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 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, 114 N.M. 346, 838 P.2d 963 (1992).

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. 1959-60 Op. Att'y Gen. No. 59-79.

Authority to require additional security. — The state board of finance may exercise its authority under 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 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 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.

ANNOTATIONS

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

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; 2004, ch. 73, § 1.

ANNOTATIONS

Repeals. — Laws 2004, ch. 73, § 1 repeals Section 6-1-7 NMSA 1978, effective May 19, 2004.

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 Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 339, § 1 repealing 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, was approved April 10, 1987. For former provisions, see 1983 Replacement Pamphlet. For present comparable provisions, see 6-1-1 to 6-1-7, 6-1-13 NMSA 1978.

Laws 1987, ch. 79, § 1 amended former 6-1-10 NMSA 1978 and was approved March 20, 1987. This amendment was not given effect due to the 1987 repeal of this section by Laws 1987, ch. 339, § 1. See 12-1-8 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 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. 1951-52 Op. Att'y Gen. No. 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

New Mexico beef council. — The New Mexico beef council, created under 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. — As to 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, 69 N.M. 419, 367 P.2d 918 (1961).

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

The state budget division, subject to the approval of the secretary of finance and administration, is authorized to provide regulations for the periodic allotment of funds that may be expended by any state agency. The expenditures of any state agency as defined in Section 6-3-1 NMSA 1978, for the first six-months [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 shall not apply to those agencies whose operations are more efficiently measured by periods other than a fiscal year, including but not limited to the legislative council, legislative committees, the inter-tribal Indian ceremonial and the state fair. Expenditures of the inter-tribal Indian ceremonial and the 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-months' allocation.

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

ANNOTATIONS

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

Bracketed material. — The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

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, 120 N.M. 820, 907 P.2d 1001 (1995).

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. — As to budgets of local public bodies, see 6-6-2 NMSA 1978 et seq.

As to 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., 69 N.M. 430, 367 P.2d 925 (1961).

But 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, 69 N.M. 419, 367 P.2d 918 (1961).

Right to approve budget does not include the right to reduce where the budget is within the appropriation. State ex rel. Lee v. Hartman, 69 N.M. 419, 367 P.2d 918 (1961).

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, 69 N.M. 419, 367 P.2d 918 (1961).

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.

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 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 repeals 6-3-11.1 and 6-3-11.2 NMSA 1978, as enacted by Laws 1987, ch. 347, §§ 1, 2, relating to limitation on recommended appropriations and to determination of expenditure limitation by department of finance and administration, effective June 16, 1989. For provisions of former sections, see 1987 Replacement Pamphlet.

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 repeals 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 1992 Replacement Pamphlet.

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 is 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 is 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 is 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

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 is set out as amended by Laws 1999, ch. 15, § 12. See 12-1-8 NMSA 1978.

The 2004 amendments, 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".

Provision of 1980 General Appropriations Act void. — The provision of the General Appropriations 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.

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.

Sections 1 through 8 [6-3A-1 to 6-3A-8 NMSA 1978] of this act may be cited as the "Accountability in Government Act".

History: Laws 1999, ch. 5, § 1 and 1999, ch. 15, § 1.

ANNOTATIONS

Compiler's notes. — Laws 1999, ch. 5, § 1, approved March 1, 1999 and Laws 1999, ch. 15, § 1, approved March 10, 1999, both effective June 18, 1999, enacted identical versions of this section. The section is set out as enacted by Laws 1999, ch. 15, § 1. See 12-1-8 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 [6-3A-1 NMSA 1978] 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 and 1999, ch. 15, § 2; 2004, ch. 39, § 2.

ANNOTATIONS

Compiler's notes. — Laws 1999, ch. 5, § 2, approved March 1, 1999, and Laws 1999, ch. 15, § 2, approved March 10, 1999, both effective June 18, 1999, enacted identical versions of this section. The section is set out as enacted by Laws 1999, ch. 15, § 2. See 12-1-8 NMSA 1978.

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

6-3A-3. Definitions.

As used in the Accountability in Government Act [6-3A-1 NMSA 1978]:

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

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

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

H. "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;

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

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

K. "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.

History: Laws 1999, ch. 5, § 3 and 1999, ch. 15, § 3; 2004, ch. 39, § 3.

ANNOTATIONS

Compiler's notes. — Laws 1999, ch. 5, § 3, approved March 1, 1999, and Laws 1999, ch. 15, § 3, approved March 10, 1999, both effective June 18, 1999, enacted identical versions of this section. The section is set out as enacted by Laws 1999, ch. 15, § 3. See 12-1-8 NMSA 1978.

The 2004 amendments, 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 and 1999, ch. 15, § 4; 2004, ch. 39, § 4.

ANNOTATIONS

Compiler's notes. — Laws 1999, ch. 5, § 4, approved March 1, 1999, and Laws 1999, ch. 15, § 4, approved March 10, 1999, both effective June 18, 1999, enacted identical versions of this section. The section is set out as enacted by Laws 1999, ch. 15, § 4. See 12-1-8 NMSA 1978.

The 2004 amendments, 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 and 1999, ch. 15, § 5; 2004, ch. 39, § 5.

ANNOTATIONS

Compiler's notes. — Laws 1999, ch. 5, § 5, approved March 1, 1999, and Laws 1999, ch. 15, § 5, approved March 10, 1999, both effective June 18, 1999, enacted identical versions of this section. The section is set out as enacted by Laws 1999, ch. 15, § 5. See 12-1-8 NMSA 1978.

The 2004 amendment, effective June 19, 2004, amended Subsection A to change June 1 to July 15, amended Subsection B to change July 1 to July 15, delete "that is required to submit a performance-based budget request in the subsequent fiscal year", to add "and the committee" after "the division", to add "proposed changes to its current program structure" and to change "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 and 1999, ch. 15, § 6; 2004, ch. 39, § 6.

ANNOTATIONS

Compiler's notes. — Laws 1999, ch. 5, § 6, approved March 1, 1999, and Laws 1999, ch. 15, § 6, approved March 10, 1999, both effective June 18, 1999, enacted identical versions of this section. The section is set out as enacted by Laws 1999, ch. 15, § 6. See 12-1-8 NMSA 1978.

The 2004 amendments, 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; and

(5) 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 and 1999, ch. 15, § 7; 2004, ch. 39, § 7.

ANNOTATIONS

Compiler's notes. — Laws 1999, ch. 5, § 7, approved March 1, 1999, and Laws 1999, ch. 15, § 7, approved March 10, 1999, both effective June 18, 1999, enacted identical

versions of this section. The section is set out as enacted by Laws 1999, ch. 15, § 7. See 12-1-8 NMSA 1978.

The 2004 amendments, 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; and

(5) 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. 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 [6-3A-1 NMSA 1978]. 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 and 1999, ch. 15, § 8; 2004, ch. 39, § 8.

ANNOTATIONS

Compiler's notes. — Laws 1999, ch. 5, § 8, approved March 1, 1999 and Laws 1999, ch. 15, § 8, approved March 10, 1999, both effective June 18, 1999, enacted identical versions of this section. The section is set out as enacted by Laws 1999, ch. 15, § 8. See 12-1-8 NMSA 1978.

The 2004 amendments, 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

ARTICLE 4
Capital Programs and Revenue Funds

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

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. 64-4.

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.

Appropriations. — Laws 2004, ch. 126, § 38, effective March 10, 2004, appropriates $10,000,000 from the general fund operating reserve fund to the commission on higher education to plan, design, construct and equip career technical-vocational education centers.

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

A. There is created within the general fund the "tax stabilization reserve".

B. The balance of the tax stabilization reserve shall be those funds directed to it by law and such other funds as the legislature may appropriate from time to time to the reserve.

C. Except as otherwise provided in Subsection D of this section, 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.

D. In the event that the 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. 347, § 3; 1989, ch. 324, § 1; 2002, ch. 109, § 1.

ANNOTATIONS

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

Appropriations. — Laws 2002, ch. 109, § 2, effective May 15, 2002, appropriates $30,000,000 from the tax stabilization reserve to the department of finance and administration for the purpose of protecting, enhancing, or conserving the state's water resources, to be transferred to the interstate stream commission in three separate increments of $10,000,000, provided that one-third of the amount expended from each increment be used to comply with the state's obligations under the Pecos River Compact. The transfer and expenditure of each increment is contingent upon: a declaration by the governor that the expenditure is necessary, a certification by the governor that there are sufficient funds remaining, an approved plan for expenditures, and an agreement by the state board of finance that the expenditure is necessary. The interstate stream commission shall make periodic reports on expenditures; expenditures for the purchase of land shall be made only from willing sellers; and any unexpended or unencumbered balance remaining at the end of the fiscal year 2004 shall revert to the tax stabilization reserve.

Compiler's notes. — Both Laws 1987, ch. 264, § 3, approved April 9, 1987, and Laws 1987, ch. 347, § 3, approved April 10, 1987, enacted an identical section, 6-4-2.2 NMSA 1978. The section enacted by Laws 1987, ch. 347, § 3 is set out above. See 12-1-8 NMSA 1978.

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, repeals 6-4-2.4 NMSA 1978, 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 Replacement Pamphlet.

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

State and Local Fiscal Assistance Act. — 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. Reservation of excess general fund revenues; appropriation to taxpayers dividend fund.

For the seventy-seventh and subsequent fiscal years, if the revenues of the general fund exceed the total of appropriations from the general fund, the excess revenue shall be transferred to the operating reserve; provided that if the sum of the excess revenue plus the balance in the 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 tax stabilization reserve; provided further that if the total of the amount transferred to the tax stabilization reserve pursuant to the provisions of this section plus the balance in that reserve prior to the transfer is greater than six 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 transferred or the difference between the total and six percent of the aggregate recurring appropriation from the general fund for the previous fiscal year is appropriated to the taxpayers dividend fund.

History: 1978 Comp., § 6-4-4, enacted by Laws 1987, ch. 347, § 4; 1989, ch. 71, § 1.

ANNOTATIONS

Compiler's notes. — Both Laws 1987, ch. 264, § 4, approved April 9, 1987, and Laws 1987, ch. 347, § 4, approved April 10, 1987, enacted an identical section, 6-4-4 NMSA 1978. The section enacted by Laws 1987, ch. 347 is set out above. See 12-1-8 NMSA 1978.

6-4-5. Taxpayers dividend fund; created; purpose.

A. There is created hereby in the state treasury the "taxpayers dividend fund".

B. The balance of the taxpayers dividend fund shall be those funds directed to it by law and such other funds as the legislature may appropriate from time to time to the fund.

C. If the balance in the taxpayers dividend fund at the end of the seventy-sixth or any subsequent fiscal year exceeds one percent of the tax liabilities reported to the taxation and revenue department pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978] during that fiscal year, then the governor shall propose to the next session of the legislature a method for refunding the balance to the taxpayers.

D. Balances in the taxpayers dividend fund may be appropriated only for the purpose of refunding those balances to the taxpayers.

History: 1978 Comp., § 6-4-5, enacted by Laws 1987, ch. 347, § 5.

ANNOTATIONS

Compiler's notes. — Both Laws 1987, ch. 264, § 5, approved April 9, 1987, and Laws 1987, ch. 347, § 5, approved April 10, 1987, enacted an identical section, 6-4-5 NMSA 1978. The section enacted by Laws 1987, ch. 347, § 5 is set out above. See 12-1-8 NMSA 1978.

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.

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. — Laws 1993, ch. 366, § 1, effective June 18, 1993, provides that the following amounts from the following funds and agencies are transferred to the computer systems enhancement fund for the eighty-first fiscal year: (1) $6,500,000 from the state unemployment compensation fund, (2) $5,000,000 from the workers' compensation administration fund, (3) $647,000 from the general fund, and (4) the amount of all unencumbered balances on April 1, 1993 from license plate replacement fee revenue appropriated to the taxation and revenue department pursuant to Subsection D of 66-3-14 NMSA 1978 and all revenue collected from that fee from April 1 to July 1, 1993, notwithstanding the provisions of that section to the contrary. All unexpended or unencumbered balances in the cumputer systems enhancement fund on April 1, 1993 shall not revert to the general fund but shall remain in the fund for appropriation by the legislature.

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. DWI program fund created; appropriation.

A. The "DWI program fund" is created in the state treasury and shall be administered by the department of finance and administration. Money in the fund is subject to appropriation by the legislature to the agencies and for the purposes specified and in accordance with the limitations and requirements in this section. Balances in the fund at the end of any year shall not revert to the general fund.

B. Money in the DWI program fund may be appropriated to any of the following agencies for the following purposes:

(1) to the department of health to contract for community DWI programs and services and for alcoholism and alcohol abuse prevention, screening and treatment programs and services pursuant to the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act [Chapter 43, Article 3 NMSA 1978];

(2) to the children, youth and families department to provide public school health education and counseling programs that emphasize alcohol abuse prevention;

(3) to the traffic safety bureau of the state highway and transportation department for DWI education, awareness and information programs;

(4) to the department of public safety to provide additional special investigators for enforcement of the Liquor Control Act [Articles 3A, 4B, 4C, 5A, 6A, 6B, 6C, 7A, 7B, and 8A of Chapter 60 NMSA 1978];

(5) to the alcohol and gaming division of the regulation and licensing department for enforcement of the provisions of the Liquor Control Act and administration of the Alcohol Server Education Act [Chapter 60, Article 6E NMSA 1978], if enacted into law by the first session of the forty-first legislature;

(6) to the public defender department for costs related to workload increases due to increases in DWI caseloads;

(7) to the district attorneys for costs related to workload increases due to increases in DWI caseloads;

(8) to the magistrate courts division of the administrative office of the courts for magistrate court costs related to workload increases due to increases in DWI caseloads, including costs of probation services;

(9) to the Bernalillo county metropolitan court for costs related to workload increases due to increases in DWI caseloads;

(10) to the district courts for costs related to workload increases due to increases in DWI caseloads;

(11) to the taxation and revenue department for DWI costs; and

(12) to the school of medicine at the university of New Mexico for prevention, research and intervention in the field of fetal alcohol syndrome.

C. Prior to the second session of the forty-first legislature, agencies eligible for funds under this section shall determine their needs for such purposes and develop recommendations with supporting data to justify the need for increased funding to expand existing programs and services or to implement new programs and services. The agencies shall develop these recommendations as part of the budget process as specified in Sections 6-3-18 through 6-3-22 NMSA 1978.

History: Laws 1993, ch. 65, § 20.

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

A. The "tobacco settlement permanent fund" is created in the state treasury. 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 the model statute, Sections 6-4-12 and 6-4-13 NMSA 1978, enacted pursuant to the master settlement agreement. Money in the fund shall be invested by the state investment officer as land grant permanent funds are invested pursuant to Chapter 6, Article 8 NMSA 1978. 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 fiscal years 2003 through 2006, a distribution shall be made from the tobacco settlement permanent fund to the general fund in an amount equal to one hundred percent of the total amount of money distributed to the tobacco settlement permanent fund in that fiscal year.

C. In fiscal year 2007 and in each fiscal year thereafter, an annual distribution shall be made from the tobacco settlement permanent fund to the tobacco settlement program fund of an amount equal to 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 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.

D. The tobacco settlement permanent fund shall be considered a reserve fund of the state and, as a reserve 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.

ANNOTATIONS

The 2000 amendment, effective April 12, 2000, inserted "distribution" in the section heading; in Subsection A, inserted "any money relased 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.

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.

Temporary provisions. — Laws 2003, ch. 312, § 2, effective June 20, 2003, provides that during fiscal year 2003, any unexpended or unencumbered balance of the tobacco settlement fund shall be transferred to the general fund.

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

The 2000 amendment, effective April 12, 2000, changed the "tobacco settlement income fund" to be 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 this act [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; or (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 clause (1) of this definition. 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 2 [6-4-13 NMSA 1978] of this act;

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 by the state on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the state. The secretary of taxation and revenue shall promulgate such regulations 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.

6-4-13. Requirements. [Contingent repeal.]

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 amendments, 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".

Contingent repeal. — See Section 6-4-13.1 NMSA 1978 for the contingent repeal of Paragraph (2) of Subsection B of Section6-4-13 NMSA 1978.

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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

6-4-14. Short title.

This act [6-4-14 to 6-4-24 NMSA 1978] may be cited as the "Tobacco Escrow Fund Act".

History: Laws 2003, ch. 114, § 1.

ANNOTATIONS

Emergency clauses. — Laws 2003, ch. 114, § 12 makes the act effective immediately. Approved April 2, 2003.

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 makes the act effective immediately. 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 makes the act effective immediately. 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, 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 Subsections 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 7 [6-4-20 NMSA 1978] of the Tobacco Escrow Fund Act;

(2) certify that it is in full compliance with Section 6-4-13 NMSA 1978, the Tobacco Escrow Fund Act 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 such brand families in the preceding or current calendar year.

D. 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.

E. 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.

F. 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.

G. 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.

ANNOTATIONS

Emergency clauses. — Laws 2003, ch. 114, § 12 makes the act effective immediately. Approved April 2, 2003.

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 nonparticipating manufacturer or brand family if:

(1) the nonparticipating manufacturer fails to provide the required certification or the attorney general determines that its certification is not in compliance with Section 4 [6-4-17 NMSA 1978] of the Tobacco Escrow Fund Act; or

(2) 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; or

(b) all 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.

B. 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 [6-4-14 to 6-4-24 NMSA 1978].

C. 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 [6-4-14 to 6-4-24 NMSA 1978].

History: Laws 2003, ch. 114, § 5.

ANNOTATIONS

Emergency clauses. — Laws 2003, ch. 114, § 12 makes the act effective immediately. Approved April 2, 2003.

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,

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 makes the act effective immediately. 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 shall provide written notice to the attorney general thirty calendar days prior to the termination of the authority of an agent appointed pursuant to Subsection A 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.

C. 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 [6-4-14 to 6-4-24 NMSA 1978].

History: Laws 2003, ch. 114, § 7.

ANNOTATIONS

Emergency clauses. — Laws 2003, ch. 114, § 12 makes the act effective immediately. Approved April 2, 2003.

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 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

Emergency clauses. — Laws 2003, ch. 114, § 12 makes the act effective immediately. Approved April 2, 2003.

The 2004 amendments, effective May 19, 2004, amends 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 or possess for sale 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 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 sale 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 sale.

D. Cigarettes that have been sold, offered for sale or possessed for sale 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. 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.

History: Laws 2003, ch. 114, § 9.

ANNOTATIONS

Emergency clauses. — Laws 2003, ch. 114, § 12 makes the act effective immediately. Approved April 2, 2003.

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 [6-4-14 to 6-4-24 NMSA 1978], 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 [6-4-14 to 6-4-24 NMSA 1978], 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 [6-4-14 to 6-4-24 NMSA 1978] 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 makes the act effective immediately. 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 makes the act effective immediately. Approved April 2, 2003.

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.

Article constitutional. — Article 5 of Chapter 6 NMSA 1978, which provides for a change in the duties of the state auditor, is constitutional. 1957-58 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.

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. 1959-60 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 makes the act effective on 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.

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. 1957-58 Op. Att'y Gen. No. 58-52.

6-5-4. Reports to legislature. [Repealed.]

ANNOTATIONS

Repeals. — Laws 2003, ch. 273, § 25 repeals 6-5-4 NMSA 1978, relating to reports to legislature, effective July 1, 2003. For provisions of former section, see 1999 Replacement Pamphlet.

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 makes the act effective on 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. 1957-58 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 1993 amendment, effective June 18, 1993, added the language beginning "unless the warrant" at the end of Subsection B.

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.

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. 1961-62 Op. Att'y Gen. No. 61-9.

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. 1961-62 Op. Att'y Gen. No. 61-9.

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. 1957-58 Op. Att'y Gen. No. 58-52.

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

Every warrant issued shall contain therein the particular fund appropriated by law out of which the same is to be paid. The financial control division shall settle all claims against the state payable by law out of the treasury, and shall 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.

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. — As to 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. 1961-62 Op. Att'y Gen. No. 61-9.

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. 1957-58 Op. Att'y Gen. No. 58-5.

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 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. 80-1.

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 word "therefor" at the end of the third sentence was inserted by the compiler. It was not enacted by the legislature 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. 1963-64 Op. Att'y Gen. No. 63-60.

Written order should include a specification for surety bonds. 1963-64 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 makes the act effective on 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 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.

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."

Applicability. — Laws 1994, ch. 11, § 2 provides the provisions of the act apply to the eighty-second and subsequent fiscal years.

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, aid the function of or forward the purposes of a single agency through financial support, the 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 any post-secondary educational institution, which term includes, but is not limited to, 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 gross annual income exceeds one hundred thousand dollars ($100,000), 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 his 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 gross annual income is one hundred thousand dollars ($100,000) 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 an agency by an 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 pre-condition 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 Sections 14-2-1 through 14-2-3 NMSA 1978.

History: Laws 1992, ch. 27, § 1.

ANNOTATIONS

Internal Revenue Code of 1986. — Section 501(c) of the Internal Revenue Code of 1986, referred to in Subsection A(2), appears as 26 U.S.C. § 501(c).

ARTICLE 6
Local Government Finances

6-6-1. Definitions.

"Local public body" means every political subdivision of the state which expends public money from whatever source derived, including but not limited to counties, county institutions, boards, bureaus or commissions; incorporated cities, towns or villages; drainage, conservancy, irrigation or their [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 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.

ANNOTATIONS

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. 1957-58 Op. Att'y Gen. No. 58-85.

The middle Rio Grande conservancy district is a "local public body" as defined by this section. 1959-60 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. 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;

H. 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;

I. 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;

J. prescribe the form for all budgets, books, records and accounts for local public bodies; and

K. 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.

ANNOTATIONS

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.

Appropriations. — Laws 2002, ch. 110, § 43, effective March 6, 2002, appropriates $220,000 from the capital projects fund to the local government division for expenditure in fiscal years 2002 through 2007 for improvements and construction at the Anderson-Abruzzo international balloon museum in Albuquerque.

Laws 2003, ch. 385, § 12, effective April 8, 2003, appropriates various amounts from the general fund to local government division of the department of finance and administration for various purposes.

Local government division may suspend public hearing on proposed budget at any time for good cause. 1961-62 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 (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. 1961-62 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. 69-9.

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. 69-9.

But 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. 1961-62 Op. Att'y Gen. No. 61-77.

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, 86 N.M. 516, 525 P.2d 876 (1974) (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, 86 N.M. 516, 525 P.2d 876 (1974) (decided prior to 1987 amendment).

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.

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. 1957-58 Op. Att'y Gen. No. 58-51.

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 3-38-24 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, and 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

Cross references. — As to 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. 1955-56 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.

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 repeals 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

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 and 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 [6-6-7, 6-6-9 and 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

Cross references. — As to 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

I. GENERAL CONSIDERATION.

A. IN GENERAL.

Cross references. — As to 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.

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, 24 N.M. 509, 174 P. 1001 (1918).

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, 24 N.M. 509, 174 P. 1001 (1918).

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 Publishing Co. v. Board of Comm'rs, 27 N.M. 371, 202 P. 124 (1921).

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, 30 N.M. 163, 231 P. 637 (1924).

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, 82 N.M. 102, 476 P.2d 500 (1970).

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 County Comm'rs, 12 N.M. 237, 78 P. 43 (1904).

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). 1909-12 Op. Att'y Gen. 173.

This statute does not exempt villages. Campbell v. Village of Green Tree, 59 N.M. 255, 282 P.2d 1101 (1955).

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.

B. APPLICABILITY OF ACT.

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.

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 County, 29 N.M. 538, 224 P. 402 (1924).

Including 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, 27 N.M. 461, 202 P. 984 (1921).

And to 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. 1921-22 Op. Att'y Gen. 97.

And to 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.

And to 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, 66 N.M. 277, 347 P.2d 168 (1959).

But inapplicable to indebtedness to state. — The Bateman Act (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 County Comm'rs, 62 N.M. 137, 306 P.2d 259 (1957); State v. Board of County Comm'rs, 33 N.M. 340, 267 P. 72 (1928).

Or to 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. 1955-56 Op. Att'y Gen. No. 56-6483.

Or to 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., 40 N.M. 13, 52 P.2d 614 (1935).

Or to 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, 82 N.M. 102, 476 P.2d 500 (1970).

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.

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 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. 83-5.

II. LIMITATION ON EXPENDITURES.

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. 1955-56 Op. Att'y Gen. No. 56-6535.

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, 85 N.M. 1, 508 P.2d 1298 (1973).

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, 82 N.M. 102, 476 P.2d 500 (1970).

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, 48 N.M. 100, 146 P.2d 315 (1944).

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. 1955-56 Op. Att'y Gen. No. 56-6443.

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 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.

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. Board of County Comm'rs, 12 N.M. 131, 75 P. 38 (1904).

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. 1919-20 Op. Att'y Gen. 87.

County board of education may borrow money to pay warrants of school teachers to avoid the necessity of discounting the warrants. 1921-22 Op. Att'y Gen. 18.

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. 1915-16 Op. Att'y Gen. 89.

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. 1931-32 Op. Att'y Gen. 49.

Collections for particular current year may be applied on indebtedness for that year, regardless of when such collections are made. 1931-32 Op. Att'y Gen. 142.

But not to indebtedness of another year. — Collections made during any current year, for such year, cannot be applied on indebtedness for another year. 1931-32 Op. Att'y Gen. 142.

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. 1957-58 Op. Att'y Gen. No. 58-41.

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. 1937-38 Op. Att'y Gen. 137.

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., 38 N.M. 298, 31 P.2d 993 (1934).

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, 62 N.M. 208, 307 P.2d 792 (1957).

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. 1955-56 Op. Att'y Gen. No. 55-6121.

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. 1937-38 Op. Att'y Gen. 101.

III. PLEADING AND PRACTICE.

Mandamus proceedings. — 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, 41 N.M. 652, 73 P.2d 329 (1937).

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, 41 N.M. 652, 73 P.2d 329 (1937).

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, 45 N.M. 335, 115 P.2d 80 (1941).

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, 82 N.M. 102, 476 P.2d 500 (1970).

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, 82 N.M. 102, 476 P.2d 500 (1970).

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 Publishing Co. v. Board of Comm'rs, 27 N.M. 371, 202 P. 124 (1921).

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, 27 N.M. 461, 202 P. 984 (1921).

But not 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 Independent Publishing Co. v. Board of County Comm'rs, 35 N.M. 486, 1 P.2d 564 (1931).

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, 27 N.M. 541, 203 P. 535 (1921).

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., 45 N.M. 446, 116 P.2d 690 (1941).

The Bateman Act (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, 48 N.M. 100, 146 P.2d 315 (1944).

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".

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.

But 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.

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, 108 N.M. 94, 766 P.2d 1328 (1989).

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, 44 N.M. 605, 107 P.2d 121 (1940).

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. Board of County Comm'rs, 12 N.M. 131, 75 P. 38 (1904).

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 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

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 County, 29 N.M. 538, 224 P. 402 (1924).

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 Publishing Co. v. Board of Comm'rs, 27 N.M. 371, 202 P. 124 (1921).

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 County Comm'rs, 13 N.M. 89, 79 P. 709 (1905).

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, 44 N.M. 605, 107 P.2d 121 (1940).

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. 1912-13 Op. Att'y Gen. 166.

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

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, 12 N.M. 237, 78 P. 43 (1904).

And 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, 64 N.M. 117, 325 P.2d 707 (1958), aff'd, 66 N.M. 277, 347 P.2d 168 (1959). See Campbell v. Village of Green Tree, 59 N.M. 255, 282 P.2d 1101 (1955).

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, 27 N.M. 461, 202 P. 984 (1921).

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 Independent Publishing Co. v. Board of County Comm'rs, 35 N.M. 486, 1 P.2d 564 (1931).

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, 66 N.M. 277, 347 P.2d 168 (1959).

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, 44 N.M. 605, 107 P.2d 121 (1940).

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

Cross references. — As to 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. Board of County Comm'rs, 12 N.M. 131, 75 P. 38 (1904).

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.

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 County Comm'rs v. Board of County Comm'rs, 105 N.M. 44, 728 P.2d 454 (1986).

School fund. — Money collected by taxes for school purposes constitutes a fund for schools for the current year. 1912-13 Op. Att'y Gen. 114.

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. 1921-22 Op. Att'y Gen. 103.

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. 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 ten million dollars ($10,000,000), it shall be invested as other funds of the local government; and

(2) if the fund is ten million dollars ($10,000,000) or over, it may be invested as funds of class A counties are invested.

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 Municipal Election Code [Articles 8 and 9 of Chapter 3 NMSA 1978]. If a majority of the registered voters of the county or municipality voting on the question vote 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 vote 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.

ANNOTATIONS

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.

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 [6-6A-1 to 6-6A-5 NMSA 1978], "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 word in the section heading was inserted by the compiler to correct an apparent misspelling. It was not enacted by the legislature and is not part of the law.

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. — As to 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.

ANNOTATIONS

Cross references. — As to leasehold community assistance fund, see 6-6A-3 NMSA 1978.

ARTICLE 7
Disaster Relief

6-7-1. Policy and purpose.

Because of the existing possibility of the occurrence of disasters resulting from drouth, fire, flood, earthquake or other causes, and in order to ensure that preparation of this state will be adequate to deal with such disasters, and generally to protect the peace, health and safety and to preserve the lives and property of the people of the state of New Mexico, it is hereby found and declared to be necessary to establish a source of emergency funds.

History: 1953 Comp., § 11-7-1, enacted by Laws 1955, ch. 185, § 1.

6-7-2. Provisional appropriation.

For the purposes set out in Section 6-7-1 NMSA 1978, when and if the governor shall declare an emergency, as provided in Section 6-7-3 NMSA 1978, there is appropriated the sum of seven hundred fifty thousand dollars ($750,000) for each eligible and qualified applicant or so much thereof as the governor may from time to time designate from the surplus unappropriated money in the general fund, if any, at the time of the declaration of such emergency or emergencies.

History: 1953 Comp., § 11-7-2, enacted by Laws 1955, ch. 185, § 2; 1977, ch. 383, § 1; 1989, ch. 181, § 1.

ANNOTATIONS

The 1989 amendment, effective July 1, 1989, substituted "Section 6-7-1 NMSA 1978" for "Section 11-7-1 NMSA 1953", "Section 6-7-3 NMSA 1978" for "Section 11-7-3 NMSA 1953", and "seven hundred fifty thousand dollars ($750,000) for each eligible and qualified applicant" for "five hundred thousand dollars ($500,000)".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63C Am. Jur. 2d Public Funds § 62.

81A C.J.S. States § 205.

6-7-3. Expenditure of funds; manner.

The money appropriated by Sections 6-7-1 and 6-7-2 NMSA 1978 shall be expended for disaster relief for any disaster declared by the governor to be of such magnitude as to be beyond local control and requiring the resources of the state. The funds shall be expended by the governor or any agent or agency designated by him for those purposes, either as a state project or for securing matching federal funds. The money shall be paid out upon warrants drawn by the secretary of finance and administration upon vouchers approved by the governor or an agent or agency designated by him for that purpose. As used in this section, "state project" means an expenditure by a state agency to provide those resources and services necessary to avoid or minimize economic or physical harm until a situation becomes stabilized and again under local self-support and control. "State project" may include any expenditure on a temporary, emergency basis for lodging, sheltering, health care, food, any transportation or shipping necessary to protect lives or public property; or for any other action necessary to protect the public health, safety and welfare.

History: 1953 Comp., § 11-7-3, enacted by Laws 1955, ch. 185, § 3; 1978, ch. 67, § 1; 1999, ch. 140, § 1.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, substituted "money" for "moneys" and "Sections 6-7-1 and 6-7-2 NMSA 1978" for "Sections 11-7-1 and 11-7-2 NMSA 1953" in the first sentence, substituted 'The money" for "Said moneys" in the third sentence, and added the fourth and fifth sentences.

ARTICLE 8
Investment of Public Money

6-8-1. Definitions.

As used in Chapter 6, Article 8 NMSA 1978:

A. "secretary" means the secretary of finance and administration;

B. "department" means the department of finance and administration;

C. "land grant permanent funds" means those funds derived from lands under the direction, control, care and disposition of the commissioner of public lands conferred by Article 13, Sections 1 and 2 of the constitution of New Mexico; and

D. "council" means the state investment council.

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.

ANNOTATIONS

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 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 restrictions specified in this article are valid and constitutional. 1957-58 Op. Att'y Gen. No. 58-10.

6-8-2. State investment council.

There is created a "state investment council." The council shall be composed of:

A. the governor;

B. the state treasurer;

C. the commissioner of public lands;

D. the secretary;

E. three public members appointed by the governor with the advice and consent of the senate;

F. the state investment officer; and

G. the chief financial officer of a state institution of higher education appointed by the governor with the advice and consent of the senate.

The chairman of the council shall be the governor.

All actions of the council shall be by majority vote, and at least three members appointed pursuant to Subsections E and G of this section must be present to constitute a quorum.

Members of the council appointed pursuant to Subsection E 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.

ANNOTATIONS

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. 1961-62 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. 1957-58 Op. Att'y Gen. No. 58-10.

6-8-3. Council terms and qualifications.

Members of the council appointed by the governor, 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.

The members of the council appointed pursuant to Subsection E of Section 6-8-2 NMSA 1978 shall be qualified by competence and experience in the field of investment or finance. During tenure, a member of the council shall not be engaged in any capacity in the sale of securities to the state. Members of the council and officers and employees of the council shall be governed by the provisions of the Conflict of Interest Act [Chapter 10, Article 16 NMSA 1978]. Nothing in this section or in the Conflict of Interest 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 Conflict of Interest 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.

Any member of the council appointed pursuant to Subsection E or G of Section 6-8-2 NMSA 1978 may be removed from the council by the 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. 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.

6-8-4. Investment office; state investment officer; terms.

There is established an "investment office." The chief administrative officer of the office shall be known as the "state investment officer."

The state investment officer shall be appointed by the governor with the advice and consent of the senate. Recommendations as to his appointment shall be made to the governor by the investment council. The state investment officer shall devote his entire time and attention to the duties of his office, shall not engage in any other occupation or profession, nor shall he hold any other public office, appointive or elective. He shall be a person qualified, by training and investment experience, to direct the work of the investment division [office] and shall have had at least five years professional experience as an investment officer. He shall receive a salary to be determined by the investment council, but in no case less than fifty thousand dollars ($50,000) annually.

The investment officer shall serve 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 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.

History: 1953 Comp., § 11-2-8.7, enacted by Laws 1957, ch. 179, § 4; 1977, ch. 247, § 97; 1981, ch. 264, § 3.

ANNOTATIONS

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., 112 N.M. 123, 812 P.2d 777 (1991).

6-8-5. Bond; staff; budget.

A. Before the state investment officer, or other responsible employee of the investment office, enters upon his duties, the secretary shall require an individual bond or include the state investment officer and other responsible employees 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 by the council. Any funds provided for the operating budget of the investment office shall be appropriated from the assets of the land grant permanent funds, the severance tax permanent fund, funds available for investment pursuant to Subsection G of Section 6-8-7 NMSA 1978 or any other funds managed by the investment office, as authorized by law; however, in regard to the land grant permanent funds, appropriation shall be made from earnings on investments of the land grant permanent funds before distribution to the income funds during the period prior to the date the United States congress consents to the provisions of Constitutional Amendment 1 approved at the 1996 general election.

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; provided that amounts budgeted or appropriated from the land grant permanent funds shall be made from earnings on investments of the funds before distribution to the income funds during the period prior to the date the United States congress consents to the provisions of Constitutional Amendment 1 approved at the 1996 general election.

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.

ANNOTATIONS

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.

Compiler's notes. — "[T]he date the United States congress consents to the provision of Constitutional Amendment 1 approved at the 1996 general election" means August 7, 1997. See P.L. 105-37, 111 Stat. 1113.

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." 1961-62 Op. Att'y Gen. No. 62-76.

6-8-7. Powers and duties of state investment officer; investment policy; investment managers.

A. Subject to the limitations, conditions and restrictions contained in policy-making regulations or resolutions adopted by the council and subject to prior authorization by the council, the state investment officer may make purchases, sales, exchanges, investments and reinvestments of the assets of all funds administered under the supervision of the council. The state investment officer shall see that money invested is at all times handled in the best interests of the state.

B. Securities or investments purchased or held may be sold or exchanged for other securities and investments; provided, however, that no sale or exchange shall be at a price less than the going market at the time the securities or investments are sold or exchanged.

C. In purchasing bonds, the state investment officer shall require a certified or original written opinion of a reputable bond attorney or the attorney general of the state certifying the legality of the bonds to be purchased; provided, however, this written opinion may be the approving legal opinion ordinarily furnished with the bond issue.

D. 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.

E. The council shall meet at least once each month, 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 one or more investment management firms to advise the council with respect to the council's overall investment plan for the investment of all funds managed by the investment office and pay reasonable compensation for such advisory services from the assets of the applicable funds, subject to budgeting and appropriation by the legislature. The terms of any such investment management services contract shall incorporate the statutory requirements for investment of funds under the council's jurisdiction.

F. For the purposes of the investment of all funds managed by the investment office, the state investment officer shall manage the funds in accordance with the prudent investor rule set forth in the Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978]. With the approval of the council, the state investment officer may 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.

G. For funds available for investment for more than one year, the state investment officer may contract with any state agency to provide investment advisory or investment management services, separately or through a pooled investment fund, provided the state agency enters into a joint powers agreement with the council and that state agency pays at least the direct cost of such services. Notwithstanding any statutory provision governing state agency investments, the state investment officer 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 are exempt from the New Mexico Securities Act of 1986 [Chapter 58,

Article 13B 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 and any tax-exempt private endowment entity whose sole beneficiary is a state agency.

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.

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.

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.

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 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 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.

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. 1961-62 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. 1959-60 Op. Att'y Gen. No. 60-9.

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. 1959-60 Op. Att'y Gen. No. 60-9.

Mere combining of funds from several trusts for investment does not violate intermingling rule. 1959-60 Op. Att'y Gen. No. 60-9.

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. 1959-60 Op. Att'y Gen. No. 60-9.

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. 1959-60 Op. Att'y Gen. No. 60-9.

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. 1959-60 Op. Att'y Gen. No. 59-160.

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., 112 N.M. 123, 812 P.2d 777 (1991).

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. 1961-62 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 added by the compiler for clarification. It was not enacted by the legislature and it is not part of the law.

6-8-9. Securities and investment.

A. Money made available from the land grant permanent funds for investment for a period in excess of one year may be invested in the following classes of securities and investments:

(1) bonds, notes or other obligations of the United States government, its agencies, government-sponsored enterprises, corporations or instrumentalities and that portion of bonds, notes or other obligations guaranteed as to principal and interest and issued by the United States government, its agencies, government-sponsored enterprises, corporations or instrumentalities or issued pursuant to acts or programs authorized by the United States government;

(2) bonds, notes, debentures and other obligations issued by the state of New Mexico or a municipality or other political subdivision of the state that are secured by an investment grade bond rating from a national rating service, pledged revenue or other

collateral or insurance necessary to satisfy the standard of prudence set forth in Section 6-8-10 NMSA 1978;

(3) bonds, notes, debentures, instruments, conditional sales agreements, securities or other evidences of indebtedness of any corporation, partnership or trust organized and operating within the United States rated not less than Baa or BBB or the equivalent by a national rating service;

(4) bonds, notes, debentures, instruments, conditional sales agreements, securities or other evidences of indebtedness rated not less than BB or B or the national association of insurance commissioners' equivalent by a national rating service. An investment made under this paragraph shall be in publicly traded debt issues with an outstanding par value of at least one hundred million dollars ($100,000,000) and issued by a corporation, partnership or trust listed on a national exchange and organized and operating within the United States; provided that investments made pursuant to this paragraph shall not exceed three percent of the market value of the land grant permanent funds, calculated at the time of investment;

(5) notes or obligations securing loans or participation in loans to business concerns or other organizations that are obligated to use the loan proceeds within New Mexico, to the extent that loans are secured by first mortgages on real estate located in New Mexico and are further secured by an assignment of rentals, the payment of which is fully guaranteed by the United States in an amount sufficient to pay all principal and interest on the mortgage;

(6) common and preferred stocks and convertible issues of any corporation; provided that it has securities listed on one or more national stock exchanges or included in a nationally recognized list of stocks; and provided further that the fund shall not own more than five percent of the voting stock of any company;

(7) real estate investments, including real property and undivided interests in real property, debt instruments secured by first liens on real property or limited partnership interests; provided that the total value of investments made under this paragraph shall not exceed three percent of the market value of the land grant permanent funds, calculated at the time of investment;

(8) securities of non-United States governmental, quasi-governmental, partnership, trust or corporate entities, and these may be denominated in foreign currencies; provided:

(a) aggregate non-United States investments shall not exceed fifteen percent of the book value of the land grant permanent funds;

(b) for non-United States stocks and non-United States bonds and notes, issues permitted for purchase shall be limited to those issues traded on a national stock exchange or included in a nationally recognized list of stocks or bonds;

(c) currency contracts may be used for investing in non-United States securities only for the purpose of hedging foreign currency risk and not for speculation;

(d) the investment management services of a trust company or national bank exercising trust powers or of an investment counseling firm may be employed; and

(e) reasonable compensation for investment management services and other administrative and investment expenses related to these investments shall be paid directly from the assets of the funds, subject to budgeting and appropriation by the legislature; and

(9) stocks or shares of a diversified investment company registered under the federal Investment Company Act of 1940, as amended, and listed securities of long-term unit investment trusts or individual, common or collective trust funds of banks or trust companies that invest primarily in equity securities authorized in Paragraphs (6) and (8) of this subsection; provided that the investment company has total assets under management of at least one hundred million dollars ($100,000,000); and provided further that the council may allow reasonable administrative and investment expenses to be paid directly from the assets derived from these investments, subject to budgeting and appropriation by the legislature.

B. Not more than sixty-five percent of the book value of the land grant permanent funds shall be invested at any given time in securities described in Paragraphs (6), (8) and (9) of Subsection A of this section, and no more than ten percent of the book value of the land grant permanent funds shall be invested at any given time in securities described in Paragraph (3) of Subsection A of this section that are rated Baa or BBB. Assets of the land grant permanent funds may be combined for investment in common pooled funds to effectuate efficient management.

C. Commissions paid for the purchase and sale of any security shall not exceed brokerage rates prescribed and approved by national stock exchanges or by industry practice.

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.

ANNOTATIONS

Cross references. — For investment in severance tax bonds, see 7-27-19 NMSA 1978.

The 1996 amendment, effective July 1, 1996, substituted "Baa or BBB or the equivalent" for "a" in Subsection E, rewrote the second paragraph of Subsection L, and made stylistic changes throughout the section.

The 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, rewrote the section to such an extent that a detailed comparison would be impracticable. 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 1998 amendment, in Paragraph A(3), substituted "instruments" for "equipment trust certificates" near the beginning of the paragraph and inserted "partnership or trust" near the middle of the paragraph; deleted "a minimum net worth of twenty-five million dollars ($25,000,000) and" preceding "securities" in Paragraph A(5); and inserted "partnership, trust" near the middle of Paragraph A(6). Laws 1998, ch. 19 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1998, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

The 2001 amendment, effective June 15, 2001, in Subsection A, added Paragraphs (4) and (7) and renumbered the remaining subsections accordingly; and updated the internal references in Paragraph A(9) and Subsection B.

Investment Company Act. — The federal Investment Company Act of 1940, referred to in Paragraph A(9), is codified as 15 U.S.C. § 80a-1 et seq.

Authority of investment officer. — The investment authority of the state investment officer is limited to those funds derived from lands granted the state and its institutions by virtue of N.M. Const. art. XIII, §§ 1 and 2, including any increase in the permanent fund by virtue of the investment of these funds by the officer. There is no restriction found in either the constitution or the statutes as to the period of time for which these funds may be invested. Therefore, they are all subject to being invested for periods in excess of one year; hence, these funds are all "moneys available for investment or a period in excess of one year" within the meaning of this section. 1961-62 Op. Att'y Gen. No. 62-76.

Section applicable to investments for less than one year. — The restrictions of this section apply to all investments made by the investment officer, including those for periods of less than one year. 1961-62 Op. Att'y Gen. No. 62-76.

No funds are restricted to short-term investment. — There are no funds over which the state investment officer has jurisdiction that are restricted to short-term investment. All investment funds available to the investment council are subject to investment for periods in excess of one year. 1961-62 Op. Att'y Gen. No. 62-76.

Capehart mortgages are legal investments. — The Capehart mortgages issued under the provisions of the National Housing Act of 1955, as amended, are legally acceptable for investments by the state investment council. The propriety of investing

public funds in these obligations is left to the council in the exercise of its sound discretion. 1959-60 Op. Att'y Gen. No. 59-135.

Investment permitted in loans guaranteed by small business administration. — The loan guarantees made by the small business administration are properly regarded as obligations of the United States, and provided the portions of the loans which the state investment council might acquire are underwritten by the small business administration, the council may invest state moneys in the loans guaranteed by the small business administration. 1969 Op. Att'y Gen. No. 69-115.

Investments in farmers' home administration loans. — The state investment council may act as "lender" and lawfully invest in farmers' home administration loans made pursuant to the consolidated Farmers' Home Administration Act of 1961, as the council is, in effect, purchasing a note which is guaranteed by the federal government. Such investment is clearly authorized by Subsection A. 1966 Op. Att'y Gen. No. 66-12 (decided prior to 1989 amendment).

Investments in loans if mortgaged property securing loan located outside New Mexico. — This section does not bar the investment council from investing in farmers' home administration loans where the mortgaged property securing the loans is not located within the state of New Mexico, since such investment is not a mortgage loan. The investment involves the simple purchase of a note which is clearly an authorized investment under Subsection A. As far as the state investment council is concerned, no mortgage is involved. The mortgage of the property is to the federal government and the state investment council has no interest in the mortgage whatsoever. Thus, the location of the land involved in a farmers' home administration loan, when the state investment council does not hold a mortgage thereon, has no effect whatsoever upon the legality of investment. 1966 Op. Att'y Gen. No. 66-12 (decided prior to 1989 amendment).

Common stocks purchased must have 10-year dividend history. — Former Subsection F, in providing for investment in common stocks, did not expressly contain the restriction that common stocks purchased must be those of corporations having a 10-year dividend history at the date of purchase. The statutory provision was, nevertheless, subject to this restriction which is expressly specified in N.M. Const. art. XII, § 7. 1957-58 Op. Att'y Gen. No. 58-10.

"Organized and operating within the United States". — The term "incorporated" as used in N.M. Const., art. XII, § 7 did not have the same meaning as the statutory clause, "organized and operating" in former Subsection F; a company "organized and operating within the United States" is not also "incorporated within the United States", if it was incorporated outside of the United States. State ex rel. Udall v. Colonial Penn Ins. Co., 112 N.M. 123, 812 P.2d 777 (1991).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63C Am. Jur. 2d Public Funds §§ 3, 7, 62, 64.

Liability of public officer for interest or other earnings received on public money in his possession, 5 A.L.R.2d 257.

81A C.J.S. States § 225.

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. 1959-60 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 state investment council shall be in the custody of the state treasurer who may, with the approval of the secretary, deposit with a bank or trust company the securities for safekeeping and servicing.

History: 1953 Comp., § 11-2-8.14, enacted by Laws 1957, ch. 179, § 11; 1975, ch. 211, § 3; 1977, ch. 247, § 102.

6-8-12. Repealed.

ANNOTATIONS

Repeals. — Laws 1996, ch. 4, § 3, repeals 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 1994 Replacement Pamphlet.

6-8-13. Record of investments.

The investment division [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.

ANNOTATIONS

Bracketed material. — The bracketed material was added by the compiler. It was not enacted by the legislature and it is not part of the law.

Investment office. — Laws 1981, ch. 264, § 3 changed the name of the investment division to the investment office. See 6-8-4 NMSA 1978.

6-8-14. Monthly reports.

No later than ten days after the close of each month, the state investment officer shall submit to the secretary and the state investment council a report of the operations of the division [office] during the past month. Each report shall give a 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 names of the dealers involved 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. The reports shall be open for inspection to the public and the press in the office of the state investment officer.

History: 1953 Comp., § 11-2-8.17, enacted by Laws 1957, ch. 179, § 14; 1977, ch. 247, § 104.

ANNOTATIONS

Bracketed material. — The bracketed material was added by the compiler. It was not enacted by the legislature and it is not part of the law.

Investment office. — See notes following 6-8-13 NMSA 1978.

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 added by the compiler. It was not enacted by the legislature and it is not part of the law.

Investment office. — See notes following 6-8-13 NMSA 1978.

6-8-17. Purpose of act.

The purpose of this act [6-8-17 and 6-8-18 NMSA 1978] is to authorize the state investment officer to invest permanent funds in interest-bearing time deposits.

History: 1953 Comp., § 11-2-10.1, enacted by Laws 1970, ch. 2, § 1.

6-8-18. Permanent funds; investment in interest-bearing time deposits.

The state investment officer, under the supervision of the state investment council, though not required to, may invest not more than twenty percent of the permanent school fund and other permanent funds in interest-bearing time deposits at rates not lower than rates received by the state treasurer on deposits of public money. Deposits

shall be secured as provided by law for securing deposits of public funds. When determined to be in the best interests of the beneficiaries of the fund, deposits shall be made in banks, savings and loan associations or credit unions that are:

A. located in New Mexico;

B. approved by the state investment officer in accordance with policy regulations promulgated by the state investment council;

C. provided that not more than five percent of the permanent funds available for deposit under this section shall be deposited in any single savings and loan association, bank or credit union; and

D. provided that any deposit made in a credit union shall be insured by an agency of the United States. As used in this section, "deposit" includes share, share certificate and share draft.

History: 1953 Comp., § 11-2-10.2, enacted by Laws 1970, ch. 2, § 2; 1971, ch. 41, § 1; 1987, ch. 79, § 2.

ANNOTATIONS

Cross references. — For limitations on the deposit of state funds in banks and savings and loan associations, see 6-10-24.1 NMSA 1978.

The 1987 amendment, effective June 19, 1987, inserted "or credit unions" following "savings and loan associations" near the end of the opening clause, in Subsection C inserted "or credit union; and" at the end and added Subsection D.

6-8-19. Short-term investments; repurchase agreements and securities lending.

A. Money in or derived from the land grant permanent funds made available for investment for a period of less than one year may be invested in:

(1) contracts for the present purchase and resale at a specified time in the future, not to exceed one year, of specific securities at specified prices at a price differential representing the interest income to be earned by the state. No such contract shall be invested in unless the contract is fully secured by:

(a) obligations of the United States or other securities backed by the United States if the obligations or securities have a market value of at least one hundred two percent of the amount of the contract; or

(b) A1 or P1 commercial paper, corporate obligations rated AA or better and maturing in five years or less or asset-backed securities rated AAA if the commercial

paper, corporate obligations or asset-backed securities have a market value of at least one hundred two percent of the market value of the contract;

(2) security-lending 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. No such contract shall 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. Such contracts may authorize the state investment officer to invest cash collateral in instruments or securities that are authorized investments for the funds and may authorize payment of a fee from the funds, or from income generated by the investment of cash collateral, to the borrower of securities providing cash as collateral. The state investment officer may enter into a contract that apportions income derived from the investment of cash to pay its agent in securities-lending transactions;

(3) commercial paper issued by corporations organized and operating within the United States and rated "prime" quality by a national rating service;

(4) prime bankers' acceptances issued by money center banks;

(5) funding agreements rated at least AA by a nationally recognized rating agency. As used in this paragraph, "funding agreement" means a floating or variable rate insurance company contract that is a general obligation of an insurance company organized and operating within the United States and that is senior to all other debt issued by the company; and

(6) time deposits, with banks incorporated in the United States or time deposits that are fully guaranteed by banks incorporated in the United States.

B. The collateral required for either of the forms of investment specified in Paragraph (1) or (2) of Subsection A of this section shall be delivered to the state fiscal agent or its designee contemporaneously with the transfer of funds or delivery of the securities at the earliest time industry practice permits, but in all cases settlement shall be on a same-day basis.

C. Neither of the contracts specified in Paragraph (1) or (2) of Subsection A 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) or is a primary broker or primary dealer.

History: 1978 Comp., § 6-8-19, enacted by 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.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, added Subsections A(3) and A(4), and substituted "specified in Paragraph (1) or (2) of Subsection A" for "in Subsection A" in Subsections B and C.

The 1990 amendment, effective March 5, 1990, added the last two sentences in Paragraph (2) of Subsection A and added "or is a primary broker or primary dealer" at the end of Subsection C.

The 1996 amendment, effective July 1, 1996, in Paragraph A(1), added the Subparagraph designation (a) and substituted "if the obligations or securities have" for "having" in that subparagraph, and added Subparagraph (b).

The 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, added "and securities lending" at the end of the section heading; substituted "permanent funds" for "permanent trust funds and in or from the severance tax permanent fund" near the beginning of Subsection A; deleted "with an average life of five years or less" following "rated AAA" and substituted "two percent" for "three percent" in Subparagraph A(1)(b); and added "security-lending" at the beginning of Paragraph A(2). The United States Congress approved the constitutional amendment in P.L. 105-37, 111 Stat. 1113, the New Mexico Statehood and Enabling Act Amendments of 1997, approved August 7, 1997.

The 2001 amendment, effective June 15, 2001, added Paragraphs A(5) and (6).

6-8-20. Private equity investment advisory committee created; membership; duties; terms; liabilities; conflict of interest.

A. There is created the "private equity investment advisory committee" to the council. The committee consists of the state investment officer, a member of the council appointed by the governor and three members who are qualified by competence and experience in finance and investment and knowledgeable about the private equity investment process and who are appointed by the governor.

B. Members appointed by the governor, except the council member, shall be appointed for three-year terms; provided that the terms of the initial committee members shall be staggered so that the term of one member expires each year. After the initial appointments, all governor-appointed members shall be appointed for three-year terms. Members shall serve until their successors are appointed. A vacancy occurring other than by expiration of term shall be filled in the same manner as the original appointment, but only for the unexpired term.

C. The committee shall review and make recommendations to the council on investments authorized pursuant to Sections 6-8-21, 7-27-5.6, 7-27-5.15 and 7-27-5.26 NMSA 1978 and shall advise the council in matters and policies related to such investments. The committee shall establish policies for national private equity fund

investments, New Mexico private equity fund investments and New Mexico film private equity fund investments not less often than annually and shall make copies available to interested parties.

D. Members of the committee shall 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] and shall receive no other compensation, perquisite or allowance.

E. The committee shall elect annually a chairman from among its members and may elect other officers as necessary. The committee shall meet upon the call of the chairman or the state investment officer.

F. Members of the committee are public employees within the meaning of the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978] and are entitled to all immunity and indemnification provided under that act.

G. No person may be a member of the committee if any recommendation, action or decision of the committee will or is likely to result in direct, measurable economic gain to that person or his employer.

H. The state investment officer may enter into contracts with investment advisors for private equity fund investments and film fund investments authorized pursuant to Sections 6-8-21, 7-27-5.6, 7-27-5.15 and 7-27-5.26 NMSA 1978 and may pay budgeted expenses for the advisors from the assets of any fund administered under the supervision of the council, as applicable.

History: Laws 1987, ch. 219, § 3; 1990, ch. 126, § 1; 1997, ch. 183, § 4; 2001, ch. 252, § 5.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, in Subsection C, inserted the reference to 7-27-5.15 NMSA 1978 and "New Mexico venture capital fund".

The 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, deleted "state investment" preceding "council" throughout the section; inserted "6-8-21" in the first sentence of Subsection C; and added Subsection H. The United States Congress approved the amendment in P.L. 105-37, 111 Stat. 1113, the New Mexico Statehood and Enabling Act Amendments of 1997, approved August 7, 1997.

The 2001 amendment, effective June 15, 2001, substituted "private equity" for "venture capital" throughout the section; inserted "7-27-5.26" in Subsections C and H; substituted "national private equity fund investments, New Mexico private equity fund investments and New Mexico film private equity" for "venture capital fund and New Mexico venture

capital" in the second sentence of Subsection C; in Subsection H, inserted "and film fund investments" and substituted "advisors" for "venture capital fund adviser".

6-8-21. Private equity investments.

A. The state investment officer may make commitments to private equity funds to invest up to six percent of the market value of the land grant permanent funds in accordance with the provisions of this section. If invested capital should at any time exceed six percent of the market value of the land grant permanent funds, no further commitments shall be made until the invested capital is less than six percent of the market value of the land grant permanent funds.

B. Not more than ten percent of the amount authorized for investment pursuant to Subsection A of this section shall be invested in any one private equity fund. The amount invested in any one private equity fund shall not exceed twenty percent of the committed capital of that fund.

C. In making investments pursuant to this section, the state investment officer and the council shall give consideration to investments in private equity funds whose investments enhance the economic development objectives of the state; provided such investments offer a rate of return and safety comparable to other private equity investments currently available.

D. The state investment officer shall make investments pursuant to this section only upon the approval of the council and upon review of the recommendation of the private equity investment advisory committee.

E. As used in this section:

(1) "committed capital" means the sum of the fixed amounts of money that accredited investors have obligated for investment in a private equity fund and which fixed amounts may be invested in that fund in one or more payments over time;

(2) "invested capital" means the original capital contributed less any return of cost by the private equity funds; and

(3) "private equity fund" means a limited partnership, limited liability company or corporation that:

(a) 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, new product development, recapitalization or similar business purposes;

(b) holds out prospects for capital appreciation from such investments comparable to similar investments made by other professionally managed private equity funds;

(c) has a minimum committed capital of fifteen million dollars ($15,000,000);

(d) accepts investments only from accredited investors, as that term is defined in Section 2 of the federal Securities Act of 1933, as amended, 15 U.S.C. Section 77(b), and rules and regulations promulgated pursuant to that section; and

(e) has full-time management with at least five years of experience in managing private equity funds.

History: 1978 Comp., § 6-8-21, enacted by Laws 1997, ch. 183, § 5; 2001, ch. 252, § 6.

ANNOTATIONS

The 2001 amendment, effective June 15, 2001, substituted "private equity" for "venture capital" throughout the section; in Subsection A, substituted "six percent" for "three percent" in three places; in Subsection E, added Paragraph (2) and renumbered former (2) as (3), in Paragraph (3)(a), inserted "or debt of" preceding "businesses" and inserted "recapitalization", and substituted "fifteen million dollars ($15,000,000)" for "ten million dollars ($10,000,000)" in Paragraph (3)(c).

ARTICLE 9
Facsimile Signatures

6-9-1. Definitions.

As used in the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 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 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 [6-9-1 to 6-9-6 NMSA 1978] 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 place 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 to 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. "deposit" includes share, share certificate and share draft;

B. "department" means the department of finance and administration; and

C. "secretary" means the secretary of finance and administration.

History: 1978 Comp., § 6-10-1.1, enacted by Laws 1987, ch. 79, § 3; 2003, ch. 273, § 12.

ANNOTATIONS

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.

A state agency may accept payment by credit card or electronic means of any amount due the state under any law or program administered by the agency. The state board of finance shall adopt rules on the terms and conditions of accepting payments by credit card or electronic transfer.

History: Laws 1999, ch. 176, § 1.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 176 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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 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".

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.

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 the money collected by the state park and recreation division [state parks division] of the energy, minerals and natural resources department and the state monuments of the museum division of the office of cultural affairs shall be deposited into the state treasury no later than ten days following collection. Provided that county treasurers shall remit all money received for taxes for state purposes or that are by law required to be remitted to the state treasurer on or before the tenth day of the next succeeding month following the receipt or collection thereof. Provided further that 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, draft or otherwise, 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 treasurer within the times and in the manner in this section provided, which money shall be by the state treasurer 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; provided, however, that 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 treasurer 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.

ANNOTATIONS

Bracketed material. — The bracketed reference to the state parks division was inserted by the compiler. The bracketed material was not enacted by the legislature and is not a part of the law. See 9-5A-6.1 NMSA 1978.

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.

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.

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. 1959-60 Op. Att'y Gen. No. 59-193; 1953-54 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. 1957-58 Op. Att'y Gen. No. 58-242.

Creation of a suspense fund by the investment council is in accordance with law. 1961-62 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. 67-7.

Escrow funds in hands of insurance department (state insurance board) must be deposited with the state treasurer. 1923-24 Op. Att'y Gen. 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. 1931-32 Op. Att'y Gen. 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. 1937-38 Op. Att'y Gen. 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 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

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

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.

Meaning of "this act". — 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.

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. 1961-62 Op. Att'y Gen. No. 62-71.

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 County Comm'rs v. Padilla, 111 N.M. 278, 804 P.2d 1097 (Ct. App. 1990).

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 County Comm'rs v. Padilla, 111 N.M. 278, 804 P.2d 1097 (Ct. App. 1990).

And determine which banks are designated 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. 1961-62 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. 1961-62 Op. Att'y Gen. No. 62-71.

"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. 1961-62 Op. Att'y Gen. No. 62-71.

And moneys 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

Meaning of "this act". — 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. 1959-60 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. 1953-54 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 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 of finance and administration. 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. "Deposit", as used in this section, means either investment or deposit and includes share, share certificate and share draft.

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, have the power to 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 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; or

(2) securities that are issued by the United States government or by its agencies or instrumentalities and that are either direct obligations of the United States, the federal home loan mortgage association, the federal national mortgage association, the federal farm credit bank or the student loan marketing association or are backed by the full faith and credit of the United States government.

G. 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, has the power to 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 his 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 are listed in a nationally recognized, 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) individual, common or collective trust funds of banks or trust companies that invest in fixed-income securities or debt instruments that are listed in a nationally recognized, 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; or

(3) shares of pooled investment funds managed by the state investment officer, as provided in Subsection G 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.

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, has the power to 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 other securities backed by the United States 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, has the power to invest money held in demand deposits and not immediately needed for the operation of state government and money held in the short-term investment fund, except as provided in Section 6-10-10.1 NMSA 1978. The investments shall be made only in securities that are issued by the United States government or by its departments or agencies and are either direct obligations of the United States or are backed by the full faith and credit of the United States government or agencies sponsored by the United States government.

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. No such contract shall be invested in unless the contract is fully secured by obligations of the United States or other securities backed by the United States having a market value of at least one hundred two percent of the amount of the contract.

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. No such contract shall 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.

L. The collateral required for either of the forms of investment in Subsection J or K of this section shall be delivered to the fiscal agent of New Mexico or its designee contemporaneously with the transfer of funds or delivery of the securities at the earliest time industry practice permits, but in all cases, settlement shall be on a same-day basis.

M. 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).

N. 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.

O. The state treasurer, with the advice and consent of the state board of finance, may also invest in:

(1) shares of a diversified investment company registered pursuant to the federal Investment Company Act of 1940 that invests in United States fixed income securities or debt instruments authorized pursuant to Subsections I, J and N of this section, provided that the investment company has total 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 investment company; or

(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 N 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.

P. No public funds to be invested in negotiable securities or loans to financial institutions fully secured by negotiable securities at current market value shall 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 third-party 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.

ANNOTATIONS

Cross references. — For deposit of receipts by municipality with no suitable banking facility within its boundaries, see 6-10-36.1 NMSA 1978.

1987 amendments. — Laws 1987, ch. 79, § 5, effective June 19, 1987, inserting "or credit union" following "savings and loan associations" in Subsections A, B, E, and F; in Subsection A, inserting "and may make deposits of that money in credit unions" following "savings and loan associations" in the middle and adding at the end all of the material following "thereafter received or collected by the treasurers"; in Subsection B, adding "subject to the limitations on credit union accounts" at the end; in Subsection C, inserting at the end "or credit union, subject to the limitation on credit union accounts"; in Subsection E, adding at the end "and include share, share certificate and share draft"; and making minor changes in language throughout the section, was approved March 20, 1987. However, Laws 1987, ch. 230, § 1, effective June 19, 1987, substituting "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 adding the proviso at the end of that subsection, adding all of the language following "counties" in Subsection B, adding all of the language beginning with "subject to" in Subsection C, adding all of the language following "or deposit" in Subsection E, adding "or agencies guaranteed by the United States government" at the end of Subsection G, redesignating former Subsection H as present 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 adding present Subsections H through K, was approved April 9, 1987. The section is set out as amended by Laws 1987, ch. 230, § 1. See 12-1-8 NMSA 1978.

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 1989 amendment, effective June 16, 1989, substituted "sponsored" for "guaranteed" near the end of the second sentence of Subsection G.

The 1991 amendment, effective July 1, 1991, in Subsection F, designated a formerly undesignated provision as Paragraph (1) and added Paragraph (2).

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 1997 amendment added Subsections M and N and redesignated former Subsection M as Subsection O. Laws 1997, ch. 128 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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 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 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.

Investment Company Act. — The federal Investment Company Act of 1940, referred to in Paragraphs G(1) and O(1), is codified as 15 U.S.C. § 80a-1 et seq.

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. 1959-60 Op. Att'y Gen. No. 59-4.

Revenues derived from operation of waterworks constitute 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. 1953-54 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. 1933-34 Op. Att'y Gen. 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. 1953-54 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. 1941-42 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. 1941-42 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. Short-term investment fund created; distribution of earnings; report of investments.

A. There is created in the state treasury the "short-term investment fund". The fund shall consist of all deposits from governmental entities and Indian tribes or pueblos that are placed in the custody of the state treasurer for short-term investment purposes pursuant to this section. The state treasurer shall maintain a separate account for each governmental entity and Indian tribe or pueblo having deposits in the fund.

B. If a local public 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 governmental unit, then a local public finance official having money of that local public body in his custody not required for current expenditure may, with the consent of the appropriate local board of finance, if any, remit some or all of such money to the state treasurer for deposit for the purpose of short-term investment as allowed by this section.

C. Before local funds are invested or reinvested for the purpose of short-term investment pursuant to this section, the local public body finance official shall notify and make such funds available to banks, savings and loan associations and credit unions located within the geographical boundaries of their respective governmental unit, subject to the limitation on credit union accounts. To be eligible for such funds, the financial institution shall pay to the local public body the rate established by the state treasurer pursuant to a policy adopted by the state board of finance for such short-term investments.

D. The local public body finance official shall specify the length of time a deposit shall be in the short-term investment fund, but in any event the deposit shall not be made for more than one hundred eighty-one days. The state treasurer through the use of the state fiscal agent shall separately track each such deposit and shall make such information available to the public upon written request.

E. The state treasurer shall invest the short-term investment fund as provided for state funds under Section 6-10-10 NMSA 1978 in investments with a maturity at the time of purchase that does not exceed three hundred ninety-seven days. The state treasurer may elect to have the short-term investment fund 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 entity and Indian tribe or pueblo and that a proportionate amount of interest earned is credited to each of the separate government accounts. 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 short-term investment fund shall be distributed by the state treasurer to the contributing entities and Indian tribes or pueblos in amounts directly proportionate to the respective amounts deposited in the fund and the length of time the amounts in the fund were invested. The state treasurer shall charge participating entities, Indian tribes and pueblos reasonable audit, administrative and investment expenses to be paid directly from their net investment income for the investment and administrative services provided pursuant to this section.

G. As used in this section, "local public body" means a political subdivision of the state, including school districts and post-secondary educational institutions.

H. In addition to the deposit of funds of local public bodies, the state treasurer may also accept for deposit, deposit and account for, in the same manner as funds of local public bodies, funds of the following governmental entities if the governing authority of the entity approves by resolution the deposit of the funds for the short-term investment:

(1) the agricultural commodity commission established under the Agricultural Commodity Commission Act [76-21-1 to 76-21-22 NMSA 1978];

(2) the Albuquerque metropolitan arroyo flood control authority established under the Arroyo Flood Control Act [72-16-1 to 72-16-103 NMSA 1978];

(3) the business improvement district management committee established under the Business Improvement District Act [3-63-1 to 3-63-16 NMSA 1978];

(4) the New Mexico community development council established under the New Mexico Community Assistance Act [11-6-1 NMSA 1978];

(5) the governing authority of only special districts authorized under Chapter 73 NMSA 1978;

(6) the board of trustees established under the Economic Advancement District Act [6-19-1 to 6-19-18 NMSA 1978];

(7) the board of directors of a corporation or foundation established under the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978];

(8) a board of directors established under the Flood Control District Act [72-18-1 to 72-18-70 NMSA 1978];

(9) the New Mexico hospital equipment loan council established under the Hospital Equipment Loan Act [Chapter 58, Article 23 NMSA 1978];

(10) the authority established under the Industrial and Agricultural Finance Authority Act [58-24-1 to 58-24-23 NMSA];

(11) the authority established under the Las Cruces Arroyo Flood Control Act [72-17-1 to 72-17-103 NMSA 1978];

(12) the authority established under the Mortgage Finance Authority Act [Chapter 58, Article 18 NMSA 1978];

(13) the authority established under the Municipal Mortgage Finance Act [58-18A-1 to 58-18A-12 NMSA 1978];

(14) the authority established under the Public School Insurance Authority Act [22-2-6.1 to 22-2-6.10 NMSA 1978];

(15) the authority established under the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978];

(16) a board of trustees established under the Special Hospital District Act [Chapter 4, Article 48A, NMSA 1978];

(17) the authority established under the New Mexico Finance Authority Act [Chapter 6, Article 21 NMSA 1978]; and

(18) the corporation established under the Small Business Investment Act [Chapter 58, Article 29, NMSA 1978].

I. In addition to the deposit of funds of local public bodies, the state treasurer may also accept for deposit and deposit and account for, in the same manner as funds of local public bodies, funds of any Indian tribe or pueblo in the state if authorized to do so under a joint powers agreement executed by the state treasurer and the governing authority of the Indian tribe or pueblo under the provisions of the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978].

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.

ANNOTATIONS

1991 amendments. — Laws 1991, ch. 239, § 1 and Laws 1991, ch. 258, § 1, both effective June 14, 1991, both amended this section by deleting "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, and inserted "short-term investment" in Subsections D, E, and F. Laws 1991, ch. 239, § 1, in addition to the above changes, substituting references to "entity" for references to local public bodies

throughout the section, inserting "and any other entities" in Subsection A, deleting "local government" preceding "accounts" at the end of the first sentence in Subsection E, and adding a Subsection H authorizing the state treasurer to deposit funds of any Indian nation or tribe in the state if authorized to do so under a joint powers agreement executed by the state treasurer and the governing authority of the Indian nation or tribe under the provisions of the Joint Powers Agreement Act, was approved on April 4, 1991. However, Laws 1991, ch. 258, § 1, making the changes described in the first sentence of this note and also substituting references to entity and Indian tribe or pueblo for "local public body" throughout the section and adding Subsection H, was approved on April 5, 1991. The section is set out as amended by Laws 1991, ch. 258, § 1. See 12-1-8 NMSA 1978.

The 1992 amendment, effective March 9, 1992, added Subsection H(17).

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 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 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 2003 amendment, effective April 8, 2003, added Paragraph H(18).

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. 1959-60 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. 1959-60 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 6-8-10 NMSA 1978. 1964 Op. Att'y Gen. No. 64-29.

The strict standards set by the state legislature and the state constitution for the investment of permanent funds derived from lands under the care of the commissioner of public lands may be utilized by the state treasurer and the state board of finance for determining which securities and investments are proper for the investment of the

permanent funds belonging to the museum of New Mexico, 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.

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.

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.

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 in the last paragraph was inserted by the compiler for clarity. It was not enacted by the legislature and it is not part of the law.

Meaning of "Section 6". — Laws 1933, ch. 175, § 6, referred to in the first and tenth paragraphs, was repealed by Laws 1934 (S.S.), ch. 24, § 5.

Meaning of "this act". — 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.

Public Moneys Act. — 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, 30 N.M. 537, 239 P. 740 (1925).

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. 1961-62 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. 1961-62 Op. Att'y Gen. No. 62-71.

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, 44 N.M. 424, 103 P.2d 628 (1940).

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. 1921-22 Op. Att'y Gen. 93.

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., 36 N.M. 166, 9 P.2d 700 (1932).

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. National Sur. Co. v. New Mexico, 16 F.2d 873 (8th Cir. 1926).

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. 1923-24 Op. Att'y Gen. 119.

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, 44 N.M. 424, 103 P.2d 628 (1940).

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 national association of securities dealers, known as "N.A.S.D.", 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. Securities which are obligations of the state of New Mexico, its agencies, institutions, counties, municipalities or other subdivisions shall be accepted as security at par value. All other 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.

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.

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.

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.

Mutual funds as collateral. — Mutual funds may not be pledged as collateral for deposits of public funds. 1987 Op. Att'y Gen. No. 87-4.

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. 87-4.

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

The 1991 amendment, effective June 14, 1991, rewrote this section to the extent that a detailed analysis would be impracticable.

Financial Institutions Reform, Recovery and Enforcement Act of 1989. — The federal Financial Institutions Reform, Recovery and Enforcement Act of 1989, referred to in Subsection A, is compiled as 12 U.S.C.S. § 1461 et seq.

Federal Deposit Insurance Act. — The Federal Deposit Insurance Act, referred to in Subsection A, is compiled as 12 U.S.C.S. § 1811 et seq.

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 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 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 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. 1957-58 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 treasures 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 "requiring the bank" near the middle of Subsections A and C; added at the end of Subsections A and B "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 purpose 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 limitation 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

The 1987 amendments. — Laws 1987, ch. 79, § 8, effective June 19, 1987, inserting Subsection B and redesignating the subsequent subsections; and, in Subsection C, inserting "or credit union" following "savings and loan associations" and making minor changes in language, was approved on March 20, 1987. However, Laws 1987, ch. 266, § 1, effective June 19, 1987, inserting Subsection B and redesignating the subsequent subsections accordingly; in Subsection C inserting "or credit unions" following "savings and loan associations"; and, in Subsection D, at the end of the first sentence substituting "avoid causing the failure of the institution" for "assure that dislocation caused by such withdrawal is avoided" and adding the last sentence, was approved on April 9, 1987. The section is set out above as amended by Laws 1987, ch. 266, § 1. See 12-1-8 NMSA 1978.

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.

6-10-25. 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 account 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. 1957-58 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. 82-1.

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

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.

Internal Revenue Code. — For the Internal Revenue Code of 1986, see Title 26 of the United States Code.

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, repeals 11-2-27, 1953 Comp., relating to interest rates and powers of state board of finance, and enacts the above 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.

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. 1931-32 Op. Att'y Gen. 177.

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. 1931-32 Op. Att'y Gen. 177.

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. 82-6.

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. 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], which shall be adhered to on each occasion of designation. The board, after it has designated the state 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 so designated shall enter into an agreement with the state, acting through its 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 thereof;

(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 which 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 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 the 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 his official bond on account of any 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 under Sections 11-2-18 NMSA 1953 or 6-10-30, 6-10-35 and 6-10-36 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 of finance and administration 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, 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 any bank or savings and loan association designated as a state checking depository from also qualifying as a state depository under Sections 11-2-18 NMSA 1953 and 6-10-30, 6-10-35 and 6-10-36 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 which, with the interest coupons, were made payable at an out-of-state bank.

G. Any 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 any such 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. Such board of finance shall, at its next meeting after receipt of the proposal, consider the proposal, and, if it is in accordance with Sections 11-2-18 NMSA 1953 and 6-10-30, 6-10-35 and 6-10-36 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 Sections 6-10-30 and 6-10-36 NMSA 1978, the board of finance may designate such 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 Sections 11-2-18 NMSA 1953 and 6-10-30, 6-10-35 and 6-10-36 NMSA 1978, a certificate shall be issued to the bank or savings and loan association by the board 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 without 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.

ANNOTATIONS

1987 amendments. — Laws 1987, ch. 79, § 14, effective June 19, 1987, in Subsection F (now Subsection G) near the beginning of the first sentence inserting "or credit union" following "savings and loan association," inserting fourth sentence (similar to the present fourth sentence in Subsection G), in the fifth sentence inserting "and, if designated, a certificate shall be issued to a credit union qualifying it as a depository of public money" immediately preceding the proviso, and making minor changes in language throughout the subsection, was approved on March 20, 1987. However, Laws 1987, ch. 87, § 1, effective June 19, 1987, inserting Subsection E; relettering the subsequent subsections; in Subsection G near the beginning of the first sentence inserting "or credit unions" following "savings and loan association," inserting the present fourth sentence, in the fifth sentence inserting "and, if designated, a certificate shall be issued to a credit union qualifying it as a depository of public money" preceding the proviso, and making minor changes in language throughout the subsection, was approved later on March 20, 1987. The section is set out above as amended by Laws 1987, ch. 87, § 1. See 12-1-8 NMSA 1978.

Compiler's notes. — Section 11-2-18 NMSA 1953, referred to throughout Subsections D, F, and G, was repealed by Laws 1969, ch. 243, § 3.

Section 6-10-30 NMSA 1978, referred to in Subsections D, F, and G, no longer relates to the qualifying of state depositories since it was repealed and reenacted by Laws 1975, ch. 304, § 1.

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 which have adopted home rule charters as authorized by the constitution and local school boards which 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; provided any credit union deposits are 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 manned branch offices within the geographical boundaries of the governmental unit which 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 in the proportion that each bank's or savings and loan association's net worth bears to the total net worth of all banks and savings and loan associations having their main office or manned branch office within the geographical boundaries of the governmental unit. The net worth of the main office of a savings and loan association and its manned branch offices within the geographical boundaries of a governmental unit is the total net worth of the association multiplied by the percentage that deposits of the main office and the manned branch

offices located within the geographical boundaries of the governmental unit are of the total deposits of the association. The net worth of each manned branch office or aggregate of manned 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 net worth 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. The director of the financial institutions division of the regulation and licensing department shall promulgate a formula for determining the net worth of banks' main offices and branches for the purposes of distribution of public money as provided for by this section. "Net worth" means the assets less liabilities as reported by those banks and savings and loan associations on their most recent semiannual reports to the state or federal supervisory authority having jurisdiction.

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 manned branch offices within the geographical boundaries of the governmental unit to the extent such 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 herein 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.

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.

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.

The 1997 amendment 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. Laws 1997, ch. 123 contains no effective date provision but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Applicability. — Laws 1981, ch. 332, § 21, provides that the act shall not affect any distribution of public money deposited in banks and savings and loan associations prior to the effective date of the act but shall be applicable to distribution of public money made on or after that date.

Internal Revenue Code. — The United States Internal Revenue Code, referred to in the second paragraph of Subsection E, appears as 26 U.S.C. § 1 et seq.

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. 1961-62 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. 1957-58 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. 1957-58 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. 1963-64 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. 82-6.

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.

For any municipality or village having within its boundaries no suitable banking facility in which to deposit collected receipts of public money, such municipality or village shall deposit receipts within a period not to exceed five days from the date of collection, 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.

ANNOTATIONS

Cross references. — For deposit and investment of funds, see 6-10-10 NMSA 1978.

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

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.

Meaning of "this Act". — 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.

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. 1921-22 Op. Att'y Gen. 120.

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, 29 N.M. 244, 223 P. 516 (1924).

Treasurers may give more than one official bond, if together they meet the requirements of the statute. 1917-18 Op. Att'y Gen. 200.

Separate bond not required for additional duties. — No separate official bond is required of the treasurer for his duties as treasurer of irrigation district. 1919-20 Op. Att'y Gen. 178.

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. 1931-32 Op. Att'y Gen. 106.

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. 1961-62 Op. Att'y Gen. 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. 1961-62 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. 1923-24 Op. Att'y Gen. 122.

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

"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 County Comm'rs, 67 N.M. 201, 354 P.2d 135 (1960). 1963-64 Op. Att'y Gen. No. 63-60.

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.

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. 1961-62 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. 1933-34 Op. Att'y Gen. 50.

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

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.

Meaning of "this act". — 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.

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

Constitutional provisions not applicable to suspense funds. — New Mexico Const., art. IV, § 30 does not apply to suspense funds provided for in this section. 1929-30 Op. Att'y Gen. 145.

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

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."

The 1988 amendment, effective May 18, 1988, added the last sentence in the first paragraph.

Tax administration suspense fund. — For the tax administration suspense fund, see 7-1-6 NMSA 1978.

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. 1931-32 Op. Att'y Gen. 20.

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. 1951-52 Op. Att'y Gen. No. 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. 1937-38 Op. Att'y Gen. 115.

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. 1937-38 Op. Att'y Gen. 177.

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

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. 1953-54 Op. Att'y Gen. No. 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.

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

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. 1937-38 Op. Att'y Gen. 110.

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. 1957-58 Op. Att'y Gen. No. 58-5.

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 moneys or securities in the state treasury, the cost of such safekeeping and insurance to be paid out of the interest on deposits 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.

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 uncollectable or the deposit or any part thereof has been rendered uncollectable 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 uncollectable 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 the 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

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, 29 N.M. 576, 224 P. 1025 (1924).

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.

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.

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 anyone 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 moneys 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 moneys 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

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

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 [6-10-55 to 6-10-57 NMSA 1978]:

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

Commissioner of revenue. — 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 provides that each division in this department shall be headed by a "director." The bracketed material was inserted by the compiler. It was not enacted by the legislature and it is not part of the law.

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. 64-4.

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

"After the taking effect of this act". — 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. 1955-56 Op. Att'y Gen. No. 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. 1961-62 Op. Att'y Gen. No. 62-139.

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, repeals 11-2-46, 1953 Comp., relating to issuance of duplicates and bond to save state or political subdivision harmless, and enacts 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. 1953-54 Op. Att'y Gen. No. 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. 1955-56 Op. Att'y Gen. No. 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

Meaning of "this act". — 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

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.

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, repeals 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 enacts the above 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. 1955-56 Op. Att'y Gen. No. 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.

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 moneys 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 moneys 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

Taylor Grazing Act. — The Taylor Grazing Act is compiled as 43 U.S.C. § 315 et seq.

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. 1939-40 Op. Att'y Gen. 49.

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 where 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, 45 N.M. 23, 107 P.2d 1050 (1940).

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

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 pets and predatory animals, see 77-15-1 NMSA 1978 et seq.

Bracketed material. — The bracketed material was added by the compiler. It was not enacted by the legislature and it 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.

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. 1939-40 Op. Att'y Gen. 59.

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. 1939-40 Op. Att'y Gen. 32.

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. 1945-46 Op. Att'y Gen. No. 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. 1939-40 Op. Att'y Gen. 140.

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. 1939-40 Op. Att'y Gen. 140.

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.

Compiler's notes. — Section 304, Title 3 of the federal Public Works and Economic Development Act of 1965, referred to in Subsection A, is codified at 42 U.S.C. § 3153. The act generally is codified at 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

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.

Meaning of "this article". — 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.

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. 1912-13 Op. Att'y Gen. 13-1095.

Transfer may be made from one fund to another to meet interest on state debts. 1914 Op. Att'y Gen. 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. 1912-13 Op. Att'y Gen. 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; 2004, ch. 73, § 1.

ANNOTATIONS

Repeals. — Laws 2004, ch. 73, § 1 repeals Section 6-12-3 NMSA 1978, effective May 19, 2004.

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

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 [6-12-3 to 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. — 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.

The bracketed material was inserted by the compiler. It was not enacted by the legislature, and is not a part of the law.

State office building commission. — 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, 46 N.M. 29, 120 P.2d 434 (1941).

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 word "be" was inserted by the compiler; it was not enacted by the legislature and is not a 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 principals 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 "s" after the word "bond" in this section was inserted by the compiler, it was not enacted by the legislature, and it is not a 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.

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.

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.

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. — 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. The bracketed material was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

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

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. 1953-54 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

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

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.

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 [6-12A-1 to 6-12A-15 NMSA 1978] 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 [6-12A-1 to 6-12A-15 NMSA 1978]:

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 [6-12A-1 to 6-12A-15 NMSA 1978], 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

Internal Revenue Code of 1986. — The federal Internal Revenue Code, referred to in Subsection D, is codified as 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 [6-12A-1 to 6-12A-15 NMSA 1978], 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 [6-12A-1 to 6-12A-15 NMSA 1978] 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

Internal Revenue Code of 1986. — The federal Internal Revenue Code, referred to in this section, is codified as 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 [6-12A-1 to 6-12A-15 NMSA 1978], 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 [6-12A-1 to 6-12A-15 NMSA 1978].

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 enumerated.]

That the state institutions, within the meaning of this act [6-13-1 to 6-13-26 NMSA 1978], are the university of New Mexico at Albuquerque, New Mexico; the New Mexico college of agriculture and mechanic arts near Las Cruces, New Mexico; the New Mexico school of mines at Socorro, New Mexico; the New Mexico military institute at Roswell, New Mexico; the New Mexico normal university at Las Vegas, New Mexico; the New Mexico normal school at Silver City, New Mexico; the Spanish-American school at El Rito, New Mexico; the New Mexico school for the deaf at Santa Fe, New Mexico; the New Mexico institute for the blind at Alamogordo, New Mexico; the eastern New Mexico normal school at Portales, New Mexico; the New Mexico home and training school for mental defectives, at Los Lunas, New Mexico; the New Mexico penitentiary at Santa Fe, New Mexico; the New Mexico insane asylum at Las Vegas, New Mexico; the New Mexico reform school at Springer, New Mexico; and the miners' hospital of New Mexico at Raton, New Mexico.

History: 1941 Comp., § 6-254, enacted by Laws 1949, ch. 121, § 1; 1953 Comp., § 11-9-2, compiled by Laws 1963, ch. 298, § 2.

ANNOTATIONS

Changes of names of state institutions. — 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.

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 [6-13-1 to 6-13-26 NMSA 1978].

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 [6-13-1 to 6-13-26 NMSA 1978].

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 [6-13-1 to 6-13-26 NMSA 1978] 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.

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 [6-13-1 to 6-13-26 NMSA 1978] 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.

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.

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.

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.

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 [6-13-1 to 6-13-26 NMSA 1978], 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.

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.

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.

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.

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.

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.

6-13-18. Security; priority of liens.

A. All bonds of the same issue under the Institution Bond Act [6-13-1 to 6-13-26 NMSA 1978] 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 word "of" in Subsection C was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

6-13-19. Refunding; purposes.

Any bonds issued under the Institution Bond Act [6-13-1 to 6-13-26 NMSA 1978], 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 [6-13-1 to 6-13-26 NMSA 1978] 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 [6-13-1 to 6-13-26 NMSA 1978]:

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 [6-13-1 to 6-13-26 NMSA 1978], 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 [6-13-1 to 6-13-26 NMSA 1978] 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 [6-13-1 to 6-13-26 NMSA 1978], 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 [6-13-1 to 6-13-26 NMSA 1978] 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 [6-13-1 to 6-13-26 NMSA 1978] 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

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 [6-14-1 to 6-14-3 NMSA 1978]:

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 NMSA 1978];

(8) the Supplemental Municipal Gross Receipts Tax Act [7-19-10 to 7-9-18 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 1992 amendment, effective March 9, 1992, added Subsection C(10).

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".

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] 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 County Comm'rs, 119 N.M. 355, 890 P.2d 808 (Ct. App. 1994).

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 [6-14-8 to 6-14-11 NMSA 1978]:

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;

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 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.

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 repeals former 6-14-10.1 NMSA, as enacted by Laws 1987, ch. 188, § 1, and enacts the above section, effective March 4, 1988. For provisions of former section, see 1987 Cumulative Supplement to this pamphlet.

Internal Revenue Code of 1986. — Section 148 of the Internal Revenue Code of 1986 appears as 26 U.S.C.S. § 148. Section 150 of the Internal Revenue Code of 1986 appears as 26 U.S.C.S. § 150.

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

Meaning of "this act". — 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. — 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. The bracketed material was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

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 County Bd. of Educ., 36 N.M. 177, 10 P.2d 590 (1932) (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, or public school finance division, of the department of finance and administration to furnish information; transcripts of proceedings; disposition.

It shall be the duty of 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], upon the receipt of the notice mentioned in Section 1 [6-15-1 NMSA 1978] hereof to furnish such 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 such other information as may be useful to such governing authorities and to the voters of such county, city, town, village 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, city, town, village or school district, the governing authorities thereof shall prepare a true and complete transcript of proceedings, also three exact copies of such transcript of the proceedings had in connection with such bond issue. One copy of the transcript of the proceedings shall be immediately filed with the local government division, or public school finance division, of the department of finance and administration, 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; Laws 1959, ch. 127, § 2.

ANNOTATIONS

Bracketed material. — 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. The bracketed material was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

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. 1957-58 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 in the second sentence in Subsection A was added by the compiler. It was not enacted by the legislature and it 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.

No constitutional conflict. — This act (6-15-3 to 6-15-8 NMSA 1978) does not conflict with N.M. Const., art. IV, § 18. 1929-30 Op. Att'y Gen. 186.

Provisions deemed directory. — Provisions of this act (6-15-3 to 6-15-8 NMSA 1978) are directory and not mandatory. 1929-30 Op. Att'y Gen. 201.

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 6-15-7 NMSA 1978 such bonds cannot have a maturity longer than 20 years. Mann v. City of Artesia, 42 N.M. 224, 76 P.2d 941 (1938).

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. 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]. All the bonds shall be sold at public sale.

B. 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 of New Mexico or the United States, if one is received, all bids shall be accompanied by 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 his 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 his 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 of New Mexico 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.

B. [C.] 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 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.

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.

ANNOTATIONS

Bracketed material. — The bracketed Subsection C designation at the beginning of the second Subsection B was inserted by the compiler. The bracketed material was not enacted by the legislature and is not part of the law.

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.

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.

No commission is allowed for sale of bonds, in whatever guise attempted. 1929-30 Op. Att'y Gen. 168, 187.

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. 1945-46 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.

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

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., 63 N.M. 421, 320 P.2d 1025 (1958).

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 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.

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 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.

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. 1951-52 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 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.

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 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.

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 (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., 40 N.M. 59, 54 P.2d 412 (1936).

Municipality entitled to use discretion in refunding portion of issue. — Where municipality issued 5*1*/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, 41 N.M. 93, 64 P.2d 384 (1937).

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. 1959-60 Op. Att'y Gen. No. 60-161.

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., 40 N.M. 59, 54 P.2d 412 (1936) (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 pastdue 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, 28 N.M. 354, 212 P. 337 (1923) (decided under former law).

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. 1959-60 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., 40 N.M. 59, 54 P.2d 412 (1936).

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, 73 N.M. 439, 389 P.2d 207 (1964).

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. 1935-36 Op. Att'y Gen. 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. 01-3.

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

Cross references. — For facsimile signatures of public officials, see 6-9-1 NMSA 1978 et seq.

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.

Legislative intent. — Considering the purpose of the Uniform Facsimile Signature of Public Officials Act (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.

Provision for seal on school district bonds is directory only and is not essential to valid obligation. Board of Educ. v. Woodmen of World, 77 F.2d 31 (10th Cir. 1935).

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., 40 N.M. 59, 54 P.2d 412 (1936) (decided under former law).

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 (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., 40 N.M. 59, 54 P.2d 412 (1936).

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. Board 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., 40 N.M. 59, 54 P.2d 412 (1936).

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] 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.

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.

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.

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 of 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 word "charter" was inserted by the compiler; it was not enacted by the legislature and is not a 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 in this section was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

Meaning of "this article". — 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, 73 N.M. 439, 389 P.2d 207 (1964).

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. 01-3.

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

Cross references. — For authorizing resolution or ordinance providing for sinking fund, see 6-15-3 NMSA 1978.

Meaning of "this article". — 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.

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. Short title.

Sections 6-15-23 through 6-15-28 NMSA 1978 may be cited as the "Bond Election Act."

History: 1953 Comp., § 11-6-35, enacted by Laws 1970, ch. 6, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 130 to 161.

64 C.J.S. Municipal Corporations §§ 1664 to 1678; 79 C.J.S. Schools and School Districts § 366.

6-15-24. Definitions.

As used in the Bond Election Act [6-15-23 to 6-15-28 NMSA 1978]:

A. "bonds" means general obligation bonds of any municipality, school district, county, junior college district or branch community college district;

B. "board" means the governing body of any municipality, school district, county, junior college district or branch community college district; and

C. "voter" means any person who is a registered qualified elector of any municipality, school district, county, junior college district or branch community [college] district and, in the case of municipalities, also means any person who is a nonresident municipal elector as defined in Section 3-30-2 NMSA 1978.

History: 1953 Comp., § 11-6-36, enacted by Laws 1970, ch. 6, § 2; 1971, ch. 132, § 1.

ANNOTATIONS

Bracketed material. — The bracketed word "college" in Subsection C was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

6-15-25. Findings; purpose of act.

A. The legislature finds that some of the qualifications of electors at bond elections, as presently prescribed by the constitution or statutes of New Mexico, or both, are invalid and some of such qualifications remain uncertain as to validity because of recent court decisions construing provisions of the constitution of the United States. The legislature recognizes that all or portions of certain sections of Article 9 of the constitution of New Mexico and certain statutes ultimately may be held to violate the constitution of the United States.

B. The purpose of the Bond Election Act [6-15-23 to 6-15-28 NMSA 1978] is to permit the authorization and issuance of bonds during and after the period of uncertainty by requiring an election procedure which will conform with any determination made by the courts as to the validity of qualifications of electors.

History: 1953 Comp., § 11-6-37, enacted by Laws 1970, ch. 6, § 3; 1971, ch. 132, § 2.

6-15-26. Bond elections.

A. Each proposition to issue bonds shall be submitted by a single set of ballots to all voters of the municipality, school district, county, junior college district or branch community college district, but the Bond Election Act [6-15-23 to 6-15-28 NMSA 1978] does not prevent the submission of more than one proposition on the same ballot.

B. The ballots shall be deposited in one ballot box for each polling place at any bond election and the vote shall be cast, counted, returned and canvassed so that the board can determine the total number of votes cast at each election for and against each bond proposition.

C. The Bond Election Act does not prevent any board from using one or more voting machines at any polling place for any bond election if the vote is cast, counted, returned and canvassed and the election otherwise is conducted in a manner which is consistent with the Bond Election Act.

D. Except as expressly provided in the Bond Election Act, any bond election shall be called, conducted and canvassed pursuant to applicable statutes governing elections for the bonds, provided, however, absentee ballot provisions in the Election Code [Chapter 1 NMSA 1978] governing regular elections of the board shall apply. A bond election called by a municipality shall be called, conducted and canvassed pursuant to the applicable provisions of the Municipal Election Code [Articles 8 and 9 of Chapter 3 NMSA 1978] and the absentee ballot provisions of the Municipal Election Code shall apply, provided, however, that the provisions of this act and any applicable statutes governing elections for the bonds shall supersede the Municipal Election Code in the event of a conflict.

History: 1953 Comp., § 11-6-38, enacted by Laws 1971, ch. 132, § 3; 1975, ch. 36, § 1; 1985, ch. 208, § 120.

ANNOTATIONS

Repeals and reenactments. — Laws 1971, ch. 132, § 3, repealed former 11-6-38, 1953 Comp., relating to bond elections, and enacted a new 11-6-38, 1953 Comp.

Meaning of "this act". — The term "this act," referred to in the last sentence in Subsection D, first appears in Laws 1985, Chapter 208 which is principally codified as

Articles 8 and 9 of Chapter 3. The term probably should refer not to Laws 1985, Chapter 208 but to the Bond Election Act, 6-15-23 to 6-15-28 NMSA 1978.

Provision that only real estate owners allowed to vote unconstitutional. — A former provision in the state constitution, which only allowed owners of real estate to vote on the question of creating a debt through the issuance of bonds, was unconstitutional as violative of the equal protection clause of the fourteenth amendment of the constitution of the United States. Board of Educ. v. Maloney, 82 N.M. 167, 477 P.2d 605 (1970).

Use of voting machines in school bond election is permissive and not mandatory. 1972 Op. Att'y Gen. No. 72-37.

6-15-27. Scope of act.

The Bond Election Act [6-15-23 to 6-15-28 NMSA 1978] is cumulative to all other laws on the subject, except that, when any bonds are being voted pursuant to the Bond Election Act, provisions of the Bond Election Act control to the extent of any conflict or inconsistency between its provisions and any provisions of any other law.

History: 1953 Comp., § 11-6-39, enacted by Laws 1970, ch. 6, § 5.

6-15-28. Validation.

All resolutions, orders, proclamations and other official actions heretofore adopted, made or otherwise accomplished by a board pursuant to the Bond Election Act [6-15-23 to 6-15-28 NMSA 1978] or any other provision of law in calling, conducting and canvassing bond elections, and all bonds and bond proceedings undertaken pursuant thereto, are validated and confirmed.

History: 1953 Comp., § 11-6-40, enacted by Laws 1970, ch. 6, § 6; 1971, ch. 132, § 4.

ARTICLE 15A
Education Technology Equipment

6-15A-1. Short title.

Sections 1 through 16 [6-15A-1 to 6-15A-16 NMSA 1978] of this act may be cited as the "Education Technology Equipment Act".

History: Laws 1997, ch. 193, § 1.

ANNOTATIONS

Cross references. — For restrictions on school district indebtedness, see N.M. Const., art. IX, § 11.

6-15A-2. Purpose.

The purpose of the Education Technology Equipment Act [6-15A-1 to 6-15A-16 NMSA 1978] 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 [6-15A-1 to 6-15A-16 NMSA 1978]:

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. "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, video and audio laser and CD ROM discs, video and audio tapes or other technologies and the maintenance, equipment and computer infrastructure information, techniques and tools used to implement technology in schools and related facilities; and

(2) improvements, alterations and modifications to, or expansions of, existing buildings or personal property necessary or advisable to house or otherwise accommodate any of the tools listed in Paragraph (1) of this subsection;

C. "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 Act

[6-15A-1 to 6-15A-16 NMSA 1978] whether designated as a lease, bond, note, loan, warrant, debenture, obligation or other instrument evidencing a debt of the school district;

D. "local school board" means the governing body of a school district; and

E. "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.

ANNOTATIONS

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).

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 word "state" near the end of the section was inserted by the compiler; it was not enacted by the legislature and is not a 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 [16-15A-1 to 16-15A-16 NMSA 1978] 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 word "at" in Subsection B was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

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 repeals 6-15A-8 NMSA 1978, as enacted by Laws 1997, ch. 193, § 8, and enacts the above section, effective April 3, 2001. For provisions of former section, see 1999 Replacement Pamphlet.

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 [6-15A-1 to 6-15A-16 NMSA 1978] 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 word "arrangements" in the last sentence was inserted by the compiler; it was not enacted by the legislature and is not a 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 [6-15A-1 to 6-15A-16 NMSA 1978] 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 [6-15A-1 to 6-15A-16 NMSA 1978] 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 [6-15A-1 to 6-15A-16 NMSA 1978], 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 in this section was inserted by the compiler to correct an apparent error; the bracketed material was not enacted by the legislature and is not a part of the law.

6-15A-14. Cumulative and complete authority.

The Education Technology Equipment Act [6-15A-1 to 6-15A-16 NMSA 1978] shall be deemed to provide an additional and alternative method for acquiring education technology equipment authorized thereby 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 act shall be deemed to provide complete authority for acquiring education technology equipment and entering into lease-purchase arrangements contemplated thereby and no other approval of any state agency or officer, except as provided therein, shall be required with respect to any lease-purchase arrangements and the local school board acting thereunder need not comply with the requirements of any other law applicable to the issuance of debt by school districts.

History: Laws 1997, ch. 193, § 14.

6-15A-15. Liberal interpretation.

The Education Technology Equipment Act [6-15A-1 to 6-15A-16 NMSA 1978], 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 [6-15A-1 to 6-15A-16 NMSA 1978] is held invalid, the remainder or its application to other circumstances shall not be affected.

History: Laws 1997, ch. 193, § 16.

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 "1988 Public Securities Validation Act."

History: Laws 1988, ch. 85, § 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.

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 1988 Public Securities Validation Act [6-16-1 to 6-16-5 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 of this state;

B. "state" means the state of New Mexico and any board, commission, department, corporation, instrumentality or agency of this state; 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: Laws 1988, ch. 85, § 2.

ANNOTATIONS

Compiler's notes. — For citations to similar previous validation acts, see compiler's note following 6-16-1 NMSA 1978.

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 of public securities before maturity and provisions therefor, 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 therefor, 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 or 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 or taken or purportedly had or taken, but required by and in substantial and due compliance with laws appertaining to any such public securities heretofore not issued or purportedly issued.

History: Laws 1988, ch. 85, § 3.

ANNOTATIONS

Compiler's notes. — For citations to similar previous validation acts, see compiler's note following 6-16-1 NMSA 1978.

6-16-4. Effect and limitations.

The 1988 Public Securities Validation Act [6-16-1 to 6-16-5 NMSA 1978] 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 which

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. This 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. Also this act shall not operate to validate, ratify, approve, confirm or legalize any public security, acts, proceeding or other matter which has heretofore been determined in any legal proceeding to be illegal, void or ineffective.

History: Laws 1988, ch. 85, § 4.

ANNOTATIONS

Compiler's notes. — For citations to similar previous validation acts, see compiler's note following 6-16-1 NMSA 1978.

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.

ANNOTATIONS

Compiler's notes. — For citations to similar previous validation acts, see compiler's note following 6-16-1 NMSA 1978.

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. 1953-54 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. 1957-58 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 in Subsection N was inserted by the compiler. It was not enacted by the legislature and is not a part of the law. Section 21-17-2 NMSA 1978 was repealed by Laws 1999, ch. 219, § 21, effective July 1, 1999.

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 at the end of the section was inserted by the compiler. Section 6-17-1.1 NMSA 1978 is apparently not encompassed within "this act", since Laws 1989, ch. 182, § 1 enacted that section separately. See the compiler's note following 6-17-4 NMSA 1978 for additional information as to the meaning of "this act".

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 [4-48B-1 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", 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

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 funds; 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, cost 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 at the end of the section was inserted by the compiler. Section 6-17-1.1 NMSA 1978 is apparently not encompassed within "this act", since Laws 1989, ch. 182, § 1 enacted that section separately. See the compiler's note following 6-17-4 NMSA 1978 for additional information as to the meaning of "this act".

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 near the beginning of this section was inserted by the compiler. Section 6-17-1.1 NMSA 1978 is apparently not encompassed within "this act", since Laws 1989, ch. 182, § 1 enacted that section separately. See the compiler's note following 6-17-4 NMSA 1978 for additional information as to the meaning of "this act".

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 in this section was inserted by the compiler. Section 6-17-1.1 NMSA 1978 is apparently not encompassed within "this act", since Laws 1989, ch. 182, § 1 enacted that section separately. See the compiler's note following 6-17-4 NMSA 1978 for additional information as to the meaning of "this act".

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 near the beginning of this section was inserted by the compiler. Section 6-17-1.1 NMSA 1978 is apparently not encompassed within "this act", since Laws 1989, ch. 182, § 1 enacted that section separately. See the compiler's note following 6-17-4 NMSA 1978 for additional information as to the meaning of "this act".

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 [4-48B-1 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 near the beginning of this section was inserted by the compiler. Section 6-17-1.1 NMSA 1978 is apparently not encompassed within "this act", since Laws 1989, ch. 182, § 1 enacted that section separately. See the compiler's note following 6-17-4 NMSA 1978 for additional information as to the meaning of "this act".

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.

Public Law 90-448, 82 Stat. 476, the Housing and Urban Development Act of 1968, is codified throughout 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

Meaning of "the act hereby amended". — "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 [6-18-1 to 6-18-16 NMSA 1978], 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 [6-18-1 to 6-18-16 NMSA 1978] 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 [6-18-1 to 6-18-16 NMSA 1978], 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 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.

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 1992 amendment, effective March 9, 1992, inserted "the New Mexico finance authority" in Subsection E.

The 1995 amendment, effective April 5, 1995, inserted "any county, any school district, any special district" in Subsection E.

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 [6-18-1 to 6-18-16 NMSA 1978] 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 which 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. 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;

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 [6-18-1 to 6-18-16 NMSA 1978], 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.

ANNOTATIONS

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 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 8 [6-18-8 NMSA 1978] of the Public Securities Short-Term Interest Rate Act;

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 [6-18-6 NMSA 1978] of the Public Securities Short-Term Interest Rate Act 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.

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 [6-18-1 to 6-18-16 NMSA 1978], 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 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.

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 Paragraph C(2); deleted "the rating of" preceding "a nationally recognized" in Paragraph C(2)(a); and inserted the final sentences of Subsections D and E.

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 [6-18-1 to 6-18-16 NMSA 1978], 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 [6-18-1 to 6-18-16 NMSA 1978] 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 in Subsection B was inserted by the compiler. 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. The bracketed material was not enacted by the legislature and is not a part of the law.

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 [6-18-1 to 6-18-16 NMSA 1978] 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 [6-18-1 to 6-18-16 NMSA 1978] 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 [6-18-1 to 6-18-16 NMSA 1978] 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 [6-18-1 to 6-18-16 NMSA 1978] 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 [6-18-1 to 6-18-16 NMSA 1978], 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 [6-19-1 to 6-19-18 NMSA 1978]:

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 [6-19-1 to 6-19-18 NMSA 1978] 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 [6-19-1 to 6-19-18 NMSA 1978].

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 [Articles 35 to 38 of Chapter 7 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 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.

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.

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 [6-19-1 to 6-19-18 NMSA 1978]. 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 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.

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".

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 [16-19-1 to 16-19-18 NMSA 1978];

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 [6-19-1 to 6-19-18 NMSA 1978].

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 payment, 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 [6-19-1 to 6-19-18 NMSA 1978] 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 [6-19-1 to 6-19-18 NMSA 1978] 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 [6-19-1 to 6-19-18 NMSA 1978] 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 [6-19-1 to 6-19-18 NMSA 1978]:

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, makes the Private Activity Bond Act effective retroactive to January 1, 1988, and applicable to all private activity bonds issued after that date.

6-20-2. Definitions.

A. As used in the Private Activity Bond Act [6-20-1 to 6-20-11 NMSA 1978]:

(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

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.

Internal Revenue Code of 1986. — For the Internal Revenue Code of 1986, see Title 26 of the United States Code. Sections 25, 141, 143, 144, and 146 of that code appear as 26 U.S.C.S. §§ 25, 141, 143, 144, and 146, respectively.

Tax Reform Act of 1986. — Sections 1312 and 1313 of the Tax Reform Act of 1986, referred to in Subsection (13)(a), appear as notes following 26 U.S.C.S. § 103.

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

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.

6-20-4. Issuance of private activity bonds.

A. Except as otherwise provided in the Private Activity Bond Act [6-20-1 to 6-20-11 NMSA 1978], 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

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.

"Effective date of the Private Activity Bond Act". — The phrase "effective date of the Private Activity Bond Act" means March 4, 1988, the effective date of Laws 1988, Chapter 46.

"Section 146(f) of the code". — 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.

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, which can be filled by persons who are residents of the state at the time of submission of the request for allocation;

(3) the present 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 which 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 which 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; and

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.

History: Laws 1988, ch. 46, § 5.

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.

"Section 142(d) of the code". — The phrase "Section 142(d) of the code" means 26 U.S.C.S. § 142(d). See 6-20-2 NMSA 1978.

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 [6-20-1 to 6-20-11 NMSA 1978] 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 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 [6-20-1 to 6-20-11 NMSA 1978]. The board 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.

History: Laws 1988, ch. 46, § 11.

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.

"Section 146 of the code". — The phrase "Section 146 of the code" means 26 U.S.C.S. § 146. See 6-20-2 NMSA 1978.

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

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 [Chapter 6, Article 21 NMSA 1978] 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 [Chapter 6, Artilce 21 NMSA 1978] 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 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 [6-21-1 NMSA 1978]:

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; airports; municipal utilities; 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, 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 district or community water association or 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; 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.

ANNOTATIONS

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.

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 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 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 2001 amendment, effective April 5, 2001, added the last sentence of Subsection E.

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.

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 twelve members. The state investment officer, 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 his duty shall take an oath of office to administer the duties of his 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 chairman. The authority shall elect annually one of its members to serve as vice chairman. 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 Finance Authority Act [Chapter 6, Article 21 NMSA 1978].

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 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 chairman 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 his 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 [Chapter 6, Article 21 NMSA 1978]. 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.

ANNOTATIONS

The 2001 amendment, effective April 5, 2001, added "separate and apart from the state" to Subsection A.

Revenue Bonds Authorization. — Laws 1993, ch. 367, § 73, effective April 8, 1993, as amended by Laws 1994, ch. 91, § 1, effective March 7, 1994, authorizes the New Mexico finance authority to issue and sell revenue bonds in an amount not to exceed $3,500,000 for planning, designing, constructing, equipping and furnishing a state office building for the workers' compensation administration that complies with the federal Americans with Disabilities Act of 1990. The act also authorizes the issuance and sale of revenue bonds in an amount not to exceed $2,500,000 when the property control division of the general services department certifies the need for the issuance of those bonds; the proceeds from the sale of the bonds are appropriated to the property control division of the general services department for acquiring land and making site improvements for a state office building for the workers' compensation administration in Albuquerque. The first $.40 of the workers' compensation assessment imposed pursuant to § 52-5-19 NMSA 1978 that is distributed to the New Mexico finance authority is appropriated to be pledged irrevocably for payment of principal, interest, any premium and expenses related to the issuance and sale of the bonds. Revenue distributed to the New Mexico finance authority shall be deposited in a special bond fund and any money remaining in the fund at the end of each calendar quarter, after all current obligations and any sinking fund are met, shall be transferred to the workers' compensation administration fund. Upon payment of all principal and interest and any other obligations or expenses related to issuance of the bonds, the New Mexico finance authority shall certify to the taxation and revenue department that all obligations have been fully discharged and direct the department to cease payments of workers' compensation assessment fee revenue to the authority.

Laws 1998, ch. 7, § 43, effective February 17, 1998, provides that the appropriation in Laws 1994, ch. 91, § 1B is expanded to include constructing, equipping and furnishing a state office building for the workers' compensation administration in Albuquerque.

Laws 2002, ch. 99, § 1, effective May 15, 2002, expands the purpose of the bond appropriation made by Laws 1994, ch. 91, § 1 to include renovations and improvements to the state office building for workers' compensation administration in Albuquerque.

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 [Chapter 6, Article 21 NMSA 1978];

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 [Chapter 6, Article 21 NMWSA 1978];

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 [Chapter 6, Article 21 NMSA 1978];

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 [Chapter 6, Article 21 NMSA 1978], 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 [Chapter 6, Article 21 NMSA 1978].

History: Laws 1992, ch. 61, § 5; 2000, ch. 80, § 2; 2001, ch. 294, § 3.

ANNOTATIONS

Cross references. — As to public project revolving fund, see 6-21-6 NMSA 1978.

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.

The 2001 amendment, effective April 5, 2001, substituted "grant of 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).

Appropriations. — Laws 2001, ch. 53, § 2, effective March 15, 2001, provides that if a qualified entity listed in § 1 of Laws 2001, ch. 53 has not certified to the New Mexico finance authority by the end of fiscal year 2004 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 provided in that section is void.

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 [7-20F-3 to 7-20F-12 NMSA 1978] only after a majority of the registered 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.

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 [6-21-1 NMSA 1978].

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 equipment program. As used in this subsection, "equipment program" means the program of the authority designed to finance:

(1) the acquisition of equipment for:

(a) fire protection;

(b) law enforcement and protection;

(c) computer and data processing;

(d) street and road construction and maintenance;

(e) emergency medical services;

(f) solid waste collection, transfer and disposal;

(g) radio and telecommunications; and

(h) utility system purposes; and

(2) the acquisition, construction and improvement of fire stations.

I. The amount of securities acquired from or the loan made to a qualified entity at any one time pursuant to Subsection H of this section shall not exceed seven hundred fifty thousand dollars ($750,000). The authority shall either obtain specific authorization by law for the projects funded through the equipment program at a legislative session subsequent to the acquisitions of the securities or the making of loans or issue bonds

within two years of the date the securities are acquired or within two years of the date on which the loans are made and use the bond proceeds to reimburse the public project revolving fund for the amounts temporarily used to acquire securities or to make loans. The temporarily funded projects under the equipment program are not required to obtain specific authorization by law required of projects permanently funded from the public project revolving fund, as provided in this section and Section 6-21-8 NMSA 1978.

J. 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.

K. 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.

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.

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.

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.

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 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.

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 2002 amendment, effective March 4, 2002, added Subsection K.

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.

Appropriations. — Laws 2001, ch. 17, § 1, effective March 13, 2001, provides that the legislative authorization granted to the New Mexico finance authority pursuant to the provisions of 6-21-6 NMSA 1978 to make loans from the public project revolving fund is revoked with respect to certain qualified entities for specified public projects.

Laws 2001, ch. 53, § 1, effective March 15, 2001, authorizes the New Mexico finance authority to make loans from the public project revolving fund to certain qualified entities for certain public projects on terms and conditions established by the authority.

Laws 2002, ch. 67, § 1, effective March 4, 2002, authorizes the New Mexico finance authority to make loans from the public project revolving fund to certain qualified entities for certain public projects on terms and conditions established by the authority.

Laws 2002, ch. 67, § 2, effective March 4, 2002, provides that if a qualified entity listed in § 1 of the act has not certified to the New Mexico finance authority by the end of fiscal year 2005 its intent to pursue a loan from the public project revolving fund for the project specified in that section, the legislative authorization provided in that section is void.

Laws 2003, ch. 74, § 1, effective March 21, 2003 authorizes the New Mexico finance authority to make loans from the public project revolving fund to qualified entities for various public projects.

Laws 2004, ch. 61, § 1, effective March 4, 2004, authorizes the New Mexico finance authority to make loans from the public project revolving fund for various projects.

Revocation of legislative authority. — Laws 2004, ch. 102, § 1, effective March 9, 2004, revokes the authorization of the New Mexico finance authority to make loans for certain projects approved by Laws 1995, ch. 187, Laws 1996, ch. 8 (1st S.S.), Laws 1997, ch. 166, Laws 1998, ch. 72 and Laws 2002, ch. 12 (2nd S.S.).

Compiler's notes. — Laws 2003, ch. 74, § 2, effective March 21, 2003, provides for voiding of authorization.

6-21-6.1. Public project revolving fund; appropriations to other funds.

A. The authority and the department of environment may enter into a joint powers agreement pursuant to the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] for the purpose of describing and allocating duties and responsibilities with respect to creation of an integrated loan and grant program to be financed through issuance of bonds payable from the public project revolving fund. The bonds may be issued in installments or at one time by the authority in amounts authorized by law. The aggregate amount of bonds authorized and outstanding pursuant to this subsection shall not be greater than the amount of bonds that may be annually repaid from an 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. The net proceeds may be used for purposes of the water and wastewater planning fund and the water and wastewater project grant fund as specified in the New Mexico Finance Authority Act [Chapter 6, Article 21 NMSA 1978] or for 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 NMSA 1978] or the Drinking Water State Revolving Loan Fund Act [6-21A-1 to 6-21A-9 NMSA 1978].

B. Public projects funded pursuant to the Wastewater Facility Construction Loan Act, the Rural Infrastructure Act, the Solid Waste Act or the Drinking Water State Revolving Loan Fund Act shall not require specific authorization by law as required in Sections 6-21-6 and 6-21-8 NMSA 1978.

C. 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 the following funds for local infrastructure financing:

(1) the wastewater facility construction loan fund for purposes of the Wastewater Facility Construction Loan Act [Chapter 74, Article 6A NMSA 1978];

(2) the rural infrastructure revolving loan fund for purposes of the Rural Infrastructure Act [Chapter 75, Article 1 NMSA 1978];

(3) the solid waste facility grant fund for purposes of the Solid Waste Act [74-9-1 NMSA 1978];

(4) 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];

(5) the water and wastewater project grant fund for purposes specified in the New Mexico Finance Authority Act [Chapter 6, Article 21 NMSA 1978]; or

(6) the water and wastewater planning fund for purposes specified in the New Mexico Finance Authority Act [Chapter 6, Article 21 NMSA 1978].

D. The authority and the department of environment 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 C of this section for local infrastructure financing.

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.

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 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.

The 1996 amendment, rewrote Subsection A. Laws 1996, ch. 52 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

The 1997 amendment inserted "or the Drinking Water State Revolving Loan Fund Act" following "the Solid Waste Act" in Subsections A and B; added Paragraph C(4); and made minor stylistic changes throughout the section. Laws 1997, ch. 144 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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 2002 amendment, effective March 4, 2002, added "water and wastewater planning fund and the" in the last sentence of Subsection A and added Paragraph C(6).

6-21-6.2. Public project revolving fund; emergency public projects. (Repealed effective June 30, 2005.).

A. Money on deposit in the public project revolving fund may be used to acquire securities or to make loans to qualified entities for emergency public projects. The amount of securities acquired from or the loan made to a qualified entity at any one time for any one emergency public project shall not exceed five hundred thousand dollars ($500,000). Emergency public projects are not required to obtain the specific authorization by law required in Sections 6-21-6 and 6-21-8 NMSA 1978; however, each emergency public project must be specifically designated as such by the authority prior to the acquisition of securities or the making of a loan to a qualified entity for the emergency public project. The aggregate amount of loans for emergency public projects that may be made by the authority in any one fiscal year may not exceed three million dollars ($3,000,000).

B. The provisions of this section shall be effective until June 30, 2005.

History: Laws 1999, ch. 4, § 2; 2002, ch. 52, § 1.

ANNOTATIONS

The 2002 amendment, effective March 4, 2002, substituted "2005" for "2002" in Subsection B.

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 [6-21-1 NMSA 1978], 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 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.

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 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.

Appropriations. — Laws 2001, ch. 345, § 1, effective April 5, 2001, authorizes the New Mexico finance authority to make grants from the water and wastewater project grant fund in the amounts and to qualified entities specified in the act on terms and conditions established by the authority.

Laws 2001, ch. 345, § 2, effective April 5, 2001, provides that if a qualified entity listed in Laws 2001, ch. 345, § 1, has not certified to the New Mexico finance authority by the end of fiscal year 2004 its desire to continue to pursue a grant from the water and wastewater project grant fund for a project listed under that section, the legislative authorization granted to the finance authority for that public project shall be void.

Laws 2001, ch. 345, § 3, effective April 5, 2001, appropriates $40,910,000 from the general fund for expenditure in fiscal 2001 and subsequent fiscal years to the water and

wastewater project grant fund to carry out the provisions of this section. Included is $1,255,433 as a set-aside for emergency projects.

Laws 2002, ch. 110, § 48, effective March 6, 2002, appropriates $15,000,000 from the capital projects fund to the water and wastewater project grant fund for the purpose of making grants to water and wastewater projects.

Laws 2004, ch. 83, effective March 5, 2004, authorizes the New Mexico finance authority to make grants from the water and wastewater project grant fund for various projects.

6-21-6.4. Water and wastewater planning fund; creation; administration; purposes.

A. The "water and wastewater planning fund" is created within the authority, which 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 water and wastewater 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 water and wastewater 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 water and wastewater 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 meeting water and wastewater public project needs and to pay administrative costs of the water and wastewater planning program.

D. The authority shall adopt rules governing the terms and conditions of grants made from the water and wastewater planning fund. Grants may be made from the fund only with the agreement of the qualified entity to reimburse the fund for the amount of the grant when financing from any source is subsequently received by the qualified entity for the water or wastewater public project.

E. The authority may make grants from the water and wastewater planning fund to qualified entities without specific authorization by law for each grant.

History: Laws 2002, ch. 26, § 2.

ANNOTATIONS

Emergency clauses. — Laws 2002, ch. 26, § 4 makes the act effective immediately. Approved March 4, 2002.

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 [Chapter 6, Article 21 NMSA 1978] 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 makes the act effective immediately. Approved March 4, 2002.

6-21-6.6. Authorization for urgent economic development public projects. (Repealed effective June 30, 2006.).

A. The authority may make loans to a qualified entity, pursuant to the provisions of the New Mexico Finance Authority Act [6-21-1 NMSA 1978], from the public project revolving fund for public projects designated as urgent economic development public projects pursuant to Subsection B of this section without the specific authorization by law otherwise required by Sections 6-21-6 and 6-21-8 NMSA 1978.

B. The authority may designate an urgent economic development public project and provide urgent economic development financing to a qualified entity if the secretary of economic development provides documents to the authority certifying the need for the financing and:

(1) describing a substantial favorable economic impact and benefit to the qualified entity;

(2) demonstrating the urgent nature of the economic development public project because of the likelihood that a new business may choose another location outside of the state or an existing business may be unable to expand in a timely fashion without receipt of the urgent economic development financing;

(3) including evidence from the business detailing the new or expanded business opportunity and describing the jobs to be provided and the urgency of the public project; and

(4) including a resolution adopted by the governing body of the qualified entity approving the project and requesting the urgent economic development financing.

C. After review of the documents submitted by the secretary of economic development, the authority may provide urgent economic development financing to the qualified entity if the authority finds that the timing of the project is so urgent that the economic development benefit to the qualified entity will be lost if the funding decision is delayed until specific authorization of the public project can be obtained from the legislature.

D. Before urgent economic development financing is made available pursuant to this section, the authority shall adopt rules governing the process for reviewing urgent economic development projects and the submission of certification requests. The rules shall be subject to approval of the New Mexico finance authority oversight committee.

E. No urgent economic development project approved pursuant to this section shall receive financing in an amount exceeding two million dollars ($2,000,000), and the total amount of urgent economic development financing provided by the authority pursuant to the provisions of this section in any fiscal year shall not exceed twenty million dollars ($20,000,000).

History: Laws 2003, ch. 325, § 3.

ANNOTATIONS

Delayed repeals. — Laws 2003, ch. 325, § 4, repeals 6-21-6.6 NMSA 1978, as enacted by 2003, ch. 325, § 3, effective June 30, 2006.

Effective dates. — Laws 2003, ch. 325 contains 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.

6-21-6.7. 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 G 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 cancer research and treatment center at the university of New Mexico health sciences center; and

(2) improvements to department of health 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 E or Subsection F, 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 E or Subsection F, 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. Upon payment of all principal, interest, premiums and expenses on bonds additionally secured by a pledge of amounts deposited in the credit enhancement account, the authority shall certify to the secretary of taxation and revenue that all obligations for bonds 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 G of Section 7-1-6.11 NMSA 1978 and to distribute those cigarette tax proceeds to the general fund.

F. 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 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.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 341, § 6 makes the act effective on July 1, 2003.

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 [6-21-1 NMSA 1978]. 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 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).

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 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.

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, 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 1992, ch. 61, § 10; 2001, ch. 294, § 6.

ANNOTATIONS

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 [Chapter 6, Article 21 NMSA 1978], 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 [Chapter 6, Article 21 NMSA 1978], 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 [Chapter 6, Article 21 NMSA 1978].

History: Laws 1992, ch. 61, § 11; 2000, ch. 80, § 5; 2001, ch. 294, § 7.

ANNOTATIONS

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).

The 2001 amendment, effective April 5, 2001, in Paragraph A(4), added "acquisition", "or improvement" and "including real and personal property"; in Paragraph C(1), deleted "of a qualified entity" and added the language beginning "including rents and lease payments" to the end of the paragraph.

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 [Chapter 6, Article 21 NMSA 1978] 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 [Chapter 6, Article 21 NMSA 1978] 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 [Chapter 6, Article 21 NMSA 1978] 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 [Chapter 6, Article 21 NMSA 1978] 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 [Chapter 6, Article 21 NMSA 1978] 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 [Chapter 6, Article 21 NMSA 1978] 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 [Chapter 6, Article 21 NMSA 1978], 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 [Chapter 6, Article 21 NMSA 1978] 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 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.

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.

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 [6-21-1 NMSA 1978];

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 1995 amendment, effective April 5, 1995, inserted "except as authorized in the New Mexico Finance Authority Act" in Subsections E and F.

The 1996 amendment, effective March 5, 1996, added Subsection G and made a stylistic change.

The 2001 amendment, effective April 5, 2001, added the exception to Subsection C.

The 2003 amendment, effective June 20, 2003, added Subsection H.

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

History: Laws 1997, ch. 144, § 2.

6-21A-3. Definitions.

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

A. "authority" means the New Mexico finance authority;

B. "department" means the department of environment;

C. "drinking water facility construction project" means the acquisition, design, construction, improvement, expansion, repair or rehabilitation of all or part of any structure, facility or equipment necessary for a drinking water system or water supply system;

D. "drinking water supply facility" means any structure, facility or equipment necessary for a drinking water system or water supply system;

E. "financial assistance" means loans, the purchase or refinancing of debt obligation of a local authority at an interest rate that is less than or equal to the market interest rate in any case in which a debt obligation is incurred after July 1, 1993, loan guarantees, bond insurance or security for revenue bonds issued by the authority;

F. "fund" means the drinking water state revolving loan fund;

G. "local authority" means any municipality, county, incorporated county, sanitation district, water and sanitation district or any similar district, public or private water cooperative or association or any similar organization, public or private community water system or nonprofit noncommunity water system or any other agency created pursuant to a joint powers agreement acting on behalf of any entity listed in this subsection with a publicly owned drinking water system or water supply system that qualifies as a community water system or nonprofit noncommunity system as defined by

the Safe Drinking Water Act. "Local authority" does not include systems owned by federal agencies;

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

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

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

ANNOTATIONS

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

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

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

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

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

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

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

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

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

(5) revenue transferred from other state revolving funds.

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

(1) to provide loans for the construction or rehabilitation of drinking water facilities;

(2) to buy or refinance the debt obligation of a local authority at an interest rate that is less than or equal to the market interest rate in any case in which a debt obligation is incurred after July 1, 1993;

(3) to guarantee or purchase insurance for obligations of local authorities to improve credit market access or reduce interest rates;

(4) to provide loan guarantees for similar revolving funds established by local authorities; and

(5) to provide a source of revenue or security for the repayment of principal and interest on bonds issued by the authority if the proceeds of the bonds are deposited in the fund or if the proceeds of the bonds are used to make loans to local authorities to the extent provided in the terms of the federal grant.

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

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

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

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

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

ANNOTATIONS

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

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

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

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

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

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

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

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

C. The department shall adopt regulations or internal procedures addressing the mechanism for the preparation of the annual intended use plan and the content of such plan and shall prepare such plan, with the assistance of the authority, as required by the

Safe Drinking Water Act and the capitalization grant agreement. The department shall review all proposals for drinking water facility construction projects, including, but not limited to, project plans and specifications for compliance with the requirements of the Safe Drinking Water Act and the requirements of state laws and regulations governing the construction and operation of drinking water supply facilities. The department also shall determine whether a local authority has demonstrated adequate technical and managerial capability to operate the drinking water supply facility for its useful life in compliance with the requirements of the Safe Drinking Water Act and with the requirements of state laws and regulations governing the operation of drinking water supply facilities.

D. The department and the authority shall enter into an agreement for the purpose of describing and allocating duties and responsibilities with respect to monitoring the construction of drinking water facility construction projects that have been provided financial assistance pursuant to the provisions of the Drinking Water State Revolving Loan Fund Act [6-21A-1 to 6-21A-9 NMSA 1978] to ensure compliance with the requirements of the Safe Drinking Water Act and with the requirements of state laws and regulations governing construction and operation of drinking water supply facilities.

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

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

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

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

History: Laws 1997, ch. 144, § 5.

ANNOTATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: Laws 1997, ch. 144, § 6.

ANNOTATIONS

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

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

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

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

(2) report the intended transfer to the legislature.

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

History: Laws 1997, ch. 144, § 7.

ANNOTATIONS

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

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

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

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

(2) report the intended transfer to the legislature.

B. The authority will have the power:

(1) to foreclose upon or attach any drinking water facility, property or interest in the facility pledged, mortgaged or otherwise available as security for a project financed in whole or in part pursuant to the Drinking Water State Revolving Loan Fund Act [6-21A-1 to 6-21A-9 NMSA 1978] in the event of a default by a local authority;

(2) to acquire and hold title to or leasehold interest in real and personal property and to sell, convey or lease that property for the purpose of satisfying a default or enforcing the provisions of a loan agreement; and

(3) to enforce its rights by suit or mandamus or may utilize all other available remedies under state law in the event of default by a local authority.

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

bond issue is required or desirable to implement the provisions of the Drinking Water State Revolving Loan Fund Act.

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

(1) any obligations of each local authority, payable to the authority;

(2) the security for the local authority obligations;

(3) any grant, subsidy or contribution from the United States or any of its agencies or instrumentalities; or

(4) any income, revenues, funds or other money of the authority from any other source appropriated or authorized for use for the purpose of implementing the provisions of the Drinking Water State Revolving Loan Fund Act, including the fund.

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

(1) the purposes of the Drinking Water State Revolving Loan Fund Act [6-21A-1 to 6-21A-9 NMSA 1978] or the purposes for which the fund may be used;

(2) the payment of interest on bonds issued by the authority for a period not to exceed three years from the date of issuance of the bonds; and

(3) the payment of all expenses, including publication and printing charges, attorney fees, financial advisory and underwriter fees and premiums or commissions that the authority determines are necessary or advantageous in connection with the recommendation, advertisement, sale, creation and issuance of bonds.

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

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

H. All bonds, notes and certificates issued by the authority shall be special obligations of the authority, payable solely from the revenue, income, fees or charges that may, pursuant to the provisions of the New Mexico Finance Authority Act and the Drinking Water State Revolving Loan Fund Act, be pledged to the payment of such obligations, and the bonds, notes or certificates shall not create an obligation, debt or liability of the state. No breach of any pledge, obligation or agreement of the authority shall impose a pecuniary liability upon the state or a charge upon its general credit or taxing power.

History: Laws 1997, ch. 144, § 8.

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

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

History: Laws 1997, ch. 144, § 9.

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

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

History: Laws 1997, ch. 144, § 10.

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 Office Building Acquisition 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'".

Effective dates. — Laws 2001, ch. 199, § 13 makes the act effective July 1, 2001.

6-21C-2. Repealed.

ANNOTATIONS

Repeals. — Laws 2003, ch. 371, § 13 repeals 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 Replacement Pamphlet.

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. Further, in anticipation of the state's future office space needs, the legislature finds it prudent to establish an office acquisition program.

B. The purpose of the State Building Bonding Act [6-21C-1 NMSA 1978] is to acquire additional state office buildings 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.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 123 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

Laws 2004, ch. 123, § 1 enacts this section as a new Section 6-21C-2 NMSA 1978, however, since that section has been previously repealed, it has been compiled as section 6-21C-2.1 NMSA 1978.

6-21C-3. Definitions.

As used in the State Building Bonding Act [6-21C-1 NMSA 1978]:

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 provides 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 [6-21C-1 NMSA 1978] for the purpose of acquiring state office buildings when the acquisition has been reviewed by the capitol buildings planning commission and has been authorized by legislative act and the director of the property control division of the general services department has certified the need for the issuance of the bonds.

B. The net proceeds from the building bonds are appropriated to the property control division of the general services department for the purpose of acquiring state office buildings, 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.

ANNOTATIONS

Cross references. — For the New Mexico finance authority, see 6-21-1 NMSA 1978.

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.

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.

Effective dates. — Laws 2001, ch. 199, § 13 makes the act effective July 1, 2001.

Temporary provisions. — Laws 2003, ch. 371, § 12, provides 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.

Tax revenue bonds authorized. — Laws 2001, ch. 166, § 1 authorizes the property control division to plan, design, purchase, renovate and furnish certain properties in Santa Fe county for use as state agency offices.

Laws 2001, ch. 166, § 2 authorizes the issuance of state office building tax revenue bonds, in an amount not to exceed $75,000,000, to acquire one or more of the properties listed in Section 1 of the act.

Laws 2001, ch. 166, § 3 makes the act effective immediately. Approved April 3, 2001.

Laws 2004, ch. 123, § 6, amends Laws 2001, ch. 166, § 1 effective May 19, 2004, to delete the requirement in Subsection A, Paragraph (4) that the land to be purchased be adjacent to the district five office of the department of transportation on Cerrillos road.

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.

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 [6-21C-1 NMSA 1978]. Money in the fund is appropriated 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.

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. 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 property control 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.

ANNOTATIONS

Cross references. — For the New Mexico finance authority, see 6-21-1 NMSA 1978.

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 tax revenue bonds, and the state cultural affairs officer, in the case of state museum tax revenue bonds" in Paragraph D(1).

The 2004 amendment, effective May 19, 2004, amended Subsection D, Paragraph (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".

Effective dates. — Laws 2001, ch. 199, § 13 makes the act effective July 1, 2001.

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".

Effective dates. — Laws 2001, ch. 199, § 13 makes the act effective July 1, 2001.

6-21C-7. Building bonds; form; execution.

A. The New Mexico finance authority, except as otherwise specifically provided in the State Building Bonding Act [6-21C-1 NMSA 1978], 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 [6-9-6 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.

Effective dates. — Laws 2001, ch. 199, § 13 makes the act effective July 1, 2001.

Temporary provisions. — Laws 2003, ch. 371, § 12, provides 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 property

control 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.

ANNOTATIONS

Cross references. — For the New Mexico finance authority, see 6-21-1 NMSA 1978.

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.

The 2004 amendment, effective May 19, 2004, amended Subsection A to delete "or the office of cultural affairs" following "general services department".

Effective dates. — Laws 2001, ch. 199, § 13 makes the act effective July 1, 2001.

6-21C-9. State Building Bonding Act is full authority for issuance of bonds; bonds are legal investments.

A. The State Building Bonding Act [6-21C-1 NMSA 1978] 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.

Effective dates. — Laws 2001, ch. 199, § 13 makes the act effective July 1, 2001.

Temporary provisions. — Laws 2003, ch. 371, § 12, provides 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 [6-21C-1 NMSA 1978].

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".

Effective dates. — Laws 2001, ch. 199, § 13 makes the act effective July 1, 2001.

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".

Effective dates. — Laws 2001, ch. 199, § 13 makes the act effective July 1, 2001.

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 [6-22-1 to 6-22-3 NMSA 1978]:

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 Section 7-1-6.4, 7-1-6.9 and Subsection B of Section 7-1-6.11 NMSA 1978.

History: Laws 1992, ch. 105, § 2.

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 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".

The 2001 amendment, effective June 15, 2001, substituted "Facility" for "Building".

6-23-2. Definitions.

As used in the Public Facility Energy Efficiency and Water Conservation Act [Chapter 6, Article 23 NMSA 1978]:

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 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.

ANNOTATIONS

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.

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".

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 amount of utility cost savings and conservation-related cost savings over ten years from the date of installation if the recommendations in the proposal were followed; 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 ten years; 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 [Chapter 6, Article 23 NMSA 1978] 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.

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.

ANNOTATIONS

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 Paragraph (1), inserted "or water" and inserted "or both," inserted "water" in Paragraph (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".

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 2001 amendment, effective June 15, 2001, in Paragraph 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 Paragraph 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 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 Paragraph 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.

6-23-4. Guaranteed utility savings contract; performance bond required.

A governmental unit shall not enter into a guaranteed utility savings contract unless a performance bond that meets the requirements of this section is delivered by the qualified provider to the governmental unit and that bond becomes binding on the parties upon the execution of the guaranteed utility savings contract. The qualified provider shall provide a performance bond satisfactory to the governmental unit and its approving agency executed by a surety company authorized to do business in this state and approved in federal circular 570 published by the United States treasury department or by the state board of finance. The bond shall be in an amount equal to the amount of the guarantee given by the qualified provider in the guaranteed utility savings contract.

History: Laws 1993, ch. 231, § 4; 1997, ch. 42, § 4.

ANNOTATIONS

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 [Chapter 6, Article 23 NMSA 1978] 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 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, in Paragraph (1), inserted "and Water Conservation" and deleted "and" at the end of the paragraph; in Paragraph (2), inserted "of energy conservation measures" and added "and" at the end of the paragraph; and added Paragraph (3).

The 1999 amendment, effective June 18, 1999, in Subsection A substituted "state agencies" for "agencies, institutions and instrumentalities of the state" in Paragraph (2), added Paragraph (4), and made related stylistic changes.

The 2001 amendment, effective June 15, 2001, in Paragraph A(2), deleted "by the secretary of general services" following "for state agencies" and added Paragraphs

A(2)(a) and (b); substituted "governing body of the municipality or county" for "secretary of finance and administration" in Paragraph A(3); and substituted "Public Facility" for "Public Building" in Paragraph B(1).

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 [Chapter 6, Article 23 NMSA 1978].

History: Laws 1993, ch. 231, § 6; 1997, ch. 42, § 6; 2001, ch. 247, § 5.

ANNOTATIONS

The 1997 amendment, effective June 20, 1997, substituted "utility" for "energy" throughout the section and inserted "and Water Conservation".

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" or "Public Building".

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, which 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 ten 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 ten 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.

ANNOTATIONS

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).

The 2001 amendment, effective June 15, 2001, substituted "water or energy by fuel type" for "water, energy by fuel type, or both" in Paragraphs 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 Paragraphs (1) and (2), substituted "appropriate fund" for "general fund" at the end of Paragraph (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.

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 superintendent of public instruction shall determine the sum of the deductions made in the state equalization guarantee distribution of school districts pursuant to Paragraph (7) of Subsection D of 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 state department of public education 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 superintendent of public instruction that the disbursement is for a payment authorized by the Public Facility Energy Efficiency and Water Conservation Act [Chapter 6, Article 23 NMSA 1978].

E. The superintendent of public instruction shall submit to the legislative finance 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.

ANNOTATIONS

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.

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.

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 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.

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.

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 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.

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.

6-23-10. State institutions and buildings; use of certain revenues authorized.

A. 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 and special funds of institutions may be appropriated and pledged for payments pursuant to any guaranteed utility savings contract or related lease-purchase agreement or installment payment contract pursuant to the Public Facility Energy Efficiency and Water Conservation Act [Chapter 6, Article 23 NMSA 1978]. Any money so appropriated shall be deposited in a special fund or account of the institution or fund and, except as provided in Subsection B of this section, that revenue and no other revenue shall be pledged for payments pursuant to the Public Facility Energy Efficiency and Water Conservation Act.

B. In the absence of an appropriation for payments pursuant to Subsection A of this section, when entering into a guaranteed utility savings contract, an institution may pledge resulting utility cost savings or conservation-related cost savings for payments to be made under the contract, provided that the utility cost savings or conservation-related cost savings are subject to appropriation by the legislature.

History: Laws 1993, ch. 231, § 10; 1997, ch. 42, § 11; 1999, ch. 257, § 4; 2001, ch. 247, § 10.

ANNOTATIONS

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".

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 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".

ARTICLE 24
New Mexico Lottery

6-24-1. Short title.

Sections 1 through 34 [6-24-1 to 6-24-34 NMSA 1978] of this act may be cited as the "New Mexico Lottery Act".

History: Laws 1995, ch. 155, § 1.

ANNOTATIONS

Cross references. — For criminal offenses related to gambling, see Chapter 30, Article 19 NMSA 1978.

For the Gaming Control Act, see 60-2E-1 NMSA 1978 et seq.

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 [6-24-1 to 6-24-34 NMSA 1978] 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 the former Paragraph (1) listing funding critical capital outlay needs of public schools and deleted the paragraph designation of the former Paragraph (2).

6-24-4. Definitions.

As used in the New Mexico Lottery Act [6-24-1 to 6-24-34 NMSA 1978]:

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;

I. "major procurement contract" means a contract for the procurement of any lottery game product or service costing in excess of seventy-five thousand dollars ($75,000), including, but not limited to, major advertising contracts, annuity contracts, prize payment agreements, consulting services, equipment, tickets and other products and services unique to the lottery, but not including materials, supplies, equipment and services common to the ordinary operations of a corporation;

J. "net revenues" means all lottery and nonlottery revenues received by the authority less payments for lottery prizes and operating expenses as provided in the New Mexico Lottery Act; and

K. "person" means an individual or any other legal entity.

History: Laws 1995, ch. 155, § 4.

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 [6-24-1 to 6-24-34 NMSA 1978].

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.

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 [6-24-1NMSA 1978] 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 [6-24-1 NMSA 1978], 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 Paragraph 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 Subparagraphs A(7)(a) to (f); deleted "but not limited to" in Paragraphs A(8), (12), and (16); inserted "with" preceding "agencies or instrumentalities" in Paragraph A(9); and deleted "any and" preceding "all types on" in Paragraph 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 net revenue for the public purposes of the New Mexico Lottery Act [6-24-1 to 6-24-34 NMSA 1978] and to that end assure that all rules, policies and procedures adopted further revenue maximization;

C. appoint a chief executive officer, prescribe his 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 all major procurements and approve, disapprove, amend or modify the terms of such procurements recommended by the chief executive officer;

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; and

I. pursue any and all 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.

History: Laws 1995, ch. 155, § 7.

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 [6-24-1 to 6-24-34 NMSA 1978];

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 [6-24-1 to 6-24-34 NMSA 1978]. 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 [6-24-1 to 6-24-34 NMSA 1978] 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 [6-24-1 to 6-24-34 NMSA 1978] 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 Paragraph 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 [6-24-1 to 6-24-34 NMSA 1978];

(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(3), 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 [6-24-1 to 6-24-34 NMSA 1978] 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:

(l) 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 [6-24-1 to 6-24-34 NMSA 1978] 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.

Americans with Disabilities Act. — The federal Americans with Disabilities Act, referred to in Paragraph C(5), is codified as 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 [6-24-1 to 6-24-34 NMSA 1978] 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 [6-24-1 to 6-24-34 NMSA 1978] 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. Major procurement; competitive proposals.

A. The authority shall enter into a contract for a major procurement after evaluating competitive proposals, and shall not design requests for proposals to provide only for sole source contracts. The authority shall design requests for proposals in such a manner as to encourage competitive proposals. The board shall adopt procedures and standards designed to allow the selection of proposals that provide the greatest long-term benefit to the state, the greatest integrity for the authority and the best service and products for the public.

B. In any request for proposal process, the authority shall conduct its own procurement, but the authority shall conduct all major procurement in keeping with the general principles of the Procurement Code [13-1-28 NMSA 1978].

C. The authority may make procurements that integrate functions such as lottery game design and production, lottery ticket distribution to retailers, marketing support, supply of goods and services and advertising. 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 net revenues for the public purposes of the New Mexico Lottery Act [6-24-1 to 6-24-34 NMSA 1978].

D. Procurements shall not be artificially divided to reduce the cost of the procurement below the major procurement threshold.

History: Laws 1995, ch. 155, § 19.

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 [6-24-1 to 6-24-34 NMSA 1978].

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 [6-24-1 to 6-24-34 NMSA 1978]. 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; payment to department; procedure.

A. The human services 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. 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.

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, 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 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 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, 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

Cross references. — For enforcement of support obligations, see Chapter 40, Article 4A NMSA 1978.

Social Security Act. — Title IV-D of the federal Social Security Act, referred to in Subsection A, is codified as 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. Lottery tuition fund created; purpose.

A. The "lottery tuition fund" is created in the state treasury. The fund shall be administered by the commission on higher education. Earnings from investment of the fund shall accrue to the credit of the fund. Any balance in the fund at the end of any fiscal year shall remain in the fund for appropriation by the legislature as provided in this section.

B. Money in the lottery tuition fund is appropriated to the commission on higher education for distribution to New Mexico's public post-secondary educational institutions to provide tuition assistance for New Mexico resident undergraduates as provided by law.

History: Laws 1995, ch. 155, § 23; 1997, ch. 106, § 1; 2001, ch. 300, § 2.

ANNOTATIONS

Cross references. — For the commission on higher education, see 21-1-26 NMSA 1978.

For tuition scholarships, see 21-1-4.3 NMSA 1978.

The 1997 amendment, effective June 20, 1997, in Subsection B, added "After appropriation, if any, by the legislature for scholarships pursuant to Subsection C of Section 21-1-2 NMSA 1978, the remaining" at the beginning of the subsection and substituted "is appropriated to the commission on higher education for distribution" for "shall be available for appropriation by the legislature".

The 2001 amendment, effective June 15, 2001, at the beginning of Subsection B, deleted "After appropriation, if any, by the legislature for scholarships pursuant to Subsection C of Section 21-1-2 NMSA 1978, the remaining".

6-24-24. Disposition of revenue.

A. As nearly as practical, an amount equal to at least fifty percent of the gross annual revenues from the sale of lottery tickets shall be returned to the public in the form of lottery prizes.

B. The authority shall transmit all net revenues to the state treasurer, who shall deposit them in the lottery tuition fund. Estimated net revenues shall be transmitted monthly to the state treasurer for deposit in the fund; provided that the total amount of annual net revenues for the fiscal year shall be transmitted no later than August 1 each year.

C. In determining net revenues, 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 [6-24-1 to 6-24-34 NMSA 1978].

D. An amount up to two percent of the gross annual revenues shall be set aside as a reserve fund to cover bonuses and incentive plans for lottery retailers, special promotions for retailers, purchasing special promotional giveaways, sponsoring special promotional events, compulsive gambling rehabilitation and such other purposes as the board deems necessary to maintain the integrity and meet the revenue goals of the lottery. The board shall report annually to the governor and each regular session of the legislature on the use of the money in the reserve fund. Any balance in excess of fifty thousand dollars ($50,000) at the end of any fiscal year shall be transferred to the lottery tuition fund.

History: Laws 1995, ch. 155, § 24; 2000, ch. 52, § 1; 2001, ch. 300, § 3.

ANNOTATIONS

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.

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".

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.

Internal Revenue Code of 1986. — The Internal Revenue Code of 1986, referred to in Subsection E, is codified as 26 U.S.C.S. § 1 et seq.

6-24-27. Revenue and budget reports; records; independent audits.

A. The board shall:

(l) 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 net revenues 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 net revenues to be deposited in the public school capital outlay fund and 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 and the legislative finance committee.

History: Laws 1995, ch. 155, § 27; 2001, ch. 91, § 3.

ANNOTATIONS

The 2001 amendment, effective April 2, 2001, deleted "and lottery oversight committee" following "legislative finance committee" in Paragraph 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 Paragraph 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 [6-24-1 to 6-24-34 NMSA 1978];

(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 [6-24-1 to 6-24-34 NMSA 1978].

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 [6-24-1 to 6-24-34 NMSA 1978];

(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 Paragraph 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 [6-24-1 to 6-24-34 NMSA 1978] 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 60-2E-1 NMSA 1978 et seq.

ARTICLE 25
Statewide Economic Development

6-25-1. Short title.

Sections 1 through 16 [6-25-1 to 6-25-16 NMSA 1978] of this act may be cited as the "Statewide Economic Development Finance Act".

History: Laws 2003, ch. 349, § 1.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 349 contains 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.

6-25-2. Findings and purpose.

A. The legislature finds that:

(1) an important purpose of government is 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, cities, 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 utilized:

(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 [6-25-1 to 6-25-16 NMSA 1978] is to stimulate economic development with a needed program in the public interest that serves a necessary and valid public purpose.

History: Laws 2003, ch. 349, § 2.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 349 contains 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.

6-25-3. Definitions.

As used in the Statewide Economic Development Finance Act [6-25-1 NMSA 1978]:

A. "authority" means the New Mexico finance authority;

B. "department" means the economic development department;

C. "economic development bonds" or "bonds" means bonds, notes or other instruments issued by the authority pursuant to the Statewide Economic Development Finance Act [6-25-1 NMSA 1978];

D. "economic development goal" means the retention and expansion of existing business enterprises, the attraction of new business enterprises or the creation and promotion of an environment suitable for the support of start-up and emerging business enterprises within the state, whether the business enterprises are for-profit or not-for-profit;

E. "eligible entity" means the person operating a project; "eligible entity" may include a for-profit business enterprise, including a corporation, limited liability company, partnership or other entity, determined by the department to be engaged in a project enterprise that serves an economic development goal and is suitable for financing assistance;

F. "financing assistance" means financing provided by the authority to eligible entities pursuant to the Statewide Economic Development Finance Act or the New Mexico Finance Authority Act [6-21-1 NMSA 1978] that may be in the form of economic development bonds, loan participations or loan guarantees;

G. "local school district" means a school district in which is located project property that has been or will be exempted from property taxes pursuant to the Statewide Economic Development Finance Act;

H. "mortgage" means a mortgage, deed of trust or pledge of any assets as a collateral security;

I. "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, local school district and, if applicable, municipal approval of a project, subject to compliance with all local zoning, permitting and other land use regulations, and for payments in lieu of taxes to the qualifying county, local school

district and, if applicable, qualifying municipality as provided by the Statewide Economic Development Finance Act;

J. "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 local school district and, if applicable, the qualifying municipality, which payment shall be distributed to the county, municipality and local school district in the same proportion as property tax revenues are normally distributed to those recipients;

K. "project" means the acquisition and use of land, buildings, other improvements and other project property for use by an eligible entity as:

(1) industrial 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 and cultural facilities, including museums, theaters, arenas or assembly halls; and

(6) recreational and tourism facilities, including parks, pools, trails, open space and equestrian facilities;

L. "project property" means any land and improvements thereon, buildings and improvements thereto, machinery and equipment of all kinds necessary to the project, operating capital and other personal property deemed necessary in connection with the project;

M. "qualifying municipality or county" means a municipality or county that enters into an opt-in agreement;

N. "state in-lieu payment" means an annual payment, in an amount determined by the department, that will be distributed to a qualifying county, a local school district and, if applicable, a qualifying municipality in the same proportion as property tax revenues are normally distributed to those recipients; and

O. "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 property to the department.

History: Laws 2003, ch. 349, § 3.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 349 contains 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.

6-25-4. Economic development department; additional powers.

Consistent with the provisions of the Statewide Economic Development Finance Act [6-25-1 NMSA 1978], the department may:

A. acquire, whether by construction, purchase, gift or lease, and hold fee simple title to or other interest in any project or project property;

B. enter into a lease of property in connection with any project or project property;

C. sell, lease or otherwise dispose of any project property;

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 bonds issued by the authority;

E. make state in-lieu payments to a qualifying county, a local 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 deem appropriate for such purposes.

History: Laws 2003, ch. 349, § 4.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 349 contains 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.

6-25-5. 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 from the authority 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, local 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, local 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 14 [6-25-14 NMSA 1978] of the Statewide Economic Development Finance Act; 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 [6-25-1 NMSA 1978].

History: Laws 2003, ch. 349, § 5.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 349 contains 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.

6-25-6. New Mexico Finance Authority; additional powers and duties.

A. Consistent with the provisions of the Statewide Economic Development Finance Act [6-25-1 NMSA 1978], the authority may:

(1) issue economic development bonds, notes or other debt instruments 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) enter into loan participation agreements on behalf of eligible entities, whether in the form of an interest rate buy-down, the purchase of loans originated and underwritten by third-party lenders or other similar arrangements;

(3) offer loan guarantees;

(4) make, enter into and enforce all contracts necessary, convenient or desirable for purposes of the authority or pertaining to the other powers granted pursuant to the Statewide Economic Development Finance Act;

(5) make and execute contracts for the origination, administration, servicing or collection of any loan, and to pay the reasonable value of services rendered to the authority pursuant to the contracts;

(6) fix, revise from time to time, charge and collect fees and other charges in connection with the issuance of bonds; the making, purchase or guaranty of loans; and any other services rendered by the authority;

(7) 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;

(8) acquire fee simple, leasehold, mortgagor's or mortgagee's interests in real or personal property and to sell, mortgage, convey, lease or assign that property for authority purposes; and

(9) in the event of default by an eligible entity, enforce its rights by suit, mandamus and all other remedies available under state law.

B. The authority shall adopt policies and procedures to:

(1) establish minimum credit qualifications for financing assistance to eligible entities for projects recommended by the department;

(2) establish procedures for applying for financing assistance; and

(3) establish fees to pay the costs of originating and administering financing assistance.

C. 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.

History: Laws 2003, ch. 349, § 6.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 349 contains 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.

6-25-7. Economic development bonds.

A. The authority may issue economic development bonds on behalf of an eligible entity to provide funds for a project recommended by the department for financing assistance. Bonds issued pursuant to the Statewide Economic Development Finance Act [6-25-1 NMSA 1978] 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, and every bond issued pursuant to the Statewide Economic Development Finance Act shall state that fact plainly on its face. 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 deemed appropriate by the authority. Bonds may be executed and delivered at any time, and from time to time, may be in such form and denominations, may be of such tenor, may be payable in such installments and at such time or times not exceeding thirty years from their date of delivery, may be payable at such place or places, may

bear interest at such rate or rates payable at such place or places and evidenced in such manner and may contain such provisions not inconsistent with the Statewide Economic Development Finance Act, all as shall be provided in the resolution and proceedings of the authority authorizing issuance of the bonds. 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 to be most advantageous, and the authority may pay all expenses; attorney, engineering and architect fees; premiums; and commissions that the authority may deem necessary or advantageous in connection with the authorization, sale and issuance of the bonds. All bonds issued pursuant to the Statewide Economic Development Finance Act shall be construed to be negotiable.

B. The principal of and interest on bonds issued pursuant to the Statewide Economic Development Finance Act [6-25-1 NMSA 1978] 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 any part of the project property being financed or other collateral pledged by an eligible entity, and may be secured by the lease of such project property, 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 bonds are authorized to be issued or any such mortgage may contain any agreement and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, 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 property, the maintenance and insurance of the project property, 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 the authority or the department shall deem advisable 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 obligate themselves except with respect to the project and application of the revenues therefrom, 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 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 the authority may deem appropriate for the bonds and may provide for the payment of the costs of the same 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. Bonds issued to finance a project may also be secured by pledging a portion of the qualifying municipal or county infrastructure gross receipts tax revenues by the municipality or county in which the project is located, as permitted by the Local Economic Development Act [5-10-1 NMSA 1978].

E. The 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 hereof and revenue derived from any sale or lease of project property shall be exempt from all taxation by the state or any political subdivision. The authority may issue 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 NMSA 1978] may be used for projects financed with bonds issued pursuant to the Statewide Economic Development Finance Act [6-25-1 NMSA 1978].

History: Laws 2003, ch. 349, § 7.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 349 contains 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.

6-25-8. Leases of project property.

A. Prior to the department's lease of any project property to an eligible entity, the authority shall determine:

(1) the amount necessary in each year to pay the principal of and interest on bonds proposed to be issued to finance the project;

(2) the amount necessary to be paid each year into any reserve funds that the authority may deem advisable to establish in connection with the retirement of the proposed bonds and the maintenance and repair of the project property; and

(3) unless the terms under which the project property is to be leased provide that the lessee shall maintain the project property and carry all proper insurance with respect thereto, the estimated cost of maintaining the project property 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 bonds are to be issued; and prior to the issuance of the bonds, the department shall lease the project property 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 deemed by the authority to be advisable in connection with the bonds; and

(3) pay the costs of maintaining the project property in good repair and keeping it properly insured, unless the lease obligates the lessee to pay for the maintenance and insurance of the project property.

History: Laws 2003, ch. 349, § 8.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 349 contains 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.

6-25-9. Refunding bonds.

A. Outstanding economic development bonds may at any time and from time to time 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 bonds, all unpaid accrued and unaccrued interest on the bonds to the normal maturity date of such bonds or to selected prior redemption dates thereof, any redemption premiums, any commission and all estimated costs incidental to the issuance of such bonds and to such refunding as may be determined by the authority. The principal amount of refunding bonds may be equal to, less than or greater than the principal amount of the 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 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 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 the [sic] they are by their terms subject to redemption. Refunding bonds shall be payable from the revenues out of which other bonds issued pursuant to the Statewide Economic Development Finance Act [6-25-1 NMSA 1978] may be 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 also as provided in this section, or from any combination of the foregoing sources, and may be secured in the manner that other bonds issued pursuant to the Statewide Economic Development Finance Act may be secured.

B. Proceeds of refunding bonds shall either be applied immediately to the retirement of the 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 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.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 349 contains 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.

6-25-10. Use of bond proceeds.

The proceeds from the sale of bonds issued pursuant to the Statewide Economic Development Finance Act [6-25-1 NMSA 1978] shall be applied only for the purpose for which the bonds were issued and cost related to the acquisition of the project property. The cost of acquiring any project property shall include the following:

A. the cost of the construction of any part of project property that may be constructed, including architect, engineering and attorney fees;

B. the purchase price of any part of project property that may be acquired by purchase;

C. the cost of the extension of any utility to the project site;

D. all expenses in connection with the authorization, sale and issuance of the bonds; and

E. the interest on the bonds for a reasonable time prior to construction, during construction and a reasonable time after completion of construction.

History: Laws 2003, ch. 349, § 10.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 349 contains 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.

6-25-11. Bonds legal investments.

Bonds issued pursuant to the Statewide Economic Development Finance Act [6-25-1 NMSA 1978] shall be legal investments for savings banks and insurance companies organized under the laws of the state.

History: Laws 2003, ch. 349, § 11.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 349 contains 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.

6-25-12. Loan participations.

The authority may purchase loans or participations in loans to eligible entities by third-party lenders for projects recommended by the department, in amounts and pursuant to such terms as the authority deems appropriate pursuant to the authority's rules, where:

A. the third-party lender is responsible for the origination, underwriting, servicing and administration of the loan; and

B. the portion of the loan purchased or underwritten by the authority is secured by a lien on a parity with the lien obtained by the third-party lender in any collateral, pursuant to which the authority's rights in such collateral may be exercised on a pro-rata basis with the third-party lender's rights in the collateral.

History: Laws 2003, ch. 349, § 12.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 349 contains 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.

6-25-13. Statewide loan participation fund.

A. The "statewide loan participation 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 [6-25-1 NMSA 1978].

B. Except as otherwise provided in the Statewide Economic Development Finance Act], money from payments of principal of and interest on loan participations and other securities held by the authority for projects receiving financing assistance based upon the department's recommendation shall be deposited in the fund; provided that fees charged by the authority to pay the costs of originating and administering loans, loan participations or loan guarantees for projects, other than interest, shall not be deposited in the fund, but shall be deposited in a separate account and may be used by the authority to meet its administrative costs.

C. Except as otherwise provided in the Statewide Economic Development Finance Act, money in the fund is appropriated to the authority to pay the reasonably necessary costs of originating and servicing loan participations, to purchase loan participations and to purchase securities to assist eligible entities in financing projects in accordance with the Statewide Economic Development Finance Act and pursuant to the recommendation of each project by the department.

D. Money in the 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 fund may be designated as a reserve for bonds issued by the authority pursuant to the Statewide Economic Development Finance Act, including bonds payable from sources other than the fund, and the authority may covenant in any bond resolution or trust indenture to maintain and replenish the reserve from money deposited in the fund after issuance of bonds by the authority.

F. Money in the fund may be used to purchase 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.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 349 contains 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.

6-25-14. Tax impact fund.

A. The "tax impact fund" is created within the state treasury. The fund shall consist of money appropriated to the fund and money distributed to the fund by law. Money

remaining in the 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 [6-25-1 NMSA 1978]. For the purpose of mitigating the tax impact of a project, money in the fund shall be disbursed by warrant of the department 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. 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. 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 property when the following conditions are satisfied:

(1) title to project property 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, local school district and, if applicable, qualifying municipality would otherwise have been entitled to receive;

(2) pursuant to an opt-in agreement, the qualifying county, local school district and, if applicable, qualifying municipality have certified to the department in advance that it supports 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 local 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, local 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, local school district and, if applicable, qualifying municipality that results from the transfer of title to project property to the department;

(2) the increase in local revenues that the qualifying county, local 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 and counties and local 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 [6-25-1 NMSA 1978], 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.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 349 contains 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.

6-25-15. Cumulative authority.

The Statewide Economic Development Finance Act [6-25-1 NMSA 1978] 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 contains 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 [6-25-1 NMSA 1978], 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 contains 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.

ARTICLE 26
Behavioral Health Capital Funding Act

6-26-1. Short title.

This act may be cited as the "Behavioral Health Capital Funding Act" [6-26-1 NMSA 1978].

History: Laws 2004, ch. 71, § 1.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 71 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

6-26-2. Purpose.

The purpose of the Behavioral Health Capital Funding Act [6–26–1 NMSA 1978] 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

6-26-3. Definitions.

As used in the Behavioral Health Capital Funding Act [6-26-1 NMSA 1978]:

A. "authority" means the New Mexico finance authority;

B. "capital project" means repair, renovation or construction of a behavioral health facility; purchase of land; or acquisition of capital equipment of a long-term nature;

C. "department" means the department of health;

D. "eligible entity" means a nonprofit behavioral health facility that has assets totaling less than ten million dollars ($10,000,000), is a 501(c)(3) nonprofit corporation for federal income tax purposes and serves primarily sick and indigent patients; and

E. "fund" means the behavioral health capital fund.

History: Laws 2004, ch. 71, § 3.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 71 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

Cross references. — For the New Mexico finance authority see Section 6-21-4 NMSA 1978. For the department of health, see Section 9-7-4 NMSA 1978.

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 capital projects pursuant to the Behavioral Health Capital Funding Act [6-26-1 NMSA 1978].

C. The fund shall be administered by the authority. Administrative costs of the authority or department shall not be paid from the fund.

History: Laws 2004, ch. 71, § 4.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 71 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

6-26-5. Department; authority; rules.

The department, in conjunction with the authority, shall adopt rules to administer and implement the provisions of the Behavioral Health Capital Funding Act [6-26-1 NMSA 1978], including provisions:

A. establishing procedures and forms for applying for loans for capital projects;

B. specifying the documentation required to be provided by the applicant to justify the need for the capital 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 capital 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 state's interest in any capital project by the filing of a lien equal to the total of the state'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 state's interest in a capital project is protected.

History: Laws 2004, ch. 71, § 5.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 71 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

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 [6-26-1 NMSA 1978]. 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) 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

(2) 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 capital project;

(4) evaluating the capability of an applicant to provide and maintain behavioral health services;

(5) selecting recipients of loans; and

(6) determining that capital projects comply with all state and federal licensing and procurement 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 defined 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.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 71 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

6-26-7. Eligible entity; change in status.

If an eligible entity that has received a loan for a capital project ceases to maintain its nonprofit status or ceases to deliver behavioral health services at the site of the capital project for twelve consecutive months, the state may pursue the remedies provided in the loan agreement or as provided by law.

History: Laws 2004, ch. 71, § 7.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 71 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

ARTICLE 27
Affordable Housing Act

6-27-1. Short title.

This act may be cited as the "Affordable Housing Act" [6-27-1 NMSA 1978].

History: Laws 2004, ch. 104, § 1.

ANNOTATIONS

Emergency clauses. — Laws 2004, ch. 104, § 9, makes the act effective immediately. Approved March 9, 2004.

6-27-2. Purpose.

The purpose of the Affordable Housing Act [6-27-1 NMSA 1978] is to implement the provisions of Subsections E and F of Section 14 of Article 9 of the constitution of New Mexico.

History: Laws 2004, ch. 104, § 2.

ANNOTATIONS

Emergency clauses. — Laws 2004, ch. 104, § 9, makes the act effective immediately. Approved March 9, 2004.

6-27-3. Definitions.

As used in the Affordable Housing Act [6-27-1 NMSA 1978]:

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 donated for use in connection with an affordable housing project;

D. "governmental entity" means a state, county or municipality;

E. "household" means one or more persons occupying a housing unit;

F. "housing assistance grant" means the donation by a governmental entity of:

(1) land for construction of an affordable housing project;

(2) an existing building for conversion or renovation as affordable housing; or

(3) the costs of 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. "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

L. "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 and housing intended to provide or providing transitional or temporary housing for homeless persons.

History: Laws 2004, ch. 104, § 3.

ANNOTATIONS

Emergency clauses. — Laws 2004, ch. 104, § 9, makes the act effective immediately. Approved March 9, 2004.

6-27-4. Eligibility requirements; non-individual and individual qualifying grantees.

A. To be eligible to receive lands, buildings and infrastructure pursuant to Section 14 of Article 9 of the constitution of New Mexico, a non-individual qualifying grantee shall:

(1) have a functioning accounting system that is operated in accordance with generally accepted accounting principles or has designated 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 Section 14 of Article 9 of the constitution of New Mexico, an individual qualifying grantee shall meet the requirements established by the authority pursuant to the Affordable Housing Act [6-27-1 NMSA 1978].

History: Laws 2004, ch. 104, § 4.

ANNOTATIONS

Emergency clauses. — Laws 2004, ch. 104, § 9, makes the act effective immediately. Approved March 9, 2004.

6-27-5. State, county and municipalities; authorization for affordable housing.

The state, a county or a municipality may donate land for construction of affordable housing or an existing building for conversion or renovation into affordable housing or may provide or pay the costs of infrastructure necessary to support affordable housing projects.

History: Laws 2004, ch. 104, § 5.

ANNOTATIONS

Emergency clauses. — Laws 2004, ch. 104, § 9, makes the act effective immediately. Approved March 9, 2004.

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 [6-27-1 NMSA 1978] is the prior approval required pursuant to Article 4, 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 oversight committee prior to its adoption of rules pursuant to this section.

History: Laws 2004, ch. 104, § 6.

ANNOTATIONS

Emergency clauses. — Laws 2004, ch. 104, § 9, makes the act effective immediately. Approved March 9, 2004.

6-27-7. Requirement for enactment of an ordinance by county or municipality authorizing housing assistance grants.

A. A county or municipality may provide housing assistance grants pursuant to Section 14 of Article 9 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 and authorizing transfer or disbursement to a qualifying grantee only after a budget is submitted to and approved by the governing body. 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 throughout the authority. The ordinance shall comply with rules promulgated by the authority pursuant to Section 8 of the Affordable Housing Act [6-28-8 NMSA 1978].

B. A school district may transfer land 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 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. As used in this section, "public post-secondary educational institution" means a state university or a public community college.

History: Laws 2004, ch. 104, § 7.

ANNOTATIONS

Emergency clauses. — Laws 2004, ch. 104, § 9, makes the act effective immediately. Approved March 9, 2004.

6-27-8. Provisions to ensure successful completion of affordable housing projects.

A. State, county and municipal housing assistance grants pursuant to the Affordable Housing Act [6-27-1 NMSA 1978] 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 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 to ensure a quick profit for the qualifying grantee;

(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 pursuant to the Affordable Housing Act [6-27-1 NMSA 1978] 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 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; and

(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.

C. In addition to the rulemaking mandated in Subsection B of this section, the authority may adopt additional rules to carry out the purposes of the Affordable Housing Act. Rulemaking procedures pursuant to the Affordable Housing Act shall:

(1) provide a public hearing in accordance with the state Administrative Procedures Act [12-8-1 NMSA 1978]; and

(2) require concurrence in a rule having application to local government by both the New Mexico municipal league and the New Mexico association of counties.

History: Laws 2004, ch. 104, § 8.

ANNOTATIONS

Emergency clauses. — Laws 2004, ch. 104, § 9, makes the act effective immediately. Approved March 9, 2004.