

**SECTION I**

**Procedures for County Treasurers**

**NMAC Title 3 Chapter 6 Part 50**

This rule was filed as 3 NMAC 6.50.

**TITLE 3 TAXATION**  
**CHAPTER 6 PROPERTY TAXES**  
**PART 50 PROCEDURES FOR COUNTY TREASURERS**

**3.6.50.1 ISSUING AGENCY:** Department of Finance and Administration, Local Government Division.  
 [7/15/98; Recompiled 10/01/01]

**3.6.50.2 SCOPE:** These rules and regulations shall apply to procedures to be followed by all county treasurers in the state of New Mexico.  
 [12/31/74, 7/15/98; Recompiled 10/01/01]

**3.6.50.3 STATUTORY AUTHORITY:** The local government division of the department of finance and administration promulgates the procedures for county treasurers, pursuant to the authority of NMSA 1978 Sections 6-6-2, 6-6-3, 7-35-6, 7-35-7 through 7-37-8, 7-38-32 through 7-38-38.1, 7-38-41 through 7-38-43, 7-38-63, 7-38-65 through 7-38-69, 7-38-71, 7-38-73, 7-38-76 through 7-38-77.1 and 7-38-80.  
 [7/15/98; Recompiled 10/01/01]

**3.6.50.4 DURATION:** Permanent.  
 [12-31-74, 2-19-92, 7-15-98; Recompiled 10/01/01]

**3.6.50.5 EFFECTIVE DATE:** July 15, 1998, unless a different date is cited at the end of a section or paragraph.  
 [7/15/98; Recompiled 10/01/01]  
 [Compiler's note: The words *or paragraph*, above, are no longer applicable. Different dates are now cited only at the end of sections, in the history notes appearing in brackets.]

**3.6.50.6 OBJECTIVE:** The objective of Title 3, Chapter 6, Part 50 NMAC is to establish uniform procedures by which county treasurers implement portions of the Property Tax Code and prepare financial reports. The rule also provides procedures for suspension of a county treasurer by the department of finance and administration.  
 [7/15/98; Recompiled 10/01/01]

**3.6.50.7 DEFINITIONS:**

- A. "Assessor" means a county assessor as defined by Sections 4-39-1 through 4-39-7 [repealed] NMSA 1978, as amended.
- B. "Board of finance" means a county board of finance.
- C. "Delinquent" refers to any payment of taxes that is not paid within thirty days of the date on which they were due.
- D. "Department" means the department of finance and administration.
- E. "Forfeiture" funds means cash or property that is subject to forfeiture and is under the Controlled Substances Act, Sections 30-31-34 through Section 30-31-35 NMSA 1978.
- F. "Local government" means a local public body as defined in Section 6-6-1 NMSA 1978.
- G. "Local government division" means the local government division of the department of finance and administration.
- H. "Property tax division" means the property tax division of the taxation and revenue department.
- I. "Refund" is that portion of property taxes in controversy found to be in excess of the amount legally due.
- J. "Secretary" means the cabinet secretary of the department of finance and administration.
- K. "State delinquency list" means the tax delinquency list collected by the property tax division as defined in Section 7-38-62 NMSA 1978.
- L. "Taxes on omitted property" refers to taxes on property subject to property taxation but was omitted from property tax schedules and for which taxes have not been paid but would be due, except for the omission.
- M. "Treasurer" means a county treasurer as defined by Sections 4-43-1 [repealed] through 4-43-4 NMSA 1978, as amended.  
 [7-15-98; Recompiled 10/01/01]

**3.6.50.8 TREASURER'S DUTIES:**

- A. Section 4-43-2 NMSA 1978 requires the treasurer to keep account of all moneys received and disbursed in the county; keep regular accounts of all warrants drawn on the treasurer and paid; and keep the books, papers and moneys pertaining to his office ready for inspection by the county commissioners at all times. All moneys under the treasurer's control include, but are not limited to: property taxes; property tax penalties and interest; state shared taxes; gross receipts taxes; lodgers' taxes; franchise taxes; licenses and permits; charges for services; fines and forfeits, including forfeiture funds;

miscellaneous revenues; other revenues including contributions, donations, investment income, refunds, rents, royalties, insurance recoveries and inter-governmental grants.

B. Section 6-10-8 NMSA 1978 states the treasurer of each county in the state shall have supervision of the deposit and safekeeping of public money in the county.

C. The treasurer determines how to deposit and invest county funds. That decision must then be approved by the board of county commissioners, sitting as the board of finance.

D. The board of finance must adopt an investment policy and permit the treasurer to make investment decisions that conform to the policy.

[7/15/98; Recompiled 10/01/01]

### **3.6.50.9 FINANCIAL REPORTS:**

A. Subsection F of Section 6-6-2 NMSA 1978 requires periodic financial reports of all local public bodies. Section 6-6-3 NMSA 1978 requires that every local public body shall make all reports as may be required by the local government division.

B. Every county shall file a financial report on a quarterly basis with the local government division. The first quarter is from July 1st to September 30th; the second quarter is from October 1st to December 31st; the third quarter is from January 1st to March 31st and the fourth quarter is from April 1st to June 30th. The reports are due at the local government division no later than thirty days following the end of the quarter.

C. The local government division may grant a county's written request, if warranted, an extension for filing the quarterly financial report.

D. Monthly financial reports shall be submitted to the county commission and may be requested by the local government division.

E. Quarterly financial reports shall be submitted on the prescribed local government division format, unless the local government division approves submission of similar data hand written, typed or using the county's current software program.

F. The treasurer's office should work cooperatively with the county managers office or county finance department to ensure that reports are submitted accurately and timely. The reports must include the signatures and titles of the individuals who prepared the reports.

G. Instructions and sample reporting formats of the quarterly financial reports are available in the local government divisions budgeting and financial accounting manual for local governments.

[7/15/98; Recompiled 10/01/01]

### **3.6.50.10 SUSPENSION OF COUNTY TREASURERS' FUNCTIONS:**

A. The secretary shall follow the procedures set forth in Section 7-35-7 NMSA 1978, as amended, for suspension of treasurers' functions and termination of a suspension order.

B. The costs counties are required to reimburse the department, when the department performs the functions of a suspended treasurer, shall include the salaries and expenses of department employees or contractors who carry out the functions of the office of a suspended treasurer.

C. The department will take all action necessary to assure reimbursement of costs by the county.

[12/31/74, 7/15/98; Recompiled 10/01/01]

### **3.6.50.11 PROPERTY TAXES:**

A. Section 7-37-7 NMSA 1978, as amended, provides for the maximum property tax rates and their limitations. The authority to impose general purpose tax rates is granted to local governments and shall be done during the budget-making and approval process. The general purpose tax rate imposed by each governmental unit for residential property is the same rate that is imposed for nonresidential property. The local government division shall apply the yield control formula and other tax rate limitations in statute that apply to the imposed tax rates prior to setting the tax rates.

B. Tax rates for school districts and institutions of higher education are set by the state department of education and the commission on higher education, respectively. These rates are certified to the local government division by August 15th of each year.

C. Pursuant to Section 7-38-33 NMSA 1978, the department shall by written order set property tax rates no later than September 1st each year for each county, municipality, special district, school district, institution of higher education and state debt service.

D. Pursuant to Section 7-38-34 NMSA 1978, within five business days of the date of the tax rate order set by the department, the board of county commissioners shall issue by written order imposing the certified tax rates on the net taxable value of property allocated to the appropriate governmental units. Within these five days, it is the responsibility of the county to ensure that the rates set are correct. The local government division must be notified of any errors with regards to the validity of these rates during this five day period.

[7/15/98; Recompiled 10/01/01]

### **3.6.50.12 COUNTY PROPERTY VALUATION FUND:**

- A. The county property valuation fund is created in Section 7-38-38.1 NMSA 1978 and prescribes the method and manner for the collection and distribution of the administrative charge on revenue recipients to offset collection costs.
- B. All administrative charges shall be collected by the treasurer and distributed to the county property valuation fund.
- C. The assessor's budget for purposes of calculating the forty percent of the amount shall include all appropriations made to the assessor's budget including the county property valuation fund.
- D. The treasurer is responsible for collecting the administrative charges and distributing these collections to the county property valuation fund in accordance with statute, relevant county ordinances and stipulated orders. [7/15/98; Recompiled 10/01/01]

**3.6.50.13 PROTESTED PROPERTY TAXES AND PROPERTY TAX SUSPENSE FUND:**

- A. The treasurer shall deposit in the property tax suspense fund an amount equal to the portion of any property taxes paid to the treasurer that is not admitted to be due and is the subject of a claim for refund.
- B. The property tax suspense fund shall be invested as permitted by Subsection B of Section 7-38-41 NMSA 1978, as amended.
- C. All refunds to property owners pursuant to Section 7-38-41 NMSA 1978 shall be made fifteen days after the treasurer receives a copy of the final order relating to the protest.
- D. If final determination in a claim for refund is less than originally claimed, or if the claim is denied, the difference between the amount placed in the property tax suspense fund and the amount refunded to the taxpayer shall be disbursed in the monthly distribution process as stated in subparagraph 15.6 [now Subsection F of 3.6.50.15 NMAC]. Upon the final determination of a claim, the treasurer is to send a copy of the final order to the assessor and the director of the property tax division who shall change their respective valuation records to clearly reflect the final determination.
- E. The treasurer is authorized to transfer any surplus interest accrued in the property tax suspense fund to the county general fund, when a case is closed or at the close of the fiscal year. [12/31/74, 7/15/98; Recompiled 10/01/01]

**3.6.50.14 COLLECTION AND RECEIPT OF PROPERTY TAXES:**

- A. All property tax payments shall be marked paid and recorded within 48 hours and must be deposited within 72 hours.
- B. Property tax receipts or copies of the tax bills marked paid are not required to be mailed to property taxpayers if payment of property taxes, penalties and interest are received by mail. These amounts are sufficiently "receipted" if indication of payment is made on the tax schedule by the treasurer. However, the treasurer is not prohibited from mailing receipts or copies of the tax bills marked paid.
- C. Except for accounts on the state delinquency list, any partial payments received by the treasurer for delinquent property taxes, penalties and interest shall be receipted and accounted for in accordance with Section 7-38-42 NMSA 1978.
- D. If the treasurer's office is unable to comply with this policy, the treasurer must immediately notify the chairman of the board of finance and the county manager in writing. The notification must include a description of the problem, identification of the cause of the problem, an estimate of the anticipated duration of non-compliance and the proposed remedial action. The notification does not relieve the receipting authority of its statutory duty to collect, record and account for property taxes.
- E. Receipting and depositing of revenues other than property tax payments shall be implemented according to policies adopted by the county board of finance. [12/31/74, 7/15/98; Recompiled 10/01/01]

**3.6.50.15 DISTRIBUTION OF PROPERTY TAXES, PENALTIES AND INTEREST:**

- A. The treasurer shall distribute the receipts from property tax collections to each governmental unit. All interest and penalties collected shall be deposited in the county general fund without regard to the tax year for which it was paid, other than as an agent of the taxation and revenue department under Section 7-38-62 NMSA 1978.
- B. At the time of distributing receipts from property taxes collected as agent for the taxation and revenue department under Section 7-38-62 NMSA 1978, all interest and penalties collected for tax years before 1990 will be placed in the county general fund and all interest and penalties collected for 1990 and subsequent tax years shall be remitted to the taxation and revenue department.
- C. The treasurer shall distribute taxes collected for the November 10th installment no earlier than December 15th or later than the 5th working day after December 15th.
- D. The treasurer shall distribute taxes collected from the April 10th installment no earlier than May 15th or later than the 5th working day after May 15th.
- E. For installment agreements pursuant to Section 7-38-38.2 NMSA 1978, no distribution shall be made earlier than the 15th of the month following the month of collection or later than the 5th working day after the 15th of month following the month of collection.

F. For delinquent taxes, normal distributions shall not be made earlier than the 15th of the month following the month of collection or later than the 5th working day after the 15th of month following the month of collection.

G. Once a county has placed a property on the state delinquency list, the property tax division shall have responsibility and exclusive authority to collect delinquent taxes, interest and penalties for all tax years. However, the property tax division may authorize treasurers to act as its agents in accepting payments of taxes, penalties, interests or costs due.

[2/19/92, 7/15/98; Recompiled 10/01/01]

**3.6.50.16 NOTIFICATION TO PROPERTY OWNER OF DELINQUENT PROPERTY TAXES:**

A. In accordance with Section 7-38-51 NMSA 1978, any property tax delinquent more than thirty days as of June 30th of each year, the treasurer shall mail a notice of delinquency to the assessed owner and any person other than the owner to whom the tax bill on the property was sent. This applies to every delinquency and not just those on the state delinquency list.

B. If payment has not been received within 90 days following the written notice of delinquency, the treasurer shall pursue further collection efforts.

C. If the collection rate for a tax year for any jurisdiction in the county falls twenty percent below anticipated collections as of December 31st of that year or June 30th of the following year, the treasurer must immediately notify the board of finance in writing.

[7/15/98; Recompiled 10/01/01]

**3.6.50.17 SALE OF REAL PROPERTY FOR DELINQUENT TAXES:** Section 7-38-66 NMSA 1978 states the taxpayer must show proof of the following to prevent or invalidate a sale:

A. All delinquent taxes, penalties, interest and costs had been paid prior to the date of sale shall prevent or invalidate the sale. The treasurers office must be in possession of the funds prior to the time of the sale or the payment must be postmarked prior to the date of the sale.

B. The taxpayer has entered into a written installment agreement to pay all delinquent taxes, penalties, interest and costs prior to the date of sale as provided in Section 7-38-68 NMSA 1978 and that payments are being made in accordance with the terms of such agreement. The installment agreement must be signed by both parties at least the day prior to the date of sale.

[7/15/98; Recompiled 10/01/01]

**3.6.50.18 INSTALLMENT AGREEMENTS OR SALE OF PROPERTY:**

A. When the property tax division collects delinquent taxes in total from the taxpayer under installment agreements or sale of property, the money, excluding interest, penalties and costs, will be remitted to the treasurer. When the money is received by the treasurer, the tax bill will be validated as paid. The distribution will be accomplished by the treasurer as the normal distribution of delinquent taxes.

B. Upon receipt of the money from the property tax division, the treasurer shall:

(1) validate the tax bill as paid in the manner prescribed in Section 7-38-63 NMSA 1978;

(2) make a notation of the payment of delinquent property taxes, penalties and interest on the property tax schedule; and

(3) distribute the amount of property taxes to the appropriate governmental units at the time of normal monthly distributions.

[12/31/74, 7/15/98; Recompiled 10/01/01]

**3.6.50.19 TAXES ON OMITTED PROPERTY:** When taxes on omitted property are placed on tax schedules, tax bills mailed and money is received for payment of these taxes, the receipting and accounting of the money is the same as for other property taxes. For distribution purposes, all the monies received for taxes on omitted property for years prior to current tax year will be considered to be receipts of delinquent taxes.

[12/31/74; Recompiled 10/01/01]

**3.6.50.20 CHANGES IN THE PROPERTY TAX SCHEDULE:**

A. Pursuant to Section 7-38-77.1 NMSA 1978, the department may order the treasurer to make changes in the property tax schedule in connection with any property listed on the schedule if the department determines that an error was made in the certification of tax rates.

B. Upon such a determination, the department will issue a statement to the county commission and treasurer stating the reason for the error along with the amended certificate of tax rates.

[7/15/98; Recompiled 10/01/01]

**3.6.50.21 BANKHEAD-JONES FARM TENANT ACT:** Pursuant to the national grasslands and land utilization project receipts for the Bankhead-Jones Farm Tenant Act, the county shall deposit these funds directly into the county road fund for the purpose of maintaining county roads or school bus routes, or both.

[3/30/73, 7/15/98; Recompiled 10/01/01]

**HISTORY OF 3.6.50 NMAC:**

Pre-NMAC History: The material in this Part was derived from that previously filed with the State Records Center and Archives:

DFA 73-1, (Directive LGD 61-32) Distribution of Bank Head Jones Farm Tenant Act (Sub-Marginal Land) and Federal Wild Life and Fishery Act Revenue, 3-30-73.

DFA 74-9, Regulations Re: The Collection and Distribution of Property Taxes by County Treasurers, 12-31-74.

History of Repealed Material: [RESERVED]

**SECTION II**

**Investment Standards**

**Section 6-8-10, NMSA 1978**

**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 NMSA 1978].

**History:** 1953 Comp., § 11-2-8.13, enacted by Laws 1957, ch. 179, § 10; 2001, ch. 252, § 3.

**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".

**ANNOTATIONS**

**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.

**PART 6**  
**Uniform Prudent Investor Act**

**45-7-601. Short title.**

Sections 45-7-601 through 45-7-612 NMSA 1978 may be cited as the "Uniform Prudent Investor Act".

**History:** 1978 Comp., § 45-7-601, enacted by Laws 1995, ch. 210, § 82.

**Cross references.** — For fiduciaries and trusts, see Chapter 46 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 210, § 94 made the Uniform Prudent Investor Act effective July 1, 1995.

**ANNOTATIONS**

**Law reviews.** — For article, "The New Mexico Uniform Trust Code," see 34 N.M.L. Rev. 1 (2004).

For student article, "New Mexico's Land Grant and Severance Tax Permanent Funds: Renewable Wealth from New Mexico Renewable Resources," see 48 Nat. Resources J. 719 (2008).

**45-7-602. Prudent investor rule.**

A. Except as otherwise provided in Subsection B of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in the Uniform Prudent Investor Act [45-7-601 NMSA 1978].

B. The prudent investor rule, a default rule, may be expanded, restricted, eliminated or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

**History:** 1978 Comp., § 45-7-602, enacted by Laws 1995, ch. 210, § 83.

**Effective dates.** — Laws 1995, ch. 210, § 94 made the Uniform Prudent Investor Act effective July 1, 1995.

**45-7-603. Standard of care; portfolio strategy; risk and return objectives.**

A. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

B. A trustee's investment and management decisions respecting individual assets must be

evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

C. Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

- (1) general economic conditions;
- (2) the possible effect of inflation or deflation;
- (3) the expected tax consequences of investment decisions or strategies;
- (4) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interest in closely held enterprises, tangible and intangible personal property and real property;
- (5) the expected total return from income and the appreciation of capital;
- (6) other resources of the beneficiaries;
- (7) needs for liquidity, regularity of income and preservation or appreciation of capital; and
- (8) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

D. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

E. A trustee may invest in any kind of property or type of investment consistent with the standards of the Uniform Prudent Investor Act [45-7-601 NMSA 1978].

F. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

**History:** 1978 Comp., § 45-7-603, enacted by Laws 1995, ch. 210, § 84.

**Effective dates.** — Laws 1995, ch. 210, § 94 made the Uniform Prudent Investor Act effective July 1, 1995.

#### **45-7-604. Diversification.**

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

**History:** 1978 Comp., § 45-7-604, enacted by Laws 1995, ch. 210, § 85.

**Effective dates.** — Laws 1995, ch. 210, § 94 made the Uniform Prudent Investor Act effective July 1, 1995.

**45-7-605. Duties at inception of trusteeship.**

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements and other circumstances of the trust, and with the requirements of the Uniform Prudent Investor Act [45-7-601 NMSA 1978].

**History:** 1978 Comp., § 45-7-605, enacted by Laws 1995, ch. 210, § 86.

**Effective dates.** — Laws 1995, ch. 210, § 94 made the Uniform Prudent Investor Act effective July 1, 1995.

**45-7-606. Loyalty.**

A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

**History:** 1978 Comp., § 45-7-606, enacted by Laws 1995, ch. 210, § 87.

**Effective dates.** — Laws 1995, ch. 210, § 94 made the Uniform Prudent Investor Act effective July 1, 1995.

**45-7-607. Impartiality.**

If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

**History:** 1978 Comp., § 45-7-607, enacted by Laws 1995, ch. 210, § 88.

**Effective dates.** — Laws 1995, ch. 210, § 94 made the Uniform Prudent Investor Act effective July 1, 1995.

**45-7-608. Investment costs.**

In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust and the skills of the trustee.

**History:** 1978 Comp., § 45-7-608, enacted by Laws 1995, ch. 210, § 89.

**Effective dates.** — Laws 1995, ch. 210, § 94 made the Uniform Prudent Investor Act effective July 1, 1995.

**45-7-609. Reviewing compliance.**

Compliance with the prudent investor rule is determined in light of the facts and

circumstances existing at the time of a trustee's decision or action and not by hindsight.

**History:** 1978 Comp., § 45-7-609, enacted by Laws 1995, ch. 210, § 90.

**Effective dates.** — Laws 1995, ch. 210, § 94 made the Uniform Prudent Investor Act effective July 1, 1995.

#### **45-7-610. Delegation of investment and management functions.**

A. A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:

- (1) selecting an agent;
- (2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
- (3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

B. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

C. A trustee who complies with the requirements of Subsection A of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

D. By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

**History:** 1978 Comp., § 45-7-610, enacted by Laws 1995, ch. 210, § 91.

**Effective dates.** — Laws 1995, ch. 210, § 94 made the Uniform Prudent Investor Act effective July 1, 1995.

#### **45-7-611. Language invoking standard.**

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under the Uniform Prudent Investor Act [45-7-601 NMSA 1978]: "investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule" and "prudent investor rule".

**History:** 1978 Comp., § 45-7-611, enacted by Laws 1995, ch. 210, § 92.

**Effective dates.** — Laws 1995, ch. 210, § 94 made the Uniform Prudent Investor Act effective July 1, 1995.

**45-7-612. Application to existing trusts.**

The Uniform Prudent Investor Act [45-7-601 NMSA 1978] applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective date, the Uniform Prudent Investor Act governs only decisions or actions occurring after that date.

**History:** 1978 Comp., § 45-7-612, enacted by Laws 1995, ch. 210, § 93.

**Effective dates.** — Laws 1995, ch. 210, § 94 made the Uniform Prudent Investor Act effective July 1, 1995.

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**SECTION III**

**County Boards of Finance**

**Section 6-10-8, NMSA 1978**

### **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.

**Compiler's notes.** — The term "this act," which appears in the first sentence, was added by the 1968 amendment. It appears to refer to Laws 1968, ch. 18, which is compiled in 6-1-1, 6-10-8, 6-10-10, 6-10-24, 6-10-26, 6-10-29, 6-10-31, 6-10-32, 22-8-31 and 22-8-37 NMSA 1978.

**The 1987 amendment,** effective June 16, 1987, inserted "and credit unions" following "savings and loan associations" in the first sentence of the first paragraph and in the last sentence of the second paragraph and made minor language changes throughout the section.

## **ANNOTATIONS**

**Delegation to country treasurer.** — There is no statutory prohibition against delegation to the county treasurer by the board of county commissioners, sitting as the county board of finance, of specific

investment decision-making. For example, the board could adopt a policy and permit the treasurer to make investment decisions that conform to the policy. Such delegation may be essential to enable the treasurer to respond to sudden changes in the financial markets. *Bd. of County Comm'rs v. Padilla*, 111 N.M. 278, 804 P.2d 1097 (Ct. App. 1990).

**Relationship between county treasurer and board of finance.** — The county treasurer determines how to deposit and invest county funds. That decision must then be approved by the board of county commissioners, sitting as the county board of finance. The board of finance has no power to modify the county treasurer's decision without the treasurer's concurrence. On the other hand, the county treasurer cannot impose a unilateral decision upon the board of finance. *Bd. of County Comm'rs v. Padilla*, 111 N.M. 278, 804 P.2d 1097 (Ct. App. 1990).

**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.

**Designation of banks as official depositories of county funds.** — The county boards of finance are the sole authorities within their respective counties to determine which banks are to be designated as the official depositories of county funds and if more than one bank in each county is so designated to then determine the distribution of deposits between such banks. 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, but see *Bd. of County Comm'rs v. Padilla*, 111 N.M. 278, 804 P.2d 1097 (Ct. App. 1990)..

**"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.

**Money derived from tax levies** and used to support a county hospital are public funds. 1969 Op. Att'y Gen. No. 69-76.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63C Am. Jur. 2d Public Funds §§ 5, 6, 11, 12.

20 C.J.S. Counties §§ 193 to 203.

**SECTION IV**

**Deposit and Investment of Funds**

**Section 6-10-10, NMSA 1978**

**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, may invest all sinking funds or money remaining unexpended from the proceeds of any issue of bonds or other negotiable securities of any county, municipality or school district that is entrusted to their care and custody and all money not immediately necessary for the public uses of the counties, municipalities or school districts not invested or deposited in banks, savings and loan associations or credit unions in:

(1) bonds or negotiable securities of the United States, the state or a county, municipality or school district that has a taxable valuation of real property for the last preceding year of at least one million dollars (\$1,000,000) and that has not defaulted in the payment of any

interest or sinking fund obligation or failed to meet any bonds at maturity at any time within five years last preceding; 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, federal home loan banks or the student loan marketing association or that 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, may invest all sinking funds or money remaining unexpended from the proceeds of any issue of bonds or other negotiable securities of the county or municipality that is entrusted to the treasurer's care and custody and all money not immediately necessary for the public uses of the county or municipality not invested or deposited in banks, savings and loan associations or credit unions in:

(1) shares of a diversified investment company registered pursuant to the federal Investment Company Act of 1940 that invests in fixed-income securities or debt instruments that 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 E 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, may invest all sinking funds or money remaining unexpended from the proceeds of any issue of bonds or other negotiable securities of the investor that is entrusted to the local public body's care and custody and all money not immediately necessary for the public uses of the investor and not otherwise invested or deposited in banks, savings and loan associations or credit unions in contracts with banks, savings and loan

associations or credit unions for the present purchase and resale at a specified time in the future of specific securities at specified prices at a price differential representing the interest income to be earned by the investor. The contract shall be fully secured by obligations of the United States or 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, may invest money held in demand deposits and not immediately needed for the operation of state government and money held in the participating government investment fund, except as provided in Section 6-10-10.1 NMSA 1978. The investments may be made 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. Such contract shall not be invested in unless the contract is fully secured by obligations of the United States or its agencies or instrumentalities or by other securities backed by the United States or its agencies or instrumentalities having a market value of at least one hundred two percent of the amount of the contract. The securities required as collateral under this subsection shall be delivered to a third-party custodian bank pursuant to a contract with the state and the counterparty or to the fiscal agent of New Mexico or its designee. Delivery shall be made simultaneously with the transfer of funds or as soon as practicable, but no later than the same day that the funds are transferred.

K. The state treasurer, with the advice and consent of the state board of finance, may also invest in contracts for the temporary exchange of state-owned securities for the use of broker-dealers, banks or other recognized institutional investors in securities, for periods not to exceed one year for a specified fee rate. Such contract shall not be invested in unless the contract is fully secured by exchange of an irrevocable letter of credit running to the state, cash or equivalent collateral of at least one hundred two percent of the market value of the securities plus accrued interest temporarily exchanged. The collateral required by this subsection shall be delivered to the fiscal agent of New Mexico or its designee simultaneously with the transfer of funds or as soon as practicable, but no later than the same day that the state-owned securities are transferred.

L. Neither of the contracts in Subsection J or K of this section shall be invested in unless the contracting bank, brokerage firm or recognized institutional investor has a net worth in excess of five hundred million dollars (\$500,000,000).

M. The state treasurer, with the advice and consent of the state board of finance, may also invest in any of the following investments in an amount not to exceed forty percent of any fund that the state treasurer invests:

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

(2) medium-term notes and corporate notes with a maturity not exceeding five years that are rated A or its equivalent or better by a nationally recognized rating service and that are issued by a corporation organized and operating in the United States; or

(3) an asset-backed obligation with a maturity not exceeding five years that is rated AAA or its equivalent by a nationally recognized rating service.

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

(1) shares of an open-ended diversified investment company that:

(a) is registered with the United States securities and exchange commission;

(b) complies with the diversification, quality and maturity requirements of Rule 2a-7, or any successor rule, of the United States securities and exchange commission applicable to money market mutual funds; and

(c) assesses no fees pursuant to Rule 12b-1, or any successor rule, of the United States securities and exchange commission, no sales load on the purchase of shares and no contingent deferred sales charge or other similar charges, however designated, provided that the state shall not, at any time, own more than five percent of a money market mutual fund's assets;

(2) individual, common or collective trust funds of banks or trust companies that invest in United States fixed-income securities or debt instruments authorized pursuant to Subsections I, J and M of this section, provided that the investment manager has assets under management of at least one billion dollars (\$1,000,000,000) and the investments made by the state treasurer pursuant to this paragraph are less than five percent of the assets of the individual, common or collective trust fund; or

(3) the participating government investment fund managed by the office of the state treasurer. Investments made pursuant to this paragraph shall be less than five percent of the total assets of the participating government investment fund.

O. Public funds to be invested in negotiable securities or loans to financial institutions fully secured by negotiable securities at current market value shall not be paid out unless there is a contemporaneous transfer of the securities at the earliest time industry practice permits, but in all cases, settlement shall be on a same-day basis either by physical delivery or, in the case of

uncertificated securities, by appropriate book entry on the books of the issuer, to the purchaser or to a reputable safekeeping financial institution acting as agent or trustee for the purchaser, which agent or trustee shall furnish timely confirmation to the purchaser.

History: Laws 1933, ch. 175, § 4; 1941 Comp., § 7-207; 1953 Comp., § 11-2-7; Laws 1968, ch. 18, § 3; 1975, ch. 157, § 1; 1979, ch. 262, § 1; 1981, ch. 332, § 3; 1983, ch. 24, § 1; 1987, ch. 79, § 5; 1987, ch. 230, § 1; 1988, ch. 61, § 1; 1989, ch. 39, § 1; 1991, ch. 247, § 1; 1994, ch. 71, § 1; 1997, ch. 128, § 1; 1999, ch. 233, § 1; 2002, ch. 39, § 1; 2003, ch. 271, § 1; 2005, ch. 238, § 1; 2005, ch. 239, § 1; 2006, ch. 80, § 1; 2008, ch. 23, § 2.

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

For the federal Investment Company Act of 1940, see 15 U.S.C. § 80a-1 et seq.

**The 2008 amendment**, effective February 27, 2008, changed the name of the short-term investment fund to the participating government investment fund in Subsection I and added Paragraph (3) of Subsection N.

**The 2006 amendment**, effective May 17, 2006, in Subsection I, in the last sentence, changed "shall be made only" to "may be made"; in Subsection J, added the last two sentences relating to delivery of securities to a third-party custodial bank; in Subsection K, provided for the delivery of collateral to the fiscal agent of New Mexico or its designee; deleted former Subsection L that provided for the delivery of the security required in Subsection J or K to be delivered to the fiscal agent of New Mexico; deleted former Paragraph (1) of Subsection N (formerly Subsection O), which provided for investment in shares of a diversified investment company that invests in certain United States fixed-income securities or debt instruments if the investment company manages assets of at least one billion dollars; and inserted new Subparagraphs (a) through (c) of Paragraph (1) of Subsection N, which provides for investment in an open-ended diversified investment company that meets the listed criteria.

**The 2005 amendment**, effective June 17, 2005, changed "third-party safekeeping financial institution" to "safekeeping financial institution" in Subsection P. This section was also amended by Laws 2005, ch. 238, § 1. Pursuant to Section 12-1-8 NMSA 1978 this section is set out as amended by Laws 2005, ch. 239, § 1.

**The 2003 amendment**, effective June 20, 2003, in Paragraph F(2), inserted ", the federal home loan mortgage association, the federal national mortgage association, the federal farm credit bank or the student loan marketing association" following "the United States" and, deleted "or agencies guaranteed by the United States government" at the end.

**The 2002 amendment**, effective May 15, 2002, inserted "with the advice and consent of the state board of finance," in Subsections J and K; substituted "one billion dollars (\$1,000,000,000) and the investments made by the state treasurer pursuant to this paragraph are less than five percent of the assets of the investment company" for "one hundred million dollars (\$100,000,000)" in Subsection O(1); and substituted "one billion dollars (\$1,000,000,000) and the investments made by the state treasurer pursuant to this paragraph are less than five percent of the assets of the individual, common or collective trust fund" for "one hundred million dollars (\$100,000,000)" in Subsection O(2).

**The 1999 amendment**, effective January 1, 2000, in Subsection A, deleted "provided that no deposit of public money shall be made in a credit union unless the deposit is insured by an agency of the United

States" following "collected by the treasurers"; in Subsection F, substituted "school district that is entrusted" for "school district which are now or may hereafter by law be entrusted"; added Subsection G and redesignated subsequent subsections accordingly; and made stylistic changes throughout.

**The 1997 amendment**, effective June 20, 1997, added Subsections M and N and redesignated former Subsection M as Subsection O.

**The 1994 amendment**, effective July 1, 1994, added Subsection G, redesignated former Subsections G to L as Subsections H to M, deleted "local" following "held in the" in Subsection H, and made minor stylistic changes.

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

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

**The 1988 amendment**, effective May 18, 1988, inserted "and money held in the local short-term investment fund, except as provided in Section 6-10-10.1 NMSA 1978" in the first sentence in Subsection G.

**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.

## ANNOTATIONS

**County treasurer's powers.** — Section 6-10-10(F) NMSA 1978 gave the same investment power to the county treasurer – "by and with the advice and consent" of the board of finance" – as that given to the county board of finance, namely to invest sinking funds, unexpended bond proceeds and money not immediately necessary for public use in government bonds and negotiable securities. *Bd. of County Comm'rs v. Padilla*, 111 N.M. 278, 804 P.2d 1097 (Ct. App. 1990).

**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. 59-04.

**Revenue 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.

**SECTION V**

**Deposit Surety and Security Pledging**

**Section 6-10-15 thru 23, NMSA 1978**

### 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.

**Bracketed material.** — The bracketed material was inserted by the compiler 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.

## ANNOTATIONS

**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).

**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).

**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).

**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).

**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).

**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.

**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.

**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.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63C Am. Jur. 2d Public Funds §§ 21 to 29.

26A C.J.S. Depositories § 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.

**Cross references.** — For federal housing administration bonds as security for public deposits, see 3-45-24 NMSA 1978.

For severance tax bonds as security for public deposits, see 7-27-19 NMSA 1978.

**The 2000 amendment,** effective May 17, 2000, inserted the paragraph designations within Subsection A and designated part of former Subsection A as present Subsection B, substituted "bonds that" for "bonds qualify as security for the deposit public money only if they" in Subsection A(4), added Subsection A(5), deleted "the federal savings and loan insurance corporation" preceding "or the national credit union" in Subsection B, and redesignated former Subsection B as Subsection C.

**1987 amendments.** — Laws 1987, ch. 79, § 6, effective June 19, 1987, adding to the end of Subsection A "or the national credit union administration," was approved March 20, 1987. However, Laws 1987, ch. 307, § 1, effective June 19, 1987, in Subsection A, deleting "or, if not rated are approved by the state board of finance or its delegate" from the end of the second sentence; and in Subsection B, inserting "which are obligations" near the beginning, was approved April 10, 1987. The section is set out above as amended by the Laws 1987, ch. 307, § 1. See 12-1-8 NMSA 1978.

## ANNOTATIONS

**Mutual funds as collateral.** — Mutual funds may not be pledged as collateral for deposits of public funds. 1987 Op. Att'y Gen. No. 87-04.

**Investment in mutual funds.** — State chartered banks and savings and loan associations are permitted to invest in mutual funds. 1987 Op. Att'y Gen. No. 87-04.

**Bonds of New Mexico mortgage finance authority are acceptable as security.** — Although the New Mexico mortgage finance authority is not a state agency, it is a state instrumentality and as such, its bonds are acceptable as security for deposit of public money under this section. 1977 Op. Att'y Gen. No. 77-27.

**Farmers' home administration loans fully guaranteed by federal government.** — Any farmers' home administration loan which is fully guaranteed by the federal government would qualify as a proper security for public funds which are deposited in banks of this state. 1966 Op. Att'y Gen. No. 66-145.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63C Am. Jur. 2d Public Funds §§ 13, 14.

26A C.J.S. Depositories § 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.

**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.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63C Am. Jur. 2d Public Funds §§ 13, 14.

26A C.J.S. Depositories § 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.

**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.

**Cross references.** — For the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989, see 12 U.S.C.S. § 1461 et seq.

For the Federal Deposit Insurance Act, see 12 U.S.C.S. § 1811 et seq.

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

### **6-10-19. Ineligible depository bonds.**

No depository bond with personal sureties shall be accepted as security for deposits of public money.

**History:** Laws 1933, ch. 175, § 10; 1941 Comp., § 7-218; 1953 Comp., § 11-2-20; 1991, ch. 31, § 3.

**The 1991 amendment**, effective June 14, 1991, substituted "as security for deposits of public money" for "by any treasurer and/or board of finance".

## **ANNOTATIONS**

**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.

**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."

## **ANNOTATIONS**

**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.

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

## **ANNOTATIONS**

**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.

**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.

## ANNOTATIONS

**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.

**Cross references.** — For state investment council, see 6-8-2 NMSA 1978.

**The 1991 amendment,** effective June 14, 1991, deleted "and mortgage collateral" following "securities" in the catchline; in Subsection A, substituted "a custodial bank" for "another bank or savings and loan association" near the beginning of the first sentence and "custodial bank" for "safe-keeping bank or savings and loan association" in the first and second sentences, and inserted "written" preceding "instructions" in the first sentence; and rewrote Subsection C which pertained to mortgage collateral pledged to secure the deposit of severance tax permanent funds.

### **6-10-24. Deposit of public funds in federally insured banks, savings and loan associations and credit unions; conditions.**

A. The state treasurer, the several county and municipal treasurers, the treasurers of any public or educational institution in this state and the treasurers of all irrigation districts and conservancy districts may deposit public funds in any bank of the state of New Mexico insured by the federal deposit insurance corporation up to the amount of the insurance or in any savings and loan association whose deposits are insured by the federal savings and loan insurance corporation up to the amount of the insurance, or in any credit union whose deposits are insured by the national credit union administration up to the amount of the insurance, without requiring the bank, savings and loan association or credit union to qualify as a public depository by giving security as required by the laws of New Mexico relating to public money; provided, however, that a deposit made in any credit union shall not exceed that amount insured by an agency of the United States.

B. The several county and municipal treasurers and the treasurers of all irrigation districts and conservancy districts shall not make any deposits outside their respective political subdivisions.

C. All other boards of control handling public funds in any manner whatever may deposit the public funds in any banks in New Mexico insured by the federal deposit insurance corporation up to the amount of the insurance or in any savings and loan association whose deposits are insured by the federal savings and loan insurance corporation up to the amount of the insurance or in any credit union whose deposits are insured by the national credit union administration up to the amount of such insurance, without requiring the bank, savings and loan association or credit union to qualify as a public depository by giving security as required by the laws of New Mexico relating to public money; provided, however, that a deposit made in any credit union shall not exceed that amount insured by an agency of the United States.

**History:** Laws 1939, ch. 21, § 1; 1941 Comp., § 7-222; 1953 Comp., § 11-2-25; Laws 1968, ch. 18, § 4; 1975, ch. 157, § 2; 1981, ch. 332, § 10; 1987, ch. 79, § 7.

**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.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63C Am. Jur. 2d Public Funds § 11.

26A C.J.S. Depositories § 8.

**SECTION VI**

**Public Money Deposits of Certain Gov. Entities; Distribution;  
and Interest**

**Section 6-10-36, NMSA 1978**

**6-10-36. Public money deposits of certain governmental units; distribution; interest.**

A. All public money, except that in the custody of the state treasurer, institutions of higher education, technical and vocational institutes, incorporated municipalities and counties that have adopted home rule charters as authorized by the constitution of New Mexico and local school boards that have been designated as boards of finance, shall be deposited in qualified depositories in accordance with the terms of this section or invested as otherwise provided by law.

B. Deposits of funds of a governmental unit may be made in noninterest-bearing checking accounts in one or more banks or savings and loan associations designated as checking depositories located within the geographical boundaries of the governmental unit. In addition, deposits of funds may be in noninterest-bearing accounts in one or more credit unions designated as checking depositories located within the geographical boundaries of the governmental unit to the extent the deposits are insured by an agency of the United States. If there is no checking depository within the geographical boundaries of the governmental unit, one or more banks, savings and loan associations or credit unions within the county in which the principal office of the governmental unit is located may be so designated, but credit union deposits shall be insured by an agency of the United States.

C. Public money placed in interest-bearing deposits in banks and savings and loan associations shall be equitably distributed among all banks and savings and loan associations having their main or staffed branch offices within the geographical boundaries of the governmental unit that have qualified as public depositories by reason of insurance of the account by an agency of the United States or by depositing collateral security or by giving bond as provided by law and that desire a deposit of public money pursuant to this section. The deposits shall be in the proportion that each bank's or savings and loan association's deposits bears to the total deposits of all banks and savings and loan associations that have their main office or staffed branch office within the geographical boundaries of the governmental unit and that desire a deposit of public money pursuant to this section. The deposits of the main office of a savings and loan association and its staffed branch offices within the geographical boundaries of a governmental unit is the total deposits of the association multiplied by the percentage that deposits of the main office and the staffed branch offices located within the geographical boundaries of the governmental unit are of the total deposits of the association, net of any public fund deposits. The deposits of each staffed branch office or aggregate of staffed branch offices of a savings and loan association located outside the geographical boundaries of the governmental unit in which the main office is located is the total deposits of the association multiplied by the percentage that deposits of the branch or the aggregate of branches located outside the geographical boundaries of the governmental unit in which the main office is located are of the total deposits of the association, net of any public fund deposits. The director of the financial institutions division of the regulation and licensing department shall promulgate a formula for determining the deposits of banks' main offices and branches for the purposes of

distribution of public money as provided for by this section.

D. Public money may be placed at the discretion of the designated board of finance or treasurer in interest-bearing deposits in credit unions having their main or staffed branch offices within the geographical boundaries of the governmental unit to the extent the deposits are insured by an agency of the United States.

E. The rate of interest for all public money deposited in interest-bearing accounts in banks, savings and loan associations and credit unions shall be set by the state board of finance, but in no case shall the rate of interest be less than one hundred percent of the asked price on United States treasury bills of the same maturity on the day of deposit. Any bank or savings and loan association that fails to pay the minimum rate of interest at the time of deposit provided for in this subsection for any respective deposit forfeits its right to an equitable share of that deposit under this section.

If the deposit is part or all of the proceeds of a bond issue and the interest rate prescribed in this subsection materially exceeds the rate of interest of the bonds, the interest rate prescribed by this subsection shall be reduced on that deposit to an amount not materially exceeding the interest rate of the bonds if the bond issue would lose its tax-exempt status pursuant to the provisions of the Internal Revenue Code of 1986, as amended.

F. Public money in excess of that for which banks, savings and loan associations and credit unions within the geographical boundaries of the governmental unit have qualified may be deposited in qualified depositories in other areas within the state under the same requirements for payment of interest as if the money were deposited within the geographical boundaries of the governmental unit or may be invested as provided by law.

G. The department of finance and administration may monitor the deposits of public money by governmental units to assure full compliance with the provisions of this section.

History: 1953 Comp., § 11-2-33, enacted by Laws 1977, ch. 136, § 1; 1981, ch. 332, § 15; 1983, ch. 191, § 1; 1987, ch. 79, § 15; 1997, ch. 123, § 2; 2007, ch. 228, § 1.

**Cross references.** — For Internal Revenue Code, see 26 U.S.C. § 1 et seq.

**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 2007 amendment,** effective July 1, 2007, amended Subsection C to change the formula for distribution of deposits of public funds by providing that deposits shall be made only to banks and savings and loan associations that desire a deposit of public money pursuant to this section and eliminated the definition of "net worth".

**The 1997 amendment,** effective June 20, 1997, inserted "technical and vocational institutes" in Subsection A and substituted "pursuant to the provisions of the Internal Revenue Code of 1986, as amended" for "under Section 103 of the United States Internal Revenue Code of 1954, as amended" in Subsection E.

**The 1987 amendment,** effective June 19, 1987, inserted "or credit union" following "savings and loan

association" in the penultimate sentence of Subsection B and in the first sentence of Subsections E and F; in Subsection B inserted the present second sentence and the present fourth sentence, and in the third sentence substituted "checking depository" for "bank or savings and loan association" near the beginning; in Subsection C inserted "in banks and savings and loan associations" following "placed in interest-bearing deposits" near the beginning of the first sentence and in the penultimate sentence substituted "regulation and licensing" for "commerce and industry" following "the director of the financial institutions division of the" at the beginning; inserted Subsection D and relettered the subsequent subsections accordingly; and made minor changes in language throughout the section.

## ANNOTATIONS

**Deposits in credit unions.** — Sections 6-10-6(D) and 6-10-44 NMSA 1978 do not give the county treasurer and the county board of finance co-equal powers with respect to deposits in federally insured credit unions. These sections do not reconcile with the relative authority of the county treasurer and the county board of finance as stated in Section 6-10-8 NMSA 1978. Sections 6-10-36(D) and 6-10-44.1 NMSA 1978 were intended to permit deposits in credit unions by treasurers and boards of finance of various public bodies, not just counties, leaving to other statutory provisions the question of relative responsibilities of the two in making an investment decision. *Bd. of County Comm'rs v. Padila*, 111 N.M. 278, 804 P.2d 1097 (Ct. App. 1990).

**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. 82-06.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63C Am. Jur. 2d Public Funds §§ 5 to 12.

26A C.J.S. Depositories § 8.

**SECTION VII**

**Collection and receipt of and accounting for property taxes  
and delinquent taxes**

**Section 7-38-42, NMSA 1978**

**7-38-42. Collection and receipt of and accounting for property taxes; application of receipts to delinquent taxes.**

A. The county treasurer has the responsibility and authority for collection of taxes and any penalties or interest due under the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] except for the collection of delinquent taxes, penalties and interest authorized to be collected by the department under Section 7-38-62 NMSA 1978.

B. Property taxes, penalties and interest collected shall be receipted and accounted for in accordance with law and regulations of the department of finance and administration.

C. Any payments received by the treasurer or the department as payments for property taxes, penalties or interest shall be first applied to the oldest outstanding unpaid property taxes, penalties or interest accrued in prior property tax years on the property identified and described in the property tax bill for which payment is tendered or, if the payment cannot be identified with a particular year's property tax bill, then the payment shall be applied first to the oldest liability for property taxes, penalties and interest shown in the treasurer's records under the name of the paying taxpayer. In applying the foregoing requirements for applications of payments and in the adoption of any regulations to implement those provisions, the following additional rules shall apply:

(1) applications of payments to a prior year's delinquent taxes, penalties and interest shall not be made for more than ten years prior to the year of payment unless the treasurer's records show that the property for which taxes are delinquent has been deeded to the state of New Mexico and that property has not been sold by the state pursuant to applicable law;

(2) applications of payments to a prior year's delinquent taxes, penalties and interest shall not be made if:

(a) the prior year for which the delinquent taxes, penalties or interest are due is not the immediately preceding tax year;

(b) the delinquent taxes, penalties or interest are the result of real estate improvements that were omitted from property tax schedules in the prior year and listed and billed pursuant to Section 7-38-76 NMSA 1978;

(c) the current owner was not the owner at the time the improvements were omitted and had no actual notice that the improvements were omitted; and

(d) the payments were made by or on behalf of the current owner;

(3) after application of payment received, if all or part of the payment has been applied to a prior year's delinquent taxes, penalties or interest, the receipting authority shall issue a receipt to the paying taxpayer showing the application of the payment and indicating any balance due for taxes, penalties or interest to bring the property tax payment status current; and

(4) the failure of a receipting authority to apply a payment as required under this

subsection or the failure to issue a required receipt to the taxpayer of the status of his account shall not relieve the taxpayer of liability for taxes, penalties or interest he would otherwise be required to pay nor does action or inaction by the receipting authority act to estop the collecting authority from taking any action to collect or enforce the payment of taxes, penalties and interest legally due.

**History:** Laws 1979, ch. 343, § 1; 2003, ch. 95, § 2.

**Prior history.** — In 1979, Section 7-38-42 NMSA 1979 was repealed and reenacted by Laws 1979, Chapter 343, § 1. For prior history, see 1953 Comp., § 72-31-42, enacted by Laws 1973, ch. 258, § 2.

**The 2003 amendment,** effective June 20, 2003, added Paragraph C(2) and redesignated former Paragraphs C(2) and (3) as present Paragraphs C(3) and (4).

## ANNOTATIONS

**Payment to county treasurer constitutes payment to state.** — Timely payments of delinquent tax to the county treasurer constituted payment to the state since treasurer had apparent if not statutory authority to accept payment of delinquent taxes on property deeded to, but not yet sold by, the state. *Tabet v. Campbell*, 101 N.M. 334, 681 P.2d 1111 (1984).

**SECTION VIII**

**Distribution of Collected Property Taxes, Penalties and  
Interest**

**Section 7-38-43, NMSA 1978**

**7-38-43. Distribution of receipts from collected property taxes, penalties and interest.**

The county treasurer shall distribute the receipts from collected property taxes to each governmental unit in an amount and in a manner determined in accordance with the law and with the regulations of the department of finance and administration. Penalties and interest collected by the county treasurer, other than as an agent of the department under Section 7-38-62 NMSA 1978 and other than penalties and interest on assessments levied by a conservancy district organized under the provisions of The Conservancy Act of New Mexico [73-14-1 NMSA 1978], created prior to 1930 and embracing land situate in four or more counties, shall be deposited in the county general fund at the times and in the manner required by regulations of the department of finance and administration. Penalties and interest collected by the county treasurer as agent of the department under Section 7-38-62 NMSA 1978 shall be remitted to the department at the times and in the manner required by regulations of the department of finance and administration.

**History:** 1953 Comp., § 72-31-43, enacted by Laws 1973, ch. 258, § 83; 1990, ch. 22, § 4; 1995, ch. 75, § 1.

**The 1995 amendment,** effective June 16, 1995, inserted the language in the second sentence beginning "and other than penalties and interest" and ending "four or more counties".

**The 1990 amendment,** effective May 16, 1990, inserted "with the" preceding "regulations" in the first sentence, substituted "other than as an agent of the department under Section 7-38-62 NMSA 1978" for "or received by him as a distribution under 72-31-63 NMSA 1953" in the second sentence, and added the third sentence.

**SECTION IX**

**Unpaid Property Taxes and Imposition of Interest**

**Section 7-38-49, NMSA 1978**

**7-38-49. Unpaid property taxes; imposition of interest.**

If property taxes are not paid for any reason within thirty days after the date they are due, interest on the unpaid taxes shall accrue from the thirtieth day after they are due until the date they are paid. Interest shall accrue at the rate of one percent a month or any fraction of a month. Interest shall accrue whether or not protests have been resolved. However, in the case of a timely protest, interest payable shall be computed on a principal amount equal to the unpaid taxes finally determined to be due upon resolution of the protest. Interest shall not be imposed on interest or on any penalty.

**History:** 1953 Comp., § 72-31-49, enacted by Laws 1973, ch. 258, § 89.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 856, 858, 891 to 903.

Interest of spouse in estate by entireties as subject to satisfaction of his or her individual debt, 75 A.L.R.2d 1172.

84 C.J.S. Taxation §§ 585 to 606.

**SECTION X**

**Delinquent Taxes and Civil Penalties**

**Section 7-38-50, NMSA 1978**

**7-38-50. Delinquent taxes; civil penalties.**

A. If property taxes become delinquent, a penalty of one percent of the delinquent taxes for each month or any portion of a month they remain unpaid shall be imposed, but the total penalty shall not exceed five percent of the delinquent taxes except that, when the penalty determined under the foregoing provisions of this subsection is less than five dollars (\$5.00), the penalty to be imposed shall be five dollars (\$5.00). A county may suspend for a particular tax year application of the minimum penalty requirements of this subsection by resolution of its county commissioners adopted not later than September 1 of that tax year. A copy of any such resolution shall be forwarded to the county treasurer.

B. If property taxes become delinquent because of an intent to defraud by the property owner, fifty percent of the property taxes due or fifty dollars (\$50.00), whichever is greater, shall be added as a penalty.

**History:** 1953 Comp., § 72-31-50, enacted by Laws 1973, ch. 258, § 90; 1975, ch. 20, § 1; 1976, ch. 14, § 1; 1982, ch. 28, § 19.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation § 856.

**7-38-43. Distribution of receipts from collected property taxes, penalties and interest.**

The county treasurer shall distribute the receipts from collected property taxes to each governmental unit in an amount and in a manner determined in accordance with the law and with the regulations of the department of finance and administration. Penalties and interest collected by the county treasurer, other than as an agent of the department under Section 7-38-62 NMSA 1978 and other than penalties and interest on assessments levied by a conservancy district organized under the provisions of The Conservancy Act of New Mexico [73-14-1 NMSA 1978], created prior to 1930 and embracing land situate in four or more counties, shall be deposited in the county general fund at the times and in the manner required by regulations of the department of finance and administration. Penalties and interest collected by the county treasurer as agent of the department under Section 7-38-62 NMSA 1978 shall be remitted to the department at the times and in the manner required by regulations of the department of finance and administration.

**History:** 1953 Comp., § 72-31-43, enacted by Laws 1973, ch. 258, § 83; 1990, ch. 22, § 4; 1995, ch. 75, § 1.

**The 1995 amendment**, effective June 16, 1995, inserted the language in the second sentence beginning "and other than penalties and interest" and ending "four or more counties".

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