tax revenue bonds, and the state cultural affairs officer, in the case of state museum tax revenue bonds".

**The 2003 amendment,** effective June 20, 2003, substituted "state building bonding fund" for "state office building bonding fund" in the section heading and throughout the

section; substituted "building bonds" for "state office building tax revenue bonds" throughout the section; substituted "State Building Bonding Act" for "State Office Building Acquisition Bonding Act" throughout the section; and inserted "in the case of state office building tax revenue bonds, and the state cultural affairs officer, in the case of state museum tax revenue bonds" in Subsection D(1).

## 6-21C-6. Authority to refund bonds.

The New Mexico finance authority may issue and sell at public or private sale building bonds to refund outstanding building bonds by exchange, immediate or prospective redemption, cancellation or escrow, including the escrow of debt service funds accumulated for payment of outstanding bonds, or any combination thereof, when, in its opinion, such action will be beneficial to the state.

**History:** Laws 2001, ch. 199, § 6; 2003, ch. 371, § 5.

**ANNOTATIONS**

**Cross references.** — For the New Mexico finance authority, *see* 6-21-1 NMSA 1978.

**The 2003 amendment,** effective June 20, 2003, substituted "building bonds" for "state office building tax revenue bonds".

## 6-21C-7. Building bonds; form; execution.

A. The New Mexico finance authority, except as otherwise specifically provided in the State Building Bonding Act, shall determine at its discretion the terms, covenants and conditions of building bonds, including, but not limited to, date of issue, denominations, maturities, rate or rates of interest, call features, call premiums, registration, refundability and other covenants covering the general and technical aspects of the issuance of the bonds.

B. The building bonds shall be in such form as the New Mexico finance authority may determine, and successive issues shall be identified by alphabetical, numerical or other proper series designation.

C. Building bonds shall be signed and attested by the secretary of the New Mexico finance authority and shall be executed with the facsimile signature of the chairman of the New Mexico finance authority and the facsimile seal of the New Mexico finance authority, except for bonds issued in book entry or similar form without the delivery of physical securities. Any interest coupons attached to the bonds shall bear the facsimile signature of the secretary of the New Mexico finance authority, which officer, by the execution of the bonds, shall adopt as his own signature the facsimile thereof appearing on the coupons. Except for bonds issued in book entry or similar form without the delivery of physical securities, the Uniform Facsimile Signature of Public Officials Act [6-

9-1 to 6-9-6 NMSA 1978] shall apply, and the New Mexico finance authority shall determine the manual signature to be affixed on the bonds.

**History:** Laws 2001, ch. 199, § 7; 2003, ch. 371, § 6.

**ANNOTATIONS**

**Cross references.** — For the New Mexico finance authority, *see* 6-21-1 NMSA 1978.

**The 2003 amendment,** effective June 20, 2003, substituted "building bonds" for "state office building tax revenue bonds" in the section heading and throughout the section.

**Temporary provisions.** — Laws 2003, ch. 371, § 12, provided that nothing in the act shall be deemed to impair state office building tax revenue bonds outstanding on June 20, 2003; the State Office Building Acquisition Bonding Act and the State Building Bonding Act are the same act; the state office building bonding fund and the state building bonding fund are the same fund.

## 6-21C-8. Procedure for sale of building bonds.

A. Building bonds shall be sold by the New Mexico finance authority at such times and in such manner as the authority may elect, consistent with the need of the facilities management division of the general services department, either at private sale for a negotiated price or to the highest bidder at public sale for cash at not less than par and accrued interest.

B. In connection with any public sale of building bonds, the New Mexico finance authority shall publish a notice of the time and place of sale in a newspaper of general circulation in the state and also in a recognized financial journal outside the state. Such publication shall be made once each week for two consecutive weeks prior to the date fixed for such sale, the last publication to be two business days prior to the date of sale. Such notice shall specify the amount, denomination, maturity and description of the bonds to be offered for sale and the place, day and hour at which sealed bids therefor shall be received. All bids, except that of the state, shall be accompanied by a deposit of two percent of the principal amount of the bonds. Deposits of unsuccessful bidders shall be returned upon rejection of the bid. At the time and place specified in such notice, the New Mexico finance authority shall open the bids in public and shall award the bonds, or any part thereof, to the bidder or bidders offering the best price. The New Mexico finance authority may reject any or all bids and readvertise.

C. The New Mexico finance authority may sell a building bond issue, or any part thereof, to the state or to one or more investment bankers or institutional investors at private sale.

**History:** Laws 2001, ch. 199, § 8; 2003, ch. 371, § 7; 2004, ch. 123, § 5; 2013, ch. 115, § 4.

**ANNOTATIONS**

**Cross references.** — For the New Mexico finance authority, *see* 6-21-1 NMSA 1978.

**The 2013 amendment,** effective June 14, 2013, changed the name of the property control division of the general services department to the facilities management division; and in Subsection A, deleted "property control" and added "facilities management" before "division".

**The 2004 amendment,** effective May 19, 2004, amended Subsection A to delete "or the office of cultural affairs" following "general services department".

**The 2003 amendment,** effective June 20, 2003, inserted "building" in the section heading; substituted "building bonds" for "state office building tax revenue bonds" throughout the section; and inserted "or the office of cultural affairs" following "general services department" in Subsection A.

## 6-21C-9. State Building Bonding Act is full authority for issuance of bonds; bonds are legal investments.

A. The State Building Bonding Act shall, without reference to any other act of the legislature, be full authority for the issuance and sale of building bonds, which bonds shall have all the qualities of investment securities under the Uniform Commercial Code [Chapter 55 NMSA 1978] and shall not be invalid for any irregularity or defect or be contestable in the hands of bona fide purchasers or holders thereof for value.

B. Building bonds are legal investments for any person or board charged with the investment of any public funds and are acceptable as security for any deposit of public money.

**History:** Laws 2001, ch. 199, § 9; 2003, ch. 371, § 8.

**ANNOTATIONS**

**The 2003 amendment,** effective June 20, 2003, substituted "State Building Bonding Act" for "State Office Building Acquisition Bonding Act" in the section heading and in Subsection A; and substituted "building bonds" for "state office building tax revenue bonds" throughout the section.

**Temporary provisions.** — Laws 2003, ch. 371, § 12, provided that nothing in the act shall be deemed to impair state office building tax revenue bonds outstanding on June 20, 2003; the State Office Building Acquisition Bonding Act and the State Building Bonding Act are the same act; the state office building bonding fund and the state building bonding fund are the same fund.

## 6-21C-10. Suit may be brought to compel performance of officers.

Any holder of building bonds or any person or officer being a party in interest may sue to enforce and compel the performance of the provisions of the State Building Bonding Act.

**History:** Laws 2001, ch. 199, § 10; 2003, ch. 371, § 9.

**ANNOTATIONS**

**The 2003 amendment,** effective June 20, 2003, substituted "building bonds" for "state office building tax revenue bonds" and substituted "State Building Bonding Act" for "State Office Building Acquisition Bonding Act".

## 6-21C-11. Building bonds tax exempt.

All building bonds shall be exempt from taxation by the state or any of its political subdivisions.

**History:** Laws 2001, ch. 199, § 11; 2003, ch. 371, § 10.

**ANNOTATIONS**

**The 2003 amendment,** effective June 20, 2003, substituted "All building bonds" for "All state office building bonds".

# ARTICLE 21D
# Energy Efficiency and Renewable Energy Bonding Act

## 6-21D-1. Short title.

Chapter 6, Article 21D NMSA 1978 may be cited as the "Energy Efficiency and Renewable Energy Bonding Act".

**History:** Laws 2005, ch. 176, § 1; 2007, ch. 171, § 1.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, changed the statutory reference to the act.

## 6-21D-2. Definitions.

As used in the Energy Efficiency and Renewable Energy Bonding Act:

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

B. "bonds" means energy efficiency bonds;

C. "department" means the energy, minerals and natural resources department;

D. "energy efficiency measure" means a modification or improvement to a building or complex of buildings that is designed to reduce energy consumption or operating costs or that provides a renewable energy source and may include:

(1) insulation of the building structure or systems within the building;

(2) storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, additional glazing, reductions in glass area or other window and door system modifications that reduce energy consumption;

(3) automated or computerized energy control systems;

(4) heating, ventilating or air conditioning system modifications or replacements;

(5) replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system;

(6) energy recovery systems;

(7) on-site photovoltaics, solar heating and cooling systems or other renewable energy systems; or

(8) cogeneration or combined heat and power systems that produce steam, chilled water or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

E. "fund" means the energy efficiency and renewable energy bonding fund;

F. "school district" means a political subdivision of the state established for the administration of public schools, segregated geographically for taxation and bonding purposes and governed by the Public School Code [Chapter 22 NMSA 1978, except Article 5A];

G. "school district building" means a building, the title to which is held by a school district; and

H. "state building" means a building, the title to which is held by the state or an agency of the state.

**History:** Laws 2005, ch. 176, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 176, § 13 made the act effective July 1, 2005.

## 6-21D-3. Building assessments for energy efficiency measures.

A. Upon the request of a state agency or a school district, the department may perform an energy efficiency assessment of a state or school district building to identify the energy efficiency measures that can be installed and operated at a total price that is less than the energy cost savings realized. In addition, the assessment shall include a schedule for funding and installing the energy efficiency measures that will realize significant energy cost savings in the shortest time frame. The department shall develop the assessment of:

(1) state buildings, in conjunction with the facilities management division of the general services department, the staff architect of the division, the capitol buildings planning commission and other state agencies with control and management over buildings; and

(2) school district buildings, in conjunction with the public education department, the public school capital outlay council and the public school facilities authority.

B. State agencies and school districts shall cooperate with the department in the assessment performed pursuant to Subsection A of this section.

**History:** Laws 2005, ch. 176, § 3; 2007, ch. 171, § 2; 2013, ch. 115, § 5.

**ANNOTATIONS**

**The 2013 amendment,** effective June 14, 2013, changed the name of the property control division of the general services department to the facilities management division; and in Paragraph (1) of Subsection A, deleted "property control" and added "facilities management" before "division".

**The 2007 amendment,** effective June 15, 2007, eliminated the requirement for a state plan and provides for energy efficiency assessments of state and school district buildings.

## 6-21D-4. Contracts for the installation of energy efficiency measures.

Pursuant to an energy efficiency assessment performed under Section 6-21D-3 NMSA 1978 and with the approval of the department, a state agency or school district may install or enter into contracts for the installation of energy efficiency measures on the building identified in the assessment. An installation contract shall be entered into

pursuant to the Procurement Code [13-1-28 to 13-1-199 NMSA 1978], except that the contract may be entered into for a term of up to ten years. The installation or contracts shall address provisions concerning payment schedules, monitoring, inspecting, measuring and warranties as are necessary to ensure that the energy efficiency measures will be installed and the energy cost savings realized in the manner most beneficial to the state; provided that bonds shall not be issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act without a finding by the department that the energy cost savings realized from the energy efficiency measures will be greater than the debt service due on the bonds issued to finance the energy efficiency measures.

**History:** Laws 2005, ch. 176, § 4; 2007, ch. 171, § 3.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, authorized state agencies and school districts, pursuant to an energy efficiency assessment, to enter into contracts pursuant to the Procurement Code for terms up to ten years for the installation of energy efficient measures.

## 6-21D-5. Energy efficiency and renewable energy bonding fund; pledge of money in the fund.

A. The "energy efficiency and renewable energy bonding fund" is created as a special fund within the authority. The fund shall be administered by the authority as a special account. The fund shall consist of gross receipts tax revenues distributed to the fund by law, money transferred to the fund pursuant to the provisions of the Energy Efficiency and Renewable Energy Bonding Act and other transfers and appropriations made to the fund. Earnings of the fund shall be credited to the fund. Any unexpended or unencumbered balance in the energy efficiency and renewable energy bonding fund shall revert to the general fund at the end of a fiscal year.

B. Money in the fund shall be pledged irrevocably by the authority for the payment of principal and interest on all bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act. Money in the fund is appropriated to the authority for the purpose of paying debt service, including redemption premiums, on the bonds and the expenses incurred in the issuance, payment and administration of the bonds.

C. On the last day of January and July of each year, the authority shall estimate the amount needed to make debt service payments on the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act plus the amount that may be needed for any required reserves, administrative expenses or the obligations coming due during the next twelve months from the fund. Amounts that revert to the general fund from the energy efficiency and renewable energy bonding fund may be appropriated by the legislature to the department for the purposes of carrying out the provisions of the Energy Efficiency and Renewable Energy Bonding Act.

D. Upon payment or defeasance of all principal, interest and other expenses or obligations related to the bonds, the authority shall certify to the public education department, the department of finance and administration and the secretary of taxation and revenue that all obligations for the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act have been discharged and shall direct that distributions cease to the fund pursuant to that act and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

E. The bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act shall be payable solely from the fund or such other special funds as may be provided by law and do not create an obligation or indebtedness of the state within the meaning of any constitutional provision. A breach of any contractual obligation incurred pursuant to that act shall not impose a pecuniary liability or a charge upon the general credit or taxing power of the state, and the bonds are not general obligations for which the state's full faith and credit is pledged.

F. The state does hereby pledge that the fund shall be used only for the purposes specified in this section and pledged first to pay the debt service on the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act. The state further pledges that any law authorizing the distribution of taxes or other revenues to the fund or authorizing expenditures from the fund shall not be amended or repealed or otherwise modified so as to impair the bonds to which the fund is dedicated as provided in this section.

**History:** Laws 2005, ch. 176, § 5.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 176, § 13 made the act effective July 1, 2005.

## 6-21D-6. Calculation of cost savings; transfers to energy efficiency and renewable energy bonding fund.

A. Upon the installation of energy efficiency measures in a state building or school district building, the department shall calculate the estimated energy cost savings, in the form of lower utility payments by the school district or the state, that will be annually realized as a result of the installation of the energy efficiency measures. The department shall certify the estimate to the department of finance and administration and the general services department or other state agency with jurisdiction, in the case of state buildings, and to the department of finance and administration, the public education department and the school district, in the case of school district buildings.

B. In the case of a school district building, when calculating the state equalization guarantee distribution pursuant to Section 22-8-25 NMSA 1978, the public education department shall deduct ninety percent of the amount certified for the school district by the department.

C. Reduction of a school district's state equalization guarantee distribution shall cease when the school district's cumulative reductions equal its proportional share of the cumulative debt service payments necessary to service the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act.

D. Prior to June 30 of each year, the total amount deducted for all school districts pursuant to Subsection B of this section shall be transferred to the fund.

E. In the case of a state building, the department of finance and administration shall deduct from the operating budget of the agency responsible for paying the utilities of the state building ninety percent of the amount certified for the agency by the department.

F. Deduction from the operating budget of the agency responsible for paying the utilities of the state building shall cease when the agency's cumulative deductions equal its proportional share of the cumulative debt service payments necessary to service the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act.

G. Prior to June 30 of each year, the total amount deducted for all agencies and all state buildings pursuant to Subsection D of this section shall be transferred from the appropriate funds to the energy efficiency and renewable energy bonding fund.

**History:** Laws 2005, ch. 176, § 6.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 176, § 13 made the act effective July 1, 2005.

## 6-21D-6.1. Energy efficiency assessment revolving fund.

The "energy efficiency assessment revolving fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests made to the fund and reimbursements of costs incurred by the department in performing energy efficiency assessments pursuant to the Energy Efficiency and Renewable Energy Bonding Act. Income from the fund shall be credited to the fund, and money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year. Money in the fund is appropriated to the department for the purposes of performing energy efficiency assessments. Expenditures from the fund shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of energy, minerals and natural resources.

**History:** Laws 2007, ch. 171, § 6.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 171 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## 6-21D-7. Energy efficiency bonds authorized; conditions; procedure.

A. The authority is authorized to issue and sell from time to time revenue bonds, known as "energy efficiency bonds", in an amount outstanding at any one time not to exceed twenty million dollars ($20,000,000), payable solely from the fund, in compliance with the Energy Efficiency and Renewable Energy Bonding Act and the New Mexico Finance Authority Act [Chapter 6, Article 21 NMSA 1978] for the purpose of installing energy efficiency measures when the department has certified the need for the bonds and the conditions of Subsection C of this section have been satisfied.

B. The net proceeds from the bonds are appropriated to the authority for the purpose of making distributions to one or more state agencies or school districts that, pursuant to an energy efficiency assessment by the department, have committed to install energy efficiency measures or entered into contracts for the installation of the measures. Upon receipt of a distribution, the state agency or school district shall deposit into the energy efficiency assessment revolving fund the cost incurred by the department to make the energy efficiency assessment on the building and shall use the remainder for the installation of energy efficiency measures pursuant to the Energy Efficiency and Renewable Energy Bonding Act, provided that, after the installation of the energy efficiency measures, any unexpended balance of the bond proceeds shall revert to the energy efficiency and renewable energy bonding fund.

C. Bonds shall not be issued pursuant to this section unless:

(1) a state agency or school district has committed to install or has entered into one or more contracts pursuant to Section 6-21D-4 NMSA 1978 for the installation of energy efficiency measures and the department has certified that the resulting energy cost savings will be realized within a reasonable time;

(2) considering the timeliness and amount of energy cost savings estimated to be realized from the energy efficiency measures, the department has certified the approximate date when the energy cost savings are most likely to equal or exceed the debt service due on the bonds to be issued to fund the energy efficiency measures;

(3) the life of energy efficiency measures meets or exceeds the life of the bonds allocable to those energy efficiency measures as determined by the department and the authority; and

(4) based on the department's certification, the debt service on the bonds has been structured by the authority to preclude the annual debt service payments due until the date that the cost savings equal or exceed the debt service.

D. Each series of bonds shall be issued pursuant to the provisions of the New Mexico Finance Authority Act, except as otherwise provided in the Energy Efficiency and Renewable Energy Bonding Act.

**History:** Laws 2005, ch. 176, § 7; 2007, ch. 171, § 4.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, provided for distributions to state agencies and school districts that, pursuant to an energy efficiency assessment, have committed to or entered into a contract to install energy efficiency measures.

## 6-21D-8. Energy Efficiency and Renewable Energy Bonding Act is full authority for issuance of bonds; bonds are legal investments.

A. The Energy Efficiency and Renewable Energy Bonding Act and the New Mexico Finance Authority Act [Chapter 6, Article 21 NMSA 1978] shall, without reference to any other act of the legislature, be full authority for the issuance and sale of energy efficiency bonds, which bonds shall have all the qualities of investment securities under the Uniform Commercial Code [Chapter 55 NMSA 1978] and shall not be invalid for any irregularity or defect or be contestable in the hands of bona fide purchasers or holders thereof for value.

B. Energy efficiency bonds are legal investments for any person or board charged with the investment of any public funds and are acceptable as security for any deposit of public money.

**History:** Laws 2005, ch. 176, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 176, § 13 made the act effective July 1, 2005.

## 6-21D-9. Bonds tax exempt.

All energy efficiency bonds shall be exempt from taxation by the state or any of its political subdivisions.

**History:** Laws 2005, ch. 176, § 9.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 176, § 13 made the act effective July 1, 2005.

## 6-21D-10. Annual report required.

No later than December 1 of each year, the department shall report to the legislature and to the governor on its activities during the previous fiscal year in administering the provisions of the Energy Efficiency and Renewable Energy Bonding Act. The report shall include:

A. details concerning all payments made for the installation of energy efficiency measures;

B. details concerning all expenditures made in administering the provisions of the Energy Efficiency and Renewable Energy Bonding Act;

C. a list of all buildings on which an energy efficiency assessment has been performed and the buildings in which energy efficiency measures were installed;

D. details showing how the energy cost savings were calculated;

E. an analysis of whether the program has been cost-effective;

F. a summary of activities being conducted during the present fiscal year; and

G. any additional information that will assist the legislature and the governor in evaluating the program.

**History:** Laws 2005, ch. 176, § 10; 2007, ch. 171, § 5.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, eliminated the report showing progress in complying with the state plan and required a list of buildings on which an energy efficiency assessment has been performed.

# ARTICLE 21E
# Energy Conservation Bonds

## 6-21E-1. Qualified energy conservation bonds; allocation; issuance.

A. As used in this section:

(1) "board" means the state board of finance;

(2) "federal act" means Section 54D of the federal Internal Revenue Code and includes federal rules and guidelines adopted to carry out the provisions of that section;

(3) "large local government" means:

(a) a municipality or county with a population greater than one hundred thousand, as determined pursuant to the provisions of the federal act; or

(b) an Indian tribal government;

(4) "qualified conservation purpose" means:

(a) capital expenditures incurred for purposes of: 1) reducing energy consumption in publicly owned buildings by at least twenty percent; 2) implementing green community programs, including the use of loans, grants or other repayment mechanisms to implement the programs; 3) rural development involving the production of electricity from renewable energy resources; or 4) any qualified facility, as determined under Section 45 (d) of the federal Internal Revenue Code without regard to Paragraphs (8) and (10) of that subsection and without regard to any placed in service date;

(b) expenditures with respect to research facilities and research grants to support research in: 1) development of cellulosic ethanol or other nonfossil fuels; 2) technologies for the capture and sequestration of carbon dioxide produced through the use of fossil fuel; 3) increasing the efficiency of existing technologies for producing nonfossil fuels; 4) automobile battery technologies and other technologies to reduce fossil fuel consumption in transportation; or 5) technologies to reduce energy use in buildings;

(c) mass commuting facilities and related facilities that reduce the consumption of energy, including expenditures to reduce pollution from vehicles used for mass commuting;

(d) demonstration projects designed to promote the commercialization of: 1) green building technology; 2) conversion of agricultural waste for use in the production of fuel or otherwise; 3) advanced battery manufacturing technologies; 4) technologies to reduce peak use of electricity; or 5) technologies for the capture and sequestration of carbon dioxide emitted from combusting fossil fuels in order to produce electricity; or

(e) public education campaigns to promote energy efficiency;

(5) "qualified energy conservation bond" means a bond of a qualified issuer, the net proceeds from the sale of which are used exclusively for qualified conservation purposes and that meets all of the other requirements of the federal act for a qualified energy conservation bond;

(6) "qualified issuer" means the state, a county, a municipality or an Indian tribal government;

(7) "remaining allocation" means the state allocation:

(a) less the amounts required by the federal act to be allocated to large local governments; and

(b) plus any amount not used by a large local government and reallocated by that large local government to the state; and

(8) "state allocation" means the maximum amount of qualified energy conservation bonds that may be issued by qualified issuers in New Mexico pursuant to the federal act.

B. The board shall determine the amount of the state allocation that is required by the federal act to be allocated to each large local government. The aggregate face amount of all qualified energy conservation bonds issued by a large local government shall not exceed the required allocated amount determined for that large local government unless the large local government applies for and receives an additional allocation pursuant to Subsection D of this section.

C. Excluding qualified energy conservation bonds issued by large local governments from their allocation required by the federal act, the aggregate face amount of all qualified energy conservation bonds issued by qualified issuers shall not exceed the remaining allocation. The board is the state agency responsible for ensuring compliance with the limitation of this subsection and for ensuring compliance with the provisions of the federal act.

D. If a qualified issuer that has been authorized to issue bonds, or is in the process of obtaining authorization to issue bonds, desires to designate all or any portion of the bonds as qualified energy conservation bonds, unless exempted pursuant to Subsection E of this section, it shall submit an application to the board for an allocation distribution. The board shall, by rule, establish deadlines for receiving applications from qualified issuers desiring to designate bonds as qualified energy conservation bonds and deadlines for issuing bonds that have been allocated by the board. The application shall include:

(1) evidence that the requirements of the federal act have been satisfied; and

(2) such other information as is required by rule of the board.

E. A large local government for which an allocation is required by the federal act shall be exempt from the application requirement to the extent that the amount of qualified energy conservation bonds to be issued by that large local government does not exceed the required allocation.

F. In the event that the face amount of all proposed qualified energy conservation bonds in valid, timely submitted applications exceeds the remaining allocation, the board shall decide how the remaining allocation shall be distributed to applicants by considering:

(1) the dates anticipated for the initial expenditure of bond proceeds and for completion of the project;

(2) the percent of the bond proceeds that are likely to be expended within three years of the date of the issuance of the bonds;

(3) whether the bond proceeds, together with all other money available for the project, are sufficient to complete the project; and

(4) such other criteria as deemed by rule of the board to be relevant.

G. If the remaining allocation exceeds the total amount of qualified energy conservation bonds allocated to applicants and issued within the time frame required by the board, the excess shall revert to the board and, together with any unused amount reallocated by a large local government to the state, shall be carried forward and included in another application cycle pursuant to this section, if determined by the board to be necessary.

**History:** Laws 2013, ch. 46, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 46 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

# ARTICLE 22
# State Aid Interception

## 6-22-1. Short title.

Sections 1 through 3 [6-22-1 to 6-22-3 NMSA 1978] of this act may be cited as the "State Aid Intercept Act".

**History:** Laws 1992, ch. 105, § 1.

## 6-22-2. Definitions.

As used in the State Aid Intercept Act:

A. "default" means the actual nonpayment of principal or interest on a local revenue bond when payment is scheduled by the indenture relating the local revenue bond;

B. "local government" means a municipality or county;

C. "local revenue bond" means a bond issued after July 1, 1992 pursuant to Sections 3-33-1 through 3-33-43 NMSA 1978 or Chapter 4, Article 62 NMSA 1978;

D. "qualified local revenue bond" means a local revenue bond for which a state distributions intercept authorization has been granted pursuant to this section;

E. "secretary" means the secretary of finance and administration; and

F. "state distributions" means any or all of the funds distributed to local governments pursuant to Sections 7-1-6.4 and 7-1-6.9 NMSA 1978.

**History:** Laws 1992, ch. 105, § 2; 2017, ch. 63, § 3.

**ANNOTATIONS**

**The 2017 amendment,** effective June 16, 2017, in Subsection F, after "pursuant to", deleted "Section" and added "Sections", after "7-1-6.4", added "and", and after "7-1-6.9", deleted "and Subsection B of Section 7-1-6.11".

## 6-22-3. Local revenue bonds; interception of state distributions to make debt service payments; notice.

A. A local government may receive a state distributions intercept authorization for any local revenue bond as provided in this section. If a local government provides notice prior to default on any interest or principal payment of a local revenue bond qualified for a state distributions intercept authorization, the payment necessary to prevent the default shall be paid from intercepted state distributions as provided in this section.

B. To receive a state distributions intercept authorization for a local revenue bond, the local government shall apply to the secretary for the authorization prior to the submission of preliminary and final documentation for the issuance of the bonds. In determining whether to grant a state distributions intercept authorization, the secretary shall consider such factors as the need for the bond-financed project, the proposed repayment schedule for the local revenue bonds and the general creditworthiness of the local government. Upon a grant of a state distributions intercept authorization by the secretary, the local revenue bonds shall be deemed to be qualified local revenue bonds pursuant to the provisions of this section.

C. Upon a finding by a local government treasurer or other officer designated by bond resolution that the local government will default on any interest or principal payment due on outstanding qualified local revenue bonds, the local government shall submit an affidavit to the secretary no later than sixty days before the payment due date. The affidavit shall be deemed actual notice to the secretary and shall report and verify calculations demonstrating that the local government will be unable or has reason to believe that it will be unable to make any scheduled payment of principal or interest when the payment is due on the qualified local revenue bonds.

D. Upon receipt of notice pursuant to this section, the secretary shall conduct an immediate investigation and review of the possible default. Upon verification of the facts in the affidavit and any other material elements of the notice, the secretary shall direct the secretary of taxation and revenue to intercept the state distributions to the local government that issued the qualified local revenue bonds and withhold the amount necessary to avoid the possible default by making the scheduled payment of interest or principal due on the qualified local revenue bonds. The secretary of taxation and revenue shall transfer that amount to the local government treasurer or other person designated as responsible for payment of debt service on the qualified local revenue bonds.

E. Any local government granted a state distributions intercept authorization for local revenue bonds pursuant to this section shall covenant with the secretary to review its sinking fund balances at least ninety days prior to any scheduled payment date for the qualified local revenue bonds. The local government may include this covenant and the state distributions intercept authorization in any documents, publications or transcripts relating to the qualified local revenue bonds. The local government shall also report quarterly to the secretary the amounts held as debt service reserve funds for the qualified local revenue bonds and their usage, if any. The report shall also specify the amounts of each of its state distributions that are pledged to secure obligations of the local government.

**History:** Laws 1992, ch. 105, § 3.

# ARTICLE 23
# Public Facility Energy Efficiency

## 6-23-1. Short title.

Chapter 6, Article 23 NMSA 1978 may be cited as the "Public Facility Energy Efficiency and Water Conservation Act".

**History:** Laws 1993, ch. 231, § 1; 1997, ch. 42, § 1; 2001, ch. 247, § 1.

**ANNOTATIONS**

**The 2001 amendment,** effective June 15, 2001, substituted "Facility" for "Building".

**The 1997 amendment,** effective June 20, 1997, substituted "Chapter 6, Article 23 NMSA 1978" for "Sections 1 through 10 of this act" and inserted "and Water Conservation".

## 6-23-2. Definitions.

As used in the Public Facility Energy Efficiency and Water Conservation Act:

A. "conservation-related cost savings" means cost savings, other than utility cost savings, in the operating budget of a governmental unit that are a direct result of energy or water conservation measures implemented pursuant to a guaranteed utility savings contract;

B. "energy conservation measure" means a training program or a modification to a facility, including buildings, systems or vehicles, that is designed to reduce energy consumption or conservation-related operating costs and may include:

(1) insulation of the building structure or systems within the building;

(2) storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area or other window and door system modifications that reduce energy consumption;

(3) automated or computerized energy control systems;

(4) heating, ventilating or air conditioning system modifications or replacements;

(5) replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code or nationally accepted standards for the lighting system after the proposed modifications are made;

(6) energy recovery systems;

(7) solar energy generating or heating and cooling systems or other renewable energy systems;

(8) cogeneration or combined heat and power systems that produce steam, chilled water or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

(9) energy conservation measures that provide long-term operating cost reductions;

(10) maintenance and operation management systems that provide long-term operating cost reductions;

(11) traffic control systems; or

(12) alternative fuel options or accessories for vehicles;

C. "governmental unit" means an agency, political subdivision, institution or instrumentality of the state, including two- and four-year institutions of higher education, a municipality, a county or a school district;

D. "guaranteed utility savings contract" means a contract for the evaluation and recommendation of energy or water conservation measures and for the implementation of one or more of those measures, and which contract provides that all payments, except obligations on termination of the contract before its expiration, are to be made over time and the savings are guaranteed to the extent necessary to make the payments for the conservation measures;

E. "qualified provider" means a person experienced in the design, implementation and installation of energy or water conservation measures and who meets the experience qualifications developed by the energy, minerals and natural resources department for energy conservation measures or the office of the state engineer for water conservation measures;

F. "utility cost savings" means the amounts saved by a governmental unit in the purchase of energy or water that are a direct result of energy or water conservation measures implemented pursuant to a guaranteed utility savings contract; and

G. "water conservation measures" means a training program, change in maintenance practices or facility or landscape alteration designed to reduce water consumption or conservation-related operating costs.

**History:** Laws 1993, ch. 231, § 2; 1997, ch. 42, § 2; 2001, ch. 247, § 2; 2009, ch. 138, § 1.

**ANNOTATIONS**

**The 2009 amendment,** effective July 1, 2009, in Subsection B(7), after "solar", added "energy generating or".

**The 2001 amendment,** effective June 15, 2001, substituted "Facility" for "Building" in the introductory language; added Subsections A and F and redesignated the remaining subsections accordingly; in Subsection B, substituted "a modification to a facility, including buildings, systems or vehicles that is" for "facility alteration" in the introductory paragraph, inserted "or nationally accepted standards" in Paragraph (5); in Paragraph (8) inserted "or combined heat and power" and "chilled water", and added Paragraphs (10), (11) and (12); substituted "payments for the conservation measures" for "payments for the energy or water conservation measures, or both" in Subsection D; and in Subsection E, deleted "or business" following "a person" and deleted "or both" following "conservation measures".

**The 1997 amendment,** effective June 20, 1997, inserted "and Water Conservation" in the introductory language; inserted "conservation-related" in the introductory language

of Subsection A; inserted "including two- and four- year institutions of higher education" in Subsection B; in Subsection C, substituted "utility" for "energy", inserted "or water" in two places, and inserted "or both," in two places; in Subsection D, inserted "or water", inserted "or both," and added the language beginning "for energy conservation" at the end of the subsection; and added Subsection E.

## 6-23-3. Guaranteed utility savings contracts authorized; energy or water savings guarantee required.

A. A governmental unit may enter into a guaranteed utility savings contract with a qualified provider to reduce energy, water or conservation-related operating costs if, after review of the utility efficiency proposal from the qualified provider, the governmental unit finds that:

(1) the amount the governmental unit would spend on the energy or water conservation measures recommended in the proposal is not likely to exceed the cumulative amount of utility cost savings and conservation-related cost savings of all energy or water conservation measures in the proposal over twenty-five years or over a period not to exceed the expected useful life of the most durable measure in the proposal, whichever period of time is less, from the date of installation if the recommendations in the proposal were followed. The normal periodic repair and replacement of components of an energy or water conservation measure that are required after the measure is installed or completed shall not be considered in the amount a governmental unit would spend on the energy or water conservation measure for purposes of this paragraph; and

(2) the qualified provider can provide a written guarantee that the utility cost savings and conservation-related cost savings will meet or exceed the costs of the conservation measures.

B. A guaranteed utility savings contract shall include:

(1) a written guarantee from the qualified provider that annual utility cost savings and conservation-related cost savings shall meet or exceed the cost of the conservation measures; and

(2) a requirement that the qualified provider maintain a direct financial relationship with the governmental unit, irrespective of the source of financing for the energy or water conservation measures to be implemented.

C. A guaranteed utility savings contract may extend beyond the fiscal year in which it becomes effective and may provide for payments over a period of time not to exceed twenty-five years or the expected useful life of the most durable energy or water conservation measure in the contract, whichever period of time is less; provided, however, only utility cost savings, conservation-related cost savings and special funds

authorized pursuant to the Public Facility Energy Efficiency and Water Conservation Act or other law shall be pledged for the payments.

D. A governmental unit may enter into an installment payment contract or lease-purchase agreement for the purchase and installation of energy or water conservation measures pursuant to a guaranteed utility savings contract, but only in accordance with the provisions of the Public Facility Energy Efficiency and Water Conservation Act and Section 13-1-150 NMSA 1978.

E. A governmental unit may enter into a guaranteed utility savings contract pursuant to Section 13-1-129 NMSA 1978 in accordance with the provisions of the Public Facility Energy Efficiency and Water Conservation Act.

**History:** Laws 1993, ch. 231, § 3; 1997, ch. 42, § 3; 1999, ch. 257, § 1; 2001, ch. 247, § 3; 2009, ch. 138, § 2.

## ANNOTATIONS

**The 2009 amendment,** effective July 1, 2009, in Subsection A(1), after "to exceed the" added "cumulative"; added the language between "cost savings" and "from the date of installation", and added the last sentence; in Subsection C, added the language between "not to exceed" and "provided, however"; and in Subsection D, at the end of the sentence, added "and Section 13-1-150 NMSA 1978".

**The 2001 amendment,** effective June 15, 2001, in Subsection A(1), deleted "or both" following "conservation measures" and substituted "of utility cost savings and conservation-related cost savings" for "to be saved in energy and conservation-related operational costs"; in Subsection A(2), substituted "utility cost savings and" for "energy, water or", deleted "operating" following "conservation-related" and substituted "conservation measures" for "system"; added the paragraph designation for Subsection B(1) and inserted "utility cost savings and conservation-related cost" and substituted "conservation measures; and" for "energy or water conservation measures or both"; added Subsection B(2); inserted "utility cost savings, conservation-related cost savings and"; and substituted "Public Facility Energy" for "Public Building Facility" in Subsections C, D and E.

**The 1999 amendment,** effective June 18, 1999, substituted "only" for "such payments shall be made only from", deleted "for that purpose" following "authorized", and inserted "shall be pledged for the payments" in Subsection C, and substituted "Public Building Energy Efficiency and Water Conservation Act" for "Public Building Energy and Water Conservation Efficiency Act" in Subsection E.

**The 1997 amendment,** effective June 20, 1997, substituted "utility" for "energy" throughout the section; inserted "conservation-related" throughout the section; in Subsection A, in the introductory language, inserted "water" and inserted "conservation related", in Subsection A(1), inserted "or water" and inserted "or both," inserted "water"

in Subsection A(2); in Subsection B, inserted "or water" and inserted "or both"; in Subsection C, inserted "however" and inserted "and Water Conservation"; and in Subsection D, inserted "or water", inserted "or both," and inserted "and Water Conservation".

## 6-23-4. Guaranteed utility savings contract; performance guarantee required.

A governmental unit shall not enter into a guaranteed utility savings contract unless a performance guarantee that meets the requirements of this section is delivered by the qualified provider to the governmental unit and that guarantee becomes binding on the parties upon the execution of the guaranteed utility savings contract. The qualified provider shall provide a performance guarantee in the form of a performance bond, a cash bond, a letter of credit issued by a bank with a Moody's or Standard and Poor's rating of "A" or better or any other surety, including insurance, satisfactory to the governmental unit and its approving agency. The guarantee for each year shall be in an amount equal to the amount of the annual guarantee given by the qualified provider in the guaranteed utility savings contract.

**History:** Laws 1993, ch. 231, § 4; 1997, ch. 42, § 4; 2005, ch. 178, § 1.

**ANNOTATIONS**

**The 2005 amendment,** effective June 17, 2005, changed "bond" to "guarantee"; provides that the provider must provide a performance guarantee in the form of a performance bond, a cash bond, a corporate guarantee or any other surety satisfactory to the governmental units and its approving agency; and deletes the former language that required bonds to be issued by a surety company authorized to do business in New Mexico and approved in federal circular 570 or approved by the state board of finance.

**The 1997 amendment,** effective June 20, 1997, substituted "utility" for "energy" throughout the section and in the section heading, and in the first sentence, substituted "A governmental unit shall not" for "No governmental unit shall" and inserted "guaranteed utility savings".

## 6-23-5. Contract approval required.

A. A governmental unit shall not enter into a guaranteed utility savings contract with a qualified provider or any installment payment contract or lease-purchase agreement pursuant to that contract unless the contracts and agreements are reviewed and approved as follows:

(1) for school districts, by the superintendent of public instruction;

(2) for state agencies:

(a) if the facilities, systems or vehicles are owned, leased or otherwise controlled by the general services department, by the secretary of general services; and

(b) if the facilities, systems or vehicles are not owned, leased or otherwise controlled by the general services department, by the executive head of the state agency;

(3) for municipalities and counties, by the governing body of the municipality or county; and

(4) for all post-secondary educational institutions and the state educational institutions confirmed in Article 12, Section 11 of the constitution of New Mexico, by the commission on higher education.

B. The approval required under this section shall be given upon:

(1) a determination that the contracts and agreements comply with the provisions of the Public Facility Energy Efficiency and Water Conservation Act and other applicable law;

(2) certification by the energy, minerals and natural resources department that the qualified provider of energy conservation measures meets the experience requirements set by the department and the guaranteed energy savings from the energy conservation measures proposed appear to be accurately estimated and reasonable; and

(3) certification by the office of the state engineer that the qualified provider of water conservation measures meets the experience requirements set by that office and the guaranteed water savings from the water conservation measures proposed appear to be accurately estimated and reasonable.

**History:** Laws 1993, ch. 231, § 5; 1997, ch. 42, § 5; 1999, ch. 257, § 2; 2001, ch. 247, § 4.

## ANNOTATIONS

**The 2001 amendment,** effective June 15, 2001, in Subsection A(2), deleted "by the secretary of general services" following "for state agencies" and added Subsections A(2)(a) and A(2)(b); substituted "governing body of the municipality or county" for "secretary of finance and administration" in Subsection A(3); and substituted "Public Facility" for "Public Building" in Subsection B(1).

**The 1999 amendment,** effective June 18, 1999, in Subsection A substituted "state agencies" for "agencies, institutions and instrumentalities of the state" in Subsection A(2), added Subsection A(4), and made related stylistic changes.

**The 1997 amendment,** effective June 20, 1997, in the introductory language of Subsection A, substituted "A governmental unit shall not" for "No governmental unit shall" and substituted "utility" for "energy"; in Subsection B(1), inserted "and Water Conservation" and deleted "and" at the end of the paragraph; in Subsection B(2), inserted "of energy conservation measures" and added "and" at the end of the paragraph; and added Subsection B(3).

## 6-23-6. Contracts and agreements not a general obligation of the governmental unit.

Payment obligations of a governmental unit pursuant to a guaranteed utility savings contract with a qualified provider and any installment payment contract or lease-purchase agreement pursuant to a guaranteed utility savings contract are not general obligations of the governmental unit and are collectible only from utility cost savings and conservation-related cost savings appropriated by the legislature and other revenues pledged for that purpose in accordance with the Public Facility Energy Efficiency and Water Conservation Act.

**History:** Laws 1993, ch. 231, § 6; 1997, ch. 42, § 6; 2001, ch. 247, § 5.

**ANNOTATIONS**

**The 2001 amendment,** effective June 15, 2001, inserted "utility cost savings and conservation-related cost savings appropriated by the legislature and other"; and substituted "Public Facility" for "Public Building".

**The 1997 amendment,** effective June 20, 1997, substituted "utility" for "energy" throughout the section and inserted "and Water Conservation".

## 6-23-6.1. Reporting and retention of utility cost savings for state agencies.

A. A state agency entering into a guaranteed utility savings contract with a qualified provider shall, no later than thirty days after the close of the fiscal year, furnish the energy, minerals and natural resources department a consumption and savings report, in a format established jointly by that department and the department of finance and administration, that estimates any cost savings resulting from the implementation of the guaranteed utility savings contract during the fiscal year. The report shall include:

(1) the name or description of each facility or major utility system covered by the report;

(2) utility account numbers;

(3) a record of monthly consumption of water or energy by fuel type; and

(4) a record of monthly per-unit cost of water or energy by fuel type.

B. If the consumption and savings report for a state agency shows a utility cost savings or conservation-related cost savings at the end of the fiscal year that resulted from implementation of a guaranteed utility savings contract and causes an unexpended and unencumbered balance in the agency's utility line item, and if the utility cost savings or conservation-related cost savings has not been pledged for payments pursuant to the guaranteed utility savings contract, the dollar amount of the utility cost savings or conservation-related cost savings shall be carried over as a reserved designated fund balance to the subsequent fiscal year.

C. Beginning the year after the energy or water conservation measures are implemented, and until any alternative financing for a guaranteed utility savings contract is repaid, or for a period of no more than twenty-five years, whichever is less, all utility budgets and appropriations for the state agency shall be based on:

(1) the energy or water consumption levels, or both, before the energy or water conservation measures were implemented;

(2) the same allowance for escalation or decrease of utility costs given state agencies that did not participate in a guaranteed utility savings contract; and

(3) any adjustments for acquisitions, expansions, sale or disposition of state agency facilities.

D. At the end of the repayment period for the guaranteed utility savings contract, or twenty-five years, whichever is less, new budgets or appropriations for utilities shall again be based upon actual utility consumption.

E. Upon carryover of the dollar amount of utility cost savings or conservation-related cost savings as a reserved designated fund balance to the subsequent fiscal year, state agencies may submit a budget adjustment request to use those funds for the following purposes:

(1) up to one hundred percent of the funds may be used for additional energy or water conservation measures or for payment of guaranteed utility savings contracts; and

(2) after encumbrances for additional energy or water conservation measures or for payment of guaranteed utility savings contracts have been made, up to fifty percent of the remaining funds may be used for purposes consistent with the duties and responsibilities assigned to the state agency, while the remaining funds shall revert to the appropriate fund.

F. For the purposes of this section, "state agency" means an agency, institution or instrumentality of the state of New Mexico. "State agency" does not include a municipality, county or school district.

**History:** 1978 Comp., § 6-23-6.1, enacted by Laws 1997, ch. 42, § 7; 1999, ch. 257, § 3; 2001, ch. 247, § 6; 2009, ch. 138, § 3.

**ANNOTATIONS**

**The 2009 amendment,** effective July 1, 2009, in Subsection C, changed "ten" to "twenty-five".

**The 2001 amendment,** effective June 15, 2001, substituted "water or energy by fuel type" for "water, energy by fuel type, or both" in Subsections A(3) and (4); in Subsection B, inserted "cost savings" following "shows a utility", deleted "operating" preceding "cost savings at the end", inserted "and if the utility cost savings or conservation-related cost savings has not been pledged for payments pursuant to the guaranteed utility savings contract", and substituted "the utility cost savings or conservation-related cost" for "the energy, water or conservation-related operating cost"; substituted "energy or water conservation" for "utility cost savings and conservation-related operating costs" in Subsection C; in Subsection E, substituted "utility cost savings" for "energy, water", deleted "operating" following "conservation-related", deleted "or both" following "water conservation measures" in Subsections E (1) and (2), substituted "appropriate fund" for "general fund" at the end of Subsection E(2); and deleted "eligible to receive income from lands granted for the use of certain institutions and deposited in income funds pursuant to Section 19-1-17 NMSA 1978" following "New Mexico" in Subsection F.

**The 1999 amendment,** effective June 18, 1999, in Subsection B deleted "the department of finance and administration shall carry forward" following "line item", and inserted "shall be carried over", and in Subsection E inserted "or for payment of guaranteed utility savings contracts" in Paragraphs (1) and (2).

## 6-23-7. Public school utility conservation fund created; use.

A. The "public school utility conservation fund" is created as a special fund in the state treasury. The fund shall consist of money transferred to the fund, from year to year, from the distribution of the permanent fund and land income of which the common schools are the beneficiary. No other money from any school district or state source shall be deposited or paid into the public school utility conservation fund.

B. Annually, after the calculation of the state equalization guarantee distribution has been made, the secretary of public education shall determine the sum of the deductions made in the state equalization guarantee distribution of school districts pursuant to Section 22-8-25 NMSA 1978 and shall certify that amount to the secretary of finance and administration. Distributions from the permanent fund and land income of which the

common schools are the beneficiary equal to that amount shall be transferred from the common school current fund to the public school utility conservation fund.

C. Money in the public school utility conservation fund is appropriated to the public education department solely for the purpose of disbursing money to school districts to make payments pursuant to any guaranteed utility savings contract between the school district and a qualified provider or any installment contract or lease-purchase agreement for the purchase and installation of energy or water conservation measures pursuant to that guaranteed utility savings contract.

D. Disbursements from the public school utility conservation fund shall be made only to school districts and only upon certification by the secretary of public education that the disbursement is for a payment authorized by the Public Facility Energy Efficiency and Water Conservation Act.

E. The secretary of public education shall submit to the legislative finance committee and the legislative education study committee prior to each regular legislative session a list of school districts proposing to enter into approved guaranteed utility savings contracts in the succeeding fiscal year. The list shall include information on the amount of the school district's proposed annual payments and specific amounts that utility and operational budget items are guaranteed to be reduced to achieve the savings to make the payments.

F. Any unexpended or unencumbered balance remaining in the public school utility conservation fund at the end of any fiscal year shall be transferred to the public school fund.

**History:** Laws 1993, ch. 231, § 7; 1997, ch. 42, § 8; 2001, ch. 247, § 7; 2021, ch. 52, § 2.

## ANNOTATIONS

**The 2021 amendment,** effective July 1, 2021, substituted "superintendent of public instruction" with "secretary of public education", and required the secretary of public education to submit to the legislative education study committee, prior to each regular legislative session, a list of school districts proposing to enter into approved guaranteed utility savings contracts in the succeeding fiscal year; in Subsection B, substituted "superintendent of public instruction" with "secretary of public education" throughout, and after "distribution of school districts pursuant to", deleted "Paragraph (7) of Subsection D of"; and in Subsection E, after "legislative finance committee", added "and the legislative education study committee".

**The 2001 amendment,** effective June 15, 2001, substituted "distribution" for "income" in Subsection A; in Subsection B, updated the internal reference and substituted "Distributions" for "Income"; deleted "or both" following "conservation measures" in Subsection C; and substituted "Public Facility" for "Public Building" in Subsection D.

**The 1997 amendment,** effective June 20, 1997, substituted "utility" for "energy" throughout the section; substituted "utility conservation" for "energy efficiency" throughout the section and in the section heading; made stylistic changes in Subsection B; in Subsection C, inserted "or water" and inserted "or both"; and inserted "and Water Conservation" in Subsection D.

## 6-23-8. Municipalities; use of certain revenues authorized.

Upon adoption of an ordinance or resolution by an affirmative vote of a majority of the members of the governing body at any regular or special meeting of the governing body called for this purpose, a municipality may pledge utility cost savings, conservation-related cost savings or any or all revenues not otherwise pledged or obligated from gross receipts taxes received by the municipality pursuant to Section 7-1-6.4 NMSA 1978 and Section 7-1-6.12 NMSA 1978 for payments pursuant to a guaranteed utility savings contract with a qualified provider and any installment payment contract or lease-purchase agreement pursuant to that guaranteed utility savings contract. The ordinance or resolution shall declare the necessity for the guaranteed utility savings contract and related contracts or agreements and shall designate the source of the pledged revenues. Any revenues pledged for such contract payments shall be deposited in a special fund, and the municipality shall not use any other revenues to make such payments. At the end of each fiscal year, any money remaining in the special fund after payment obligations are met may be transferred to any other fund of the municipality.

**History:** Laws 1993, ch. 231, § 8; 1997, ch. 42, § 9; 2001, ch. 247, § 8.

**ANNOTATIONS**

**The 2001 amendment,** effective June 15, 2001, inserted "or resolution" following "ordinance" in the first and second sentences; and inserted "utility cost savings, conservation-related cost savings or" in the first sentence.

**The 1997 amendment,** effective June 20, 1997, substituted "utility" for "energy" throughout the section and deleted "Subsections A and E of" preceding "Section 7-1-6.12 NMSA 1978" in the first sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Constitutionality, construction, and application of state and local public-utility-gross-receipts-tax statutes - modern cases, 58 A.L.R.5th 187.

## 6-23-9. Counties; use of certain revenues authorized.

Upon adoption of an ordinance or resolution by an affirmative vote of a majority of the members of the board of county commissioners at any regular or special meeting of the board called for this purpose, a county may pledge utility cost savings, conservation-related cost savings or any or all of the revenue not otherwise pledged or obligated from

the first one-eighth of one percent increment and of one-half of the revenue from the third one-eighth of one percent increment of the county gross receipts tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978 and any or all of the revenue from the distribution related to the first one-eighth of one percent increment made pursuant to Section 7-1-6.16 NMSA 1978 for the purpose of making payments pursuant to a guaranteed utility savings contract with a qualified provider or any installment payment contract or lease-purchase agreement pursuant to that guaranteed utility savings contract. The ordinance or resolution shall declare the necessity for the guaranteed utility savings contract and related contracts or agreements and shall designate the source of the pledged revenues. Any revenues pledged for such contract payments shall be deposited in a special fund and the county shall not use any other county or state revenue to make such payments. At the end of each fiscal year, any money remaining in the special fund after the payment obligations are met may be transferred to any other fund of the county.

**History:** Laws 1993, ch. 231, § 9; 1997, ch. 42, § 10; 2001, ch. 247, § 9.

**ANNOTATIONS**

**The 2001 amendment,** effective June 15, 2001, inserted "or resolution" following "ordinance" in the first and second sentences; and inserted "utility cost savings, conservation-related cost savings or" in the first sentence.

**The 1997 amendment,** effective June 20, 1997, substituted "utility" for "energy" throughout the section and deleted "Subsection B of" preceding "Section 7-1-6.13 NMSA 1978" in the first sentence.

## 6-23-10. State institutions and buildings; use of certain revenues authorized.

Resulting utility cost savings and conservation-related cost savings, income from lands granted for the use of certain institutions and public buildings and deposited in income funds for such institutions and buildings pursuant to Section 19-1-17 NMSA 1978 or special funds of institutions may be appropriated and pledged for payments pursuant to a guaranteed utility savings contract or related lease-purchase agreement or installment payment contract pursuant to the Public Facility Energy Efficiency and Water Conservation Act. Money appropriated for that purpose shall be deposited in a special fund or account of the institution or fund and that revenue and no other revenue shall be pledged for payments pursuant to the Public Facility Energy Efficiency and Water Conservation Act.

**History:** Laws 1993, ch. 231, § 10; 1997, ch. 42, § 11; 1999, ch. 257, § 4; 2001, ch. 247, § 10; 2009, ch. 138, § 4.

**ANNOTATIONS**

**The 2009 amendment,** effective July 1, 2009, at the beginning of the section, added "Resulting utility cost savings and conservation-related cost savings"; and deleted former Subsection D, which provided for the pledge of resulting utility cost savings or conservation-related cost savings for payment under a contract.

**The 2001 amendment,** effective June 15, 2001, inserted the Subsection A designation and added Subsection B; in Subsection A, substituted "Public Facility" for "Public Building" in two places and inserted "except as provided in Subsection B of this section".

**The 1999 amendment,** effective June 18, 1999, inserted "and special funds of institutions" preceding "may be" and substituted "pledged for" for "used to make such" near the end of the section.

**The 1997 amendment,** effective June 20, 1997, in the first sentence, substituted "utility" for "energy" and inserted "and Water Conservation", and in the second sentence, inserted "pursuant" and inserted "and Water Conservation".

# ARTICLE 24
# New Mexico Lottery

## 6-24-1. Short title.

Chapter 6, Article 24 NMSA 1978 may be cited as the "New Mexico Lottery Act".

**History:** Laws 1995, ch. 155, § 1; 2007, ch. 72, § 1.

**ANNOTATIONS**

**Cross references.** — For criminal offenses related to gambling, *see* Chapter 30, Article 19 NMSA 1978.

For the Gaming Control Act, *see* Chapter 60, Article 2E NMSA 1978.

**The 2007 amendment,** effective July 1, 2007, changed the statutory reference to the act.

## 6-24-2. Legislative findings.

The legislature finds that:

A. lotteries have been enacted in many states and the revenues generated from those lotteries have contributed to the benefit of the residents of those states;

B. many New Mexicans already participate in other state lotteries and support the establishment of a state lottery in New Mexico; and

C. the most desirable, efficient and effective mechanism for operation of a state lottery is an independent lottery authority organized as a business enterprise separate from state government, without need for state revenues or resources and subject to oversight, audit and accountability by public officials and agencies.

**History:** Laws 1995, ch. 155, § 2.

## 6-24-3. Purposes.

The purposes of the New Mexico Lottery Act are to:

A. establish and provide for the conduct of a fair and honest lottery for the entertainment of the public; and

B. provide the maximum amount of revenues, without imposing additional taxes or using other state revenues, for the purpose of providing tuition assistance to resident undergraduates at New Mexico post-secondary educational institutions.

**History:** Laws 1995, ch. 155, § 3; 2001, ch. 300, § 1.

**ANNOTATIONS**

**The 2001 amendment,** effective June 15, 2001, in Subsection B, deleted former Paragraph (1) listing funding critical capital outlay needs of public schools and deleted the paragraph designation of former Paragraph (2).

## 6-24-4. Definitions.

As used in the New Mexico Lottery Act:

A. "authority" means the New Mexico lottery authority;

B. "board" means the board of directors of the authority;

C. "chief executive officer" means the chief executive officer of the authority appointed by the board pursuant to the New Mexico Lottery Act;

D. "lottery" means the New Mexico state lottery established and operated by the authority pursuant to the New Mexico Lottery Act;

E. "lottery contractor" means a person with whom the authority has contracted for the purpose of providing goods or services for the lottery;

F. "lottery game" means any variation of the following types of games, but does not include any video lottery game:

(1) an instant-win game in which disposable tickets contain certain preprinted winners that are determined by rubbing or scraping an area or areas on the tickets to match numbers, letters, symbols or configurations, or any combination thereof, as provided by the rules of the game; provided, an instant-win game may also provide for preliminary and grand prize drawings conducted pursuant to the rules of the game; and

(2) an on-line lottery game in which a lottery game is hooked up to a central computer via a telecommunications system through which a player selects a specified group of numbers or symbols out of a predetermined range of numbers or symbols and purchases a ticket bearing the player-selected numbers or symbols for eligibility in a drawing regularly scheduled in accordance with game rules;

G. "lottery retailer" means a person with whom the authority has contracted for the purpose of selling tickets in lottery games to the public;

H. "lottery vendor" means any person who submits a bid, proposal or offer as part of a major procurement contract and any person who is awarded a major procurement contract; and

I. "person" means an individual or any other legal entity.

**History:** Laws 1995, ch. 155, § 4; 2007, ch. 72, § 2.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, eliminated the definitions of "major procurement contract" and "net revenues".

## 6-24-5. New Mexico lottery authority created.

A. There is created a public body, politic and corporate, separate and apart from the state, constituting a governmental instrumentality to be known as the "New Mexico lottery authority". The authority is created and organized for the purpose of establishing and conducting the New Mexico state lottery to provide revenues for the public purposes designated by the New Mexico Lottery Act.

B. The authority shall be governed by a board of directors composed of seven members who are residents of New Mexico appointed by the governor with the advice and consent of the senate. The members of the board of directors shall be prominent persons in their businesses or professions and shall be appointed so as to provide equitable geographical representation. No more than four members of the board shall be from any one political party. The governor shall consider appointing at least one member who has at least five years experience as a law enforcement officer, at least

one member who is an attorney admitted to practice in New Mexico and at least one member who is a certified public accountant certified in New Mexico.

C. Board members shall be appointed for five-year terms. To provide for staggered terms, four of the initially appointed members shall be appointed for terms of five years and three members for terms of three years. Thereafter, all members shall be appointed for five-year terms. A vacancy shall be filled by appointment by the governor for the remainder of the unexpired term. A member shall serve until his replacement is confirmed by the senate. Board members shall be eligible for reappointment.

D. The board shall select one of its members as chairman annually. A chairman may be selected for successive years. Members of the board may be removed by the governor for malfeasance, misfeasance or willful neglect of duty after reasonable notice and a public hearing unless the notice and hearing are expressly waived in writing by the member.

E. The board shall hold regular meetings at the call of the chairman, but not less often than once each calendar quarter. A board meeting may also be called upon the request in writing of three or more board members. A majority of members then in office constitutes a quorum for the transaction of any business and for the exercise of any power or function of the authority.

F. Board members shall receive no compensation for their services but shall be paid expenses incurred in the conduct of authority business as allowed and approved by the authority in accordance with policies adopted by the board.

G. A board member shall be subject to a background check and investigation to determine his fitness for office. The results of that background check shall be made available to the governor and the senate.

**History:** Laws 1995, ch. 155, § 5.

**ANNOTATIONS**

**Lottery's powers.** — The legislature made its intent clear that the lottery is a governmental instrumentality, empowered with the authority to maneuver in a corporate environment to accomplish its public purpose of financing the tuition fund. *Stansell v. N.M. Lottery*, 2009-NMCA-062, 146 N.M. 417, 211 P.3d 214.

**The New Mexico lottery is not a person** under the Unfair Practices Act, Section 57-12-1 NMSA 1978. *Stansell v. N.M. Lottery*, 2009-NMCA-062, 146 N.M. 417, 211 P.3d 214.

## 6-24-6. Powers of the authority.

A. The authority shall have all powers necessary or convenient to carry out and effectuate the purposes and provisions of the New Mexico Lottery Act that are not in conflict with the constitution of New Mexico and that are generally exercised by corporations engaged in entrepreneurial pursuits, including the power to:

(1) sue and be sued;

(2) adopt and alter a seal;

(3) adopt, amend and repeal bylaws, rules, policies and procedures for the conduct of its affairs and its business;

(4) procure or provide insurance;

(5) hold copyrights, trademarks and service marks and enforce its rights with respect thereto;

(6) initiate, supervise and administer the operation of the lottery in accordance with the provisions of the New Mexico Lottery Act and rules, policies and procedures adopted pursuant to that act;

(7) enter into written agreements or contracts for the operation, participation in or marketing or promotion of a joint lottery or joint lottery games with operators of a lottery:

(a) in one or more other states;

(b) in a territory of the United States;

(c) in one or more political subdivisions of another state or territory of the United States;

(d) in a sovereign nation;

(e) in an Indian nation, tribe or pueblo located within the United States; or

(f) legally operated outside of the United States;

(8) acquire or lease real property and make improvements thereon and acquire by lease or by purchase personal property, including computers, mechanical, electronic and on-line equipment and terminals and intangible property, including computer programs, systems and software;

(9) enter into contracts to incur debt and borrow money in its own name and enter into financing agreements with the state, with agencies or instrumentalities of the state or with any commercial bank or credit provider;

(10) receive and expend, in accordance with the provisions of the New Mexico Lottery Act, all money received from any lottery or nonlottery source for effectuating the purposes of the New Mexico Lottery Act;

(11) administer oaths, take depositions, issue subpoenas and compel the attendance of witnesses and the production of books, papers, documents and other evidence relative to any investigation or proceeding conducted by the authority;

(12) appoint and prescribe the duties of officers, agents and employees of the authority, including professional and administrative staff and personnel, and to fix their compensation, pay their expenses and provide a benefit program, including a retirement plan and a group insurance plan;

(13) select and contract with lottery vendors and lottery retailers;

(14) enter into contracts or agreements with state, local or federal law enforcement agencies or private investigators or other persons for the performance of law enforcement, background investigations and security checks;

(15) enter into contracts of all types on such terms and conditions as the authority may determine;

(16) establish and maintain banking relationships, including establishment of checking and savings accounts and lines of credit;

(17) advertise and promote the lottery and lottery games;

(18) act as a lottery retailer, conduct promotions that involve the dispensing of lottery tickets and establish and operate a sales facility to sell lottery tickets and any related merchandise; and

(19) adopt, repeal and amend such rules, policies and procedures as necessary to carry out and implement its powers and duties, organize and operate the authority, conduct lottery games and any other matters necessary or desirable for the efficient and effective operation of the lottery and the convenience of the public.

B. The powers enumerated in this section are cumulative of and in addition to those powers enumerated elsewhere in the New Mexico Lottery Act, and no such powers limit or restrict any other powers of the authority.

**History:** Laws 1995, ch. 155, § 6; 2003, ch. 112, § 1.

## ANNOTATIONS

**The 2003 amendment,** effective April 2, 2003, in Subsection A, deleted "any and" preceding "all powers necessary", deleted "but without limiting the generality of the

foregoing" near the end; in Subsection A(7), substituted "or contracts" for "with one or more other states" preceding "for the operation" added "with operators of a lottery:" at the end; added Subsections A(7)(a) to (f); deleted "but not limited to" in Subsections A(8), (12), and (16); inserted "with" preceding "agencies or instrumentalities" in Subsection A(9); and deleted "any and" preceding "all types on" in Subsection A(15).

## 6-24-7. Board of directors; duties.

The board shall provide the authority with the private-sector perspective of a large marketing enterprise and shall make every effort to exercise sound and prudent business judgment in its management and promotion of the lottery. It is the duty of the board to:

A. adopt all rules, policies and procedures necessary for the establishment and operation of the lottery;

B. maximize the revenue for the public purposes of the New Mexico Lottery Act and to that end assure that all rules, policies and procedures adopted further revenue maximization;

C. appoint a chief executive officer, prescribe the chief executive officer's qualifications, duties and salary and set the salaries of the other officers and employees of the authority;

D. approve, disapprove, amend or modify the annual budget recommended by the chief executive officer for the operation of the authority;

E. approve or disapprove all procurements over seventy-five thousand dollars ($75,000);

F. supervise the chief executive officer and the other officers and employees of the authority and meet with the chief executive officer at least once every three months to make and consider recommendations, set policies, determine types and forms of lottery games to be operated by the lottery and transact other necessary business;

G. conduct, with the chief executive officer, a continuing study of the lottery and other state lotteries to improve the efficiency, profitability and security of the authority and the lottery;

H. prepare quarterly and annual reports and maintain records as required under the New Mexico Lottery Act;

I. pursue other matters necessary, desirable or convenient for the efficient and effective operation of lottery games, the continued entertainment and convenience of the public and the integrity of the lottery; and

J. support problem gambling initiatives and provide information to players about where to obtain problem gambling assistance in New Mexico.

**History:** Laws 1995, ch. 155, § 7; 2007, ch. 72, § 3.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, required the board to approve procurements over $75,000, and added Subsection J to require the board to support problem gambling initiatives, and provide information about where to find gambling assistance.

## 6-24-8. Lottery games; adoption of rules, policies and procedures by board.

The board may adopt rules, policies and procedures for the conduct of lottery games in general, including, but not limited to the following matters:

A. the type of games to be conducted, which may include any type of lottery game not prohibited by the New Mexico Lottery Act;

B. the percentage of lottery revenues that shall be returned to the public in the form of lottery prizes;

C. the method and location of selecting or validating winning tickets;

D. the manner and time of payment of prizes, which may include lump-sum payments or installments over a period of years;

E. the manner of payments of prizes to the holders of winning tickets;

F. the frequency of games and drawings or selection of winning tickets;

G. the method to be used in selling tickets, which may include the use of electronic or mechanical devices;

H. the price of each ticket and the number and size of prizes;

I. the conduct of drawings and determination of winners of lottery games;

J. requirements governing lottery tickets, including, but not limited to, requirements that all instant-win tickets be recyclable; and

K. any and all other matters necessary, desirable or convenient toward ensuring the efficient and effective operation of lottery games.

**History:** Laws 1995, ch. 155, § 8.

## 6-24-9. Legislative oversight; legislative finance committee; duties.

A. The legislative finance committee shall oversee the operations of the authority, as well as periodically review and evaluate the success with which the authority is accomplishing its duties and operating the lottery pursuant to the New Mexico Lottery Act. The committee may conduct an independent audit or investigation of the lottery or the authority.

B. The legislative finance committee shall report annually its findings and recommendations on the lottery and the operation of the authority to each regular session of the legislature.

**History:** Laws 1995, ch. 155, § 9; 2001, ch. 91, § 1.

**ANNOTATIONS**

**The 2001 amendment,** effective April 2, 2001, eliminated the lottery oversight committee and provided for the legislative oversight of the lottery by the legislative finance committee.

## 6-24-10. Chief executive officer; compensation; appointment; duties.

A. The board shall appoint and set the compensation of a "chief executive officer", who shall serve at the pleasure of the board.

B. The chief executive officer, who shall be an employee of the authority, shall:

(1) manage and direct the operation of the lottery and all administrative and technical activities of the authority in accordance with the provisions of the New Mexico Lottery Act and pursuant to rules, policies and procedures adopted by the board pursuant to that act;

(2) employ and supervise such personnel as deemed necessary;

(3) with the approval of the board and pursuant to rules, policies and procedures adopted by the board, enter into contracts for materials, equipment and supplies to be used in the operation of the lottery, for the design and installation of lottery games, for consultant services and for promotion of the lottery;

(4) contract with lottery retailers pursuant to the New Mexico Lottery Act and board rules;

(5) promote or provide for promotion of the lottery and any functions related to the authority;

(6) hire an executive vice president for security and an internal auditor and take all necessary measures to provide for the security and integrity of the lottery;

(7) prepare an annual budget for the approval of the board;

(8) provide quarterly to the board, the governor and the legislative finance committee a full and complete report of lottery revenues and expenses for the preceding quarter; and

(9) perform such other duties as are necessary to implement and administer the lottery.

C. The chief executive officer may refuse to renew a lottery contract in accordance with the provisions of the New Mexico Lottery Act or the rules, policies and procedures of the board.

D. The chief executive officer or his designee may conduct hearings and administer oaths to persons for the purpose of assuring the security or integrity of lottery operations or to determine the qualifications of or compliance by lottery vendors and lottery retailers.

**History:** Laws 1995, ch. 155, § 10; 2001, ch. 91, § 2.

**ANNOTATIONS**

**The 2001 amendment,** effective April 2, 2001, deleted "and lottery oversight committee" following "the governor" in Subsection B(8).

## 6-24-11. Employees; conflict of interest; investigations; bonds.

A. No employee of the authority shall participate in any decision involving a lottery retailer with whom the employee has a financial interest.

B. No employee of the authority who leaves the employment of the authority may represent any lottery vendor or lottery retailer before the authority for a period of two years following termination of employment with the authority.

C. A background investigation shall be conducted on each applicant who has reached the final selection process prior to employment by the authority. The authority is authorized to pay for the actual cost of such investigations and may contract with the department of public safety for the performance of the investigations.

D. The authority shall bond authority employees with access to authority funds or lottery revenue in an amount determined by the board and may bond other employees as deemed necessary.

**History:** Laws 1995, ch. 155, § 11.

## 6-24-12. Executive vice president for security; qualifications; duties.

A. The chief executive officer shall hire an executive vice president for security, who shall be qualified by training and experience, including at least five years of law enforcement experience, and be knowledgeable and experienced in computer security. The executive vice president for security shall take direction as needed from the chief executive officer and shall be accountable to the board.

B. The executive vice president for security shall:

(1) be the chief administrative officer of the security division of the authority, which is designated as a law enforcement agency for the purposes of administering the security provisions of the New Mexico Lottery Act;

(2) be responsible for assuring the security, honesty, fairness and integrity of the operation and administration of the lottery and to that end shall institute all necessary security measures, including an examination of the background of all prospective employees, lottery retailers, lottery vendors and lottery contractors;

(3) in conjunction with the chief executive officer, confer with the attorney general or his designee to promote and ensure the security, honesty, fairness and integrity of the operation and administration of the lottery; and

(4) in conjunction with the chief executive officer, report any alleged violation of law to the attorney general or any other appropriate law enforcement authority for further investigation and action.

C. The executive vice president for security and the employees of the division assigned by him as security agents shall be commissioned by the board as peace officers with full powers of arrest in the performance of their duties. These peace officers shall seek and must obtain certification pursuant to the provisions of the Law Enforcement Training Act [Chapter 29, Article 7 NMSA 1978].

D. The department of public safety in conjunction with the authority shall develop policy and procedures to require background checks. The policy and procedures shall require the fingerprinting of all board members and prospective employees. Fingerprint cards will be submitted to the department of public safety records bureau for processing through the federal bureau of investigation. The department of public safety will not disseminate the criminal history information to the authority.

E. An applicant for consideration shall be fingerprinted and shall provide two fingerprint cards to the department of public safety. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with Section 6-24-18 NMSA 1978. Other information contained in the federal bureau of investigation record supported by independent evidence can form the basis for the denial, suspension or revocation for good and just cause. Such records and any related information shall be privileged and shall not be disclosed to individuals not directly involved in the decisions affecting the specific applicants or employees. The authority shall pay for the cost of obtaining the federal bureau of investigation record. The department of public safety shall implement the provisions of this section on or before July 1, 1999.

**History:** Laws 1995, ch. 155, § 12; 1999, ch. 287, § 1.

**ANNOTATIONS**

**The 1999 amendment,** effective April 8, 1999, deleted "but not limited to" before "an examination" in Subsection B(2), and added Subsections C to E.

## 6-24-13. Determination of confidential information; applicability of Open Meetings Act; criminal investigations.

A. The authority is specifically authorized to determine which information relating to the operation of the lottery is confidential. Such information is limited to trade secrets and proprietary information; security measures, systems or procedures; security reports; information concerning bids or other contract data during the negotiation process, the disclosure of which would impair the efforts of the authority to contract for goods or services on favorable terms; and information obtained pursuant to investigations that would be protected from public disclosure under the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

B. The authority is subject to the provisions of the Open Meetings Act [Chapter 10, Article 15 NMSA 1978]; provided that meetings or portions of meetings devoted to discussing information deemed to be confidential pursuant to Subsection A of this section are exempt from the provisions of that act.

C. The authority or its authorized agent shall:

(1) conduct criminal background investigations and credit investigations on all potential lottery retailers and all lottery vendors prior to the execution of any contract with a lottery retailer or a lottery vendor;

(2) supervise ticket validation and lottery drawings;

(3) inspect at times determined solely by the authority the facilities of any lottery vendor or lottery retailer in order to determine the integrity of the lottery vendor's

product or the operations of the lottery retailer in order to determine whether the lottery vendor or the lottery retailer is in compliance with its contract;

(4) report any suspected violations of the New Mexico Lottery Act to the appropriate district attorney, the attorney general or to any law enforcement agency having jurisdiction over the violation; and

(5) upon request, provide assistance to any district attorney, the attorney general or a law enforcement agency investigating a violation of the New Mexico Lottery Act.

**History:** Laws 1995, ch. 155, § 13.

## 6-24-14. Lottery retailers; contracts; sales commission; bonds.

A. Lottery tickets shall be sold only by a lottery retailer who, pursuant to a contract with the authority, has been issued a certificate of authority signed by the chief executive officer. The lottery retailer shall display the certificate conspicuously at each authorized location. No lottery retailer shall sell a lottery ticket except from the locations listed in his contract and as evidenced by his certificate of authority unless the authority authorizes in writing any temporary location not listed in his contract.

B. Before entering into a contract with a lottery retailer applicant, the chief executive officer shall consider:

(1) the financial responsibility and security of the applicant and his business or activity;

(2) the accessibility of his place of business or activity to the public; and

(3) the sufficiency of existing licenses to serve the public convenience and the volume of the expected sales.

C. No person shall be a lottery retailer who:

(1) is under eighteen years of age;

(2) is engaged exclusively in the business of selling lottery tickets;

(3) is a lottery vendor or an employee or agent of any lottery vendor doing business in New Mexico;

(4) has been found to have violated any provisions of the New Mexico Lottery Act or any rule adopted by the board pursuant to that act; or

(5) fails to certify to the chief executive officer that his premises are in compliance with the federal Americans with Disabilities Act of 1990.

D. All lottery retailer contracts may be renewable annually in the discretion of the authority unless sooner terminated.

E. The authority to act as a lottery retailer is not assignable or transferable.

F. Lottery retailer applicants shall pay an application fee established by the board to cover the cost of investigating and processing the application.

G. The board shall determine the commission to be paid lottery retailers for their sales of lottery tickets.

H. Each lottery retailer shall keep a complete and current set of records accounting for all of his sales of lottery tickets and shall provide it for inspection upon request of the board, the chief executive officer, the legislative finance committee or the attorney general.

I. Lottery retailers shall make payments to the lottery only by check, bankdraft, electronic fund transfer or other recorded, noncash financial transfer method as determined by the chief executive officer.

J. No lottery retailer shall contract with any person for lottery goods or services except with the approval of the board.

**History:** Laws 1995, ch. 155, § 14.

**ANNOTATIONS**

**Cross references.** — For provisions regarding the deduction of lottery game receipts from gross receipts, *see* 7-9-87 NMSA 1978.

For the federal Americans with Disabilities Act, *see* 42 U.S.C.S. § 12101 et seq.

## 6-24-15. Lottery tickets; sales.

A. The price of each lottery ticket shall be clearly stated on the ticket. No person shall sell a ticket at a price other than at the price established by the authority unless authorized in writing by the chief executive officer. No person other than a lottery retailer shall sell lottery tickets, but this subsection shall not be construed to prevent a person who may lawfully purchase tickets from making a gift of lottery tickets. Transactions between individuals on a nonprofit basis are permissible. Nothing in the New Mexico Lottery Act shall be construed to prohibit the authority from designating certain of its agents or employees to sell or give lottery tickets directly to the public.

B. Lottery tickets may be given by merchants as a means of promoting goods or services to customers or prospective customers.

C. Tickets shall not be sold to or purchased by individuals under eighteen years of age. Persons under eighteen years of age may receive lottery tickets as gifts.

D. Tickets may be purchased only with cash or a check and shall not be purchased on credit.

E. The names of elected officials shall not appear on any lottery ticket.

**History:** Laws 1995, ch. 155, § 15.

## 6-24-16. Termination of lottery retailer contracts.

A. Any lottery retailer contract executed by the authority pursuant to the New Mexico Lottery Act shall specify the reasons for which a contract may be terminated by the authority, which reasons shall include but not be limited to:

(1) a violation of the New Mexico Lottery Act or any rule, policy or procedure of the board adopted pursuant to that act;

(2) failure to accurately or timely account for lottery tickets, lottery games, revenues or prizes as required by the authority;

(3) commission of any fraud, deceit or misrepresentation;

(4) failure to achieve sales goals established by the lottery;

(5) conduct prejudicial to public confidence in the lottery;

(6) the lottery retailer's filing for or being placed in bankruptcy or receivership;

(7) any material change as determined in the sole discretion of the authority in any matter considered by the authority in executing the contract with the lottery retailer; and

(8) failure to meet any of the objective criteria established by the authority pursuant to the New Mexico Lottery Act.

B. The chief executive officer may terminate a contract with a lottery retailer for violations or actions that according to the terms of the contract, pursuant to Subsection A of this section, require termination.

**History:** Laws 1995, ch. 155, § 16.

## 6-24-17. Disclosure of odds.

The authority shall make adequate disclosure of the odds with respect to each lottery game by stating the odds in lottery game advertisements or by posting the odds at each place in which lottery tickets are sold.

**History:** Laws 1995, ch. 155, § 17.

## 6-24-18. Felony and gambling-related convictions; ineligibility for lottery positions.

No person who has been convicted of a felony or a gambling-related offense under federal law or the law of any state may be a board member, chief executive officer, officer or employee of the authority, lottery vendor or lottery retailer. Prior to appointment as a board member, chief executive officer or other officer or employee, a person shall submit to the board a full set of fingerprints made at a law enforcement agency by an agent or officer of such agency on forms supplied by the authority. The executive vice president for security may require a lottery retailer to submit fingerprints prior to completing a contract.

**History:** Laws 1995, ch. 155, § 18.

## 6-24-19. Procurement; competitive proposals.

The authority shall enter into a contract for a procurement after evaluating competitive proposals and shall not design requests for proposals to provide only for sole source contracts. The authority shall conduct its own procurement, but the authority shall conduct all procurement in accordance with the Procurement Code [13-1-28 to 13-1-199 NMSA 1978]. In all procurement decisions, the authority shall take into account the particularly sensitive nature of the lottery and shall act to promote and ensure security, honesty, fairness and integrity in the operation and administration of the lottery and the objectives of raising revenue for the public purposes of the New Mexico Lottery Act. Procurements shall not be artificially divided to reduce the cost of the procurement below the procurement thresholds provided in the Procurement Code.

**History:** Laws 1995, ch. 155, § 19; 2007, ch. 72, § 4.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, required the authority to comply with the Procurement Code.

## 6-24-20. Disclosures by lottery vendor.

A. Any lottery vendor that submits a bid or proposal for a contract to supply lottery equipment, tickets or other material or services for use in the operation of the lottery shall disclose at the time of such bid or proposal:

(1) the lottery vendor's business name and address and the names and addresses of the following:

(a) if the lottery vendor is a partnership, all of the general and limited partners;

(b) if the lottery vendor is a trust, the trustee and all persons entitled to receive income or benefit from the trust;

(c) if the lottery vendor is an association, the members, officers and directors;

(d) if the lottery vendor is a corporation, the officers, directors and each owner or holder, directly or indirectly, of any equity security or other evidence of ownership of any interest in the corporation; except that, in the case of owners or holders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those owning or holding five percent or more of the publicly held securities must be disclosed; and

(e) if the lottery vendor is a subsidiary company, each intermediary company, holding company or parent company involved therewith and the officers, directors and stockholders of each; except that, in the case of owners or holders of publicly held securities of an intermediary company, holding company, or parent company that is a publicly traded corporation, only the names and addresses of those owning or holding five percent or more of the publicly held securities must be disclosed;

(2) if the lottery vendor is a corporation, all the states in which the lottery vendor is authorized to do business and the nature of that business;

(3) other jurisdictions in which the lottery vendor has contracts to supply gaming materials, equipment or services;

(4) the details of any conviction by a federal or any state court of the lottery vendor or any person whose name and address is required under this section for a criminal offense punishable by imprisonment for more than one year and shall submit to the board a full set of fingerprints of such person made at a law enforcement agency by an agent or officer of such agency on forms supplied by the authority;

(5) the details of any disciplinary action taken by any state against the lottery vendor or any person whose name and address are required by this section regarding any matter related to gaming services or the selling, leasing, offering for sale or lease, buying or servicing of gaming materials or equipment;

(6) audited annual financial statements of the lottery vendor for the preceding five years;

(7) a statement of the lottery vendor's gross receipts realized in the preceding year from gaming services and the sale, lease or distribution of gaming materials or equipment to states operating lotteries and to private persons licensed to conduct gambling, differentiating that portion of the gross receipts attributable to transactions with states operating lotteries from that portion of the gross receipts attributable to transactions with private persons licensed to conduct gambling;

(8) the name and address of any source of gaming materials or equipment for the lottery vendor;

(9) the number of years the lottery vendor has been in the business of supplying gaming services or gaming materials or equipment; and

(10) any other information, accompanied by any documents the board by rule may reasonably require as being necessary or appropriate in the public interest to accomplish the purposes of the New Mexico Lottery Act.

B. No contract for supplying goods or services for use in the operation of the lottery is enforceable against the authority unless the requirements of this section have been fulfilled.

**History:** Laws 1995, ch. 155, § 20.

## 6-24-21. Drawings for and payment of prizes; unclaimed prizes; applicability of taxation.

A. All lottery prize drawings shall be open to the public. If the prior written approval of the chief executive officer and the executive vice president for security are obtained, the selection of winning entries may be performed by an employee of the lottery. A member of the board shall not perform the selection of a winning entry. Drawings for a prize of more than five thousand dollars ($5,000) shall be conducted and videotaped by the security division and witnessed by the internal auditor of the authority or his designee. Promotional drawings for a prize of less than five thousand dollars ($5,000) are exempt from the requirements of this subsection if prior written approval is given by the chief executive officer and the executive vice president for security. All lottery drawing equipment used in public drawings to select winning numbers or entries or participants for prizes shall be examined and tested by the chief executive officer's staff and the internal auditor of the authority or his designee prior to and after each public drawing.

B. Any lottery prize is subject to applicable state taxes. The authority shall report to the state and federal taxing authorities any lottery prize exceeding six hundred dollars ($600).

C. The authority shall adopt rules, policies and procedures to conduct fair and equitable drawings and establish a system of verifying the validity of tickets claimed to win prizes and to effect payment of such prizes, provided:

(1) no prize shall be paid upon a ticket purchased or sold in violation of the New Mexico Lottery Act. Any such prize shall constitute an unclaimed prize for purposes of this section;

(2) the authority is discharged from all liability upon payment of a prize;

(3) the board may by rule provide for the payment of prizes by lottery retailers, whether or not the lottery retailer sold the winning ticket, whenever the amount of the prize is less than an amount set by board rule. Payment shall not be made directly to a player by a machine or a mechanical or electronic device;

(4) prizes not claimed within the time period established by the authority are forfeited and shall be paid into the prize fund. No interest is due on a prize when a claim is delayed;

(5) the right to a prize is not assignable, but prizes may be paid to a deceased winner's estate or to a person designated by judicial order;

(6) until a signature or mark is placed on a ticket in the area designated for signature, a ticket is owned by the bearer of the ticket, but after a signature or mark is placed on a ticket in the area designated for signature, a ticket is owned by the person whose signature or mark appears, and that person is entitled to any prize attributable to the owner; and

(7) the authority is not responsible for lost or stolen tickets.

**History:** Laws 1995, ch. 155, § 21; 1999, ch. 287, § 2.

**ANNOTATIONS**

**The 1999 amendment,** effective April 8, 1999, rewrote Subsection A and added Subsections C(6) and C(7).

## 6-24-22. Lien on lottery winnings for debt collected by human services department [health care authority department]; payment to department; procedure.

A. The human services department [health care authority department] shall periodically certify to the authority the names and social security numbers of persons owing a debt to or collected by the human services department [health care authority department]. This list shall include individuals that owe child support being collected by

the state's child support enforcement agency pursuant to Title IV-D of the Social Security Act.

B. Prior to the payment of a lottery prize in excess of six hundred dollars ($600), the lottery shall check the name of the winner against the list of names and social security numbers of persons owing a debt to or collected by the human services department [health care authority department].

C. If the prize winner is on the list of persons owing a debt to or collected by the agency, the lottery shall make a good-faith attempt to notify the human services department [health care authority department], and the department then has a lien against the lottery prize in the amount of the debt owed to or collected by the agency. The lottery has no liability to the human services department [health care authority department] or the person on whose behalf the department is collecting the debt if the lottery fails to match a winner's name to a name on the list or is unable to notify the department of a match. The department shall provide the lottery with written notice of a lien promptly within five working days after the lottery notifies the department of a match.

D. If the lottery prize is to be paid directly by the authority, the amount of the debt owed to or collected by the human services department [health care authority department] shall be held by the lottery for a period of ninety days from the lottery's confirmation of the amount of the debt to allow the department to institute any necessary administrative seizure proceedings in accordance with Section 27-1-11 NMSA 1978. If an administrative seizure a proceeding is not initiated within the ninety-day period, the authority shall release the lottery prize payment to the winner.

E. The human services department [health care authority department], in its discretion, may release or partially release the lien upon written notice to the authority.

F. A lien or administrative seizure established against a lottery prize on behalf of a child support enforcement case shall take first priority over all other liens established by the department.

G. A lien under this section is in addition to any other lien created by law.

**History:** Laws 1995, ch. 155, § 22; 2004, ch. 40, § 1.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 205, § 16 provided that references to the human services department shall be deemed to be references to the health care authority department.

**Cross references.** — For enforcement of support obligations, *see* Chapter 40, Article 4A NMSA 1978.

For Title IV-D of the federal Social Security Act, *see* 42 U.S.C.S. § 651 et seq.

**The 2004 amendments,** effective May 19, 2004, amended Subsection A to delete the language relating to Title IV-D of the Social Security Act and to add the last sentence of the subsection, amended Subsection D to change "thirty" to "ninety" in both places and to change "garnishment or wage withholding" to "an administrative seizure" and added "Section 27-1-11 NMSA 1978", added a new Subsection F and redesignated former Subsection F as Subsection G.

## 6-24-23. Recompiled.

**History:** Laws 1995, ch. 155, § 23; 1997, ch. 106, § 1; 2001, ch. 300, § 2; recompiled and amended as § 21-21N-5 by Laws 2014, ch. 80, § 5.

**ANNOTATIONS**

**Recompilations.** — Laws 2014, ch. 80, § 5 recompiled and amended former 6-24-23 NMSA 1978 as 21-21N-5 NMSA 1978, effective March 12, 2014.

## 6-24-24. Disposition of revenue.

A. As nearly as practical, an amount equal to at least fifty percent of the gross annual revenue from the sale of lottery tickets shall be returned to the public in the form of lottery prizes.

B. No later than the last business day of each month, the authority shall transmit at least twenty-seven percent of the gross revenue of the previous month until December 31, 2008 and at least thirty percent of the gross revenue of the previous month thereafter to the state treasurer, who shall deposit it in the lottery tuition fund.

C. Operating expenses of the lottery include all costs incurred in the operation and administration of the lottery and all costs resulting from any contracts entered into for the purchase or lease of goods or services required by the lottery, including the costs of supplies, materials, tickets, independent audit services, independent studies, data transmission, advertising, promotion, incentives, public relations, communications, commissions paid to lottery retailers, printing, distribution of tickets, purchases of annuities or investments to be used to pay future installments of winning lottery tickets, debt service and payment of any revenue bonds issued, contingency reserves, transfers to the reserve fund and any other necessary costs incurred in carrying out the provisions of the New Mexico Lottery Act.

**History:** Laws 1995, ch. 155, § 24; 2000, ch. 52, § 1; 2001, ch. 300, § 3; 2007, ch. 72, § 5.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, required the authority to transfer at least twenty-seven percent of monthly gross revenues to the lottery tuition fund until December 31, 2008 and thereafter to transfer at least thirty percent of monthly gross revenues and deleted the transfer of balances to the lottery tuition fund.

**The 2001 amendment,** effective June 15, 2001, in Subsection B, after "who shall deposit", substituted "them" for "fifty percent of the revenues in the public school capital outlay fund for expenditure pursuant to the provisions of the Public School Capital Outlay Act and fifty percent".

**The 2000 amendment,** effective July 1, 2000, in Subsection B, changed percentages for the deposits of net revenue from sixty to fifty percent for the public school capital outlay fund and from forty to fifty percent for the lottery tuition fund.

## 6-24-25. Prohibition on use of state funds.

The authority shall be self-sustaining and self-funded. No appropriations, loans or other transfer of state funds shall be made to the authority or used or obligated to pay the expenses of the authority or lottery prizes. No claim for the payment of any lottery expense or lottery prize shall be made against any money other than money credited to the authority.

**History:** Laws 1995, ch. 155, § 25.

## 6-24-26. Authorization to issue revenue bonds.

A. In order to provide funds for the initial development and operation of the lottery, the board is authorized to issue lottery revenue bonds in an amount not to exceed three million dollars ($3,000,000) payable solely from revenues of the authority generated from operation of the lottery.

B. The board may issue bonds to refund other bonds issued pursuant to this section.

C. The bonds shall have a maturity of no more than five years from the date of issuance. The board shall determine all other terms, covenants and conditions of the bonds; provided, however, that the bonds may provide for prepayment in part or in full of the balance due at any time without penalty.

D. The bonds shall be executed with the manual or facsimile signature of the chief executive officer or the chairman of the board and attested by another member of the board. The bonds may bear the seal, if any, of the authority.

E. The proceeds of the bonds and the earnings on those proceeds are appropriated to the authority for the initial development and operation of the lottery, to pay expenses incurred in the preparation, issuance and sale of the bonds, to pay any obligations relating to the bonds and the proceeds of the bonds under the Internal Revenue Code of 1986 and for any other lawful purpose.

F. The bonds may be sold either at a public sale or at a private sale to the state investment officer or to the state treasurer. If the bonds are sold at a public sale, the notice of sale and other procedures for the sale shall be determined by the chief executive officer or the board.

G. This section is full authority for the issuance and sale of the bonds, and the bonds shall not be invalid for any irregularity or defect in the proceedings for their issuance and sale and shall be incontestable in the hands of bona fide purchasers or holders of the bonds for value.

H. An amount of money from the sources specified in Subsection A of this section sufficient to pay the principal of and interest on the bonds as they become due in each year shall be set aside, and is hereby pledged, for the payment of the principal and interest on the bonds.

I. The bonds shall be legal investments for any person or board charged with the investment of public funds and may be accepted as security for any deposit of public money, and the bonds and interest thereon are exempt from taxation by the state and any political subdivision or agency of the state.

J. The bonds shall be payable by the authority, which shall keep a complete record relating to the payment of the bonds.

**History:** Laws 1995, ch. 155, § 26.

**ANNOTATIONS**

**Cross references.** — For investment of the severance tax permanent fund in New Mexico lottery revenue bonds, *see* 7-27-5.21 NMSA 1978.

For the Internal Revenue Code of 1986, *see* 26 U.S.C.S. § 1 et seq.

## 6-24-27. Revenue and budget reports; records; independent audits.

A. The board shall:

(1) submit quarterly and annual reports to the governor and the legislative finance committee disclosing the total lottery revenue, prizes, commissions, ticket costs, operating expenses and other revenue of the authority during the reporting period and,

in the annual report, describe the organizational structure of the authority and summarize the functions performed by each organizational division within the authority;

(2) maintain weekly or more frequent records of lottery transactions, including the distribution of lottery tickets to retailers, revenue received, claims for prizes, prizes paid, prizes forfeited and other financial transactions of the authority; and

(3) use the state government fiscal year.

B. The board shall provide, for informational purposes, to the department of finance and administration and the legislative finance committee, by December 1 of each year, a copy of the annual proposed operating budget for the authority for the succeeding fiscal year. This budget proposal shall also be accompanied by an estimate of the revenue to be deposited in the lottery tuition fund for the current and succeeding fiscal years.

C. The board shall contract with an independent certified public accountant or firm for an annual financial audit of the authority. The certified public accountant or firm shall have no financial interest in any lottery contractor. The certified public accountant or firm shall present an audit report no later than March 1 for the prior fiscal year. The certified public accountant or firm shall evaluate the internal auditing controls in effect during the audit period. The cost of this financial audit shall be an operating expense of the authority. The legislative finance committee may, at any time, order an audit of any phase of the operations of the authority, at the expense of the authority, and shall receive a copy of the annual independent financial audit. A copy of any audit performed by the certified public accountant or ordered by the legislative finance committee shall be transmitted to the governor, the speaker of the house of representatives, the president pro tempore of the senate, the legislative finance committee and the legislative council service library.

**History:** Laws 1995, ch. 155, § 27; 2001, ch. 91, § 3; 2007, ch. 72, § 6.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, deleted the provision that required the annual proposed operating budget include an estimate of the amount to be deposited in the public school capital outlay fund and required a copy of the audit to be filed in the legislative council service library.

**The 2001 amendment,** effective April 2, 2001, deleted "and lottery oversight committee" following "legislative finance committee" in Subsection A(1) and from the end of Subsection B.

## 6-24-28. Internal auditor; appointment; duties.

A. The board, with the recommendation and assistance of the chief executive officer, shall employ an internal auditor. The internal auditor, who shall be an employee of the authority, shall be qualified by training and experience as an auditor and management analyst and have at least five years of auditing experience. The internal auditor shall take direction as needed from the chief executive officer and be accountable to the board.

B. The internal auditor shall conduct and coordinate comprehensive audits for all aspects of the lottery, provide management analysis expertise and carry out any other duties specified by the board and by law. The internal auditor shall specifically:

(1) conduct, or provide for through a competitive bid process, an annual financial audit and observation audits of drawings;

(2) create an annual audit plan to be approved by the board;

(3) search for means of better efficiency and cost savings and waste prevention;

(4) examine the policy and procedure needs of the lottery and determine compliance;

(5) ensure that proper internal controls exist;

(6) perform audits that meet or exceed governmental audit standards; and

(7) submit audit reports on a quarterly basis to the board, the chief executive officer, the state auditor and the legislative finance committee.

C. The internal auditor shall conduct audits as needed in the areas of:

(1) personnel security;

(2) lottery retailer security;

(3) lottery contractor security;

(4) security of manufacturing operations of lottery contractors;

(5) security against lottery ticket counterfeiting and alteration and other means of fraudulently winning;

(6) security of drawings among entries or finalists;

(7) computer security;

(8) data communications security;

(9) database security;

(10) systems security;

(11) lottery premises and warehouse security;

(12) security in distribution;

(13) security involving validation and payment procedures;

(14) security involving unclaimed prizes;

(15) security aspects applicable to each particular lottery game;

(16) security of drawings in games whenever winners are determined by drawings;

(17) the completeness of security against locating winners in lottery games with preprinted winners by persons involved in their production, storage, distribution, administration or sales; and

(18) any other aspects of security applicable to any particular lottery game and to the lottery and its operations.

D. Specific audit findings related to security invasion techniques are confidential and may be reported only to the chief executive officer or his designee, the board, the governor and the attorney general.

**History:** Laws 1995, ch. 155, § 28; 2001, ch. 91, § 4.

**ANNOTATIONS**

**The 2001 amendment,** effective April 2, 2001, deleted "the lottery oversight committee" following "the state auditor" in Subsection B(7).

## 6-24-29. Unlawfully influencing and fraud; penalties.

A. It is unlawful to knowingly:

(1) influence the winning of a prize through the use of coercion, fraud, deception or tampering with lottery equipment or materials;

(2) make a material false statement in any application for selection as a lottery retailer or any lottery vendor proposal or other proposal to conduct lottery

activities or to make a material false entry in any book or record that is compiled or maintained or submitted pursuant to the provisions of the New Mexico Lottery Act;

(3) obtain or attempt to obtain access to a computer database or information maintained by the authority without the specific written authorization of the authority; or

(4) obtain or attempt to obtain access to a computer database or information maintained by a person pursuant to a contract with the authority without the specific written authorization of the authority.

B. Any person who violates any provision of Subsection A of this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

**History:** Laws 1995, ch. 155, § 29; 1999, ch. 287, § 3.

**ANNOTATIONS**

**The 1999 amendment,** effective April 8, 1999, added Subsections A(3) and A(4).

## 6-24-30. Conflicts of interest; penalties.

A. It is unlawful for the chief executive officer, a board member or any employee of the authority or any person residing in the household of the officer, board member or employee to:

(1) have, directly or indirectly, an interest in a business, knowing that such business contracts with the lottery for a major procurement, whether such interest is as a natural person, partner, member of an association, stockholder or director or officer of a corporation; or

(2) accept or agree to accept any economic opportunity, gift, loan, gratuity, special discount, favor, service or hospitality having an aggregate value of more than twenty dollars ($20.00) in any calendar year, except for food and beverages consumed by the recipient at the time of receipt, from a person, knowing that the person:

(a) contracts or seeks to contract with the state to supply gaming equipment, materials, lottery tickets or consulting services for use in the lottery; or

(b) is a lottery retailer.

B. It is unlawful for a lottery retailer or a lottery vendor to offer, pay, give or make any economic opportunity, gift, loan, gratuity, special discount, favor, service or hospitality having an aggregate value of more than twenty dollars ($20.00) in any calendar year, except food and beverages consumed by the recipient at the time of receipt, to a person, knowing the person is the chief executive officer, a board member

or an employee of the authority, or a person residing in the household of the officer, board member or employee.

C. Any person who violates any provision of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

D. If a board member, the chief executive officer or an employee of the authority, or any person residing in the household thereof, is convicted of a violation of this section, that board member, chief executive officer or employee shall be removed from office or employment with the authority.

**History:** Laws 1995, ch. 155, § 30; 1999, ch. 287, § 4.

**ANNOTATIONS**

**The 1999 amendment,** effective April 8, 1999, deleted "other than food and beverages" following "service or hospitality" and inserted "except food and beverages consumed by the recipient at the time of receipt" in Subsections A(2) and B and substituted "more than twenty dollars ($20.00)" for "twenty dollars ($20.00) or less" in Subsection A(2).

## 6-24-31. Forgery of lottery ticket; penalty.

A. It is unlawful to falsely make, alter, forge, pass, present or counterfeit, with intent to defraud, a lottery ticket, or receipt for the purchase thereof, issued or purported to have been issued by the lottery under the New Mexico Lottery Act.

B. It is unlawful to steal, knowingly possess or attempt to redeem stolen lottery tickets.

C. A person who violates the provisions of Subsection A of this section when:

(1) the value of all things received in return for the forged lottery ticket or forged receipt for the purchase of a lottery ticket is one hundred dollars ($100) or less is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978;

(2) the value of all things received in return for the forged lottery ticket or forged receipt for the purchase of a lottery ticket is more than one hundred dollars ($100) but not more than one thousand dollars ($1,000) is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978;

(3) the value of all things received in return for the forged lottery ticket or forged receipt for the purchase of a lottery ticket is more than one thousand dollars ($1,000) but not more than two thousand five hundred dollars ($2,500) is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(4) the value of all things received in return for the forged lottery ticket or forged receipt for the purchase of a lottery ticket is more than two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(5) the value of all things received in return for the forged lottery ticket or forged receipt for the purchase of a lottery ticket is more than twenty thousand dollars ($20,000) is guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

D. A person who violates the provisions of Subsection B of this section when:

(1) the face value of the lottery tickets is one hundred dollars ($100) or less is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978;

(2) the face value of the lottery tickets is more than one hundred dollars ($100) but not more than one thousand dollars ($1,000) is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978;

(3) the face value of the lottery tickets is more than one thousand dollars ($1,000) but not more than two thousand five hundred dollars ($2,500) is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(4) the face value of the lottery tickets is more than two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(5) the face value of the lottery tickets is more than twenty thousand dollars ($20,000) is guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

**History:** Laws 1995, ch. 155, § 31; 1999, ch. 287, § 5.

**ANNOTATIONS**

**Cross references.** — For forgery generally, *see* 30-16-10 NMSA 1978.

**The 1999 amendment,** effective April 8, 1998, deleted former Subsection B, relating to persons who violate Subsection A, and added Subsections B to D.

## 6-24-32. Unlawful sale of lottery ticket; penalty.

A. It is unlawful for:

(1) any person to sell a lottery ticket at a price other than that fixed by the authority pursuant to the New Mexico Lottery Act;

(2) any person other than the authority or a lottery retailer to sell or resell any lottery ticket; and

(3) any person to sell a lottery ticket to any person under eighteen years of age.

B. Notwithstanding the provisions of Subsection A of this section, any person may make a gift of lottery tickets, and the authority or a lottery retailer may make a gift of lottery tickets for promotional purposes.

C. Any person who violates any provision of this section for the first time is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

D. Any person who violates any provision of this section for a second or subsequent time is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

**History:** Laws 1995, ch. 155, § 32.

## 6-24-33. Unlawful purchase of lottery ticket; penalty.

A. It is unlawful for the following persons to purchase a lottery ticket or to share knowingly in the lottery winnings of another person:

(1) the chief executive officer, a board member or an employee of the authority; or

(2) an owner, officer or employee of a lottery vendor or, in the case of a corporation, an owner of five percent or more of the corporate stock of a lottery vendor.

B. Notwithstanding the provisions of Subsection A of this section, the chief executive officer may authorize in writing any employee of the authority and any employee of a lottery contractor to purchase a lottery ticket for the purposes of verifying the proper operation of the lottery with respect to security, systems operation and lottery retailer contract compliance. Any prize awarded as a result of such ticket purchase shall become the property of the authority and shall be added to the prize pools of subsequent lottery games.

C. Nothing in this section shall prohibit lottery retailers or their employees from purchasing lottery tickets or from being paid a prize for a winning ticket.

D. Certain classes of persons who, because of the unique nature of the supplies or services they provide for use directly in the operation of the lottery, may be prohibited, in accordance with rules adopted by the board, from participating in any lottery in which such supplies or services are used.

E. Any person who violates any provision of this section for the first time is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

F. Any person who violates any provision of this section for a second or subsequent time is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

**History:** Laws 1995, ch. 155, § 33; 2001, ch. 91, § 5.

**ANNOTATIONS**

**The 2001 amendment,** effective April 2, 2001, deleted "a member of the lottery oversight committee" following "board member" in Subsection A(1).

## 6-24-34. Criminal provisions of act in addition to any existing Criminal Code provisions.

The criminal provisions of the New Mexico Lottery Act are not intended to and do not replace or preempt prosecution for Criminal Code [30-1-1 NMSA 1978] violations based on identical or similar conduct.

**History:** Laws 1995, ch. 155, § 34.

**ANNOTATIONS**

**Cross references.** — For criminal offenses related to gambling, *see* Chapter 30, Article 19 NMSA 1978.

For the Gaming Control Act, *see* Chapter 60, Article 2E NMSA 1978 et seq.

# ARTICLE 25
# Statewide Economic Development

## 6-25-1. Short title.

Chapter 6, Article 25 NMSA 1978 may be cited as the "Statewide Economic Development Finance Act".

**History:** Laws 2003, ch. 349, § 1; 2005, ch. 103, § 1.

**ANNOTATIONS**

**The 2005 amendment,** effective April 4, 2005, substituted "Chapter 6, Article 25 NMSA 1978" for "Sections 1 through 16 of this act".

## 6-25-2. Findings and purpose.

A. The legislature finds that:

(1) it is important for government to promote, support and assist in developing a thriving economic base within the state; increase opportunities for gainful employment and improved living conditions; assist in promoting a balanced and productive economy; encourage the flow of private capital for investment in productive enterprises; and otherwise improve the prosperity, health and general welfare of the people of the state;

(2) in order to attract and encourage established businesses to locate in New Mexico, to retain and expand existing New Mexico businesses and to provide an environment that supports new and emerging businesses within the state, New Mexico communities must be able to provide basic infrastructure and educational, cultural and recreational facilities that require substantial financial resources beyond those of many New Mexico communities;

(3) other states have agencies dedicated to providing financing for economic development projects, which agencies work directly with the state, municipalities, counties and regional economic development agencies to provide the necessary financing related to retaining and attracting businesses and to provide financing to qualified nonprofit corporations that provide community housing, education, health care and cultural facilities;

(4) it is necessary to provide coordinated planning and financing resources to address community and cultural infrastructure needs; and

(5) the combined expertise and resources of the economic development department and the New Mexico finance authority should be used:

(a) for the effective promotion of economic development within the state;

(b) to increase the gainful employment of the citizens and decrease the cost of social services and unemployment compensation;

(c) to increase the tax base of the state; and

(d) to improve the prosperity, health and welfare of the people of the state.

B. The purpose of the Statewide Economic Development Finance Act is to:

(1) stimulate economic development with needed programs in the public interest that serve necessary and valid public purposes; and

(2) provide one method of implementing the economic development assistance provisions of Subsection D of Article 9, Section 14 of the constitution of New Mexico for state projects.

**History:** Laws 2003, ch. 349, § 2; 2005, ch. 103, § 2.

**ANNOTATIONS**

**The 2005 amendment,** effective April 4, 2005, provided in Subsection B(2) that the purpose of the act is to provide one method of implementing the economic development assistance provisions of Article 9, Section 14 of the constitution of New Mexico for state projects.

## 6-25-3. Definitions.

As used in the Statewide Economic Development Finance Act:

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

B. "department" means the economic development department;

C. "community development entity" means an entity designed to take advantage of the federal new markets tax credit program;

D. "economic development assistance provisions" means the economic development assistance provisions of Subsection D of Article 9, Section 14 of the constitution of New Mexico;

E. "project revenue bonds" means bonds, notes or other instruments authorized in Section 6-25-7 NMSA 1978 and issued by the authority pursuant to the Statewide Economic Development Finance Act on behalf of eligible entities;

F. "economic development goal" means:

(1) assistance to rural and underserved areas designed to increase business activity, including agricultural enterprises, such as new or ongoing agricultural projects that add value to New Mexico agricultural products;

(2) retention and expansion of existing business, including agricultural enterprises, such as new or ongoing agricultural projects that add value to New Mexico agricultural products;

(3) attraction of new business, including agricultural enterprises, such as new or ongoing agricultural projects that add value to New Mexico agricultural products; or

(4) creation and promotion of an environment suitable for the support of start-up and emerging business, including agricultural enterprises, such as new or ongoing agricultural projects that add value to New Mexico agricultural products within the state;

G. "economic development revolving fund bonds" means bonds, notes or other instruments payable from the fund and issued by the authority pursuant to the Statewide Economic Development Finance Act;

H. "eligible entity" means a for-profit or not-for-profit business, including an agricultural enterprise, such as new or ongoing agricultural projects that add value to New Mexico agricultural products and including a corporation, limited liability company, partnership or other entity, determined by the department to be engaged in an enterprise that serves an economic development goal and is suitable for financing assistance;

I. "federal new markets tax credit program" means the tax credit program codified as Section 45D of the Internal Revenue Code of 1986, as that section may be amended or renumbered, and regulations issued pursuant to that section;

J. "financing assistance" means project revenue bonds, loans, loan participations or loan guarantees provided by the authority to or for eligible entities pursuant to the Statewide Economic Development Finance Act;

K. "fund" means the economic development revolving fund;

L. "mortgage" means a mortgage, deed of trust or pledge of any assets as a collateral security;

M. "opt-in agreement" means an agreement entered into between the department and a qualifying county, a school district and, if applicable, a qualifying municipality that provides for county, school district and, if applicable, municipal approval of a project, subject to compliance with all local zoning, permitting and other land use rules, and for payments in lieu of taxes to the qualifying county, school district and, if applicable, qualifying municipality as provided by the Statewide Economic Development Finance Act;

N. "payment in lieu of taxes" means the total annual payment, including any state in-lieu payment, paid as compensation for the tax impact of a project, in an amount negotiated and determined in the opt-in agreement between the department and the qualifying county, the school district and, if applicable, the qualifying municipality, which payment shall be distributed to the county, municipality and school district in the same proportion as property tax revenues are normally distributed to those recipients;

O. "standard project" means land, buildings, improvements, machinery and equipment, operating capital and other personal property for which financing assistance is provided for adequate consideration, taking into account the anticipated quantifiable benefits of the standard project, for use by an eligible entity as:

(1) industrial or manufacturing facilities;

(2) commercial facilities, including facilities for wholesale sales and services;

(3) health care facilities, including hospitals, clinics, laboratory facilities and related office facilities;

(4) educational facilities, including schools;

(5) arts, entertainment or cultural facilities, including museums, theaters, arenas or assembly halls;

(6) recreational and tourism facilities, including parks, pools, trails, open space and equestrian facilities; and

(7) agricultural enterprises, including new or ongoing agricultural projects and projects that add value to New Mexico agricultural products;

P. "project" means a standard project or a state project;

Q. "qualifying municipality or county" means a municipality or county that enters into an opt-in agreement;

R. "quantifiable benefits" means a project's advancement of an economic development goal as measured by a variety of factors, including:

(1) the benefits an eligible entity contracts to provide, such as local hiring quotas, job training commitments and installation of public facilities or infrastructure; and

(2) other benefits such as the total number of direct and indirect jobs created by the project, total amount of annual salaries to be paid as a result of the project, total gross receipts and occupancy tax collections, total property tax collections, total state corporate and personal income tax collections and other fee and revenue collections resulting from the project;

S. "school district" means a school district where a project is located that is exempt from property taxes pursuant to the Statewide Economic Development Finance Act;

T. "state in-lieu payment" means an annual payment, in an amount determined by the department, that will be distributed to a qualifying county, a school district and, if

applicable, a qualifying municipality in the same proportion as property tax revenues are normally distributed to those recipients;

U. "state project" means land, buildings or infrastructure for facilities to support new or expanding eligible entities for which financing assistance is provided pursuant to the economic development assistance provisions; and

V. "tax impact of a project" means the annual reduction in property tax revenue to affected property tax revenue recipients directly resulting from the conveyance of a project to the department.

**History:** Laws 2003, ch. 349, § 3; 2005, ch. 103, § 3; 2006, ch. 64, § 1; 2019, ch. 8, § 1.

**ANNOTATIONS**

**Cross references.** — For the federal new markets tax credit, *see* 26 C.F.R. 1.45D and 26 U.S.C. 45D-1T.

**The 2019 amendment,** effective June 14, 2019, revised certain definitions as used in the Statewide Economic Development Finance Act to include agricultural enterprises; in Paragraph F(1), after "business activity", added "including agricultural enterprises, such as new or ongoing agricultural projects that add value to New Mexico agricultural products", in Paragraph F(2), after "existing business", added "including agricultural", and after "enterprises", added "such as new or ongoing agricultural projects that add value to New Mexico agricultural products", in Paragraph F(3), after "new business", added "including agricultural", and after "enterprises", added "such as new or ongoing agricultural projects that add value to New Mexico agricultural products", in Paragraph F(4), after "emerging business", added "including agricultural", and after "enterprises", added "such as new or ongoing agricultural projects that add value to New Mexico agricultural products"; in Subsection H, after "not-for-profit business", added "including an agricultural", and after "enterprise", added "such as new or ongoing agricultural projects that add value to New Mexico agricultural products and"; in Subsection I, after "Internal Revenue Code", added "of 1986"; and in Subsection O, added Paragraph O(7).

**The 2006 amendment,** effective May 17, 2006, added a new Subsection C to define "community development entity" and added a new Subsection I to define "federal new markets tax credit program".

**The 2005 amendment,** effective April 4, 2005, added the definition in Subsection C of "economic development assistance provisions"; changed the defined term in Subsection D from "economic development bonds" to "project revenue bonds"; added to the definition of "economic development goal" in Subsection E(1) the element of assistance to rural and underserved areas; added the definition of "economic development revolving fund bonds" in Subsection F, eliminated the reference to the person who operates a project and includes not-for-profit business enterprises in the definition of

"eligible entity" in Subsection G, defined "financing assistance" in Subsection H to mean project revenue bonds, loans, loan participations or loan guarantees provided by the authority and eliminated reference to the New Mexico Finance Authority Act; deleted the definition of "local school district"; added the definition of "fund" in Subsection I; defined "standard project" in Subsection M to include machinery and equipment, operating capital and other personal property for which financing assistance is provided for adequate consideration, taking into account the quantifiable benefits of the project; defined "project" in Subsection N to mean a standard project or a state project; added the definition of "quantifiable benefits" in Subsection P; added the definition of "school district" in Subsection Q; and added the definition of "state project" in Subsection S.

## 6-25-4. Economic development department; additional powers.

Consistent with the provisions of the Statewide Economic Development Finance Act, the department may:

A. acquire, whether by construction, purchase, gift or lease, and hold fee simple title to or other interest in any project;

B. enter into a lease of property in connection with any project;

C. sell, lease or otherwise dispose of any project;

D. assign lease payments, rents and any other revenues derived from a project to the authority pursuant to leases, mortgages or indentures securing payment of the principal of, interest on and any other charges and expenses relating to project revenue bonds issued by the authority;

E. make state in-lieu payments to a qualifying county, a school district and, if applicable, a qualifying municipality to offset the tax impact of a project; and

F. coordinate with the authority:

(1) for the authority's provision of staffing support and assistance in carrying out the department's responsibilities under the Statewide Economic Development Finance Act; and

(2) to enter into memoranda of understanding or such other agreements as the department and authority determine to be appropriate for such purposes.

**History:** Laws 2003, ch. 349, § 4; 2005, ch. 103, § 4.

**ANNOTATIONS**

**The 2005 amendment,** effective April 4, 2005, deleted reference to "project property" in Subsections A, B and C and added the reference to project revenue bonds in Subsection D.

## 6-25-5. Additional duties of the economic development department and the New Mexico finance authority; opt-in agreements.

A. For the purpose of recommending projects to the authority for financing assistance, the department and the authority shall coordinate to:

(1) survey potential eligible entities and projects and provide outreach services to local governments and eligible entities, for the purpose of identifying and recommending projects to the authority for financing assistance;

(2) evaluate potential projects for suitability for financing assistance;

(3) formulate recommendations of projects that are suitable for financing assistance; and

(4) obtain input and information relevant to the establishment and implementation of criteria for evaluating potential projects.

B. The department, with such staffing and other assistance from the authority as the department may request, shall propose to enter into opt-in agreements with counties, school districts and municipalities for the purpose of facilitating local government approvals necessary to permit projects to proceed. Opt-in agreements shall provide:

(1) for project compliance with all applicable local land use regulations;

(2) for payments in lieu of taxes to qualifying counties, school districts and, if applicable, qualifying municipalities to mitigate the tax impact of a project;

(3) that financing assistance is conditioned upon compliance with:

(a) all applicable ordinances, regulations and codes of a local government concerning planning, zoning and development permitting; and

(b) such other requirements as the department and the county, school district and municipality may agree to include;

(4) that the payments in lieu of taxes shall be distributed in a manner and in amounts calculated in accordance with the provisions of Section 6-25-14 NMSA 1978; and

(5) that the county, school district or municipality reserves the right to withdraw from the agreement if it determines that the project subject to the agreement does not satisfy the requirements enumerated in the opt-in agreement.

C. The department shall adopt rules for the exercise of its powers and responsibilities pursuant to the Statewide Economic Development Finance Act.

**History:** Laws 2003, ch. 349, § 5; 2005, ch. 103, § 5.

**ANNOTATIONS**

**The 2005 amendment,** effective April 4, 2005, deleted the qualification in Subsection A(4) that the department and the authority coordinate to obtain input and information from the authority and changed the statutory reference in Subsection B(4) to Section 6-25-14 NMSA 1978.

## 6-25-6. New Mexico finance authority; additional powers and duties.

A. To implement a program to assist eligible entities in financing projects, the authority has the powers specified in this section.

B. State projects receiving financing assistance with money in the fund shall first be approved by law. To protect public money in the fund or other public resources, rules of the authority relating to state projects shall include provisions to ensure achievement of the economic development goals of the state project and shall describe the means of recovering public money or other public resources if an eligible entity defaults on its obligations to the authority.

C. Standard projects receiving financing assistance with money in the fund shall be approved by the authority pursuant to rules approved by the New Mexico finance authority oversight committee. Beginning July 1, 2027, standard projects shall first be approved by law.

D. The authority may:

(1) issue project revenue bonds on behalf of an eligible entity, payable from the revenues of a project and other revenues authorized as security for the bonds, to finance a project on behalf of an eligible entity;

(2) make loans from the fund for projects to eligible entities that establish one or more dedicated sources of revenue to repay the loan from the authority;

(3) enter into loan participation agreements from the fund for projects, whether in the form of an interest rate buy-down, the purchase of loans or portions of loans originated and underwritten by third-party lenders or other similar arrangements;

(4) provide loan guarantees from the fund for projects;

(5) make, execute and enforce all contracts necessary, convenient or desirable for purposes of the authority or pertaining to project revenue bonds, economic development revolving fund bonds, loans, loan participations or loan guarantees and the Statewide Economic Development Finance Act and pay the reasonable value of services rendered to the authority pursuant to the contracts;

(6) purchase and hold loans and loan participations in the fund at prices and in a manner determined by the authority;

(7) sell loans and loan participations acquired or held by the authority in the fund at prices and in a manner determined by the authority;

(8) prescribe the form of application or procedure required of an eligible entity to apply for financing assistance;

(9) fix the terms and conditions of the financing assistance, including the priority of lien and type of collateral or other security, and enter into agreements with eligible entities with respect to financing assistance;

(10) fix, revise from time to time, charge and collect fees and other charges in connection with the issuance of bonds; the making, purchase, participation in or guarantee of loans; and the review of proposed financing assistance to an eligible entity, whether or not the financing assistance is provided;

(11) employ architects, engineers, accountants and attorneys; construction and financial experts; and such other advisors, consultants and agents as may be necessary in its judgment, and fix and pay their compensation;

(12) to the extent allowed under its contracts with the holders of bonds of the authority, consent to modification of the rate of interest, time and payment of installments of principal or interest, security or any other term of financing assistance;

(13) consider the ability of the eligible entity to secure financing for a project from other sources and the costs of that financing;

(14) acquire fee simple, leasehold, mortgagor's or mortgagee's interests in real or personal property and sell, mortgage, convey, lease or assign that property for authority purposes; and

(15) in the event of default by an eligible entity, enforce its rights by suit, mandamus and all other remedies available under law.

E. The authority shall adopt rules subject to approval of the New Mexico finance authority oversight committee to:

(1) establish procedures for applying for financing assistance;

(2) establish credit qualifications for eligible entities and establish terms and conditions for financing assistance;

(3) establish economic development goals for projects in consultation with the department;

(4) establish methods for determining quantifiable benefits;

(5) provide safeguards to protect public money and other public resources provided for a state project;

(6) establish procedures by which the authority requests approval by law for projects receiving financing assistance with money in the fund; and

(7) establish fees to pay the costs of evaluating, originating and administering financing assistance.

F. The authority shall coordinate with the department to provide staffing and other assistance to the department in carrying out the department's responsibilities and activities pursuant to the Statewide Economic Development Finance Act.

G. The authority shall report to the New Mexico finance authority oversight committee twice each year regarding the total expenditures from the economic development revolving fund for the previous fiscal year, the purposes for which expenditures were made, an analysis of the progress of the projects funded and proposals for legislative action.

**History:** Laws 2011, ch. 150, § 2; 2013, ch. 106, § 2; repealed and reenacted by Laws 2016, ch. 38, § 1; 2019, ch. 69, § 1; 2023, ch. 120, § 1.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 2016, ch. 38, § 1 repealed former 6-25-6 NMSA 1978, and enacted a new section, effective July 1, 2016.

**The 2023 amendment,** effective June 16, 2023, extended the date by which statewide economic development finance act standard projects must be approved by law; and in Subsection C, after "July 1", changed "2023" to "2027".

**The 2019 amendment,** effective June 14, 2019, extended the date after which statewide economic development finance act standard projects must first be approved by law; and in Subsection C, changed "2019" to "2023".

**The 2013 amendment,** effective July 1, 2016, extended the suspension of specific prior authorization of funding of projects from the economic development revolving fund for three years; and added Subsection G.

## 6-25-6.1. New Mexico finance authority; additional powers; federal new markets tax credit program.

In addition to other powers granted to the authority, the authority may form, operate, own or co-own one or more nonprofit or for-profit qualified community development entities for the purpose of participation in the federal new markets tax credit program, and pursuant to participation in the federal new markets tax credit program may:

A. apply for and obtain one or more allocations of new markets tax credits;

B. market and sell qualified equity investments;

C. make qualified low-income community investments; and

D. take all actions necessary or convenient to carry out the purposes of the qualified community development entity or to participate in the federal new markets tax credit program.

**History:** Laws 2006, ch. 64, § 2.

**ANNOTATIONS**

**Cross references.** — For the federal new markets tax credit, *see* 26 C.F.R. 1.45D and 26 U.S.C. 45D-1T.

**Effective dates.** — Laws 2006, ch. 64 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

## 6-25-7. Project revenue bonds.

A. The authority may issue project revenue bonds on behalf of an eligible entity to provide funds for a project. Project revenue bonds issued pursuant to the Statewide Economic Development Finance Act shall not be a general obligation of the authority or the state within the meaning of any provision of the constitution of New Mexico and shall never give rise to a pecuniary liability of the authority or the state or a charge against the general credit or taxing powers of the state. Project revenue bonds shall be payable from the revenue derived from a project being financed by the bonds and from other revenues pledged by an eligible entity and may be secured in such manner as provided in the Statewide Economic Development Finance Act and as determined by the authority. Project revenue bonds may be executed and delivered at any time, may be in such form and denominations, may be payable in installments and at times not

exceeding thirty years from their date of delivery, may bear or accrete interest at a rate or rates and may contain such provisions not inconsistent with the Statewide Economic Development Finance Act, all as provided in the resolution and proceedings of the authority authorizing issuance of the bonds. Project revenue bonds issued by the authority pursuant to the Statewide Economic Development Finance Act may be sold at public or private sale in such manner and from time to time as may be determined by the authority, and the authority may pay all expenses that the authority may determine necessary in connection with the authorization, sale and issuance of the bonds. All project revenue bonds issued pursuant to the Statewide Economic Development Finance Act shall be negotiable.

B. The principal of and interest on project revenue bonds issued pursuant to the Statewide Economic Development Finance Act shall be secured by a pledge of the revenues of the project being financed with the proceeds of the bonds, may be secured by a mortgage of all or a part of the project being financed or other collateral pledged by an eligible entity and may be secured by the lease of such project, which collateral and lease may be assigned, in whole or in part, by the department to the authority or to third parties to carry out the purposes of the Statewide Economic Development Finance Act. The resolution of the authority pursuant to which the project revenue bonds are authorized to be issued or any such mortgage may contain any agreement and provisions customarily contained in instruments securing bonds, including provisions respecting the fixing and collection of all revenues from any project to which the resolution or mortgage pertains, the terms to be incorporated in the lease of the project, the maintenance and insurance of the project, the creation and maintenance of special funds from the revenues of the project and the rights and remedies available in event of default to the bondholders or to the trustee under a mortgage, all as determined by the authority or the department and as shall not be in conflict with the Statewide Economic Development Finance Act; provided, however, that, in making any such agreements or provisions, the authority and the department may not obligate themselves except with respect to the project and application of the revenues from the project, and except as expressly permitted by the Statewide Economic Development Finance Act, and shall not have the power to incur a pecuniary liability or a charge or to pledge the general credit or taxing power of the state. The resolution authorizing the issuance of project revenue bonds may provide procedures and remedies in the event of default in payment of the principal of or interest on the bonds or in the performance of any agreement. No breach of any such agreement shall impose any pecuniary liability upon the authority, the department or the state or any charge against the general credit or taxing powers of the state.

C. The authority may arrange for such other guarantees, insurance or other credit enhancements or additional security provided by an eligible entity as determined by the authority for the project revenue bonds and may provide for the payment of the costs from the proceeds of the bonds or may require payment of the costs by the eligible entity on whose behalf the bonds are issued.

D. Project revenue bonds issued to finance a project may also be secured by pledging a portion of the qualifying municipal or county gross receipts tax revenues by the municipality or county in which the project is located, as permitted by the Local Economic Development Act.

E. The project revenue bonds and the income from the bonds, all mortgages or other instruments executed as security for the bonds, all lease agreements made pursuant to the provisions of the Statewide Economic Development Finance Act and revenue derived from any sale or lease of a project shall be exempt from all taxation by the state or any political subdivision of the state. The authority may issue project revenue bonds the interest on which is exempt from taxation under federal law.

F. In any calendar year, no more than fifteen percent of the state ceiling allocated pursuant to the Private Activity Bond Act [6-20-1 to 6-20-11 NMSA 1978] may be used for projects financed pursuant to the Statewide Economic Development Finance Act.

**History:** Laws 2003, ch. 349, § 7; 2005, ch. 103, § 7; 2019, ch. 274, § 9.

## ANNOTATIONS

**The 2019 amendment,** effective July 1, 2019, removed the restriction on optional municipal or county participation in statewide economic development project revenue bonds from only the current infrastructure options to any municipal or county local option rate; and in Subsection D, after "municipal or county", deleted "infrastructure".

**Temporary provisions.** — Laws 2019, ch. 274, § 15 provided:

A. The repeal of and changes to certain taxes made in this act shall not impair outstanding bonds that are secured by a pledge of those taxes.

B. If a municipality or county has issued a revenue bond that is secured by a pledge of a tax being amended or repealed by this act, the revenue received by the municipality or county is impressed with the obligation to repay the outstanding bond and is dedicated to that repayment until the bond is fully discharged or otherwise provided for in full.

C. If a municipality or county has dedicated any amount of revenue attributable to a tax being amended or repealed by this act, the municipality or county shall continue to dedicate the same amount of revenue attributable to the tax until the ordinance dedicating the revenue expires, the term of the dedication expires, the governing body acts to change the dedication or, in the case of bonded indebtedness, the debt is fully discharged or otherwise provided for in full.

**The 2005 amendment,** effective April 4, 2005, changes "economic development bonds" and "bonds" to "project revenue bonds" and "project property" to "project" and deletes

the requirement that bonds state that the bonds are not a general obligation of the state or of the finance authority.

## 6-25-8. Leases of projects.

A. Prior to the department's lease of any project to an eligible entity, the authority shall determine:

(1) the amount necessary in each year to pay the principal of and interest on project revenue bonds to be issued to finance the project;

(2) the amount necessary to be paid each year into any reserve funds the authority establishes in connection with the retirement of the proposed project revenue bonds and the maintenance and repair of the project; and

(3) unless the terms under which the project is to be leased provide that the lessee shall maintain the project and carry all proper insurance with respect to the project, the estimated cost of maintaining the project in good repair and keeping it properly insured.

B. The determinations required by Subsection A of this section shall be set forth in the resolution under which the proposed project revenue bonds are to be issued; and prior to the issuance of the bonds, the department shall lease or sell the project to a lessee or purchaser pursuant to an agreement conditioned upon completion of the project and providing for payment to the department and assigned to the authority or a trustee, of such rentals or payments as will be sufficient to:

(1) pay the principal of and interest on the bonds issued to finance the project;

(2) build up and maintain any reserve established by the authority for the bonds; and

(3) pay the costs of maintaining the project in good repair and keeping it properly insured, unless the lease obligates the lessee to pay for the maintenance and insurance of the project.

**History:** Laws 2003, ch. 349, § 8; 2005, ch. 103, § 8.

**ANNOTATIONS**

**The 2005 amendment,** effective April 4, 2005, changed "bonds" to "project revenue bonds" and "project property" to "project".

## 6-25-9. Project revenue refunding bonds.

A. Outstanding project revenue bonds may be refunded by the authority by issuing its refunding bonds in such amounts as the authority may determine to refund all or a portion of the principal of the project revenue bonds, all interest on the bonds to the normal maturity date of such bonds or to selected prior redemption dates, any redemption premiums, any commission and all estimated costs incidental to the issuance of such bonds and to such refunding. The principal amount of project revenue refunding bonds may be equal to, less than or greater than the principal amount of the project revenue bonds to be refunded. Any such refunding may be effected whether the bonds to be refunded have matured or will thereafter mature, either by sale of the refunding bonds and the application of the proceeds for the payment of the bonds to be refunded, or by exchange of the refunding bonds for the bonds to be refunded; provided that the holders of any project revenue bonds to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. Project revenue refunding bonds shall be payable from the revenues out of which other project revenue bonds are payable or from the amounts derived from an escrow as provided in this section, including amounts derived from the investment of refunding bond proceeds and other legally available amounts, or from any combination of the foregoing sources, and may be secured in the manner that other project revenue bonds issued pursuant to the Statewide Economic Development Finance Act may be secured.

B. Proceeds of project revenue refunding bonds shall either be applied immediately to the retirement of the project revenue bonds being refunded or placed in escrow in a commercial bank or trust company that possesses and is exercising trust powers. Notwithstanding any other provision of law, the escrowed proceeds may be invested in short-term or long-term securities. Except to the extent inconsistent with the express terms of the Statewide Economic Development Finance Act, the resolution of the authority pursuant to which the project revenue bonds to be refunded were issued, including any mortgage or trust indenture securing the bonds, shall govern the establishment of any escrow in connection with the refunding bonds and the investment or reinvestment of any escrowed proceeds.

**History:** Laws 2003, ch. 349, § 9; 2005, ch. 103, § 9.

**ANNOTATIONS**

**The 2005 amendment,** effective April 4, 2005, changed "bonds" to "project revenue bonds".

## 6-25-10. Use of project revenue bond proceeds.

The proceeds from the sale of project revenue bonds issued pursuant to the Statewide Economic Development Finance Act shall be applied only for the purpose for which the bonds were issued and costs related to the project. The cost of any project shall include the following:

A. all expenses in connection with the authorization, sale and issuance of the bonds; and

B. capitalized interest on the bonds for a reasonable time.

**History:** Laws 2003, ch. 349, § 10; 2005, ch. 103, § 10.

**ANNOTATIONS**

**The 2005 amendment,** effective April 4, 2005, changed "bonds" to "project revenue bonds" and "project property" to "project", deletes the requirements that the cost of a project shall include the cost of construction, including architect, engineering and attorney fees; the purchase price of any project property that may be purchased and the cost of extension of utilities and added in Subsection B that the cost of a project include the capitalized interest on bonds for a reasonable time.

## 6-25-11. Project revenue bonds legal investments.

Project revenue bonds issued pursuant to the Statewide Economic Development Finance Act shall be legal investments in which all insurance companies, banks and savings and loan associations organized under the laws of the state, public officers and public bodies and all administrators, guardians, executors, trustees and other fiduciaries, including the state investment council, may properly and legally invest funds.

**History:** Laws 2003, ch. 349, § 11; 2005, ch. 103, § 11.

**ANNOTATIONS**

**The 2005 amendment,** effective April 4, 2005, after "legal investments" deleted "for savings bonds and insurance companies organized under the laws of the state", and added the remainder of the paragraph.

## 6-25-12. Repealed.

**History:** Laws 2003, ch. 349, § 12; repealed Laws 2005, ch. 103, § 27.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 103, § 27 repealed 6-25-12 NMSA 1978, as enacted by Laws 2003, ch. 349, § 12, relating to loan participations, effective April 4, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

## 6-25-13. Economic development revolving fund.

A. The "economic development revolving fund" is created within the authority. The fund shall be administered by the authority as a separate account and may consist of

such subaccounts as the authority deems necessary to carry out the purposes of the fund. The authority may establish procedures for administering the fund in accordance with the Statewide Economic Development Finance Act.

B. Except as otherwise provided in the Statewide Economic Development Finance Act, money from payments of principal of, interest on and other fees or charges paid to the authority in connection with economic development revolving fund bonds, loans, project revenue bonds purchased with money on deposit in the fund, loan participations and loan guarantees shall be deposited in the fund.

C. Money in the economic development revolving fund is appropriated to the authority to:

(1) pay the reasonably necessary administrative and other costs incurred by the authority in evaluating, processing, originating and servicing economic development revolving fund bonds, loans, project revenue bonds, loan participations and loan guarantees;

(2) purchase loan participations for projects;

(3) make loans for projects;

(4) make loan guarantees for projects; and

(5) purchase project revenue bonds.

D. Money in the economic development revolving fund that is not needed for immediate disbursement, including money held in reserve, may be deposited or invested in the same manner as other funds administered by the authority.

E. Money on deposit in the economic development revolving fund may be designated as a reserve for economic development revolving fund bonds issued and for financing assistance provided from the fund by the authority pursuant to the Statewide Economic Development Finance Act and the authority may covenant in any resolution or trust indenture to maintain and replenish the reserve from money deposited in the fund.

F. Money in the economic development revolving fund may be used to purchase project revenue bonds issued by the authority pursuant to the Statewide Economic Development Finance Act, which are payable from any designated source of revenues or collateral. Purchasing and holding the bonds shall not result in cancellation or merger of the bonds, notwithstanding the fact that the authority as the issuer of the bonds is obligated to make the required debt service payments and the fund held by the authority is entitled to receive the required debt service payments.

**History:** Laws 2003, ch. 349, § 13; 2005, ch. 103, § 12.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2006, ch. 69, § 1, effective March 6, 2006, authorized the New Mexico finance authority, pursuant to Sections 6-25-6 and 6-25-13 NMSA 1978, to provide financing assistance from the economic development revolving fund to eligible entities for certain standard projects, subject to detailed analysis, final approval and specific terms and conditions established by the authority.

Laws 2009, ch. 237, § 1, effective April 7, 2009, authorized the New Mexico finance authority to provide financing assistance in the form of loan participations with private lenders for up to forty-nine percent of total individual project financing, not to exceed $5,000,000 per project, from the economic development revolving fund to eligible entities for standard projects subject to detailed analysis, final approval and specific terms and conditions established by the authority.

**The 2005 amendment,** effective April 4, 2005, changed "statewide loan participation fund" and "fund" to "economic development revolving fund" and provided that fees or charges paid to the finance authority in connection with economic development revolving fund bonds, loans, project revenue bonds purchased with money in the economic development revolving fund and loan guarantees shall be deposited in the fund in Subsection B; provided that money in the fund is appropriated to pay costs incurred by the finance authority in evaluating and processing bonds, loans, and loan guarantees in Subsection C(1); deleted the authority to use money to purchase securities to assist in financing projects in Subsection C(2); and authorized the use of money in the fund to make loans, loan guarantees and purchase project revenue bonds in Subsections C(3) through (5).

## 6-25-14. Tax impact fund.

A. The "tax impact fund" is created within the state treasury. The tax impact fund shall consist of money appropriated to the fund and money distributed to the fund by law. Money remaining in the tax impact fund at the end of each fiscal year shall not revert, but shall remain in the fund for the purposes set forth in the Statewide Economic Development Finance Act. For the purpose of mitigating the tax impact of a project, money in the tax impact fund shall be disbursed by warrant of the secretary of finance and administration, upon vouchers submitted by the department, to qualifying counties, school districts and, if applicable, qualifying municipalities as state in-lieu payments in the same proportion as property taxes are distributed.

B. The amount of state in-lieu payments shall be determined by the department, as specified in the opt-in agreement, and shall be subject to the availability of money in the tax impact fund in each fiscal year during the term of the opt-in agreement.

C. In each fiscal year during the term of an opt-in agreement, a county, school district and, if applicable, a municipality shall qualify to receive state in-lieu payments in connection with project when the following conditions are satisfied:

(1) title to the project has been transferred to the department in connection with financing assistance provided pursuant to the Statewide Economic Development Finance Act, resulting in an exemption from property taxes that the qualifying county, school district and, if applicable, qualifying municipality would otherwise have been entitled to receive;

(2) pursuant to an opt-in agreement, the qualifying county, school district and, if applicable, qualifying municipality have certified to the department in advance that they support the project, subject to the project's compliance with the planning, zoning, subdivision, building code and other applicable laws and regulations governing land use;

(3) pursuant to an opt-in agreement, the county, the school district and, if applicable, the municipality and the department have agreed on the amount of the annual payment in lieu of taxes; and

(4) the department has determined that there is sufficient money on deposit in the tax impact fund in the current fiscal year to make distributions of state in-lieu payments for the project.

D. The department shall establish by rule procedures for certification by local governments concerning project support, notification of local school boards concerning financing and qualification for state in-lieu payments.

E. The amount of state in-lieu payments that a qualifying county, school district and, if applicable, qualifying municipality are entitled to receive shall be determined by the department based upon:

(1) the annual reduction in property tax revenue received by the qualifying county, school district and, if applicable, qualifying municipality that results from the transfer of title to the project to the department;

(2) the increase in local revenues that the qualifying county, school district and, if applicable, qualifying municipality are anticipated to receive as a result of the project;

(3) an allocation of the annual revenue deposited to the tax impact fund among the qualifying municipalities, counties and school districts that have qualified to receive state in-lieu payments; and

(4) such adjustments as the department may determine by rule are appropriate and necessary to carry out the purposes of the Statewide Economic Development Finance Act, including, without limitation, adjustments that are necessary or desirable to:

(a) overcome particular barriers to economic expansion in specific locales;

(b) mitigate the tax impact of a project that will not be offset by increased local gross receipts revenue production directly or indirectly resulting from the project; or

(c) encourage job growth in an area in which unemployment is a particular problem.

**History:** Laws 2003, ch. 349, § 14; 2005, ch. 103, § 13.

**ANNOTATIONS**

**The 2005 amendment,** effective April 4, 2005, changed "project property" to "project", and deleted the requirement in Subsection B that state in-lieu payments from the tax impact fund shall be made as a portion of the total amount of the annual payment in lieu of taxes required in the opt-in agreement.

## 6-25-15. Cumulative authority.

The Statewide Economic Development Finance Act shall be deemed to provide an additional and alternative method for the accomplishment of the things authorized by that act, shall be interpreted as supplemental and additional to the powers conferred by other laws and shall not be regarded as in derogation of any powers now existing; provided that the issuance of bonds pursuant to the provisions of the Statewide Economic Development Finance Act need not comply with the requirement of any other law applicable to the issuance of bonds or notes.

**History:** Laws 2003, ch. 349, § 15.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 349 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

## 6-25-16. Liberal interpretation.

The Statewide Economic Development Finance Act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes thereof.

**History:** Laws 2003, ch. 349, § 16.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 349 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

## 6-25-17. Economic development revolving fund bonds of the authority; use; security.

A. The authority may issue and sell economic development revolving fund bonds in principal amounts it determines necessary to provide sufficient money for any purpose of the Statewide Economic Development Finance Act, including:

(1) making loans;

(2) entering into loan participations;

(3) providing loan guarantees;

(4) purchasing project revenue bonds;

(5) paying, funding or refunding of the principal of or interest or redemption premiums on economic development revolving fund bonds issued by the authority, whether the economic development revolving fund bonds or interest to be paid, funded or refunded have or have not become due;

(6) establishing or increasing reserves or sinking funds to secure or to pay principal, premium, if any, or interest on economic development revolving fund bonds; and

(7) paying all other costs or expenses of the authority incident to and necessary or convenient to carry out its duties pursuant to the Statewide Economic Development Finance Act.

B. All economic development revolving fund bonds issued by the authority shall be payable solely from the fund and the revenues, income and fees deposited in the fund, and the economic development revolving fund bonds 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 or a charge upon the general credit or taxing power of the state or any political subdivision of the state.

**History:** Laws 2005, ch. 103, § 14.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 103, § 28 made the act effective April 4, 2005.

## 6-25-18. Economic development revolving fund bonds; authorization for issuance; terms and conditions.

A. Economic development revolving fund bonds of the authority shall be authorized by resolution of the authority and may be issued in one or more series. The economic development revolving fund bonds shall bear the dates, be in the form, be issued in the denominations, have terms and maturities, bear or accrete interest at rates and be payable and evidenced in the manner and times as the resolution of the authority or the trust agreement securing the economic development revolving fund bonds provides. The economic development revolving fund bonds may be redeemed with or without premiums prior to maturity, may be ranked or assigned priority status and may contain provisions not inconsistent with this subsection.

B. The economic development revolving fund bonds issued by the authority may be sold at any time at private or public sale at prices agreed upon by the authority.

C. Economic development revolving fund bonds may be issued pursuant to the Statewide Economic Development Finance Act without obtaining the consent of any agency of the state and without any other proceeding or condition other than the proceedings or conditions specified in that act.

D. The economic development revolving fund bonds issued by the authority are negotiable instruments for all purposes of the Uniform Commercial Code [Chapter 55 NMSA 1978].

E. Any resolution for the issuance of economic development revolving fund bonds shall provide that each economic development revolving fund bond authorized shall recite that it is issued by the authority. The recital shall clearly state that the economic development revolving fund bonds are in full compliance with all of the provisions of the Statewide Economic Development Finance Act.

**History:** Laws 2005, ch. 103, § 15.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 103, § 28 made the act effective April 4, 2005.

## 6-25-19. Economic development revolving fund bonds secured by trust indenture.

Economic development revolving fund bonds may be secured by a trust indenture between the authority and a corporate trustee that may be either a bank having trust powers or a trust company. The trust indenture shall contain reasonable provisions for protecting and enforcing the rights and remedies of bondholders, including covenants setting forth the duties of the authority in relation to the exercise of its powers and the custody, use and investment of the money. The authority shall provide by the trust indenture for the payment of the proceeds of the economic development revolving fund bonds and the revenue to the trustee under the trust indenture or other depository for disbursement with such safeguards as the authority determines are necessary.

**History:** Laws 2005, ch. 103, § 16.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 103, § 28 made the act effective April 4, 2005.

## 6-25-20. Publication of notice; validation; limitation of action.

A. After adoption of a resolution authorizing issuance of economic development revolving fund bonds or project revenue bonds in accordance with the Statewide Economic Development Finance Act, the authority shall publish notice of the adoption of the resolution once in a newspaper of general statewide circulation.

B. After the passage of thirty days from the publication required by Subsection A of this section, any action attacking the validity of the proceedings taken by the authority preliminary to and in the authorization and issuance of the bonds described in the notice is perpetually barred.

**History:** Laws 2005, ch. 103, § 17.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 103, § 28 made the act effective April 4, 2005.

## 6-25-21. Refunding bonds.

The authority is authorized to issue economic development revolving fund bonds for the purpose of refunding any economic development revolving fund bonds then outstanding, including the payment of any redemption premiums and any interest accrued or to accrue to the date of redemption of the outstanding economic development revolving fund bonds. Until the proceeds of the bonds issued for the purpose of refunding outstanding economic development revolving fund bonds are applied to the purchase, retirement or redemption of the outstanding economic development revolving fund bonds, the proceeds may be placed in escrow and be invested and reinvested. The interest, income and profits, if any, earned or realized on any such investment may also be applied to the payment of the outstanding economic development revolving fund bonds to be refunded by purchase, retirement or redemption. After the terms of the escrow have been fully satisfied, any balance may be returned to the authority for use by it in any lawful manner. All such refunding bonds shall be issued and secured and shall be subject to the provisions of the Statewide Economic Development Finance Act in the same manner and to the same extent as any other bonds issued pursuant to that act.

**History:** Laws 2005, ch. 103, § 18.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 103, § 28 made the act effective April 4, 2005.

## 6-25-22. Economic development revolving fund and project revenue bond anticipation notes.

The authority is authorized to issue negotiable economic development revolving fund and project revenue bond anticipation notes and may renew the notes from time to time, but the maximum maturity of such notes, including renewals of such notes, shall not exceed ten years from the date of issue of the original notes. The notes shall be payable from any available money of the authority from payments made by an eligible entity or from the proceeds of sale of the bonds of the authority in anticipation of which such notes were issued. The notes may be issued for any purpose of the authority authorized by the Statewide Economic Development Finance Act. All such notes shall be issued and secured and shall be subject to the provisions of that act in the same manner and to the same extent as bonds issued pursuant to that act.

**History:** Laws 2005, ch. 103, § 19.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 103, § 28 made the act effective April 4, 2005.

## 6-25-23. Remedies of holders of economic development revolving fund bonds and project revenue bonds.

Any holder of economic development revolving fund bonds or project revenue bonds issued by the authority pursuant to the Statewide Economic Development Finance Act or a trustee under a trust indenture entered into pursuant to that act, except to the extent that his rights are restricted by any bond resolution or trust indenture may protect and enforce, by any suitable form of legal proceedings, any rights provided by the laws of this state or granted by the bond resolution or trust indenture. Such rights include the right to compel the performance of all duties of the authority or the department required by the Statewide Economic Development Finance Act, the bond resolution or the trust indenture and to enjoin unlawful activities.

**History:** Laws 2005, ch. 103, § 20.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 103, § 28 made the act effective April 4, 2005.

## 6-25-24. Agreement of the state.

The state pledges to and agrees with the holders of any economic development revolving fund bonds, project revenue bonds or notes issued by the authority under the

Statewide Economic Development Finance Act that the state will not limit or alter the rights vested in the authority or the department to fulfill the terms of any agreements made with the holders of the economic development revolving fund bonds, project revenue bonds or notes or in any way impair the rights and remedies of those holders until the economic development revolving fund bonds, project revenue bonds or notes together with the interest on the economic development revolving fund bonds, project revenue bonds or notes, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of those holders, are fully met and discharged. The authority may include this pledge and agreement of the state in any agreement with the holders of the economic development revolving fund bonds, project revenue bonds or notes.

**History:** Laws 2005, ch. 103, § 21.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 103, § 28 made the act effective April 4, 2005.

## 6-25-25. Economic development revolving fund bonds; legal investments.

The economic development revolving fund bonds or notes issued under the Statewide Economic Development Finance Act shall be legal investments in which all insurance companies, banks and savings and loan associations organized under the laws of the state, public officers and public bodies and all administrators, guardians, executors, trustees and other fiduciaries, including the state investment council, may properly and legally invest funds.

**History:** Laws 2005, ch. 103, § 22.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 103, § 28 made the act effective April 4, 2005.

## 6-25-26. Tax exemption.

The promotion of proposed projects pursuant to the Statewide Economic Development Finance Act is a public purpose. The state covenants with the purchasers and all subsequent holders and transferees of bonds issued by the authority, in consideration of the acceptance of and payment for the economic development revolving fund bonds, that the economic development revolving fund bonds issued pursuant to that act and the income from the economic development revolving fund bonds shall at all times be free from taxation by the state, except for estate or gift taxes and taxes on transfers.

**History:** Laws 2005, ch. 103, § 23.

### ANNOTATIONS

**Effective dates.** — Laws 2005, ch. 103, § 28 made the act effective April 4, 2005.

## 6-25-27. Proprietary information; confidentiality; penalty.

A. Information obtained by the department or the authority that is proprietary technical or business information or related to the possible relocation or expansion of an eligible entity shall be confidential and not subject to inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

B. It is unlawful for any employee of the department or the authority, or any former employee of the department or the authority to reveal to any person other than another employee of the department or the authority any confidential information obtained by the department or the authority that is proprietary technical or business information or related to the possible relocation or expansion of an eligible entity and not available from public sources, except in response to an order of a district court, an appellate court or a federal court.

C. Any employee or former employee of the department or the authority who reveals to another person any information that he is prohibited from lawfully revealing is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

**History:** Laws 2005, ch. 103, § 24.

### ANNOTATIONS

**Effective dates.** — Laws 2005, ch. 103, § 28 made the act effective April 4, 2005.

## 6-25-28. Application of other laws.

The Statewide Economic Development Finance Act shall be deemed to provide additional and alternative methods of financing projects authorized in that act and shall be deemed supplemental and additional to powers conferred by other laws.

**History:** Laws 2005, ch. 103, § 25.

### ANNOTATIONS

**Effective dates.** — Laws 2005, ch. 103, § 28 made the act effective April 4, 2005.

## 6-25-29. Temporary provision; fund name change; outstanding bonds; fund balances.

Nothing in this act shall be deemed to impair economic development bonds or loan participations outstanding on the effective date of this act. The economic development revolving fund is the new name for the statewide loan participation fund and is not a new fund created by this act.

**History:** Laws 2005, ch. 103, § 26.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 103, § 28 made the act effective April 4, 2005.

# ARTICLE 25A
# New Mexico Exposition Center Authority

## 6-25A-1. Short title.

This act [6-25A-1 to 6-25A-23 NMSA 1978] may be cited as the "New Mexico Exposition Center Authority Act".

**History:** Laws 2005, ch. 342, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 342, § 24 made the act effective April 7, 2005.

## 6-25A-2. Legislative findings.

The legislature finds that:

A. there is a need for appropriate facilities in this state to enhance, foster, aid, provide and promote transportation, economic development, housing, recreation, education, culture, history and sense of place and for governmental operations necessary to support such activities;

B. there is a need for suitable facilities for expositions, conventions, exhibitions, meetings, banquets and related facilities that will enhance or supplement facilities currently available for these activities in order to promote the state and its counties and municipalities as attractive destinations to convention and visitor industry planners;

C. there is a great tradition in the state involving railway transportation that can be integrated with expositions, conventions and exhibitions and planned commuter rail transportation facilities for the mutual benefit of the state and out-of-state visitors participating in expositions, conventions and exhibitions; and

D. private enterprise alone cannot provide facilities of the type and size to achieve a first-class exposition center, but by establishing an authority to plan, develop, manage and operate a suitable exposition center the state can achieve a great public benefit at the least public cost through the use of leases, concessions and other contractual relationships with private enterprise.

**History:** Laws 2005, ch. 342, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 342, § 24 made the act effective April 7, 2005.

## 6-25A-3. Definitions.

As used in the New Mexico Exposition Center Authority Act:

A. "authority" means the New Mexico exposition center authority;

B. "bond" means a bond, note, certificate of participation or other evidence of indebtedness;

C. "bondholder" or "holder" means a person who is the owner of a bond, whether registered or not;

D. "exposition center" means real or personal property, or any combination thereof, that is owned, leased or otherwise controlled or financed by the authority, located in the participating jurisdictions, other than property owned by the state, commonly known as the "state fairgrounds", located within the exterior boundaries of the city of Albuquerque, that is related to, useful for or in furtherance of one or more purposes authorized by the New Mexico Exposition Center Authority Act, including facilities used for expositions, conventions, exhibitions, displays, meetings, banquets, trade shows, sporting events, arena events, museums, excursion trains, commuter and long-distance rail stations, trolleys, hotels, parking facilities, connection walkways, transportation maintenance yards, rail crossings and other light and heavy rail transportation activities and operations and related facilities, provided such facilities are available for the use by the general public;

E. "participating jurisdiction" means a department, commission, council, board, committee, institution, legislative body, agency, government corporation or educational institution of the state or a political subdivision of the state that is empowered to receive or expend public money, including municipalities and counties;

F. "project" means planning and design work for and development, construction, reconstruction, enlargement, improvement, installation, rehabilitation, remodeling and renovation of the exposition center; and

G. "security" or means bonds, notes or other evidence of indebtedness issued by participating jurisdictions or leases or certificates or other evidence of participation in the lessor's interest in and rights under a lease with participating jurisdictions that are payable from taxes, revenues, rates, charges, assessments or user fees or from the proceeds of funding or refunding bonds, notes or other evidence of indebtedness of a qualified entity or from certificates or evidence of participation in a lease with participating jurisdictions.

**History:** Laws 2005, ch. 342, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 342, § 24 made the act effective April 7, 2005.

## 6-25A-4. New Mexico exposition center authority created; membership; qualifications; quorum; meetings; compensation; bond.

A. There is created a public body politic and corporate, separate and apart from the state, constituting a governmental instrumentality to be known as the "New Mexico exposition center authority" for the performance of essential public functions.

B. The authority shall be composed of fifteen members, including the secretary of finance and administration, the secretary of economic development, the secretary of tourism, the chair of the state transportation commission, the secretary of transportation, the executive director of the New Mexico finance authority, the mayor of the city of Albuquerque, the chair of the Bernalillo county board of county commissioners, the mayor of the city of Santa Fe, the chair of the Santa Fe county board of county commissioners, the executive director of the mid-region council of governments and four members who are residents of the state, at least three of whom are nonresidents of Bernalillo or Santa Fe county, appointed by the governor, with the advice and consent of the senate. The appointed members shall serve at the pleasure of the governor.

C. The appointed members of the authority shall be appointed to four-year terms. The initial members shall be appointed to staggered terms of four years or less, so that the term of at least one member expires on January 1 of each year. Vacancies shall be filled by appointment by the governor for the remainder of the unexpired term. An appointed member shall continue to serve beyond the expiration of the member's term until a new member is appointed. Any member shall be eligible for reappointment.

D. Each appointed member before entering upon the member's duties shall take an oath of office to administer the duties of office faithfully and impartially. A record of the oath shall be filed in the office of the secretary of state.

E. The governor shall designate an appointed member of the authority to serve as chair. The authority shall elect annually one of its members to serve as vice chair. The

authority shall appoint and prescribe the duties of such other officers, who need not be members, as the authority deems necessary or advisable, including an executive director and a secretary, who may be the same person. The authority may delegate to one or more of its members, officers, employees or agents such powers and duties as it may deem proper and consistent with the New Mexico Exposition Center Authority Act.

F. The executive director of the authority shall direct the affairs and business of the authority, subject to the policies, control and direction of the authority. The secretary of the authority shall keep a record of the proceedings of the authority and shall be the custodian of all books, documents and papers filed with the authority, the minute book or journal of the authority and its official seal. The secretary shall make copies of all minutes and other records and documents of the authority and give certificates under the official seal of the authority to the effect that the copies are true copies, and all persons dealing with the authority may rely upon the certificates.

G. Meetings of the authority shall be held at the call of the chair or whenever three members shall so request in writing. A majority of members then serving constitutes a quorum for the transaction of any business. The affirmative vote of at least a majority of a quorum present shall be necessary for any action to be taken by the authority. An ex-officio member may designate in writing another person to attend meetings and to act for that member with the same authority as the member. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all rights and perform all duties of the authority.

H. Each member of the authority shall give a bond as provided in the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978]. All costs of the surety bonds shall be borne by the authority.

I. The authority is not created or organized, and its operations shall not be conducted, for the purpose of making a profit. No part of the revenues or assets of the authority shall benefit or be distributable to its members, officers or other private persons. The members of the authority shall receive no compensation for their services, but shall be reimbursed for actual and necessary expenses at the same rate and on the same basis as provided for public officers in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

J. The authority shall not be subject to the supervision or control of any other board, bureau, department or agency of the state except as specifically provided in the New Mexico Exposition Center Authority Act. No use of the terms "state agency" or "instrumentality" in any other law of the state shall be deemed to refer to the authority unless the authority is specifically referred to in the law.

K. The authority may operate the exposition center in the participating jurisdictions in accordance with the purposes expressed in the New Mexico Exposition Center Authority Act.

L. The authority shall be included as a "qualified entity" within the meaning of that term pursuant to the New Mexico Finance Authority Act [Chapter 6, Article 21 NMSA 1978].

M. The authority shall be included in the definition of "qualifying entity" pursuant to the Local Economic Development Act [Chapter 5, Article 10 NMSA 1978].

N. The authority shall be included as an "eligible entity" within the meaning of that term pursuant to the Statewide Economic Development Finance Act [Chapter 6, Article 25 NMSA 1978].

O. The authority is a governmental instrumentality for purposes of the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978].

**History:** Laws 2005, ch. 342, § 4.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 342, § 24 made the act effective April 7, 2005.

## 6-25A-5. Powers of the authority.

The authority may:

A. sue and be sued;

B. adopt and alter an official seal;

C. make and alter bylaws for its organization and internal management and adopt, subject to the review and approval of the New Mexico exposition center authority oversight committee, rules necessary and appropriate to implement the provisions of the New Mexico Exposition Center Authority Act;

D. appoint officers, agents and employees, prescribe their duties and qualifications and fix their compensation;

E. make, enter into and enforce contracts, agreements and other instruments necessary, convenient or desirable in the exercise of the authority's powers and functions and for the purposes of the New Mexico Exposition Center Authority Act;

F. acquire, construct or improve, grant mortgages of, accept mortgages of, otherwise encumber, sell, lease, convey or dispose of real and personal property for its public uses;

G. acquire, construct, improve or hold land, buildings, improvements and other facilities, including equipment for lease, use or occupancy by private enterprise and

pledge rentals and other revenues derived therefrom to the payment of operating costs and expenses and to the payment of bonds;

H. make grants to participating jurisdictions for a project for the exposition center;

I. make loans to or purchase securities from participating jurisdictions and contract to make loans to or purchase securities from participating jurisdictions for the exposition center;

J. procure insurance to secure payment on a loan, lease or payment owed to the authority from insurers, including the federal government or its agencies or instrumentalities, as it may deem necessary or desirable, and pay any premiums for that insurance;

K. carry out projects for the development of the exposition center in the participating jurisdictions;

L. fix, revise from time to time, charge and collect rents, fees and other charges in connection with the making of loans or leases, or for services provided by the authority;

M. accept, administer, hold and use all funds made available to the authority from any source;

N. borrow money and issue bonds and provide for the rights of bondholders;

O. establish and maintain reserve and sinking fund accounts to ensure that funds will be available for maintenance of debt service accounts;

P. invest and reinvest its funds and take and hold property as security for the investment of such funds as provided by the New Mexico Exposition Center Authority Act;

Q. employ attorneys, accountants, underwriters, financial advisors, trustees, paying agents, architects, engineers, contractors and such other advisors, consultants and agents as may be necessary and fix and pay their compensation;

R. apply for and accept gifts, grants or loans of property, funds, services or aid in any form from the United States or its agencies or instrumentalities, from the state or its agencies or instrumentalities or from a person and comply, subject to the provisions of the New Mexico Exposition Center Authority Act, with the terms and conditions of the gifts, grants or loans, including pledges or guarantees that may be required in connection with the gifts, grants or loans;

S. maintain one or more offices in the participating jurisdictions as it may determine;

T. subject to an agreement with bondholders:

(1) renegotiate a loan, lease, agreement or other obligation;

(2) consent to a modification of the terms of a loan, lease, agreement or other obligation; and

(3) purchase bonds, which may upon purchase be canceled;

U. operate and manage the exposition center in one or more participating jurisdictions and pledge the revenues from the exposition center to the payment of bonds in accordance with the provisions of the New Mexico Exposition Center Authority Act;

V. authorize the engagement of a person, public or private, including an entity engaged in the business of managing exposition and convention centers, as the authority may select upon terms and for periods as the authority may deem appropriate;

W. notwithstanding the provisions of the Procurement Code [13-1-28 to 13-1-199 NMSA 1978], enter into contracts to carry out any of its powers granted in the New Mexico Exposition Center Authority Act, including the planning, design, engineering and financing of exhibition center projects, with a master developer, the developer of a specific exhibition center project, contractors, owners or other persons or entities, on terms that the authority shall determine to be appropriate; and

X. do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in the New Mexico Exposition Center Authority Act.

**History:** Laws 2005, ch. 342, § 5.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 342, § 24 made the act effective April 7, 2005.

## 6-25A-6. Purchases in name of the authority; documentation.

A. All tangible and intangible property, real and personal property and securities purchased, held or owned by the authority shall be purchased and held in the name of the authority, or may be mortgaged, assigned or otherwise encumbered as security for the repayment of bonds issued by the authority.

B. All securities purchased by the authority, upon delivery to the authority, shall be accompanied by all documentation required by the authority and shall include an approving opinion of recognized bond counsel, certification and guarantee of signatures and certification as to no litigation pending as of the date of delivery of the securities challenging the validity or issuance of such securities.

**History:** Laws 2005, ch. 342, § 6.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 342, § 24 made the act effective April 7, 2005.

## 6-25A-7. Bonds of the authority; use; security.

A. The authority may issue and sell bonds in principal amounts it considers necessary to provide sufficient money for the purposes of the New Mexico Exposition Center Authority Act, including:

(1) purchase of securities;

(2) making loans through the purchase of securities;

(3) making grants for projects from money available to the authority;

(4) the financing of a project located in whole or in part in a participating jurisdiction for use in connection with the exposition center;

(5) the payment, funding or refunding of the principal of or interest or redemption premiums on bonds issued by the authority, whether the bonds or interest to be paid, funded or refunded have or have not become due;

(6) the establishment or increase of reserves or sinking funds to secure or to pay principal, premium, if any, or interest on bonds issued by the authority; and

(7) the payment of other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers.

B. Except as otherwise provided in the New Mexico Exposition Center Authority Act, bonds issued by the authority shall be obligations of the authority payable solely from revenues, income, fees, charges or funds of the authority that may, pursuant to the provisions of the New Mexico Exposition Center Authority Act, be pledged to the payment of those obligations, and the bonds shall not create an obligation, debt or liability of the state. No breach of a pledge, obligation or agreement of the authority shall impose a pecuniary liability or a charge upon the general credit or taxing power of the state or a political subdivision of the state.

C. As security for the payment of the principal, interest or premium, if any, on bonds issued by the authority, the authority may pledge, transfer and assign:

(1) an obligation that is payable to the authority, including rents, lease payments and other use or occupancy fees or charges owing to the authority in connection with the leasing, use or occupancy of real or personal property;

(2) the revenues of the authority derived from loan payments, rents, fees, charges or other payments, with respect to or derived from any property acquired, constructed, furnished or equipped with the proceeds of bonds after provision for the reasonable cost of operating, maintaining and repairing that property of the authority;

(3) the revenues to meet the costs of operating, maintaining and repairing the real and personal property of the authority and to meet the interest and principal requirements of the bonds issued by the authority and establish and maintain reserves pursuant to covenants of the authority to maintain rates and charges that will produce such revenues;

(4) any grant, subsidy or contribution from the United States or its agencies or instrumentalities; or

(5) any income, revenues, funds or other money of the authority from any other source authorized for that pledge, transfer or assignment.

**History:** Laws 2005, ch. 342, § 7.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 342, § 24 made the act effective April 7, 2005.

## 6-25A-8. Bonds; authorization for issuance; terms and conditions.

A. Bonds of the authority shall be authorized by resolution of the authority and may be issued in one or more series. The bonds shall bear the dates, be in the form, be issued in the denominations, have terms and maturities, bear interest at rates and be payable and evidenced in the manner and times as the resolution of the authority or the trust agreement securing the bonds provides. The bonds may be redeemed with or without premiums prior to maturity, may be ranked or assigned priority status and may contain provisions not inconsistent with this subsection.

B. Bonds issued by the authority may be sold at any time at private or public sale at the prices agreed upon by the authority.

C. Bonds of the authority may be issued pursuant to the New Mexico Exposition Center Authority Act without obtaining the consent of any agency of the state and without any other proceeding or condition other than the proceedings or conditions specified in the New Mexico Exposition Center Authority Act.

D. Bonds issued by the authority are negotiable instruments for all purposes of the Uniform Commercial Code [Chapter 55 NMSA 1978], subject only to the provisions of the bonds for registrations.

E. A resolution for the issuance of bonds shall provide that each bond authorized shall recite that it is issued by the authority. The recital shall clearly state that the bonds are in full compliance with all the provisions of the New Mexico Exposition Center Authority Act.

**History:** Laws 2005, ch. 342, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 342, § 24 made the act effective April 7, 2005.

## 6-25A-9. Bonds secured by trust indenture.

Bonds of the authority may be secured by a trust indenture between the authority and a corporate trustee that may be either a bank having trust powers or a trust company. The trust indenture may contain reasonable provisions for protecting and enforcing the rights and remedies of bondholders, including covenants setting forth the duties of the authority in relation to the exercise of its powers and the custody, use and investment of money. The authority may provide by the trust indenture for the payment of the proceeds of the bonds and the revenue to the trustee under the trust indenture or other depository for disbursement with safeguards as the authority determines necessary.

**History:** Laws 2005, ch. 342, § 9.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 342, § 24 made the act effective April 7, 2005.

## 6-25A-10. Publication of notice; validation; limitation of action.

A. After adoption of a resolution authorizing issuance of bonds, the authority shall publish notice of the adoption of the resolution once in a newspaper of general statewide circulation.

B. After the passage of thirty days from the publication required by Subsection A of this section, an action attacking the validity of the proceedings had or taken by the authority preliminary to and in the authorization and issuance of the bonds described in the notice is perpetually barred.

**History:** Laws 2005, ch. 342, § 10.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 342, § 24 made the act effective April 7, 2005.

## 6-25A-11. Refunding bonds.

The authority may issue its bonds for the purpose of refunding bonds then outstanding, including the payment of redemption premiums and interest accrued or to accrue to the date of redemption of the outstanding bonds. Until the proceeds of the bonds issued for the purpose of refunding outstanding bonds are applied to the purchase or retirement of the outstanding bonds or the redemption of the outstanding bonds, the proceeds may be placed in escrow and be invested and reinvested. The interest, income and profits, if any, earned or realized on an investment may, in the discretion of the authority, also be applied to the payment of the outstanding bonds to be refunded by purchase, retirement or redemption, as the case may be. After the terms of the escrow have been fully satisfied and carried out, a balance of proceeds and interest, if any, earned or realized on the investments of proceeds and interest may be returned to the authority for use by it in a lawful manner. Refunding bonds shall be issued and secured and shall be subject to the provisions of the New Mexico Exposition Center Authority Act in the same manner and to the same extent as any other bonds issued pursuant to the New Mexico Exposition Center Authority Act.

**History:** Laws 2005, ch. 342, § 11.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 342, § 24 made the act effective April 7, 2005.

## 6-25A-12. Remedies of bondholders.

A holder of bonds issued by the authority or a trustee under a trust indenture entered into pursuant to the New Mexico Exposition Center Authority Act, except to the extent that its rights are restricted by a bond resolution or trust indenture authorized pursuant to the bond resolution, may protect and enforce, by a suitable form of legal proceedings, rights under the laws of this state or granted by the bond resolution or trust indenture authorized pursuant to the bond resolution. These rights include the right to compel the performance of the duties of the authority required by the New Mexico Exposition Center Authority Act or the bond resolution and to enjoin unlawful activities.

**History:** Laws 2005, ch. 342, § 12.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 342, § 24 made the act effective April 7, 2005.

## 6-25A-13. Agreement of the state.

The state pledges to and agrees with the holder of a bond issued pursuant to the New Mexico Exposition Center Authority Act that the state will not limit or alter the rights vested in the authority to fulfill the terms of agreements made with the bondholder or in

any way impair the rights and remedies of that bondholder until the bond together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with an action or proceeding by or on behalf of that bondholder, are fully met and discharged. The authority may include this pledge and agreement of the state in any agreement with a bondholder.

**History:** Laws 2005, ch. 342, § 13.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 342, § 24 made the act effective April 7, 2005.

## 6-25A-14. Bonds; legal investment for public officers and fiduciaries.

Bonds issued by the authority shall be legal investments in which all insurance companies, banks and savings and loan associations organized under the laws of the state, public officers and public bodies and all administrators, guardians, executors, trustees and other fiduciaries may properly and legally invest funds.

**History:** Laws 2005, ch. 342, § 14.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 342, § 24 made the act effective April 7, 2005.

## 6-25A-15. Tax exemption.

A. The creation of the authority is in all respects for the benefit of the people of the state, for the improvement of their health and welfare and for the promotion of projects for the exposition center pursuant to the New Mexico Exposition Center Authority Act. These purposes are public purposes and the authority will be performing an essential governmental function in the exercise of its powers with the purchasers and subsequent holders and transferees of bonds issued by the authority, in consideration of the acceptance of and payment for the bonds. Bonds issued pursuant to the New Mexico Exposition Center Authority Act and the income from the bonds shall at all times be free from taxation by the state, except for estate or gift taxes and taxes on transfers.

B. The property, income and operations of the authority shall be exempt from taxation of every kind and nature.

**History:** Laws 2005, ch. 342, § 15.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 342, § 24 made the act effective April 7, 2005.

## 6-25A-16. Money of the authority; expenses; audit; annual report.

A. Money of the authority, except as otherwise authorized or provided in the New Mexico Exposition Center Authority Act or in a bond resolution, trust indenture or other instrument under which bonds are issued, shall be deposited as soon as practicable in a separate account or accounts in banks or trust companies organized under the laws of this state. Deposits of money shall be secured, if required by the authority, in such a manner as the authority determines to be prudent. Banks or trust companies may give security for deposits of the authority.

B. Subject to the provisions of any contract with bondholders, the authority shall prescribe a system of accounts.

C. Money held by the authority that is not needed for immediate disbursement, including funds held in reserve, may be deposited with the state treasurer for short-term investment pursuant to Section 6-10-10.1 NMSA 1978 or may be invested in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States, obligations issued by agencies of the United States, obligations of this state or any political subdivision of the state, interest-bearing time deposits, commercial paper issued by corporations organized and operating within the United States and rated "prime" quality by a national rating service, other investments permitted by Section 6-10-10 NMSA 1978 or as otherwise provided by the trust indenture or bond resolution, if the funds are pledged for or secure payment of bonds issued by the authority.

D. The authority shall have an audit of its books and accounts made at least once each year by the state auditor or by a certified public accounting firm whose proposal has been reviewed and approved by the state auditor. The cost of the audit shall be an expense of the authority. Copies of the audit shall be submitted to the governor and the New Mexico exposition center authority oversight committee and made available to the public.

E. The authority shall submit a report of its activities to the governor and to the legislature not later than December 1 of each year. Each report shall set forth a complete operating and financial statement covering its operations for that year.

**History:** Laws 2005, ch. 342, § 16.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 342, § 24 made the act effective April 7, 2005.

## 6-25A-17. Corporate existence.

The authority and its corporate existence shall continue until terminated by law, provided that no termination by law shall take effect so long as the authority has bonds or other obligations outstanding, unless adequate provision has been made for the

payment of those obligations. Upon termination of the existence of the authority, all its rights and properties in excess of its obligations shall pass to and be vested in the state.

**History:** Laws 2005, ch. 342, § 17.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 342, § 24 made the act effective April 7, 2005.

## 6-25A-18. Prohibited actions.

The authority shall not:

A. deal in securities within the meaning of or subject to securities law, securities exchange law or securities dealer law of the United States or the state or of another state or jurisdiction, domestic or foreign, except as authorized in the New Mexico Exposition Center Authority Act; or

B. issue bills of credit or accept deposits of money for time on demand deposit or administer trusts or engage in any form or manner, or in the conduct of, a private or commercial banking business, or act as a savings bank or savings and loan association or another kind of financial institution except as authorized in the New Mexico Exposition Center Authority Act.

**History:** Laws 2005, ch. 342, § 18.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 342, § 24 made the act effective April 7, 2005.

## 6-25A-19. Conflicts of interest; penalty.

A. If a member, officer or employee of the authority has an interest, either direct or indirect, in a contract to which the authority is or is to be a party, that interest shall be disclosed to the authority in writing and shall be set forth in the minutes of the authority. The member, officer or employee having that interest shall not participate in an action by the authority with respect to that contract.

B. A person who has a conflict of interest as provided in this section and participates in a transaction involving that conflict of interest or fails to notify the authority of the conflict is guilty of a misdemeanor and upon conviction shall be sentenced to imprisonment in the county jail for a definite term of not more than one year or to the payment of a fine of not more than one thousand dollars ($1,000), or both.

**History:** Laws 2005, ch. 342, § 19.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 342, § 24 made the act effective April 7, 2005.

## 6-25A-20. Cumulative authority.

The New Mexico Exposition Center Authority Act shall be deemed to provide an additional and alternative method for the doing of the things it authorizes and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing; provided that the issuance of bonds under the provisions of the New Mexico Exposition Center Authority Act need not comply with the requirements of any other law applicable to the issuance of bonds.

**History:** Laws 2005, ch. 342, § 20.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 342, § 24 made the act effective April 7, 2005.

## 6-25A-21. New Mexico exposition authority oversight committee.

There is created a joint interim legislative committee that shall be known as the "New Mexico exposition center authority oversight committee". The New Mexico legislative council shall determine the membership of the committee and shall appoint the members and designate the chair and the vice chair in accordance with council policies. The staff for the committee shall be provided by the legislative council service.

**History:** Laws 2005, ch. 342, § 21.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 342, § 24 made the act effective April 7, 2005.

## 6-25A-22. Committee duties.

The New Mexico exposition center authority oversight committee shall:

A. monitor and oversee the operation of the authority;

B. meet on a regular basis to receive and review reports from the authority on implementation of the provisions of the New Mexico Exposition Center Authority Act and to review and approve rules proposed for adoption by the authority;

C. oversee and monitor proposed projects for the exposition center in participating jurisdictions;

D. provide advice and assistance to the authority and cooperate with the executive branch of state government and participating jurisdictions on planning, setting priorities for and financing of projects for the exposition center; and

E. report its findings and recommendations, including recommended legislation, to the governor and to each session of the legislature. The report and proposed legislation shall be made available on or before December 15 each year.

**History:** Laws 2005, ch. 342, § 22.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 342, § 24 made the act effective April 7, 2005.

## 6-25A-23. Severability.

If any part or application of the New Mexico Exposition Center Authority Act is held invalid, the remainder or its application to other situations shall not be affected.

**History:** Laws 2005, ch. 342, § 23.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 342, § 24 made the act effective April 7, 2005.

# ARTICLE 26
# Behavioral Health Capital Funding Act

## 6-26-1. Short title.

This act [6-26-1 to 6-26-8 NMSA 1978] may be cited as the "Behavioral Health Capital Funding Act".

**History:** Laws 2004, ch. 71, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 71 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

## 6-26-2. Purpose.

The purpose of the Behavioral Health Capital Funding Act is to provide funding for capital projects to eligible entities in order to increase behavioral health care services to sick and indigent patients.

**History:** Laws 2004, ch. 71, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 71 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

## 6-26-3. Definitions.

As used in the Behavioral Health Capital Funding Act:

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

B. "capital project" means acquisition, repair, renovation or construction of a behavioral health facility; purchase of land; or acquisition of capital equipment;

C. "department" means the human services department [health care authority department];

D. "eligible entity" means:

(1) a nonprofit behavioral health facility that is a 501(c)(3) nonprofit corporation for federal income tax purposes and serves primarily sick and indigent patients; or

(2) a behavioral health care clinic that operates in a rural or other health care underserved area of the state, that is owned by a county or municipality and that meets department requirements for eligibility;

E. "fund" means the behavioral health capital fund;

F. "operating capital" means funds needed to meet short-term obligations, such as accounts payable, wages, debt servicing, lease and income tax payments; and

G. "project" means a capital project or operating capital needed to support the increase of behavioral health services to sick and medically indigent persons.

**History:** Laws 2004, ch. 71, § 3; 2019, ch. 156, § 1; 2023, ch. 129, § 1.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 205, § 16 provided that references to the human services department shall be deemed to be references to the health care authority department.

**Cross references.** — For the New Mexico finance authority *see* 6-21-4 NMSA 1978.

For the department of health, *see* 9-7-4 NMSA 1978.

**The 2023 amendment,** effective June 16, 2023, defined "operating capital" and "project" and revised the definitions of "capital project" and "department"; in Subsection B, after "means", added "acquisition", and after "equipment", deleted "of a long term nature"; in Subsection C, after "means the", added "human services", and after "department", deleted "of health"; and added Subsections F and G.

**The 2019 amendment,** effective June 14, 2019, expanded the definition of "eligible entity" for purposes of the Behavioral Health Capital Funding Act; and in Subsection D, Paragraph D(1), after "behavioral health facility that", deleted "has assets totaling less than ten million dollars ($10,000,000)", and added Paragraph D(2).

## 6-26-4. Behavioral health capital fund.

A. The "behavioral health capital fund" is created as a revolving fund in the authority. The fund shall consist of appropriations, loan repayments, gifts, grants, donations and interest earned on investment of the fund. Money in the fund shall not revert at the end of a fiscal year.

B. Money in the fund is appropriated to the authority for the purpose of making loans to eligible entities for projects pursuant to the Behavioral Health Capital Funding Act.

C. The fund shall be administered by the authority. The authority may recover from the fund the actual costs of administering the fund and originating loans.

**History:** Laws 2004, ch. 71, § 4; 2019, ch. 156, § 2; 2023, ch. 129, § 2.

**ANNOTATIONS**

**The 2023 amendment,** effective June 16, 2023, changed the amount that the New Mexico finance authority may recover from the behavioral health capital fund from up to ten percent of original loan amounts to actual costs of administering the fund and originating loans; in Subsection B, after "eligible entities for", deleted "capital"; and in Subsection C, added "actual" preceding "costs", and after "originating loans", deleted "up to an amount equal to ten percent of original loan amounts".

**The 2019 amendment,** effective June 14, 2019, authorized the New Mexico finance authority to recover from the behavioral health capital fund the costs of administering the fund and originating loans; in Subsection C, after "The authority", deleted "or department shall not be paid" and added "may recover", and after "from the fund", added "the costs of administering the fund and originating loans up to an amount equal to ten percent of original loan amounts".

## 6-26-5. Authority; rules.

The authority, in conjunction with the department, shall adopt rules to administer and implement the provisions of the Behavioral Health Capital Funding Act, including provisions:

A. establishing procedures and forms for applying for loans;

B. specifying the documentation required to be provided by the applicant to justify the need for the project;

C. specifying the documentation required to be provided by the applicant to demonstrate that the applicant is an eligible entity;

D. establishing procedures for review, evaluation and approval of loans, including the programmatic, organizational and financial information necessary to review, evaluate and approve an application;

E. for evaluating the ability and competence of an applicant to provide efficiently and adequately for the completion of a proposed project;

F. for the approval of loan applications, including provisions that accord priority attention to areas with the greatest need for behavioral health services;

G. that ensure fair geographic distribution of loans;

H. establishing requirements for repayment of loans, including payment schedules, interest rates, loan terms and other requirements;

I. for ensuring the authority's interest in any project by the filing of a lien equal to the total of the authority's financial participation in the project; and

J. for such other requirements deemed necessary by the department and the authority to ensure that the state receives the behavioral health services for which the legislature appropriates money and that the investment in a project is protected.

**History:** Laws 2004, ch. 71, § 5; 2023, ch. 129, § 3.

**ANNOTATIONS**

**The 2023 amendment,** effective June 16, 2023, provided the New Mexico finance authority with primary authority for adopting rules to administer and implement the provisions of the Behavioral Health Capital Funding Act; in the section heading, deleted "Department"; in the introductory clause, after "The", deleted "department" and added "authority", and after "with the", deleted "authority" and added "department"; in Subsection A, after "for loans", deleted "for capital projects"; in Subsection B, after "need for the", deleted "capital"; in Subsection E, after "proposed", deleted "capital"; and in Subsection I, after "ensuring the", deleted "state's" and added "authority's", and after "total of the", deleted "state's" and added "authority's"; and in Subsection J, after "that the", deleted "state's interest" and added "investment" and after "in a", deleted "capital".

## 6-26-6. Department; authority; powers and duties.

A. The department and the authority shall administer the loan programs established pursuant to the provisions of the Behavioral Health Capital Funding Act. The department and the authority shall:

(1) enter into joint powers agreements with each other or other appropriate public agencies to carry out the provisions of that act; and

(2) apply to any appropriate federal, state or local governmental agency or private organization for grants and gifts to carry out the provisions of that act.

B. The department and the authority may:

(1) instead of a loan, contract for services with an eligible entity to provide free or reduced-fee primary care services for sick and medically indigent persons as reasonably adequate legal consideration for money from the fund to the eligible entity so it may acquire or construct a capital project to provide the services;

(2) make and enter into contracts and agreements necessary to carry out their powers and duties pursuant to the provisions of the Behavioral Health Capital Funding Act; and

(3) do all things necessary or appropriate to carry out the provisions of the Behavioral Health Capital Funding Act.

C. The authority is responsible for all financial duties of the programs, including:

(1) administering the fund;

(2) accounting for all money received, controlled or disbursed for capital projects in accordance with the provisions of the Behavioral Health Capital Funding Act;

(3) evaluating and approving loans, including determining the financial capacity of an eligible entity;

(4) enforcing contract provisions of loans, including the ability to sue to recover money or property owed the state;

(5) determining interest rates and other financial aspects of a loan and relevant terms of a contract for services; and

(6) performing other duties in accordance with the provisions of the Behavioral Health Capital Funding Act, rules promulgated pursuant to that act or joint powers agreements entered into with the department.

D. The department is responsible for the following duties:

(1) defining sick and medically indigent persons for purposes of the Behavioral Health Capital Funding Act;

(2) establishing priorities for loans;

(3) determining the appropriateness of a project;

(4) evaluating the capability of an applicant to provide and maintain behavioral health services;

(5) selecting recipients of loans and persons with whom to contract for services; and

(6) determining that projects comply with all state and federal licensing requirements.

E. The authority may make a loan to an eligible entity to acquire, construct, renovate or otherwise improve a capital project, provided there is a finding:

(1) by the department that the project will provide behavioral health services to sick and indigent persons as determined by the department; and

(2) by the authority that there is adequate protection, including loan guarantees, real property liens, title insurance, security interests in or pledges of accounts and other assets, loan covenants and warranties or restrictions or other encumbrances and pledges for the state funds extended for the loan.

**History:** Laws 2004, ch. 71, § 6; 2023, ch. 129, § 4.

**ANNOTATIONS**

**The 2023 amendment,** effective June 16, 2023, authorized the humans services department and the New Mexico finance authority to contract for services to provide free or reduced-fee primary care services for sick and medically indigent persons; in

Subsection B, added a new Paragraph B(1) and redesignated former Paragraphs B(1) and B(2) as Paragraphs B(2) and B(3), respectively; and in Subsection D, Paragraph D(5) after "loans", added "and persons with whom to contract for services", and in Paragraph D(6), deleted "capital" preceding "projects" and after "federal licensing", deleted "and procurement".

## 6-26-7. Eligible entity; change in status.

If an eligible entity that has received a loan or contract for services for a project ceases to maintain its nonprofit status or ceases to deliver behavioral health services at the site of the project for twelve consecutive months, the authority may pursue the remedies provided in the loan agreement or contract for services or as provided by law.

**History:** Laws 2004, ch. 71, § 7; 2023, ch. 129, § 5.

**ANNOTATIONS**

**The 2023 amendment,** effective June 16, 2023, authorized the New Mexico finance authority to pursue remedies provided in a contract for services when an entity has violated the terms of the contract; and after "received a loan", added "or contract for services", deleted "capital" preceding each occurrence of "project", substituted "state" with "authority", and after "loan agreement", added "or contract for services".

## 6-26-8. Report.

The department and the authority shall report jointly to the governor and the legislature by December 1 of each year on the behavioral health capital funding program.

**History:** Laws 2004, ch. 71, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 71 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

# ARTICLE 27
# Affordable Housing Act

## 6-27-1. Short title.

Chapter 6, Article 27 NMSA 1978 may be cited as the "Affordable Housing Act".

**History:** Laws 2004, ch. 104, § 1; 2015, ch. 69, § 1.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, changed the statutory reference of the Affordable Housing Act from "This act" to "Chapter 6, Article 27 NMSA 1978".

## 6-27-2. Purpose.

The purpose of the Affordable Housing Act is to implement the provisions of Subsections E and F of Article 9, Section 14 of the constitution of New Mexico.

**History:** Laws 2004, ch. 104, § 2; 2015, ch. 69, § 2.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, amended the citation of the Affordable Housing Act in this section; after "Subsections E and F of", deleted "Section 14 of", and after "Article 9", added "Section 14".

## 6-27-3. Definitions.

As used in the Affordable Housing Act:

A. "affordable housing" means residential housing primarily for persons or households of low or moderate income;

B. "authority" means the New Mexico mortgage finance authority;

C. "building" means a structure capable of being renovated or converted into affordable housing or a structure that is to be demolished and is located on land that is donated and upon which affordable housing will be constructed;

D. "governmental entity" means the state, including any agency or instrumentality of the state, a county, a municipality or the authority;

E. "household" means one or more persons occupying a housing unit;

F. "housing assistance grant" means the donation, provision or payment by a governmental entity of:

(1) land upon which affordable housing will be constructed;

(2) an existing building that will be renovated, converted or demolished and reconstructed as affordable housing;

(3) the costs of acquisition, development, construction, financing and operating or owning affordable housing; or

(4) the costs of financing or infrastructure necessary to support affordable housing;

G. "infrastructure" includes infrastructure improvements and infrastructure purposes;

H. "infrastructure improvement" includes, but is not limited to:

(1) sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge;

(2) drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge;

(3) water systems for domestic purposes, including production, collection, storage, treatment, transport, delivery, connection and dispersal;

(4) areas for motor vehicle use for road access, ingress, egress and parking;

(5) trails and areas for pedestrian, equestrian, bicycle or other nonmotor vehicle use for access, ingress, egress and parking;

(6) parks, recreational facilities and open space areas to be used by residents for entertainment, assembly and recreation;

(7) landscaping, including earthworks, structures, plants, trees and related water delivery systems;

(8) electrical transmission and distribution facilities;

(9) natural gas distribution facilities;

(10) lighting systems;

(11) cable or other telecommunications lines and related equipment;

(12) traffic control systems and devices, including signals, controls, markings and signs;

(13) inspection, construction management and related costs in connection with the furnishing of the items listed in this subsection; and

(14) heating, air conditioning and weatherization facilities, systems or services, and energy efficiency improvements that are affixed to real property;

I. "infrastructure purpose" means:

(1) planning, design, engineering, construction, acquisition or installation of infrastructure, including the costs of applications, impact fees and other fees, permits and approvals related to the construction, acquisition or installation of the infrastructure;

(2) acquiring, converting, renovating or improving existing facilities for infrastructure, including facilities owned, leased or installed by the owner;

(3) acquiring interests in real property or water rights for infrastructure, including interests of the owner; and

(4) incurring expenses incident to and reasonably necessary to carry out the purposes specified in this subsection;

J. "municipality" means an incorporated city, town or village, whether incorporated under general act, special act or special charter, incorporated counties and H class counties;

K. "public post-secondary educational institution" means a state university or a public community college;

L. "qualifying grantee" means:

(1) an individual who is qualified to receive assistance pursuant to the Affordable Housing Act and is approved by the governmental entity; and

(2) a governmental housing agency, regional housing authority, tribal housing agency, corporation, limited liability company, partnership, joint venture, syndicate, association or nonprofit organization that:

(a) is organized under state, local or tribal laws and can provide proof of such organization;

(b) if a nonprofit organization, has no part of its net earnings inuring to the benefit of any member, founder, contributor or individual; and

(c) is approved by the governmental entity; and

M. "residential housing" means any building, structure or portion thereof that is primarily occupied, or designed or intended primarily for occupancy, as a residence by one or more households and any real property that is offered for sale or lease for the construction or location thereon of such a building, structure or portion thereof. "Residential housing" includes congregate housing, manufactured homes, housing intended to provide or providing transitional or temporary housing for homeless persons and common health care, kitchen, dining, recreational and other facilities primarily for use by residents of a residential housing project.

**History:** Laws 2004, ch. 104, § 3; 2007, ch. 49, § 1; 2015, ch. 69, § 3.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, clarified the definition of "governmental entity" and added the definition of "public post-secondary educational institution"; in Subsection D, after "means", deleted "a" and added "the", and after "state", added "including any agency or instrumentality of the state"; and added Subsection K and redesignated the succeeding subsections accordingly.

**The 2007 amendment,** effective June 15, 2007, included payment of the cost of affordable housing in the definition of "housing assistance grant".

## 6-27-4. Eligibility requirements; non-individual and individual qualifying grantees.

A. To be eligible to receive lands, buildings and infrastructure pursuant to Article 9, Section 14 of the constitution of New Mexico, a nonindividual qualifying grantee shall:

(1) have a functioning accounting system that is operated in accordance with generally accepted accounting principles or shall designate an entity that will maintain such an accounting system consistent with generally accepted accounting principles;

(2) have among its purposes significant activities related to providing housing or services to low- or moderate-income persons or households; and

(3) if it has significant outstanding or unresolved monitoring findings from either the authority or its most recent independent financial audit, have a certified letter from the authority or auditor stating that the findings are in the process of being resolved.

B. To be eligible to receive lands, buildings and infrastructure pursuant to Article 9, Section 14 of the constitution of New Mexico, an individual qualifying grantee shall meet the requirements established by the authority pursuant to the Affordable Housing Act.

**History:** Laws 2004, ch. 104, § 4; 2015, ch. 69, § 4.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, made technical changes to the citation; in the introductory sentence of Subsection A, after "pursuant to", deleted "Section 14 of", and after "Article 9", added "Section 14"; in Subsection A, Paragraph (1), after "principles or", deleted "has designated" and added "shall designate"; and in Subsection B, after "pursuant to", deleted "Section 14 of", and after "Article 9", added "Section 14".

## 6-27-5. State, county, municipalities, instrumentalities of the state and the authority; authorization for affordable housing.

The state, including any agency or instrumentality of the state, or a county, a municipality or the authority may:

A. donate, provide or pay all, or a portion, of the costs of land for the construction on the land of affordable housing;

B. donate, provide or pay all or a portion of the costs of conversion or renovation of existing buildings into affordable housing;

C. provide or pay the costs of financing or infrastructure necessary to support affordable housing projects; or

D. provide or pay all or a portion of the costs of acquisition, development, construction, financing, operating or owning affordable housing.

**History:** Laws 2004, ch. 104, § 5; 2007, ch. 49, § 2; 2015, ch. 69, § 5.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, authorized instrumentalities of the state to provide for affordable housing; in the catchline, after "municipalities", added "instrumentalities of the state"; and in the introductory sentence, after "The state", added "including any agency or instrumentality of the state, or".

**The 2007 amendment,** effective June 15, 2007, permitted governmental entities to donate land and buildings and pay the cost of affordable housing.

## 6-27-6. Requirement for specific law authorizing a housing assistance grant from state.

A. The specific grant of authority created in the Affordable Housing Act is the prior approval required pursuant to Article 9, Section 14 of the constitution of New Mexico to allow the state to provide affordable housing assistance.

B. Funding pursuant to this grant of authority shall be appropriated to the department of finance and administration for disbursement by the authority to a qualifying grantee in accordance with rules promulgated by the authority.

C. Rules adopted by the authority may include provisions for matching or using local, private or federal funds in connection with a specific grant, but matching or using federal funds shall not be prohibited.

D. The authority shall seek comment from the Mortgage Finance Authority Act [Chapter 58, Article 18 NMSA 1978] oversight committee prior to its adoption of rules pursuant to this section.

**History:** Laws 2004, ch. 104, § 6; 2015, ch. 69, § 6.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, corrected a reference to the New Mexico constitution; and in Subsection A, after "Article", changed "4" to "9".

## 6-27-7. Requirement for enactment of an ordinance by a county or a municipality and review by the authority authorizing housing assistance grants.

A. A county or municipality may provide housing assistance grants pursuant to Article 9, Section 14 of the constitution of New Mexico after enactment by its governing body of an ordinance authorizing grants stating the requirements of and purposes of the grants. The ordinance may provide for matching or using local, private or federal funds either through direct participation with a federal agency pursuant to federal law or through indirect participation through programs of the authority. No less than forty-five days prior to enactment, the county or municipality shall submit a proposed ordinance to the authority, which shall review the proposed ordinance to ensure compliance with rules promulgated by the authority pursuant to Section 6-27-8 NMSA 1978. Within fifteen days after enactment of the ordinance, the county or municipality shall submit a certified true copy of the ordinance to the authority. The governing body of the county or municipality shall authorize the transfer or disbursement of housing assistance grant funds only after the qualifying grantee has submitted a budget to the governing body and the governing body has approved the budget.

B. A school district may transfer land or buildings owned by the school district to a county or municipality to be further granted as part or all of an affordable housing grant if the school district and the governing body of the county or municipality enter into a contract that provides the school district with a negotiated number of affordable housing units that will be reserved for employees of the school district.

C. The governing board of a public post-secondary educational institution may transfer land or buildings owned by that institution to a county or municipality; provided that:

(1) the property transferred shall be granted by the county or municipality as part or all of an affordable housing grant; and

(2) the governing board of the public post-secondary educational institution and the governing body of the county or municipality enter into a contract that provides the public post-secondary educational institution with affordable housing units.

D. Agencies or instrumentalities of the state may provide housing assistance grants pursuant to Article 9, Section 14 of the constitution of New Mexico in accordance with rules promulgated by the authority.

E. The authority may provide housing assistance grants pursuant to Article 9, Section 14 of the constitution of New Mexico in accordance with rules promulgated by the authority.

**History:** Laws 2004, ch. 104, § 7; 2007, ch. 49, § 3; 2015, ch. 69, § 7.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, removed the requirement of adopting a resolution placed on the governing body of the authority authorizing housing assistance grants; in the catchline, after "grants", deleted "requirement for adoption of a resolution by the governing body of the authority authorizing housing assistance grants"; in Subsection A, after "purposes of the grants", deleted "and authorizing transfer or disbursement to a qualifying grantee only after a budget is submitted to and approved by the governing body", and after "ordinance to the authority", added the remainder of the subsection; added a new Subsection D and redesignated former Subsection D as Subsection E; in Subsection E, after "New Mexico", deleted the remainder of the subsection and added "in accordance with rules promulgated by the authority"; and deleted former Subsection E.

**The 2007 amendment,** effective June 15, 2007, required review by the authority of ordinances authorizing housing assistance grants.

## 6-27-8. Provisions to ensure successful completion of affordable housing projects; sale after foreclosure.

A. State, county and municipal housing assistance grants awarded pursuant to the Affordable Housing Act shall be applied for and awarded to qualifying grantees pursuant to the rules promulgated by the authority subject to the requirements of that act.

B. The authority shall adopt rules in accordance with the Administrative Procedures Act [12-8-1 to 12-8-25 NMSA 1978] to carry out the purposes of the Affordable Housing Act. Concurrence by the New Mexico municipal league is required for rules applicable to municipalities. Concurrence by the New Mexico association of counties is required for rules applicable to counties.

C. The authority shall adopt rules covering:

(1) procedures to ensure that qualifying grantees meet the requirements of the Affordable Housing Act and rules promulgated pursuant to that act both at the time of the award and through the term of the grant;

(2) establishment of an application and award timetable for housing assistance grants to permit the selection of the potential qualifying grantees prior to January of the year in which the grants would be made;

(3) contents of the application, including an independent evaluation of the:

(a) financial and management stability of the applicant;

(b) demonstrated commitment of the applicant to the community;

(c) cost-benefit analysis of the project proposed by the applicant;

(d) benefits to the community of a proposed project;

(e) type or amount of assistance to be provided;

(f) scope of the affordable housing project;

(g) substantive or matching contribution by the applicant to the proposed project; and

(h) performance schedule for the qualifying grantee with performance criteria;

(4) a requirement for long-term affordability of a state, county or municipal project so that a project cannot be sold shortly after completion and taken out of the affordable housing market;

(5) a requirement that a grant for a state or local project must impose a contractual obligation on the qualifying grantee that the housing units in a state or local project developed pursuant to the Affordable Housing Act be occupied by low- or moderate-income households;

(6) provisions for adequate security against the loss of public funds or property in the event that a qualifying grantee defaults on a contractual obligation for the project or abandons or otherwise fails to complete a project;

(7) a requirement for review and approval of a housing grant project budget by the grantor before any expenditure of grant funds or transfer of granted property;

(8) a requirement that, unless the period is extended for good cause shown, the authority shall act on an application within forty-five days of the date of receipt of an application that the authority deems to be complete and, if not acted upon, the application shall be deemed approved;

(9) a requirement that a condition of grant approval be proof of compliance with all applicable state and local laws, rules and ordinances;

(10) provisions defining "low- and moderate-income" and setting out requirements for verification of income levels;

(11) a requirement that a county or municipality that makes a housing assistance grant shall have an existing valid affordable housing plan or housing elements contained in its general plan;

(12) a requirement that the governmental entity enter into a contract with a qualifying grantee consistent with the Affordable Housing Act, which contract shall include remedies and default provisions in the event of the unsatisfactory performance by the qualifying grantee; and

(13) provisions necessary to ensure the timely sale of an affordable housing project on which a qualifying grantee has defaulted on a contractual obligation or abandoned or otherwise failed to complete.

D. The rules adopted by the authority pursuant to Paragraph (13) of Subsection C of this section shall require a governmental entity to:

(1) make a determination that the property is not marketable for a price that would sufficiently recover the public funds invested in the project;

(2) ascertain that the property has a title that has been transferred to the contracting governmental entity through a foreclosure sale, a transfer of title by deed in lieu of foreclosure or any other manner;

(3) exercise reasonable efforts to ensure that all proceeds from the sale of a property pursuant to Paragraph (13) of Subsection C of this section are used solely for purposes pursuant to the Affordable Housing Act and that the qualifying grantee that held title to the property shall not benefit from the sale of the property or from the transfer of the affordable housing project; and

(4) provide the terms for:

(a) the sale of the property at fair market value; and

(b) the removal of the contractual obligation requiring long-term occupancy of the property by low- or moderate-income households.

**History:** Laws 2004, ch. 104, § 8; 2007, ch. 49, § 4; 2015, ch. 69, § 8.

## ANNOTATIONS

**The 2015 amendment,** effective July 1, 2015, required certain rules adopted by the New Mexico Mortgage Finance Authority to be approved by the New Mexico municipal league and New Mexico association of counties, and required the New Mexico

Mortgage Finance Authority to adopt rules covering the sale of certain housing after foreclosure; in the catchline, after "projects", deleted "investigation" and added "sale after foreclosure"; in Subsection A, after "assistance grants", added "awarded"; in Subsection B, after "adopt rules", deleted "covering" and added "in accordance with the Administrative Procedures Act to carry out the purposes of the Affordable Housing Act. Concurrence by the New Mexico municipal league is required for rules applicable to municipalities. Concurrence by the New Mexico association of counties is required for rules applicable to counties.", and redesignated the remainder of Subsection B as new Subsection C; in Subsection C, added "The authority shall adopt rules covering"; in Paragraph (4) of Subsection C, after "affordable housing market", deleted "to ensure a quick profit for the qualifying grantee"; in Paragraph (6) of Subsection C, after "qualifying grantee", added "defaults on a contractual obligation for the project or"; added Paragraph (13) to new Subsection C; deleted former Subsections C and D; and added a new Subsection D.

**The 2007 amendment,** effective June 15, 2007, authorized the attorney general to investigate alleged violations of the Affordable Housing Act.

## 6-27-9. Investigation of Affordable Housing Act violations; penalties; remedies.

A. The attorney general shall investigate an alleged violation of the Affordable Housing Act reported by the authority. If the attorney general has reasonable belief that a person is in possession, custody or control of an original or copy of a document or recording, including a record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription or other tangible document or recording that the attorney general believes to be relevant to the subject matter of an investigation of a probable violation of the Affordable Housing Act, the attorney general may, prior to the institution of a civil proceeding, execute in writing and cause to be served upon the person a civil investigative demand requiring the person to produce for inspection or copying the document or recording.

B. If the attorney general has reasonable belief that a person has violated a provision of the Affordable Housing Act and that instituting a proceeding against that person would be in the public interest, the attorney general may bring a civil action on behalf of the state alleging a violation of the Affordable Housing Act. The action may be brought in the district court of the county in which the person alleged to have violated that act resides or in which the person's principal place of business is located. The attorney general shall not be required to post bond when seeking a temporary or permanent injunction in the civil action.

C. The attorney general may, in addition to or as an alternative to pursuing a civil action, as provided in this section, pursue criminal charges against a person for an alleged violation of the Affordable Housing Act under the applicable provisions of the Criminal Code. Venue for any criminal action shall be in the judicial district where the violation occurred.

D. In a civil action brought under this section for an alleged violation of the Affordable Housing Act, if a court finds that a person willfully committed an act in violation of the Affordable Housing Act, the attorney general may seek to recover a civil penalty not exceeding the amount of five thousand dollars ($5,000) per violation, in addition to any equitable relief imposed by the court.

E. As used in this section, "person" means an individual, including a municipal or county government employee or elected official, or a corporate entity, including any organization formed under state law to carry out business or other activities.

**History:** Laws 2015, ch. 69, § 9.

**ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 69, § 10 provided that Laws 2015, ch. 69, § 9 was effective July 1, 2015.

# ARTICLE 28
# Indian Capital Outlay

## 6-28-1. Legislative findings and purpose.

A. The legislature finds that many residents of this state living within Indian country are impoverished and are involuntarily living without electric service, indoor plumbing, adequate potable water, telecommunications or related infrastructure due to federal government policies over the decades. This finding is based upon federal decennial census data showing that Native Americans living in Indian country have a long history of income below federal poverty levels and a lack of basic domestic amenities. Living under such adverse circumstances has a negative impact on the education of children at the elementary and secondary school levels and on the health and welfare of Native Americans in general.

B. Since the nineteenth century, the federal government has assumed a trust responsibility for Native Americans, but since New Mexico attained statehood, it has had a responsibility for its Native American residents.

C. The legislature finds it is the policy of the state of New Mexico to improve the basic quality of life of residents within Indian country through the use of any means available.

D. The purpose of this act is in part to enable the state, in compliance with the provisions of the constitution of New Mexico, to provide financial assistance to residents within Indian country so that they may be served by basic residential services such as electric service, indoor plumbing, sewer, adequate potable water, telecommunications and related infrastructure.

E. The state has developed government-to-government relationships and agreements with the twenty-two Indian nations, tribes and pueblos in New Mexico regarding education and other topics. To better provide services to Native Americans, many state agencies have designated divisions or liaisons to work with the nations, tribes and pueblos.

F. The state has worked with Indian nations, tribes and pueblos, of which the Navajo Nation is the largest tribal government, and recognizes that the Navajo Nation is divided into political subdivisions designated as chapters.

G. Due to federal, state and tribal policies related to the implementation of capital outlay and other projects, delays in implementation due to bureaucratic red tape have resulted in the reversion of millions of dollars in capital outlay funds designated for projects in Indian country.

H. Tribal governments and their subdivisions have, through the years, organized nonprofit entities to assist in the provision of education and other basic services.

**History:** Laws 2006, ch. 105, § 1.

**ANNOTATIONS**

**Cross references.** — For the Indian Affairs Department, *see* 9-21-1 NMSA 1978.

For the Tribal Infrastructure Act, *see* 6-29-1 NMSA 1978.

**Emergency clauses.** — Laws 2006, ch. 105, § 9 contained an emergency clause and was approved March 7, 2006.

## 6-28-2. Fiscal agents for Navajo Nation projects.

The state recognizes the chapters of the Navajo Nation as local tribal entities having the capability and capacity to apply for and implement capital improvement projects. The state also recognizes as local tribal entities those nonprofit entities organized under the supervision of tribal governments whose mission or objective is to provide education and other basic services and who may apply for and implement capital improvement projects. Therefore, the state may contract through a fiscal agent other than the Navajo Nation for the expenditure of state funds on behalf of local tribal entities of the Navajo Nation. Unless otherwise negotiated, an administrative fee of no more than five percent of a project's cost may be charged by the entity that serves as fiscal agent.

**History:** Laws 2006, ch. 105, § 2.

**ANNOTATIONS**

**Cross references.** — For rights-of-way agreements with the Navajo Nation, *see* 11-17-1 NMSA 1978.

**Emergency clauses.** — Laws 2006, ch. 105, § 9 contained an emergency clause and was approved March 7, 2006.

## 6-28-3. Public employment programs.

Local tribal entities may be considered as vendors when they utilize their own resources to implement capital improvement projects.

**History:** Laws 2006, ch. 105, § 3.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2006, ch. 105, § 9 contained an emergency clause and was approved March 7, 2006.

## 6-28-4. Direct payments.

A. In the case of capital outlay projects located within Indian country and authorized to the Indian affairs department or other state agencies, the state may make payments directly to third-party contractors for services rendered or goods supplied regarding such projects. Upon approval by the Indian affairs department or other state agency of a billing statement submitted on behalf of a vendor by a tribal government or a local tribal entity, the department may arrange for payment of that statement directly to the vendor. Capital outlay projects may be invoiced and paid in phases.

B. The department of finance and administration is authorized to make payments directly to third-party contractors for services rendered or goods supplied regarding capital outlay projects located within Indian country and authorized to the Indian affairs department or other state agency.

**History:** Laws 2006, ch. 105, § 4.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2006, ch. 105, § 9 contained an emergency clause and was approved March 7, 2006.

## 6-28-5. Navajo Nation projects; general fund appropriations.

Money appropriated from the general fund to several chapters of the Navajo Nation located in New Mexico for the same or similar purposes may be pooled by those chapters to create a regional or centralized project upon review of the Indian affairs department and approval by the state board of finance.

**History:** Laws 2006, ch. 105, § 5.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2006, ch. 105, § 9 contained an emergency clause and was approved March 7, 2006.

## 6-28-6. Tribal Infrastructure Act.

The provisions of this act [6-28-1 to 6-28-8 NMSA 1978] also may be used to implement the provisions of the Tribal Infrastructure Act [6-29-1 to 6-29-9 NMSA 1978].

**History:** Laws 2006, ch. 105, § 6.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2006, ch. 105, § 9 contained an emergency clause and was approved March 7, 2006.

## 6-28-7. Presumption of indigency.

For the purposes of capital outlay projects located within Indian country and authorized to the Indian affairs department, pursuant to Subsection A of Section 14 of Article 9 of the constitution of New Mexico, persons who reside in Indian country who are not served by electric service, water service, indoor plumbing, sewers, telecommunications or related infrastructure are presumed to be indigent. State agencies may contract with and make payment to local tribal entities to assist the indigent in local tribal entities.

**History:** Laws 2006, ch. 105, § 7.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2006, ch. 105, § 9 contained an emergency clause and was approved March 7, 2006.

## 6-28-8. Rulemaking authority.

The department of finance and administration or the Indian affairs department [9-21-1 to 9-21-15 NMSA 1978] shall promulgate rules necessary to implement the provisions of this act [6-28-1 to 6-28-8 NMSA 1978].

**History:** Laws 2006, ch. 105, § 8.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2006, ch. 105, § 9 contained an emergency clause and was approved March 7, 2006.

# ARTICLE 29
# Tribal Infrastructure Act

## 6-29-1. Short title.

This act [6-29-1 to 6-29-9 NMSA 1978] may be cited as the "Tribal Infrastructure Act".

**History:** 1978 Comp., § 9-21-17, enacted by Laws 2005, ch. 146, § 1; recompiled as § 6-29-1 by Laws 2008, ch. 81, § 4.

**ANNOTATIONS**

## 6-29-2. Findings and purpose.

A. The legislature finds that:

(1) tribes lack basic infrastructure resulting in poor social, health and economic conditions of tribal communities;

(2) adequate infrastructure such as water and wastewater systems, major water systems, electrical power lines, communications, roads, health and emergency response facilities and infrastructure needed for economic development are essential to improved health, safety and welfare of all New Mexicans, including residents of tribal communities;

(3) local tribal efforts and resources have been insufficient to develop and maintain a consistent and adequate level of infrastructure in tribal communities;

(4) addressing the urgent need of replacing, improving and developing tribal infrastructure through the use of an alternative financing mechanism is a long-term cost savings benefit to both the state and the tribes; and

(5) adequate infrastructure development on tribal land will allow tribal members to achieve the basic conditions necessary to improve the quality of their lives.

B. The purposes of the Tribal Infrastructure Act are to:

(1) ensure adequate financial resources for infrastructure development for tribal communities;

(2) provide for the planning and development of infrastructure in an efficient and cost-effective manner; and

(3) develop infrastructure in tribal communities to improve the quality of life and encourage economic development.

**History:** 1978 Comp., § 9-21-18, enacted by Laws 2005, ch. 146, § 2; recompiled as § 6-29-2 by Laws 2008, ch. 81, § 4.

**ANNOTATIONS**

## 6-29-3. Definitions.

As used in the Tribal Infrastructure Act:

A. "board" means the tribal infrastructure board;

B. "department" means the Indian affairs department;

C. "financial assistance" means providing grants or loans on terms and conditions approved by the board;

D. "governor" means the governor of New Mexico;

E. "project fund" means the tribal infrastructure project fund;

F. "qualified project" means a tribal infrastructure project selected by the board for financial assistance pursuant to the Tribal Infrastructure Act;

G. "tribe" means a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico or any of its governmental entities or subdivisions; and

H. "trust fund" means the tribal infrastructure trust fund.

**History:** 1978 Comp., § 9-21-19, enacted by Laws 2005, ch. 146, § 3; recompiled as § 6-29-3 by Laws 2008, ch. 81, § 4.

**ANNOTATIONS**

## 6-29-4. Tribal infrastructure board created.

A. The "tribal infrastructure board" is created and is administratively attached to the department.

B. The board shall consist of nine voting members and four non-voting members.

C. The voting ex-officio members are:

(1) the secretary of Indian affairs, or the secretary's designee from the department, who shall be chair of the board;

(2) the secretary of finance and administration or the secretary's designee from the department of finance and administration;

(3) the secretary of health or the secretary's designee from the department of health;

(4) the secretary of environment or the secretary's designee from the department of environment; and

(5) the executive director of the New Mexico finance authority or the executive director's designee from the New Mexico finance authority.

D. The following four voting members who have experience with capital projects development or administration from tribes shall be appointed by the governor:

(1) one person who is a member of a pueblo;

(2) one person who is a member of the Jicarilla Apache Nation;

(3) one person who is a member of the Mescalero Apache Tribe; and

(4) one person who is a member of the Navajo Nation.

E. There shall be four non-voting members as follows:

(1) one representative from the federal bureau of Indian affairs, Albuquerque area office, designated by the regional director;

(2) one representative from the federal bureau of Indian affairs Navajo area office designated by the regional director;

(3) one representative from the Albuquerque area Indian health services designated by the area director; and

(4) one representative from the Navajo area Indian health services designated by the area director.

F. The board shall meet at the call of the chair or whenever four voting members submit a request in writing to the chair, but not less than twice each calendar year. A majority of members constitutes a quorum for the transaction of business. The

affirmative vote of at least a majority of a quorum shall be necessary for an action to be taken by the board.

G. Each member of the board appointed by the governor shall be appointed to a two-year term. Vacancies shall be filled by appointment by the governor for the remainder of the unexpired term.

H. Members of the board appointed by the governor may receive per diem and mileage as provided for non-salaried public officers in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

**History:** 1978 Comp., § 9-21-20, enacted by Laws 2005, ch. 146, § 4; recompiled as § 6-29-4 by Laws 2008, ch. 81, § 4.

**ANNOTATIONS**

## 6-29-5. Board; duties.

The board shall:

A. adopt rules governing terms, conditions and priorities for providing financial assistance to tribes, including developing application and evaluation procedures and forms and qualifications for applicants and for projects;

B. provide financial assistance to tribes for qualified projects on terms and conditions established by the board;

C. authorize funding for qualified projects, including:

(1) planning, designing, constructing, improving, expanding or equipping water and wastewater facilities, major water systems, electrical power lines, communications infrastructure, roads, health infrastructure, emergency response facilities and infrastructure needed to encourage economic development;

(2) developing engineering feasibility reports for infrastructure projects;

(3) inspecting construction of qualified projects;

(4) providing special engineering services;

(5) completing environmental assessments or archaeological clearances and other surveys for infrastructure projects;

(6) acquiring land, easements or rights of way; and

(7) paying legal costs and fiscal agent fees associated with development of qualified projects.

**History:** 1978 Comp., § 9-21-21, enacted by Laws 2005, ch. 146, § 5; recompiled as § 6-29-5 by Laws 2008, ch. 81, § 4.

**ANNOTATIONS**

## 6-29-6. Tribal infrastructure trust fund; created; investment; distribution.

A. The "tribal infrastructure trust fund" is created in the state treasury. The trust fund shall consist of money that is appropriated, donated or otherwise accrues to it. Money in the trust fund shall be invested by the state investment officer in the manner that land grant permanent funds are invested pursuant to Chapter 6, Article 8 NMSA 1978. Income from investment of the trust fund shall be credited to the fund. Money in the trust fund shall not be expended for any purpose, but an annual distribution from the trust fund shall be made to the project fund pursuant to this section.

B. On July 1 of each year in which adequate money is available in the trust fund, an annual distribution shall be made from the trust fund to the project fund in the amount of ten million dollars ($10,000,000) until the distribution is less than an amount equal to four and seven-tenths percent of the average of the year-end market values of the trust fund for the immediately preceding five calendar years. Thereafter, the amount of the annual distribution shall be four and seven-tenths percent of the average of the year-end market values of the trust fund for the immediately preceding five calendar years.

**History:** 1978 Comp., § 9-21-22, enacted by Laws 2005, ch. 146, § 6; recompiled as § 6-29-6 by Laws 2008, ch. 81, § 4.

**ANNOTATIONS**

## 6-29-7. Tribal infrastructure project fund; created; purpose; appropriations.

A. The "tribal infrastructure project fund" is created in the state treasury and:

(1) the department of finance and administration shall administer the project fund;

(2) the project fund shall consist of:

(a) distributions made to it from the trust fund;

(b) payments of principal and interest on loans for qualified projects;

(c) other money appropriated by the legislature or distributed or otherwise allocated to the project fund for the purpose of supporting qualified projects; and

(d) income from investment of the money in the project fund that shall be credited to the project fund;

(3) balances in the project fund at the end of a fiscal year shall not revert to the trust fund or to the general fund; and

(4) the project fund may consist of subaccounts as determined to be necessary by the department of finance and administration.

B. The department of finance and administration may establish procedures and adopt rules as required to administer the project fund and to originate grants or loans for qualified projects approved by the board.

C. Beginning in fiscal year 2006 and in subsequent years, the lesser of one percent of the project fund or one hundred thousand dollars ($100,000) is appropriated from the project fund to the department of finance and administration for expenditure in the fiscal year in which it is appropriated, to administer the project fund. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall revert to the project fund.

D. Beginning in fiscal year 2006 and in each subsequent year, the lesser of five percent of the project fund or five hundred thousand dollars ($500,000) is appropriated from the project fund to the Indian affairs department for expenditure in the fiscal year in which it is appropriated to administer the Tribal Infrastructure Act, to pay per diem and mileage as required by that act and for operation of the board. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall revert to the project fund.

E. The balance in the project fund not otherwise appropriated in this section is appropriated to the department of finance and administration for expenditure in fiscal year 2006 and in subsequent fiscal years to carry out the provisions of the Tribal Infrastructure Act by providing grants or loans for qualified projects. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall revert to the project fund.

**History:** 1978 Comp., § 9-21-23, enacted by Laws 2005, ch. 146, § 7; recompiled as § 6-29-7 by Laws 2008, ch. 81, § 4.

## ANNOTATIONS

**Compiler's notes.** — Laws 2008, ch. 81, § 1 amended Laws 2006, ch. 111, § 76 to provide that the unexpended balance, as defined in Subsection D of Section 2 of that act, of an appropriation made from the general fund to the Indian affairs department or

to the aging and long-term services department for projects located on lands of an Indian nation, tribe or pueblo, including projects that have been reauthorized, shall revert in the time frame set forth in Subsection A of Section 2 of that act to the tribal infrastructure project fund.

## 6-29-8. Legislative oversight; rule review; report.

A. Rules proposed by the board and the department of finance and administration pursuant to the Tribal Infrastructure Act shall be reviewed by the legislative interim Indian affairs committee prior to approval.

B. The legislative interim Indian affairs committee shall be briefed by the board on grant and loan proposals submitted to the board and shall review, monitor and provide assistance and advice concerning grants and loans proposed by the board.

C. The board shall report to the legislative interim Indian affairs committee no later than October 1 of each year regarding the total expenditures from the project fund for the previous fiscal year, the purposes for which expenditures were made, an analysis of the progress of the projects funded and proposals for legislative action in the subsequent legislative session.

**History:** 1978 Comp., § 9-21-24, enacted by Laws 2005, ch. 146, § 8; 2007, ch. 124, § 1; recompiled as § 6-29-8 by Laws 2008, ch. 81, § 4.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, required the legislative interim Indian affairs committee to monitor and provide assistance and advice concerning loans and grants.

## 6-29-9. Tribal capital outlay reversions.

A. The unexpended balances of a capital outlay appropriation made after January 1, 2007 from the general fund to the department or to the aging and long-term services department for projects located on lands of an Indian nation, tribe or pueblo shall revert to the project fund.

B. For the purpose of this section, "unexpended balance" means the remainder of an appropriation after reserving for unpaid costs and expenses covered by binding written obligations to third parties.

**History:** Laws 2008, ch. 81, § 3.

**ANNOTATIONS**

**Cross references.** — For the aging and long-term services department, *see* 9-23-1 NMSA 1978 et seq.

**Effective dates.** — Laws 2008, ch. 81 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 14, 2008, 90 days after the adjournment of the legislature.

# ARTICLE 30
# Colonias Infrastructure

## 6-30-1. Short title.

Sections 1 through 8 [6-30-1 to 6-30-8 NMSA 1978] of this act may be cited as the "Colonias Infrastructure Act".

**History:** Laws 2010, ch. 10, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2010, ch. 10, § 11 made the Colonias Infrastructure Act effective July 1, 2011.

## 6-30-2. Findings and purpose.

A. The legislature finds that:

(1) colonias lack basic infrastructure resulting in poor social, health and economic conditions;

(2) adequate infrastructure such as water and wastewater systems, solid waste disposal facilities, flood and drainage control, roads and housing infrastructure are essential to improved health, safety and welfare of all New Mexicans, including residents of the colonia communities;

(3) local efforts and resources have been insufficient to develop and maintain a consistent and adequate level of infrastructure;

(4) addressing the urgent need of replacing, improving and developing infrastructure through the use of an alternative financing mechanism is a long-term cost savings benefit to both the state and the communities; and

(5) adequate infrastructure development allows colonia residents to achieve the basic conditions necessary to improve the quality of their lives.

B. The purposes of the Colonias Infrastructure Act are to:

(1) ensure adequate financial resources for infrastructure development for colonia recognized communities;

(2) provide for the planning and development of infrastructure in an efficient and cost-effective manner; and

(3) develop infrastructure projects to improve quality of life and encourage economic development.

**History:** Laws 2010, ch. 10, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2010, ch. 10, § 11 made the Colonias Infrastructure Act effective July 1, 2011.

**Funding colonias infrastructure projects does not implicate the anti-donation clause.** — The anti-donation clause is not implicated where the New Mexico finance authority and the colonias infrastructure board (board), created pursuant to the Colonias Infrastructure Act, 6-30-1 to 6-30-8 NMSA 1978, provide financial assistance to qualifying entities, as defined by the Colonias Infrastructure Act, for colonias infrastructure projects, even if the funds are subsequently provided to private entities, because the financial assistance is being transferred from the board, an agency of the state, to qualifying entities, also political subdivisions of the state. *Housing Infrastructure and the Anti-Donation Clause* (10/31/17), Att'y Gen. Adv. Ltr. 2017-06.

## 6-30-3. Definitions.

As used in the Colonias Infrastructure Act:

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

B. "board" means the colonias infrastructure board;

C. "colonia" means a rural community with a population of twenty-five thousand or less located within one hundred fifty miles of the United States-Mexico border that:

(1) has been designated as a colonia by the municipality or county in which it is located because of a:

(a) lack of potable water supply;

(b) lack of adequate sewage systems; or

(c) lack of decent, safe and sanitary housing;

(2) has been in existence as a colonia prior to November 1990; and

(3) has submitted appropriate documentation to the board to substantiate the conditions of this subsection, including documentation that supports the designation of the municipality or county;

D. "financial assistance" means providing grants or loans on terms and conditions approved by the authority;

E. "project fund" means the colonias infrastructure project fund;

F. "qualified entity" means a county, municipality or other entity recognized as a political subdivision of the state;

G. "qualified project" means a capital outlay project selected by the board for financial assistance that is primarily intended to develop colonias infrastructure. A qualified project may include a water system, a wastewater system, solid waste disposal facilities, flood and drainage control, roads or housing infrastructure; but "qualified project" does not include general operation and maintenance, equipment, housing allowance payments or mortgage subsidies; and

H. "trust fund" means the colonias infrastructure trust fund.

**History:** Laws 2010, ch. 10, § 3.

**ANNOTATIONS**

**Cross references.** — For the New Mexico finance authority, *see* 6-21-4 NMSA 1978.

**Effective dates.** — Laws 2010, ch. 10, § 11 made the Colonias Infrastructure Act effective July 1, 2011.

## 6-30-4. Colonias infrastructure board created.

A. The "colonias infrastructure board" is created.

B. The board shall consist of seven voting members as follows:

(1) the secretary of finance and administration or the secretary's designee from the department of finance and administration;

(2) the secretary of environment or the secretary's designee from the department of environment;

(3) the chief executive officer of the authority or the chief executive officer's designee from the authority;

(4) one member appointed by the president pro tempore of the senate;

(5) one member appointed by the minority leader of the senate;

(6) one member appointed by the speaker of the house of representatives; and

(7) one member appointed by the minority leader of the house of representatives.

C. The members appointed pursuant to Paragraphs (4) through (7) of Subsection B of this section shall be appointed with the advice and consent of the senate, serve at the pleasure of the appointing authority, be residents of the colonias area and have experience in capital project development or administration, and they may receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] but shall receive no other compensation, perquisite or allowance.

D. There shall be five advisory, nonvoting members of the board as follows:

(1) the executive director of the south central council of governments or the director's designee;

(2) the executive director of the southwest New Mexico council of governments or the director's designee;

(3) the executive director of the southeastern New Mexico economic development district or the director's designee;

(4) the executive director of the New Mexico association of counties or the director's designee; and

(5) the executive director of the New Mexico mortgage finance authority or the director's designee.

E. The board shall choose a chair and vice chair from among its members and such other officers as it deems necessary. A majority of members constitutes a quorum for the transaction of business. The affirmative vote of at least a majority of a quorum shall be necessary for an action to be taken by the board. The board shall meet whenever a voting member submits a request in writing to the chair, but not less than quarterly.

F. All meetings of the board shall be open to the public and subject to the Open Meetings Act [Chapter 10, Article 15 NMSA 1978] and, at each meeting, the board shall provide an opportunity for public comment.

**History:** Laws 2010, ch. 10, § 4.

**ANNOTATIONS**

**Cross references.** — For the department of finance and administration, *see* 9-6-3 NMSA 1978.

For the department of environment, *see* 9-7A-4 NMSA 1978.

For the New Mexico finance authority, *see* 6-21-4 NMSA 1978.

**Effective dates.** — Laws 2010, ch. 10, § 11 made the Colonias Infrastructure Act effective July 1, 2011.

## 6-30-5. Board; duties.

The board shall:

A. promulgate such rules as are necessary to govern the acceptance, evaluation and prioritization of applications submitted by qualified entities for financial assistance;

B. after applications have been processed and evaluated by the authority, prioritize the qualified projects for financial assistance; and

C. upon such terms and conditions as are established by the authority, recommend the prioritized projects to the authority for financial assistance for:

(1) planning, designing, constructing, improving or expanding a qualified project;

(2) developing engineering feasibility reports for qualified projects;

(3) inspecting construction of qualified projects;

(4) providing professional services;

(5) completing environmental assessments or archaeological clearances and other surveys for qualified projects;

(6) acquiring land, water rights, easements or rights of way; or

(7) paying legal costs and fiscal agent fees associated with development of qualified projects.

**History:** Laws 2010, ch. 10, § 5.

**ANNOTATIONS**

**Effective dates.** — Laws 2010, ch. 10, § 11 made the Colonias Infrastructure Act effective July 1, 2011.

**Funding colonias infrastructure projects does not implicate the anti-donation clause.** — The anti-donation clause is not implicated where the New Mexico finance authority and the colonias infrastructure board (board), created pursuant to the Colonias Infrastructure Act, 6-30-1 to 6-30-8 NMSA 1978, provide financial assistance to qualifying entities, as defined by the Colonias Infrastructure Act, for colonias infrastructure projects, even if the funds are subsequently provided to private entities, because the financial assistance is being transferred from the board, an agency of the state, to qualifying entities, also political subdivisions of the state. *Housing Infrastructure and the Anti-Donation Clause* (10/31/17), Att'y Gen. Adv. Ltr. 2017-06.

## 6-30-6. Authority; duties.

The authority shall:

A. provide staff support to the board;

B. administer the project fund;

C. at the direction of the board, process, review and evaluate applications for financial assistance from qualified entities; and

D. at the direction of the board, administer qualified projects that receive financial assistance.

**History:** Laws 2010, ch. 10, § 6.

**ANNOTATIONS**

**Effective dates.** — Laws 2010, ch. 10, § 11 made the Colonias Infrastructure Act effective July 1, 2011.

## 6-30-7. Colonias infrastructure trust fund; created; investment; distribution.

A. The "colonias infrastructure trust fund" is created in the state treasury. The trust fund shall consist of money that is appropriated, donated or otherwise allocated to it. Money in the trust fund shall be invested by the state investment officer in the manner that land grant permanent funds are invested pursuant to Chapter 6, Article 8 NMSA 1978. Income from investment of the trust fund shall be credited to the fund. Money in the trust fund shall not be expended for any purpose, but an annual distribution from the trust fund shall be made to the project fund pursuant to this section.

B. On July 1 of each year in which adequate money is available in the trust fund, an annual distribution shall be made from the trust fund to the project fund in the amount of ten million dollars ($10,000,000) until the distribution is less than an amount equal to four and seven-tenths percent of the average of the year-end market values of the trust fund for the immediately preceding five calendar years. Thereafter, the amount of the annual distribution shall be four and seven-tenths percent of the average of the year-end market values of the trust fund for the immediately preceding five calendar years.

**History:** Laws 2010, ch. 10, § 7.

**ANNOTATIONS**

**Effective dates.** — Laws 2010, ch. 10, § 11 made the Colonias Infrastructure Act effective July 1, 2011.

## 6-30-8. Colonias infrastructure project fund; created; purpose; appropriations.

A. The "colonias infrastructure project fund" is created in the authority and shall be administered by the authority.

B. The project fund shall consist of:

(1) distributions from the trust fund;

(2) payments of principal and interest on loans for qualified projects;

(3) other money appropriated by the legislature or distributed or otherwise allocated to the project fund for the purpose of supporting qualified projects;

(4) the proceeds of severance tax bonds appropriated to the fund for qualified projects; and

(5) income from investment of the project fund that shall be credited to the project fund.

C. Except for severance tax bond proceeds required to revert to the severance tax bonding fund, balances in the project fund at the end of a fiscal year shall not revert to any other fund.

D. The project fund may consist of subaccounts as determined to be necessary by the authority.

E. The authority may establish procedures and adopt rules as required to:

(1) administer the project fund;

(2) originate grants or loans for qualified projects recommended by the board;

(3) recover from the project fund the costs of administering the fund and originating the grants and loans; and

(4) govern the process through which qualified entities may apply for financial assistance from the project fund.

**History:** Laws 2010, ch. 10, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2010, ch. 10, § 11 made the Colonias Infrastructure Act effective July 1, 2011.

# ARTICLE 31
# Economic Development Grants

## 6-31-1. Short title.

Sections 1 through 6 [6-31-1 to 6-31-6 NMSA 1978] of this act may be cited as the "Economic Development Grant Act".

**History:** Laws 2014, ch. 58, § 1.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2014, ch. 58, § 8, contained an emergency clause and was approved March 10, 2014.

## 6-31-2. Purpose.

The purpose of the Economic Development Grant Act is to provide matching state grants to local and regional economic development agencies to expand the economic development and job-creation capacities of those agencies through employment of economic development professionals.

**History:** Laws 2014, ch. 58, § 2.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2014, ch. 58, § 8, contained an emergency clause and was approved March 10, 2014.

## 6-31-3. Definitions.

As used in the Economic Development Grant Act:

A. "commission" means the economic development commission; and

B. "department" means the economic development department.

**History:** Laws 2014, ch. 58, § 3.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2014, ch. 58, § 8, contained an emergency clause and was approved March 10, 2014.

## 6-31-4. Economic development grant program; created; oversight.

A. The "economic development grant program" is created in the department. The commission shall oversee the program, and the department shall provide administrative assistance to the commission as needed.

B. The commission shall:

(1) establish and publish deadlines and guidelines for the submission of grant applications;

(2) develop procedures for receipt, review and approval of grant applications;

(3) receive, review and approve grant applications;

(4) award grants to local and regional economic development agencies for up to fifty percent of the cost to the agencies to hire economic development professionals;

(5) monitor local and regional economic development agencies' use of grant money by reviewing annual reports submitted by those agencies to the commission to ensure that grants are used consistently with the agencies' grant applications; and

(6) perform other duties as necessary to carry out the provisions of the Economic Development Grant Act.

**History:** Laws 2014, ch. 58, § 4.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2014, ch. 58, § 8, contained an emergency clause and was approved March 10, 2014.

## 6-31-5. Grant applications; grant recipients; requirements.

A. A local or regional economic development agency may submit an application to the commission for an economic development grant. An applying agency shall comply with deadlines and guidelines published by the commission. A grant application shall include a statement of:

(1) the amount of money that the local or regional economic development agency has allocated to employ economic development professionals;

(2) the amount of matching grant money that the local or regional economic development agency requests; and

(3) the ways that the local or regional economic development agency's employment of one or more economic development professionals will expand the agency's economic development or job-creation efforts in the agency's local area or region or in the state.

B. During the time that one or more economic development professionals are employed by a local or regional economic development agency using grant money, the agency shall report annually to the commission. A report shall include:

(1) the name, dates of employment and professional credentials of each economic development professional employed by the local or regional economic development agency using grant money; and

(2) detailed information about each economic development professional's role and contributions to the local or regional economic development agency, including:

(a) new jobs in the agency's local area or region or in the state that are attributable to the professional's efforts;

(b) the number of cases that the professional completed;

(c) the number of cases that the professional managed;

(d) the number of job-creation leads generated by the professional; and

(e) the number of job-creation projects sourced through the professional's marketing efforts.

**History:** Laws 2014, ch. 58, § 5.

## ANNOTATIONS

**Emergency clauses.** — Laws 2014, ch. 58, § 8, contained an emergency clause and was approved March 10, 2014.

## 6-31-6. Economic development grant fund created.

The "economic development grant fund" is created in the state treasury. The fund consists of appropriations, gifts, grants and donations to the fund and income from investment of the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year. The department shall administer the fund, and money in the fund is appropriated to the department to provide matching funds to local and regional development agencies as approved by the commission. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the secretary of economic development or the secretary's authorized representative.

**History:** Laws 2014, ch. 58, § 6.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2014, ch. 58, § 8, contained an emergency clause and was approved March 10, 2014.

# ARTICLE 32
# Small Business Recovery and Stimulus

## 6-32-1. Short title.

Chapter 6, Article 32 NMSA 1978 may be cited as the "Small Business Recovery and Stimulus Act".

**History:** Laws 2020 (1st S.S.), ch. 6, § 1; 2021, ch. 5, § 1.

**ANNOTATIONS**

**The 2021 amendment,** effective March 3, 2021, changed the name of the "Small Business Recovery Act of 2020" to the "Small Business Recovery and Stimulus Act"; changed "Section 1 through 7 of this act" to "Chapter 6, Article 32 NMSA 1978", after "Recovery", added "and Stimulus", and after "Act", deleted "of 2020".

## 6-32-2. Definitions.

As used in the Small Business Recovery and Stimulus Act:

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

B. "New Mexico resident" means an individual who is domiciled in this state during any part of the year or an individual who is physically present in this state for one hundred eighty-five days or more during the taxable year;

C. "non-employer business" means a qualifying small business that has no paid employees;

D. "ordinary and necessary business expenses" means all expenses, including expenses and capital expenses incurred to operate the business in compliance with a public health order;

E. "qualifying small business" means a business or nonprofit corporation that:

(1) can demonstrate, as determined by the authority, that it has sustained a substantial decline in gross revenue or a substantial disruption to its operations due to the public health orders issued by the secretary of health and related to the coronavirus disease 2019 public health emergency;

(2) had an annual net revenue of less than five million dollars ($5,000,000) as determined by the authority; and

(3) is organized and operated as a nonprofit corporation or is owned as follows:

(a) for a sole proprietorship, one hundred percent of the assets of the business are owned or leased by a New Mexico resident; and

(b) for a corporation, partnership, joint venture, limited liability company, limited partnership or other business entity, at least fifty-one percent of the total voting power of the entity and at least fifty-one percent of the total value of the equity is owned by one or more New Mexico residents or the business entity maintains a physical business location within the state and has employed at least ten full-time New Mexico resident employees at any time since January 1, 2019; and

F. "nonprofit corporation" means an organization that has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3), 501(c)(6), 501(c)(8), 501(c)(19) or 501(c)(23) of the United States Internal Revenue Code of 1986 and subject to the provisions of the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978].

**History:** Laws 2020 (1st S.S.), ch. 6, § 2; 2021, ch. 5, § 2.

## ANNOTATIONS

**Cross references.** — For federal Coronavirus Aid, Relief, and Economic Security Act, *see* Pub.L. 116–136.

For Section 179 of the Internal Revenue Code of 1986, *see* 26 U.S.C. § 179.

For Section 501 of the Internal Revenue Code, *see* 26 U.S.C. § 501.

**The 2021 amendment,** effective March 3, 2021, defined "non-employer business", revised the definitions for "qualifying small business" and "nonprofit corporation", and deleted definitions for "average adjusted monthly business expenses", "community development financial institution", "loan servicer" and "service provider" as used in the Small Business Recovery and Stimulus Act; in the first sentence, after "Recovery", added "and Stimulus", and after "Act", deleted "of 2020"; deleted Subsections B through D, which defined "average adjusted monthly business expenses", "community development financial institution" and "loan servicer", and redesignated former Subsection E as Subsection B; added a new Subsection C and redesignated former Subsections F and G as Subsections D and E, respectively; in Subsection E, Paragraph E(1), deleted "has closed or reduced operations" and added "can demonstrate, as determined by the authority, that it has sustained a substantial decline in gross revenue or a substantial disruption to its operations", after the second occurrence of "health", deleted "on March 23, 2020" and added "and related to the coronavirus disease 2019 public health emergency", in Paragraph E(2), after "annual", deleted "gross" and added "net", and after "determined", deleted "from the business's federal income tax return for taxable year 2019" and added "by the authority", deleted former Paragraph E(3) and redesignated former Paragraph E(4) as Paragraph E(3), in Subparagraph E(3)(b), after each occurrence of "at least", deleted "eighty" and added "fifty-one", and after "New Mexico residents", added "or the business entity maintains a physical business location within the state and has employed at least ten full-time New Mexico resident employees at any time since January 1, 2019"; deleted former Subsection H, which defined "service provider", and redesignated former Subsection I as Subsection F; and in Subsection F, after "means an", deleted "entity organized pursuant to Section 501(c)(3) or 501(c)(6) of the Internal Revenue Service Code" and added the remainder of the subsection".

## 6-32-3. Small business recovery loan fund; created; funding schedule.

A. The "small business recovery loan fund" is created in the authority. The fund consists of appropriations, gifts, grants, deposits, transfers and donations to the fund. Money in the fund is appropriated to the authority to administer the provisions of the Small Business Recovery and Stimulus Act. The authority shall administer the fund. Balances remaining in the fund as of December 31, 2023 and not identified by the authority as necessary to administer the Small Business Recovery and Stimulus Act over the life of the loans provided pursuant to that act shall revert to the severance tax permanent fund. The authority may expend no more than two percent of the state investment council's commitment pursuant to Section 7-27-5.15 NMSA 1978 for administering the Small Business Recovery and Stimulus Act.

B. On March 3, 2021, the authority and the state investment council shall coordinate to develop a funding schedule to ensure that sufficient funding, as provided for in Section 7-27-5.15 NMSA 1978, is made available to the authority to carry out the provisions of the Small Business Recovery and Stimulus Act.

**History:** Laws 2020 (1st S.S.), ch. 6, § 3; 2021, ch. 5, § 3; 2022, ch. 25, § 1.

**ANNOTATIONS**

**The 2022 amendment,** effective May 18, 2022, extended the reversion date of unencumbered money in the Small Business Recovery Loan Fund; in Subsection A, after "December 31", deleted "2022" and added "2023"; and in Subsection B, deleted "Upon the effective date of this 2021 act" and added "On March 3, 2021".

**The 2021 amendment,** effective March 3, 2021, extended the deadline for balances in the fund to revert to the severance tax permanent fund, changed the amount that the New Mexico finance authority may expend for administering the Small Business Recovery and Stimulus Act, and changed “Small Business Recovery Act of 2020” to “Small Business Recovery and Stimulus Act" throughout; in Subsection A, after "remaining in the fund", deleted "at the end of fiscal year 2022" and added "as of December 31, 2022 and not identified by the authority as necessary to administer the Small Business Recovery and Stimulus Act over the life of the loans provided pursuant to that act", after "expend no more than", changed "one" to "two", and after "percent of the", deleted "balance of the fund" and added "state investment council's commitment pursuant to Section 7-27-5.15 NMSA 1978"; in Subsection B, after "effective date of this", changed "2020" to "2021", after "Section", deleted "10 of this 2020 act" and added "7-27-5.15 NMSA 1978".

## 6-32-4. Loans; terms.

A. The authority shall receive and review applications for small business recovery loans pursuant to the Small Business Recovery and Stimulus Act. The authority may designate one or more application periods and shall review small business recovery loan applications received in each application period in the order in which the completed applications were received and shall provide a determination to the applicant within a reasonable time period after review. The authority shall make loans to qualifying small businesses; provided that funds are available and the qualifying small business satisfies credit and identification criteria, as determined by the authority. The authority shall adopt rules to govern the application procedures and requirements for disbursing loans under the Small Business Recovery and Stimulus Act, including requirements consistent with the purpose of that act for determining the eligibility of qualifying small businesses for loans; provided that the authority may issue rules to permit a business that does not have a record of actual losses, but can otherwise satisfy the requirements of the Small Business Recovery and Stimulus Act, to apply for a small business recovery loan.

B. The authority shall evaluate an application based on information received from the applicant as well as third-party credit and identification reports.

C. The authority shall make small business recovery loans in accordance with the following:

(1) the loan amount shall be in an amount not to exceed three hundred percent of the qualifying small business's average monthly business expenses as determined by the authority; provided that the maximum loan amount shall be no greater than one hundred fifty thousand dollars ($150,000);

(2) the terms of the loan shall require that:

(a) for a loan recipient that is not a non-employer business, the recipient shall use a minimum of eighty percent of the proceeds of the loan for: 1) ordinary and necessary business expenses, including capital expenses, other than compensation for an individual who owns equity in the business; 2) making adaptations or improvements to assets, including real property, that are necessary due to the coronavirus disease 2019 public health emergency to protect the public health; and 3) purchasing or improving any assets for the purpose of developing and growing the qualifying small business's e-commerce production and sales capacity;

(b) for a loan recipient that is a non-employer business, the recipient shall use a minimum of fifty percent of the proceeds of the loan for: 1) ordinary and necessary business expenses, including capital expenses, other than compensation for an individual who owns equity in the business; 2) making adaptations or improvements to assets, including real property, that are necessary due to the coronavirus disease 2019 public health emergency to protect the public health; and 3) purchasing or improving any assets for the purpose of developing and growing the qualifying small business's e-commerce production and sales capacity;

(c) the loan recipient provide a written certification signed by an appropriate officer of the qualifying small business that certifies that: 1) the officer understands that the business is receiving a loan under the Small Business Recovery and Stimulus Act that must be repaid by the business with interest under the terms of the loan agreement; 2) all documents submitted in support of the loan application and all statements and certifications made in the loan application are true and accurate to the best of the officer's knowledge; 3) prior to the issuance of the public health order issued by the secretary of health on March 23, 2020, the business was current on all obligations pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978], the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978], the Withholding Tax Act [Chapter 7, Article 3 NMSA 1978], the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] and the Unemployment Compensation Law [Chapter 51 NMSA 1978] applicable to the business's operations; and 4) all loan proceeds will be used for purposes as provided in the Small Business Recovery and Stimulus Act, including that no more than twenty percent of the proceeds may be used as compensation for employees who own equity in the business; and

(d) the loan recipient provide the authority with ongoing information relevant to the reporting requirements of the authority provided in Section 6-32-7 NMSA 1978;

(3) the terms of the loan shall not require that the qualifying small business provide a personal guarantee or collateral to secure a loan in the amount of seventy-five thousand dollars ($75,000) or less. For a loan in an amount greater than seventy-five thousand dollars ($75,000), the authority may require a personal guarantee or collateral to secure the amount of the loan greater than seventy-five thousand dollars ($75,000); provided that the authority shall define specific guidelines related to personal guarantees or collateral; and

(4) the application for a loan must be received no later than December 31, 2022.

D. The authority may exercise any power provided to the authority in the New Mexico Finance Authority Act [Chapter 6, Article 21 NMSA 1978] to assist in the administration of the Small Business Recovery and Stimulus Act; provided that the power is consistent with the provisions of that act.

**History:** Laws 2020 (1st S.S.), ch. 6, § 4; 2021, ch. 5, § 4; 2022, ch. 25, § 2.

## ANNOTATIONS

**The 2022 amendment,** effective May 18, 2022, extended the date by which applications for loans pursuant to the Small Business Recovery and Stimulus Act must be received; and in Subsection C, Paragraph C(4), after "no later than", deleted "May" and added "December".

**The 2021 amendment,** effective March 3, 2021, extended the deadline to apply for a small business recovery loan, changed the terms of small business recovery loans, increased the limits of small business recovery loans, and changed the permissible uses of the proceeds of a small business recovery loan, permitted the requirement of a personal guarantee or collateral for certain small business recovery loans; changed each occurrence of "Small Business Recovery Act of 2020" to "Small Business Recovery and Stimulus Act" throughout; in Subsection A, after the first occurrence of "Small Business Recovery and Stimulus Act", deleted "The authority shall review all small business recovery loan applications in the order in which the completed applications were received and shall provide a determination to the applicant as soon as practicable" and added "The authority may designate one or more application periods and shall review small business recovery loan applications received in each application period in the order in which the completed applications were received and shall provide a determination to the applicant within a reasonable time period after review.", after "qualifying small business", deleted "meets the requisite creditworthiness" and added "satisfies credit and identification criteria", and after "provided that the authority", deleted "shall not create additional requirements for eligibility other than those provided by that act" and added "may issue rules to permit a business that does not have a record of actual losses, but can otherwise satisfy the requirements of the Small Business Recovery and Stimulus Act, to apply for a small business recovery loan"; in Subsection B, after "evaluate", deleted "the creditworthiness of an applicant" and added "an

application", and after "from the applicant", deleted "which may include an independent credit reporting agency report when available" and added "as well as third-party credit and identification reports"; deleted former Subsection C and redesignated former Subsections D and E as Subsections C and D, respectively; in Paragraph C(1), after the first occurrence of "amount", changed "equal to two" to "not to exceed three", after "business's average", deleted "adjusted", after "monthly business expenses", deleted "from the previous calendar or fiscal year" and added "as determined by the authority", and after "no greater than", changed "seventy-five thousand dollars ($75,000)" to "one hundred fifty thousand dollars ($150,000)", in Paragraph C(2), after "shall require that", deleted "the loan recipient", in Subparagraph C(2)(a), added "for a loan recipient that is not a non-employer business, the recipient shall", added item designation "1)", in Item C(2)(a)1), after "compensation for", deleted "employees" and added "an individual", and added new Item C(2)(a)2), added new Subparagraph C(2)(b) and redesignated former Subparagraphs C(2)(b) and C(2)(c) as Subparagraphs C(2)(c) and C(2)(d), respectively, in Subparagraph C(2)(c), added "the loan recipient", in Item C(2)(c)2), after "loan application", added "and all statements and certifications made in the loan application", deleted former Item C(2)(c)3) and redesignated former Items C(2)(c)4) and C(2)(c)5) as Items C(2)(c)3) and C(2)(c)4), respectively, in Subparagraph C(2)(d), added "the loan recipient", and after "Section", deleted "7 of the Small Business Recovery Act of 2020" and added "6-32-7 NMSA 1978, in Paragraph C(3), after "secure a loan", added the remainder of the paragraph, and in Paragraph C(4), after "no later than", changed "December 31, 2020" to "May 31, 2022"; and in Subsection D, after "administration of", deleted "this" and added "Small Business Recovery and Stimulus Act".

**Temporary provisions.** — Laws 2021, ch. 5, § 8, provided that for any small business recovery loan provided pursuant to the New Mexico Small Business Recovery Act of 2020 made prior to March 3, 2021, the New Mexico finance authority shall permit the recipient of that loan to refinance the loan subject to terms consistent with Laws 2021, ch. 5.

## 6-32-5. Repayment.

A. Small business recovery loans shall be made for loan periods not to exceed ten years, as determined by the authority. The loans shall bear an annual interest rate equal to one-half of the *Wall Street Journal* prime rate on the date the loan is made; provided that no interest shall accrue during the first year of the loan.

B. Interest shall begin to accrue on a small business recovery loan on the first anniversary of the funding date of the loan. Thereafter, for the next two years, the authority shall require interest-only payments on a schedule determined by the authority. Beginning on the third anniversary of the funding date of the loan, payment on the outstanding principal and interest on the loan shall be due on a schedule determined by the authority for the remainder of the loan period.

C. Receipts from the repayment of principal or interest accrued on the loans made pursuant to the Small Business Recovery and Stimulus Act shall be transferred from the

authority to the state investment council and deposited in the severance tax permanent fund.

D. No provision in a small business recovery loan or the evidence of indebtedness of the loan shall include a penalty or premium for prepayment of the balance of the indebtedness.

**History:** Laws 2020 (1st S.S.), ch. 6, § 5; 2021, ch. 5, § 5.

**ANNOTATIONS**

**The 2021 amendment,** effective March 3, 2021, increased the loan periods for small business recovery loans, provided that no interest shall accrue during the first year of a small business recovery loan, and changed the repayment terms for small business recovery loans; in Subsection A, after "shall be made for", deleted "an initial loan period of three" and added "loan periods not to exceed ten", after "years,", added "as determined by the authority", and after the semicolon, added "provided that no interest shall accrue during the first year of the loan"; completely rewrote Subsection B; and in Subsection C, changed "Small Business Recovery Act of 2020" to Small Business Recovery and Stimulus Act", and after "shall be", added "transferred from the authority to the state investment council and".

**Temporary provisions.** — Laws 2021, ch. 5, § 8, provided that for any small business recovery loan provided pursuant to the New Mexico Small Business Recovery Act of 2020 made prior to March 3, 2021, the New Mexico finance authority shall permit the recipient of that loan to refinance the loan subject to terms consistent with Laws 2021, ch. 5.

## 6-32-6. Repealed.

**History:** Laws 2020 (1st S.S.), ch. 6, § 6; repealed by Laws 2021, ch. 5, § 9.

**ANNOTATIONS**

**Repeals.** — Laws 2021, ch. 5, § 9 repealed 6-32-6 NMSA 1978, as enacted by Laws 2020 (1st S.S.), ch. 6, § 6, relating to small business technical assistance, service providers, effective March 3, 2021. For provisions of former section, *see* the 2020 NMSA 1978 on *NMOneSource.com*.

## 6-32-7. Reports; confidentiality.

A. Prior to October 1, 2021 and each October 1 for the proceeding four years, the authority shall submit a report to the legislature, the legislative finance committee, the New Mexico finance authority oversight committee, the revenue stabilization and tax policy committee and any other appropriate legislative interim committee. The report

shall provide details regarding the loans made pursuant to the Small Business Recovery and Stimulus Act. The report shall include:

(1) the total number of loans made pursuant to that act;

(2) the total number of loan applications;

(3) the average amount of money provided to loan applicants;

(4) the total number of loans and the amount of those loans, if any, in a delinquent status or default;

(5) the total number of loan recipients that are in the process of filing or have filed for bankruptcy;

(6) the total number of employees currently employed by a business that received a loan; and

(7) an overview of the industries and types of business entities represented by loan recipients.

B. Information obtained by the authority regarding individual loan applicants, including information used to analyze an application, is confidential and not subject to inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978]; provided that nothing in this section shall prevent the authority from disclosing broad demographic information and information relating to the total amount of loans made, the total outstanding balance of loans made pursuant to the Small Business Recovery and Stimulus Act and the names of the loan recipients.

**History:** Laws 2020 (1st S.S.), ch. 6, § 7; 2021, ch. 5, § 6.

**ANNOTATIONS**

**The 2021 amendment,** effective March 3, 2021, provided that information obtained by the New Mexico finance authority to analyze an application is confidential, and made technical amendments; changed each occurrence of "Small Business Recovery Act of 2020" to "Small Business Recovery and Stimulus Act" throughout; and in Subsection B, after "individual loan applicants", added "including information used to analyze an application".

# ARTICLE 33
# Venture Capital Program

## 6-33-1. Short title.

Chapter 6, Article 33 NMSA 1978 may be cited as the "Venture Capital Program Act".

**History:** Laws 2022, ch. 21, § 1; 2023, ch. 127, § 1.

**ANNOTATIONS**

**The 2023 amendment,** effective June 16, 2023, deleted "This act" and added "Chapter 6, Article 33 NMSA 1978".

## 6-33-2. Definitions.

As used in the Venture Capital Program Act:

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

B. "New Mexico business" means, in the case of a corporation or limited liability company, a business with its principal office and a majority of its full-time employees located in New Mexico or, in the case of a limited partnership, a business with its principal place of business and at least eighty percent of its assets located in New Mexico; and

C. "venture private equity fund" means an entity that makes, manages or sources potential investments in New Mexico businesses and that:

(1) has as its primary business activity the investment of funds in return for equity in or debt of businesses for the purpose of providing capital for start-up, expansion, product or market development, recapitalization or business purposes in early stages of development;

(2) holds out prospects for capital appreciation from such investments;

(3) has at least one full-time manager with at least three years of professional experience in assessing the growth prospects of businesses or evaluating business plans; and

(4) accepts investments only from accredited investors, as that term is defined in the federal Securities Act of 1933, as amended, and rules and regulations promulgated pursuant to that section, or federally recognized Indian nations, tribes and pueblos with at least five million dollars ($5,000,000) in overall investment assets.

**History:** Laws 2022, ch. 21, § 2; 2023, ch. 127, § 2.

**ANNOTATIONS**

**Cross references.** — For the federal Securities Act of 1933, *see* 15 U.S.C.

**The 2023 amendment,** effective June 16, 2023, revised the definition of "venture private equity fund"; and in Subsection C, deleted former Paragraph C(4), which provided "is committed to investing or helps secure investing by others, in an amount at least equal to the total investment made by the authority in that fund pursuant to the Venture Capital Program Act, in New Mexico businesses and that hold promise for attracting additional capital from individual or institutional investors nationwide for businesses in New Mexico; and", and redesignated Paragraph C(5) as Paragraph C(4)..

## 6-33-3. Venture capital program fund.

A. The "venture capital program fund" is created in the authority. The fund consists of appropriations, gifts, grants, deposits, transfers, donations and money earned from investment of the fund and otherwise accruing to the fund. The authority shall administer the fund. Money in the fund is appropriated to the authority for investment in New Mexico businesses and venture private equity funds pursuant to the Venture Capital Program Act and to pay the cost of administering that act. Balances remaining in the fund at the end of a fiscal year shall not revert. Money from the fund may be drawn only on warrants approved by the chief executive officer of the authority pursuant to vouchers signed by the chief financial officer of the authority.

B. The authority shall adopt rules governing the terms and conditions of investments made from the venture capital program fund. The authority may make investments from the venture capital program fund as permitted pursuant to Subsection A of Section 4 [6-33-4 NMSA 1978] of the Venture Capital Program Act without specific authorization by law.

**History:** Laws 2022, ch. 21, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2022, ch. 21, § 8 made Laws 2022, ch. 21, § 3 effective July 1, 2022.

## 6-33-4. Investments; qualifications; board approval.

A. In making investments pursuant to the Venture Capital Program Act, the authority shall make:

(1) investments in venture private equity funds; or

(2) early stage investments in New Mexico businesses whose investments or enterprises enhance the economic development objectives of the state.

B. The authority is authorized to make investments in New Mexico businesses to create new job opportunities and to support new, emerging or expanding businesses in a manner consistent with the constitution of New Mexico if:

(1) an investment in any one business does not exceed ten percent of the balance of the venture capital program fund;

(2) an investment in any one industry does not exceed thirty percent of the balance of the venture capital program fund; and

(3) the investments represent no more than fifty-one percent of the total investment capital in a business; provided, however, that nothing in this subsection prohibits the ownership of more than fifty-one percent of the total investment capital in a New Mexico business if the additional ownership interest:

(a) is due to foreclosure or other action by the authority pursuant to agreements with the business or other investors in that business;

(b) is necessary to protect the investment; and

(c) does not require an additional investment of the fund.

C. In making investments pursuant to the Venture Capital Program Act, the authority may make differential rate investments for economic development purposes.

D. The authority shall make investments pursuant to the Venture Capital Program Act only upon approval of the board of directors of the authority and within guidelines and policies established by the board.

**History:** Laws 2022, ch. 21, § 4; 2023, ch. 127, § 3.

**ANNOTATIONS**

**The 2023 amendment,** effective June 16, 2023, revised investment guidelines; in Subsection B, deleted former Paragraph B(1), which provided "the investments are made in conjunction with cooperative investment agreements with parties that have demonstrated abilities and relationships in making investments in new, emerging or expanding businesses", and redesignated former Paragraph B(2) as Paragraph B(1), and added a new Paragraph B(2); and added a new Subsection C and redesignated former Subsection C as Subsection D..

## 6-33-5. Budget.

The authority shall annually prepare a budget for administering and investing all funds managed by the venture capital program, which shall be reviewed and approved by the board of directors of the authority. Funds provided for the operating budget of the venture capital program may be made from the assets of the venture capital program fund or any other funds managed by the authority, as authorized by law.

**History:** Laws 2022, ch. 21, § 5; 2023, ch. 127, § 4.

### ANNOTATIONS

**The 2023 amendment,** effective June 16, 2023, eliminated bond requirements for New Mexico finance authority employees; and deleted Subsection A.

## 6-33-6. Compromise; adjustment.

In the event of default in the payment of principal of or interest on an investment made, the authority is authorized to institute proper proceedings to collect matured interest and principal; the authority may, after consultation with the board of directors of the authority, accept for exchange purposes refunding bonds or other evidences of indebtedness at interest rates to be agreed upon with the obligor. The authority, after consultation with the board of directors of the authority, is authorized to adjust past-due interest or principal in default.

**History:** Laws 2022, ch. 21, § 6.

### ANNOTATIONS

**Effective dates.** — Laws 2022, ch. 21, § 8 made Laws 2022, ch. 21, § 6 effective July 1, 2022.

## 6-33-7. Reports.

No later than July 1 of each year, the authority shall submit a report to the legislative finance committee, the revenue stabilization and tax policy committee and any other appropriate interim legislative committee. The report shall provide for the prior calendar year the amounts invested in each venture private equity fund, as well as information about the objectives of the funds, the companies in which each venture private equity fund is invested and how each venture private equity investment enhances the economic development objectives of the state. Each report shall also provide the amounts invested in each New Mexico business during the prior calendar year.

**History:** Laws 2022, ch. 21, § 7.

### ANNOTATIONS

**Effective dates.** — Laws 2022, ch. 21, § 8 made Laws 2022, ch. 21, § 7 effective July 1, 2022.

## 6-33-8. Proprietary information; confidentiality.

Information obtained by the authority in order to make investments from the venture capital program fund, which information is proprietary, technical, trade secret or business information, shall be confidential and not subject to inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

**History:** Laws 2023, ch. 127, § 5.

**ANNOTATIONS**

**Effective dates.** — Laws 2023, ch. 127 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

# ARTICLE 34
# Opportunity Enterprise and Housing Development

## 6-34-1. Short title.

Chapter 6, Article 34 NMSA 1978 may be cited as the "Opportunity Enterprise and Housing Development Act".

**History:** Laws 2022, ch. 57, § 1; 2024, ch. 8, § 1.

**ANNOTATIONS**

**The 2024 amendment,** effective May 15, 2024, changed the name of the Opportunity Enterprise Act to the Opportunity Enterprise and Housing Development Act; changed "This act" to "Chapter 6, Article 34 NMSA 1978" and after "Opportunity Enterprise" added "and Housing Development".

## 6-34-2. Definitions.

As used in the Opportunity Enterprise and Housing Development Act:

A. "affordable housing infrastructure project" means infrastructure projects needed to support housing for low- or moderate-income residents;

B. "authority" means the New Mexico finance authority;

C. "board" means the opportunity enterprise and housing development review board;

D. "department" means the economic development department;

E. "economic development opportunities" means the advancement of an environmentally sustainable economic development goal of the state as determined by the authority, in coordination with the department, and includes the creation of jobs, the provision of needed services and commodities to diverse communities across the state and the increase of tax and other revenue collections resulting from the enterprise development project;

F. "enterprise assistance" means opportunity enterprise financing, an opportunity enterprise lease or an opportunity enterprise loan;

G. "enterprise development project" means a commercial real estate development project primarily occupied by businesses unrelated to the opportunity enterprise partner that involves the purchase, planning, designing, building, surveying, improving, operating, furnishing, equipping or maintaining of land, buildings or infrastructure to create or expand economic development opportunities within the state;

H. "housing development assistance" means a loan for workforce development housing projects or affordable housing infrastructure projects;

I. "housing development partner" means a domestic corporation, a general partnership, a limited liability company, a limited partnership, a public benefit corporation, a nonprofit entity or any other private business entity or combination thereof that the authority determines is or will be engaged in a project that creates or expands housing within the state and is eligible for housing development assistance pursuant to the Opportunity Enterprise and Housing Development Act;

J. "housing development project" means an affordable housing infrastructure project or a workforce development housing project;

K. "opportunity enterprise partner" means a domestic corporation, a general partnership, a limited liability company, a limited partnership, a public benefit corporation, a nonprofit entity or other private business entity or combination thereof that the authority determines is or will be engaged in an enterprise that creates or expands economic development opportunities within the state and is eligible for enterprise assistance pursuant to the Opportunity Enterprise and Housing Development Act;

L. "opt-in agreement" means an agreement entered into among the authority, the department and a county, municipality or school district that ensures compliance with all local zoning, permitting and other land use rules and that provides for payments in lieu of taxes to the county, municipality or school district;

M. "payment in lieu of taxes" means the total annual payment paid as compensation for the tax impact of an enterprise development project, in an amount negotiated and determined in the opt-in agreement among the authority, the department and the county, school district or, if applicable, municipality where the enterprise development project is located in the same proportional amount as property tax revenues are normally distributed to those recipients;

N. "workforce development housing" means below-market housing addressing demand for workforce housing for middle-income workers in proximity to employment centers; and

O. "workforce development housing project" means a residential real estate development project that involves the purchase, planning, designing, building, surveying, improving, operating, furnishing, equipping or maintaining of land, buildings or infrastructure that provides housing, including housing that provides the option of home ownership.

**History:** Laws 2022, ch. 57, § 2; 2024, ch. 8, § 2.

### ANNOTATIONS

**The 2024 amendment,** effective May 15, 2024, provided definitions for the terms "affordable housing infrastructure project", "housing development assistance", "housing development partner", "housing development project", "workforce development housing", and "workforce development housing project", revised the definition of "enterprise development project", and removed the definition of "fund" as used in the Opportunity Enterprise and Housing Development Act, and made certain technical and conforming amendments; changed the name of the Opportunity Enterprise Act to the Opportunity Enterprise and Housing Development Act throughout the section; added a new Subsection A and redesignated former Subsections A through F as Subsections B through G, respectively; in Subsection C, after "opportunity enterprise" added "and housing development"; in Subsection G, after "means" added "a commercial real estate development project primarily occupied by businesses unrelated to the opportunity enterprise partner that involves"; deleted former Subsection G, which defined "fund"; added new Subsections H through J and redesignated former Subsections H through J as Subsections K through M, respectively; and added Subsections N and O.

## 6-34-3. New Mexico finance authority; powers; duties.

To create or expand economic development opportunities and housing within the state, the authority may:

A. acquire, whether by construction, purchase, gift or lease, and hold title to or other interest in an enterprise development project or housing development project;

B. provide opportunity enterprise financing to opportunity enterprise partners and collect costs and fees associated with that financing;

C. enter into a contract to lease property to an opportunity enterprise partner and collect rent, costs and fees associated with that lease;

D. make loans to opportunity enterprise partners and collect payments, including principal, interest costs and fees associated with that loan;

E. make loans to housing development partners and collect payments, including principal, interest costs and fees associated with those loans;

F. sell or otherwise dispose of any property obtained as a result of an enterprise development project or a housing development project; provided that proceeds received shall be deposited in the opportunity enterprise revolving fund or the housing development revolving fund, respectively;

G. make, execute and enforce all contracts necessary to carry out the provisions of the Opportunity Enterprise and Housing Development Act;

H. take legal action available to the authority to recover public money or other public resources if an opportunity enterprise partner or housing development partner defaults on its obligations to the authority;

I. enter into joint powers agreements or other agreements with a state agency or governmental entity, as the authority determines to be appropriate for such purpose;

J. adopt rules relating to the use of the opportunity enterprise revolving fund and the housing development revolving fund necessary to carry out the provisions of the Opportunity Enterprise and Housing Development Act subject to approval of the New Mexico finance authority oversight committee; and

K. enter into opt-in agreements where the enterprise development project is located to facilitate the development of an enterprise development project; provided that if included in the opt-in agreement, the authority shall make payments in lieu of taxes to a county, municipality or school district to offset the tax impact of an enterprise development project.

**History:** Laws 2022, ch. 57, § 3; 2024, ch. 8, § 3.

## ANNOTATIONS

**The 2024 amendment,** effective May 15, 2024, included housing development projects within the scope of the New Mexico finance authority's powers and duties, authorized the New Mexico finance authority to make loans to housing development partners and to perform certain duties related to those loans, included the housing development revolving fund for the deposit of certain proceeds received by the New Mexico finance authority, authorized the New Mexico finance authority to adopt rules related to the use of the housing development revolving fund; in the introductory clause, after "economic development opportunities" added "and housing"; after "Opportunity Enterprise" added "and Housing Development" throughout the section; in Subsection A, after "enterprise development project" added "or housing development project"; added a new Subsection E and redesignated former Subsections E through J as Subsections F through K, respectively; in Subsection F, after "enterprise development project" added "or a housing development project" after "deposited in the" added "opportunity enterprise revolving" and after "fund" added "or the housing development revolving fund, respectively"; in Subsection H, after "opportunity enterprise partner" added "or housing

development partner"; and in Subsection J, after "use of the" added "opportunity enterprise revolving" after "fund," added "and the housing development revolving fund".

## 6-34-4. Economic development department; powers; duties.

A. For the purpose of recommending enterprise development projects to the board for enterprise assistance, the department and the board shall coordinate to:

(1) survey potential opportunity enterprise partners and enterprise development projects;

(2) provide outreach services to local governments and potential opportunity enterprise partners for the purpose of making recommendations regarding enterprise assistance; and

(3) evaluate potential opportunity enterprise partners and formulate recommendations regarding suitability for enterprise assistance.

B. The department may, when applicable, enter into opt-in agreements with the authority and the county, school district or, if applicable, municipality where the enterprise development project is located for the purpose of facilitating the development of the enterprise development project.

**History:** Laws 2022, ch. 57, § 4.

**ANNOTATIONS**

**Effective dates.** — Laws 2022, ch. 57, § 16 made Laws 2022, ch. 57, § 4 effective July 1, 2022.

## 6-34-5. Opportunity enterprise and housing development review board; created; membership.

A. The "opportunity enterprise and housing development review board" is created. The authority shall provide necessary administrative services to the board.

B. The board is composed of the following fourteen members:

(1) the secretary of economic development or the secretary's designee;

(2) the secretary of finance and administration or the secretary's designee;

(3) the secretary of general services or the secretary's designee;

(4) the state treasurer or the state treasurer's designee;

(5) the executive director of the New Mexico mortgage finance authority or the executive director's designee;

(6) two members appointed by the governor who shall have experience in the housing, building or development sector;

(7) one representative appointed by the council of government organizations within the state; and

(8) six public members appointed by the New Mexico legislative council who shall have experience in any one or more of the following:

(a) the banking and finance industry;

(b) commercial or industrial credit;

(c) private equity, venture capital or mutual fund investments;

(d) commercial real estate development;

(e) engineering, construction and construction management;

(f) organized labor;

(g) urban planning; or

(h) environmentally sustainable construction and development.

C. Members of the board appointed pursuant to Paragraphs (7) and (8) of Subsection B of this section shall serve for staggered terms of six years; provided that the initial term of members appointed pursuant to Paragraph (8) of Subsection B of this section may be for a term of less than six years, as determined by the New Mexico legislative council, to ensure staggered membership of the board. Members of the board shall serve until their successors are appointed. A member of the board appointed pursuant to Paragraph (6), (7) or (8) of Subsection B of this section may be removed from the board by the appointing authority for failure to attend three consecutive meetings or other cause. A vacancy on the board of an appointed member shall be filled by appointment by the original appointing authority for the remainder of the unexpired term of office; provided that a member who is removed pursuant to this section shall be ineligible for reappointment.

D. Members of the board appointed pursuant to Paragraphs (6) through (8) of Subsection B of this section shall:

(1) be governed by the provisions of the Governmental Conduct Act [Chapter 10, Article 16 NMSA 1978]; and

(2) not hold any office or employment in a political party.

E. The members shall select a chair, vice chair and other officers that the board deems necessary, who shall serve a term of two years. The board shall maintain minutes of all meetings of the board, and all meetings shall be held pursuant to the Open Meetings Act [Chapter 10, Article 15 NMSA 1978].

**History:** Laws 2022, ch. 57, § 5; 2024, ch. 8, § 4.

**ANNOTATIONS**

**The 2024 amendment,** effective May 15, 2024, changed the name of the Opportunity Enterprise Review Board to the Opportunity Enterprise and Housing Development Review Board, and revised the provisions related to the composition of the Opportunity Enterprise and Housing Development Review Board; in the section heading, added "and housing development"; in Subsection A, after "opportunity enterprise" added "and housing development"; in Subsection B, in the introductory clause, after "composed of the following" deleted "twelve" and added "fourteen", in Paragraph B(5), after "the" deleted "state auditor or the state auditor's" and added "executive director of the New Mexico mortgage finance authority or the executive director's" added a new Paragraph B(6) and redesignated former Paragraphs B(6) and B(7) as Paragraphs B(7) and B(8), respectively; in Subsection C, after "Paragraphs", deleted "(6) and" after "(7)" added "and (8)", after the first occurrence of "Paragraph" deleted "(7)" and added "(8)", after "pursuant to Paragraph (6), (7)" added "or (8)"; and in Subsection D, after "pursuant to Paragraphs (6)" deleted "and (7)" and added "through (8)".

## 6-34-6. Opportunity enterprise and housing development review board; powers.

A. The board shall:

(1) meet quarterly and at the call of the chair;

(2) receive a list of executed contracts for enterprise assistance and housing development assistance;

(3) recommend to the authority application forms and procedures for the prioritization of enterprise development projects and housing development projects;

(4) review standards and procedures for the approval of proposed contracts as needed;

(5) make recommendations to the authority of potential enterprise development projects and housing development projects;

(6) determine whether the use of enterprise assistance and housing development assistance is a prudent expenditure of public funds and report to the legislature annually on that determination; and

(7) make recommendations to the authority of potential rulemaking, application or lending changes to ensure transparent and efficient processes for carrying out the provisions of the Opportunity Enterprise and Housing Development Act.

B. The board and the department shall coordinate to:

(1) provide outreach services to local governments and potential opportunity enterprise partners;

(2) evaluate opportunity enterprise partners and eligible enterprise development projects for suitability for enterprise assistance;

(3) evaluate housing development partners and eligible housing development projects for suitability for housing development assistance; and

(4) obtain input and information relevant to carrying out the purposes of the Opportunity Enterprise and Housing Development Act from recipients of enterprise assistance and housing development assistance, local governments and local communities.

**History:** Laws 2022, ch. 57, § 6; 2024, ch. 8, § 5.

## ANNOTATIONS

**The 2024 amendment,** effective May 15, 2024, made conforming amendments due to the Opportunity Enterprise Review Board's name change to the Opportunity Enterprise and Housing Development Review Board, and revised the board's powers to include duties related to housing development projects; in the section heading, added "and housing development"; in Subsection A, Paragraph A(2), after "enterprise assistance" added "and housing development assistance" in Paragraph A(3), after "procedures for" deleted "approval" and added "the prioritization", after "enterprise" deleted "assistance" and added "development projects and housing development projects", in Paragraph A(4), deleted "develop" and added "review" and after "proposed contracts" deleted "for enterprise assistance" and added "as needed", in Paragraph A(5), after "enterprise development projects" added "and housing development projects", in Paragraph A(6), after "enterprise assistance" added "and housing development assistance" and in Paragraph A(7), after "Opportunity Enterprise" added "and Housing Development"; and in Subsection B, added a new Paragraph B(3) and redesignated former Paragraph B(3) as Paragraph B(4), and in Paragraph B(4), after "Opportunity Enterprise" added "and Housing Development" and after "enterprise assistance" added "and housing development assistance".

## 6-34-7. Rulemaking; board.

The board shall adopt rules necessary to carry out the provisions of the Opportunity Enterprise and Housing Development Act to:

A. establish procedures for applying and qualifying for enterprise assistance and housing development assistance;

B. establish economic development goals in consultation with the department;

C. govern the application procedures and requirements for enterprise assistance and housing development assistance;

D. determine how to select and prioritize applications for enterprise assistance to be recommended to the authority;

E. prioritize projects that are in political subdivisions that are implementing zoning reforms that support housing development projects;

F. determine how to select and prioritize applications for housing development assistance to be recommended to authority; and

G. provide safeguards to protect public money and other public resources subject to the Opportunity Enterprise and Housing Development Act.

**History:** Laws 2022, ch. 57, § 7; 2024, ch. 8, § 6.

**ANNOTATIONS**

**The 2024 amendment,** effective May 15, 2024, made conforming amendments due to the Opportunity Enterprise Act's name change to the Opportunity Enterprise and Housing Development Act, and included in the opportunity enterprise and housing development review board's rulemaking authority to include the authority to adopt rules related to housing development projects; in the introductory clause, after "Opportunity Enterprise" added "and Housing Development"; after "enterprise assistance" added "and housing development assistance" throughout the section; in Subsection D, after "enterprise assistance to be" deleted "funded by" and added "recommended to"; and added new Subsections E and F and redesignated former Subsection E as Subsection G.

## 6-34-8. Enterprise assistance; general requirements.

A. An application for enterprise assistance shall:

(1) describe the scope and plans of the enterprise development project or proposed use of leased property by the applicant;

(2) demonstrate that the enterprise development project or lease will create or expand economic development opportunities within the state;

(3) demonstrate that the proposed enterprise development project or lease will comply with applicable state and federal law;

(4) provide sufficient evidence that other means of financing a proposed enterprise development project are unavailable or insufficient; and

(5) include other documentation or certifications that the authority deems necessary.

B. The authority, in coordination with the department, shall:

(1) make the application publicly available, including a description of the scope and plans of the proposed enterprise development project or lease;

(2) ensure that all information relating to the enterprise development project or lease and the evaluation of the application is made publicly available, unless the information includes trade secrets or information that is otherwise unable to be disclosed as provided by law;

(3) prioritize applications for enterprise assistance that demonstrate local support and financial need; and

(4) prior to providing enterprise assistance, determine that:

(a) the proposed enterprise development project or lease will create or expand economic development opportunities within the state;

(b) the proposed enterprise development project or lease will comply with applicable state and federal law; and

(c) other means of financing a proposed enterprise development project are unavailable or insufficient.

C. A contract to provide enterprise assistance shall:

(1) define the roles and responsibilities of the authority and the opportunity enterprise partner;

(2) provide clawback or recapture provisions that protect the public investment in the event of a default on the contract;

(3) provide a finance plan detailing the financial contributions and obligations of the authority and opportunity enterprise partner;

(4) require an opportunity enterprise partner to provide guarantees, letters of credit or other acceptable forms of security, as determined by the authority;

(5) specify how rents, if applicable, will be collected and accounted for;

(6) specify how debts incurred on behalf of the opportunity enterprise partner will be repaid; and

(7) provide that, in the event of a default, the authority may:

(a) elect to take possession of the property, including the succession of all right, title and interest in the enterprise development project; and

(b) terminate the lease or cease any further funding and exercise any other rights and remedies that may be available.

D. The authority may require any document, guarantee or certification from a recipient of enterprise assistance that the authority determines is necessary to ensure economic development opportunities are advanced by the enterprise assistance.

E. The authority may prioritize an application for enterprise assistance for a proposed enterprise development project located in a nonurban community.

F. Enterprise assistance shall only be provided if compliant with the Opportunity Enterprise and Housing Development Act. All contracts for enterprise assistance shall be provided to the board no later than thirty days from the execution of that contract.

G. As used in this section, "nonurban community" means a municipality with a population of less than sixty thousand according to the most recent federal decennial census or the unincorporated area of a county.

**History:** Laws 2022, ch. 57, § 8; 2024, ch. 8, § 7.

**ANNOTATIONS**

**The 2024 amendment,** effective May 15, 2024, made conforming amendments due to the Opportunity Enterprise Act's name change to the Opportunity Enterprise and Housing Development Act, and revised the definition of "nonurban community"; in Subsection F, after "Opportunity Enterprise" added "and Housing Development"; and in Subsection G, after "population of less than" deleted "forty" and added "sixty".

## 6-34-9. Opportunity enterprise financing.

A. The authority shall receive and review applications for opportunity enterprise financing. If the authority determines that an enterprise development project is eligible

for financing, the authority may enter into a contract with the opportunity enterprise partner to provide financing to that partner, which shall be used to complete that project.

B. The authority shall ensure that all zoning, permitting and other regulatory requirements will be met by the enterprise development project and that the enterprise development project will create or expand economic development opportunities within the state.

C. Financing shall not be subject to repayment if the terms of the contract for financing are carried out by the opportunity enterprise partner. A property associated with the enterprise development project shall be the property of the authority and shall be a property available for lease as provided in Section 10 [6-34-10 NMSA 1978] of the Opportunity Enterprise Act [Opportunity Enterprise and Housing Development Act]. The authority may enter into agreements with the general services department or other state agency or entity approved by the board to administer and maintain the property as required by the Opportunity Enterprise Act.

D. As provided in rules adopted by the board, upon completion of an enterprise development project, the authority shall allow the opportunity enterprise partner responsible for the completion of that project an opportunity to obtain an opportunity enterprise lease for that property as provided in Section 10 of the Opportunity Enterprise Act; provided that any breach of the terms of the contract for opportunity enterprise financing may preclude that opportunity enterprise partner from leasing the property, and in that event, the property shall be made available for lease to other opportunity enterprise partners.

**History:** Laws 2022, ch. 57, § 9.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 2024, ch. 8, § 1 changed the "Opportunity Enterprise Act" to the "Opportunity Enterprise and Housing Development Act".

**Effective dates.** — Laws 2022, ch. 57, § 16 made Laws 2022, ch. 57, § 9 effective July 1, 2022.

## 6-34-10. Opportunity enterprise lease; terms.

A. The authority shall receive and review applications for opportunity enterprise leases. If the authority determines that an opportunity enterprise partner is eligible for an opportunity enterprise lease, the authority may enter into a contract to lease an available property to that opportunity enterprise partner in exchange for rent payments, subject to the terms provided by this section. The authority may enter into agreements with the general services department or other state agency or entity approved by the board to administer an opportunity enterprise lease.

B. An opportunity enterprise lease shall:

(1) require that the property be used solely to create and expand economic development opportunities;

(2) provide, based on the fair market value of the property, for:

(a) sufficient rent; and

(b) other securities to ensure the maintenance and protection of the property;

(3) require that the property be properly insured for the duration of the lease; and

(4) be bound only by the terms of the lease and any rules promulgated pursuant to the provisions of the Opportunity Enterprise and Housing Development Act.

C. Receipts from the payment of rent owed pursuant to an opportunity enterprise lease shall be deposited in the opportunity enterprise revolving fund.

**History:** Laws 2022, ch. 57, § 10; 2024, ch. 8, § 8.

**ANNOTATIONS**

**The 2024 amendment,** effective May 15, 2024, made conforming amendments due to the Opportunity Enterprise Act's name change to the Opportunity Enterprise and Housing Development Act; in Subsection B, Paragraph B(4), after "Opportunity Enterprise" added "and Housing Development"; and in Subsection C, after "deposited in the" added "opportunity enterprise revolving".

## 6-34-11. Opportunity enterprise loans; terms; repayment.

A. The authority shall receive and review applications for opportunity enterprise loans. The authority may make loans to opportunity enterprise partners if:

(1) funding is available;

(2) the opportunity enterprise partner meets credit and identification criteria, as determined by the authority;

(3) the opportunity enterprise partner certifies that the proceeds of the loan will be used for an enterprise development project; and

(4) the opportunity enterprise partner meets any other requirement for an opportunity enterprise loan.

B. The opportunity enterprise partner shall provide the authority with ongoing information requested by the authority.

C. Opportunity enterprise loans shall be made for loan periods of no more than thirty years, as determined by the authority. The loans shall bear an annual interest rate of no less than zero percent.

D. Beginning no later than the third anniversary of the funding date of the loan, payment on the outstanding principal of the loan shall be due on a schedule determined by the authority for the remainder of the loan period.

E. Receipts from the repayment of opportunity enterprise loans shall be deposited in the opportunity enterprise revolving fund.

F. No provision in an opportunity enterprise loan or the evidence of indebtedness of the loan shall include a penalty or premium for prepayment of the balance of the indebtedness.

G. The authority may provide a guarantee to a federally insured financial institution on behalf of a person who would otherwise be eligible as an opportunity enterprise partner; provided that the proceeds of any guaranteed loan are used for an enterprise development project. A guarantee pursuant to this subsection shall be provided subject to terms approved by the board.

**History:** Laws 2022, ch. 57, § 11; 2024, ch. 8, § 9.

**ANNOTATIONS**

**The 2024 amendment,** effective May 15, 2024, removed the minimum loan period for opportunity enterprise loans; in Subsection C, after "loan periods of no" deleted "less than fifteen years and no"; and in Subsection E, after "deposited in the" added "opportunity enterprise revolving".

## 6-34-12. Opportunity enterprise revolving fund; created; permitted uses.

A. The "opportunity enterprise revolving fund" is created within the authority. The fund consists of appropriations, distributions, transfers, gifts, grants, donations, bequests, fees collected, payments of principal and interest on opportunity enterprise loans, income from rents paid on opportunity enterprise leases, income from investment of the fund and any other money distributed or otherwise allocated to the fund. Balances in the fund at the end of a fiscal year shall not revert to the general fund except as provided in Section 6-34-13 NMSA 1978. The fund shall be administered by the authority as a separate account and may consist of such subaccounts as the authority deems necessary to carry out the purposes of the fund.

B. Money in the opportunity enterprise revolving fund shall be used by the authority to carry out the provisions of the Opportunity Enterprise and Housing Development Act, including to:

(1) pay the reasonably necessary administrative costs, payments in lieu of taxes and other costs and fees incurred by the authority in carrying out the provisions of that act;

(2) provide opportunity enterprise financing; and

(3) make opportunity enterprise loans.

C. Money in the opportunity enterprise revolving fund that is not needed for immediate disbursement may be deposited or invested in the same manner as other funds administered by the authority.

**History:** Laws 2022, ch. 57, § 12; 2024, ch. 8, § 10.

**ANNOTATIONS**

**The 2024 amendment,** effective May 15, 2024, made conforming amendments due to the Opportunity Enterprise Act's name change to the Opportunity Enterprise and Housing Development Act; in Subsection A, after "Section" deleted "13 of the Opportunity Enterprise Act" and added "6-34-13 NMSA 1978"; after "Money in the" added "opportunity enterprise revolving" throughout the section; and after "Opportunity Enterprise" added "and Housing Development".

## 6-34-13. Excess revenue to the general fund; opportunity enterprise revolving fund; transfer.

A. If, on June 30, 2028 and by June 30 of each fiscal year thereafter, the balance in the opportunity enterprise revolving fund for that fiscal year exceeds the annual average amount by an amount greater than six percent, the amount in excess of six percent shall be transferred to the general fund. If there is not an excess amount pursuant to this section, no transfer shall be made from the fund.

B. As used in this section, "annual average amount" means the total balance of the opportunity enterprise revolving fund in the immediately preceding five fiscal years, divided by five.

**History:** Laws 2022, ch. 57, § 13; 2024, ch. 8, § 11.

**ANNOTATIONS**

**The 2024 amendment,** effective May 15, 2024, added "opportunity enterprising revolving" preceding each occurrence of "fund".

## 6-34-13.1. Housing development assistance; requirements.

A. An application for housing development assistance shall:

(1) describe the scope and plans of the housing development project;

(2) demonstrate that the housing development project will create or expand housing within the state;

(3) demonstrate that the proposed housing development project will comply with applicable state and federal law;

(4) provide sufficient evidence that other means of financing a proposed housing development project are unavailable or insufficient; and

(5) include other documentation or certifications that the authority deems necessary.

B. The authority shall:

(1) make the application publicly available, including a description of the scope and plans of the proposed housing development project;

(2) ensure that all information relating to the housing development project and the evaluation of the application is made publicly available, unless the information is otherwise unable to be disclosed as provided by law;

(3) prioritize applications for housing development assistance that demonstrate local support and financial need; and

(4) prior to providing housing development assistance, determine that:

(a) the proposed housing development project will create or expand housing within the state;

(b) the proposed housing development project will comply with applicable state and federal law; and

(c) other means of financing a proposed housing development project are unavailable or insufficient.

**History:** Laws 2024, ch. 8, § 12.

**ANNOTATIONS**

**Effective dates.** — Laws 2024, ch. 8 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 15, 2024, 90 days after adjournment of the legislature.

## 6-34-13.2. Housing development loans; terms; repayment.

A. The authority shall receive and review applications for housing development loans. The authority may make loans to housing development partners if:

(1) funding is available;

(2) the housing development partner meets credit and identification criteria, as determined by the authority;

(3) the housing development partner certifies that the proceeds of the loan will be used for a housing development project; and

(4) the housing development partner meets any other requirement for a housing development project loan as determined by the authority.

B. The housing development partner shall provide the authority with ongoing information requested by the authority.

C. Housing development loans shall be made for loan periods of no more than forty years, as determined by the authority. The loans shall bear an annual interest rate of no less than zero percent.

D. Receipts from the repayment of housing development loans shall be deposited in the housing development revolving fund.

E. No provision in a housing development loan or the evidence of indebtedness of the housing development loan shall include a penalty or premium for prepayment of the balance of the indebtedness.

F. The authority may prioritize an application for housing development assistance for a proposed housing development project located in a nonurban community. As used in this subsection, "nonurban community" means a municipality with a population of less than sixty thousand according to the most recent federal decennial census or the unincorporated area of a county.

**History:** Laws 2024, ch. 8, § 13.

**ANNOTATIONS**

**Effective dates.** — Laws 2024, ch. 8 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 15, 2024, 90 days after adjournment of the legislature.

## 6-34-13.3. Housing development revolving fund; created.

A. The "housing development revolving fund" is created within the authority. The fund consists of appropriations, distributions, transfers, gifts, grants, donations, bequests, fees collected, payments of principal and interest on housing development assistance, income from investment of the fund and any other money distributed or otherwise allocated to the fund. Balances in the fund at the end of a fiscal year shall not revert to any other fund. The fund shall be administered by the authority as a separate account and may consist of such subaccounts as the authority deems necessary to carry out the purposes of the fund.

B. Money in the housing development revolving fund shall be used by the authority to carry out the provisions of the Opportunity Enterprise and Housing Development Act, including to:

(1) pay the reasonably necessary administrative costs and other costs and fees incurred by the authority in carrying out the provisions of that act; and

(2) provide housing development assistance.

C. Money in the housing development revolving fund that is not needed for immediate disbursement may be deposited or invested in the same manner as other funds administered by the authority.

**History:** Laws 2024, ch. 8, § 14.

**ANNOTATIONS**

**Effective dates.** — Laws 2024, ch. 8 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 15, 2024, 90 days after adjournment of the legislature.

## 6-34-14. Reports.

A. On December 1, 2024 and each succeeding December 1 thereafter, the authority shall submit a report to the governor, the legislature, the legislative finance committee, the New Mexico finance authority oversight committee, the revenue stabilization and tax policy committee and other appropriate legislative interim committees. The report shall provide details regarding assistance from the opportunity enterprise revolving fund and housing development revolving fund provided pursuant to the Opportunity Enterprise and Housing Development Act. The report shall include:

(1) the total amount of enterprise assistance provided for enterprise development projects and state revenue derived from each enterprise development project;

(2) the total number of loans made pursuant to the Opportunity Enterprise and Housing Development Act; the amount of those loans; the number of loan recipients in a delinquent status, in default or that have filed for bankruptcy;

(3) an overview of the industries and types of business entities operating pursuant to an enterprise development project or lease;

(4) the total number of employees currently employed directly or indirectly related to an enterprise development project or lease;

(5) the total number of affordable housing units and workforce development housing units supported by housing development assistance; and

(6) any recommended changes to the Opportunity Enterprise and Housing Development Act to ensure proper safeguards for public money and to ensure enterprise assistance and housing development assistance are able to efficiently advance the economic development interests of the state.

B. Information obtained by the authority regarding applicants for enterprise assistance and housing development assistance is confidential and not subject to inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 3 NMSA 1978]; provided that nothing shall prevent the authority from disclosing:

(1) information required in the report pursuant to this section;

(2) public information pursuant to Paragraphs (1) and (2) of Subsection B of Section 6-34-8 NMSA 1978 and Paragraphs (1) and (2) of Subsection B of Section 12 [6-34-13.1 NMSA 1978] of this 2024 act; and

(3) the names of persons that have received enterprise assistance and housing development assistance and the amounts of assistance provided pursuant to the Opportunity Enterprise and Housing Development Act.

**History:** Laws 2022, ch. 57, § 14; 2024, ch. 8, § 15.

## ANNOTATIONS

**The 2024 amendment,** effective May 15, 2024, changed the New Mexico finance authority's deadline for submitting reports related to the opportunity enterprise revolving fund and housing development revolving fund, revised the information required to be included in these reports, and made technical and conforming amendments; in Subsection A, in the introductory paragraph, deleted "Prior to October" and added "On

December", after "1" changed "2023" to "2024", after "succeeding" changed "October" to "December", after "assistance" added "from the opportunity enterprise revolving fund and housing development revolving fund" and after "Opportunity Enterprise" added "and Housing Development" throughout the section, in Paragraph A(2), after "default" deleted "or in the process of filing", added a new Paragraph A(5) and redesignated former Paragraph A(5) as Paragraph A(6), in Paragraph A(6), after "ensure enterprise assistance" deleted "is" and added "and housing development assistance are"; in Subsection B, in the introductory clause, after "applicants for enterprise" deleted "financing" and added "assistance and housing development assistance", in Paragraph B(2), after "Section," deleted "8 of the Opportunity Enterprise Act" and added "6-34-8 NMSA 1978 and Paragraphs (1) and (2) of Subsection B of Section 12 of this 2024 act", in Paragraph B(3), after "enterprise assistance and" added "housing development assistance and".

## 6-34-15. Conflict of interest.

A. If a member of the board or an employee of the authority has an interest, either direct or indirect, in an application or contract relating to enterprise assistance or housing development assistance, that interest shall be disclosed to the authority and the board in writing. The person having such interest shall not participate in actions by the board or the authority with respect to that conflict.

B. A person who has a conflict of interest and participates in an action involving that conflict of interest or knowingly fails to notify the authority and the board in writing of that conflict is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

**History:** Laws 2022, ch. 57, § 15; 2024, ch. 8, § 16.

**ANNOTATIONS**

**The 2024 amendment,** effective May 15, 2024, required that if a member of the board or an employee of the authority has an interest in an application or contract relating to "housing development assistance" that interest must be disclosed to the authority and the board in writing; in Subsection A, after "enterprise assistance" added "or housing development assistance".