

## 4-43-2. Duties.

The county treasurer shall keep:

A. account of all money received and disbursed;

B. regular accounts of all checks and warrants drawn on the treasury and paid; and

C. the books, papers and money pertaining to his office ready for inspection by the board of county commissioners at all times.

**History:** Kearny Code, Treas. Dept., §§ 10, 11; Laws 1851-1852, p. 170; C.L. 1865, ch. 21, §§ 6, 7; 1865, ch. 102, §§ 17, 18; C.L. 1884, §§ 408A, 408B; C.L. 1897, § 746; Code 1915, § 1279; C.S. 1929, § 33-4503; 1941 Comp., § 15-4003; 1953 Comp., § 15-42-3; Laws 1967, ch. 238, § 5; 2001, [ch. 147, § 1](#).

## 4-45-4. County orders for payment from treasury; form and signature.

County orders shall be signed by the chairman of the board of county commissioners or his designee and attested by the county clerk and shall specify the nature of the claim of service for which they were issued, and the money shall be paid from the county treasury on such orders and not otherwise. Money may be paid from the county treasury by check or warrant. If money is paid by check, the check must be signed by the chairman of the board of county commissioners or his designee and the county treasurer.

**History:** Laws 1876, ch. 1, § 21; C.L. 1884, § 352; C.L. 1897, § 670; Code 1915, § 1223; C.S. 1929, § 33-4237; 1941 Comp., § 15-4204; 1953 Comp., § 15-44-4; [Laws 2001, ch. 147, § 2](#).

### ANNOTATIONS

**Cross references.** — For unauthorized issuance by county commissioners of order for payment of money, see [4-38-29](#) NMSA 1978.

For duties of county clerk as to orders for payment of money, see [4-40-4](#), [4-40-6](#) NMSA 1978.

**The 2001 amendment**, effective June 15, 2001, inserted the section heading; inserted "of the board of county commissioners or his designee" and the last two sentences in the section text.

**Statutory duties of county clerk are ministerial** and are intended only to insure the regularity of county fiscal procedures. 1979 Op. Att'y Gen. No. [79-33](#).

**County funds may be distributed only on the order of the county commissioners**, and may not be granted to the county health department to be distributed by warrants of the county health officer (now district health officer). 1921 Op. Att'y Gen. No. [21-2936](#).

## 4-51-2. [Violation of act; penalty; liability to county.]

Any official or employee violating the provisions of this act [4-51-1 through [4-51-3](#) NMSA 1978] shall, upon conviction thereof in a court of competent jurisdiction, be deemed guilty of a misdemeanor and punished by a fine not less than one hundred dollars [(\$100)] nor more than five hundred dollars [(\$500)], or by imprisonment, in the discretion of the court. Any county commissioner, or any other official whose duty it is to allow claims and issue warrants therefor, who issues warrants or evidences

of indebtedness contrary to the provisions of this act shall be liable to the county for such violations, and recovery may be had against the bondsmen of such official. Any county treasurer or other official whose duty it is to pay warrants and evidences of indebtedness, who shall pay such warrants and evidences of indebtedness contrary to the provisions of this act, shall likewise be liable to the county for such violations, and recovery may be had against his bondsmen.

**History:** Laws 1921, ch. 188, § 7; C.S. 1929, § 33-5907; 1941 Comp., § 15-4807; 1953 Comp., § 15-51-7.

#### ANNOTATIONS

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

**Cross references.** — For liability of county commissioners for moneys, warrants or indebtedness ordered paid out without authority of law, see [4-38-28](#) NMSA 1978.

For liability of county commissioners for unauthorized approval of accounts, see [4-38-29](#) NMSA 1978.

For financial affairs of counties, municipalities and school districts generally, see [6-6-7](#) NMSA 1978 et seq.

### 6-10-8. County boards of finance.

The board of county commissioners in each county in the state shall, ex officio and without additional compensation, constitute a county board of finance and as such shall, subject to the limitations of this act, have supervision over the determination of the qualifications and selection of banks, savings and loan associations and credit unions, whose deposits are insured by an agency of the United States, to receive the public money of their respective counties and of independent rural school districts, rural school districts and municipal school districts of municipalities having less than twenty-five thousand population according to the next preceding United States census and of any special or other districts in their respective counties for which the respective county treasurers of such counties act as ex-officio tax collectors. The county clerk in each county shall, ex officio and without additional compensation, act as clerk of such county board of finance. Every county board of finance shall hold meetings whenever necessary for the discharge of its duties, and the chairman shall convene such board whenever necessity therefor exists or when requested so to do by two of its members or at any time when the county treasurer shall advise the chairman that he has in his custody public money in excess of the aggregate amount which depositories qualified by law are entitled to hold. A majority of the board shall constitute a quorum for the transaction of business.

The county treasurer of each county in the state shall have supervision of the deposit and safekeeping of the public money of his county and all the money which may at any time come into or be in his possession as county treasurer and ex-officio tax collector for the use and benefit of the state or of any county, municipality or district or of any subdivision of any county or of any state or public institution and by and with the advice and consent of the respective boards of finance having jurisdiction over the respective funds shall designate banks, savings and loan associations and credit unions, whose deposits are insured by an agency of the United States, to receive on deposit all moneys entrusted in his care.

**History:** Laws 1933, ch. 175, § 1; 1941 Comp., § 7-204; 1953 Comp., § 11-2-4; Laws 1968, ch. 18, § 2; 1981, ch. 332, § 1; 1987, ch. 79, § 4.

## ANNOTATIONS

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

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

**Delegation to county treasurer.** — There is no statutory prohibition against delegation to the county treasurer by the board of county commissioners, sitting as the county board of finance, of specific investment decision-making. For example, the board could adopt a policy and permit the treasurer to make investment decisions that conform to the policy. Such delegation may be essential to enable the treasurer to respond to sudden changes in the financial markets. *Board of Cnty. Comm'rs v. Padilla*, [1990-NMCA-125](#), [111 N.M. 278](#), [804 P.2d 1097](#).

**Relationship between county treasurer and board of finance.** — The county treasurer determines how to deposit and invest county funds. That decision must then be approved by the board of county commissioners, sitting as the county board of finance. The board of finance has no power to modify the county treasurer's decision without the treasurer's concurrence. On the other hand, the county treasurer cannot impose a unilateral decision upon the board of finance. *Board of Cnty. Comm'rs v. Padilla*, [1990-NMCA-125](#), [111 N.M. 278](#), [804 P.2d 1097](#).

**Boards of county commissioners have exclusive authority** and responsibility to act as county boards of finance, the only limitations upon their authority being those imposed by statute. 1962 Op. Att'y Gen. No. [62-71](#).

**Designation of banks as official depositories of county funds.** — The county boards of finance are the sole authorities within their respective counties to determine which banks are to be designated as the official depositories of county funds and if more than one bank in each county is so designated to then determine the distribution of deposits between such banks. 1962 Op. Att'y Gen. No. [62-71](#).

**County treasurer acts in purely ministerial capacity** and can only deal with such moneys in the manner prescribed by the county board of finance. 1962 Op. Att'y Gen. No. [62-71](#), but see *Board of County Comm'rs v. Padilla*, [1990-NMCA-125](#), [111 N.M. 278](#), [804 P.2d 1097](#).

**"School activity funds" of public schools are public funds** so as to require that they be deposited in the same manner as other public funds. 1962 Op. Att'y Gen. No. [62-71](#).

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

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63C Am. Jur. 2d Public Funds §§ 5, 6, 11, 12. 20 C.J.S. Counties §§ 193 to 203.

## ANNOTATIONS

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

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

**The 2019 amendment**, effective June 14, 2019, defined "investment policy", "supranational issuer", and "United States government sponsored enterprises" as used in this section, allowed the state treasurer and county and municipal treasurers to invest in securities issued by a supranational issuer, permitted the state treasurer to invest in securities issued by all United States government sponsored enterprises, and restricted the maturity timeframe for most investments by county and municipal treasurers; in Subsection E, added Paragraphs E(2) through E(4); in Subsection F, Paragraph F(1), after "last preceding", added "and that have a maturity date that does not exceed ten years from the date of purchase", in Paragraph F(2), after "federal home loan banks,", added the remainder of the paragraph; in Subsection G, added "It shall be the duty of the treasurer to bring amendments to the

investment policy to the board of finance and obtain consent before such amendments take effect. The investment policy shall be reviewed at least every two years.", after "control of the funds", added "as can be reflected by an investment policy that is amended by the treasurer and approved by the board of finance", in Paragraph G(1), after "instruments that", deleted "are listed in a nationally recognized" and added "passively match or track the components of a", deleted former Paragraph G(2) and redesignated former Paragraph G(3) as Paragraph G(2), and added new Paragraphs G(3) through G(5); in Subsection H, after "United States or", deleted "other securities backed by the United States" and added "the securities of its agencies, instrumentalities or United States government sponsored enterprises"; in Subsection I, after "securities issued by", deleted "federal home loan banks" and added "all United States government sponsored enterprises"; in Subsection J, after each occurrence of "agencies, instrumentalities", added "or United States government sponsored enterprises"; and in Subsection N, added Paragraph N(6).

**The 2017 amendment**, effective June 16, 2017, clarified the authorization for the use of letters of credit issued by a federal home loan bank for securitization of public fund deposits in New Mexico; and in Subsection F, Paragraph F(2) and Subsection I, after "instrumentalities", added "including securities issued by federal home loan banks".

**The 2016 amendment**, effective May 18, 2016, allowed county and municipal treasurers to invest in federally insured obligations, including brokered certificates of deposit, certificate of deposit account registry service and federally insured cash accounts; and in Subsection F, added new Paragraph (3).

**The 2013 amendment**, effective June 14, 2013, authorized municipalities, counties, and the state treasurer to invest in securities backed by the full faith and credit of the United States; authorized the state treasurer to invest in securities issued by the state of New Mexico and its agencies, institutions and political subdivisions, and securities issued by other states or governmental entities in other states; increased the percentage of general funds and bond proceeds that may be invested in the local government investment pool; in Paragraph (2) of Subsection F, after "securities that are issued", added "and backed", after "backed by the", added "full faith and credit of the", after "United States government or", added "issued", and after "instrumentalities", deleted language which required that investments in United States securities be in securities that are direct obligations of the United States or named agencies of the United States or that are backed by the full faith and credit of the United States; in Subsection I, in the first sentence, after "money held in the", deleted "participating government investment fund" and added "local government investment pool" and in the second sentence, after "that are issued," added "and backed", after "backed by", added "the full faith and credit of", after "government or", added "issued", and after "or issued by its", deleted language which required that investments in United States securities be in securities that are direct obligations of the United States or that are backed by the full faith and credit of the United States or agencies sponsored by the United States and added "agencies or instrumentalities"; in Subsection K, in the third sentence, after "delivered to the", deleted "fiscal agent" and added "state"; and in Paragraph (3) of Subsection N, at the beginning of the sentence, after "the", deleted "participating government investment fund" and added "local government investment pool", and in the second sentence, after "this paragraph shall", deleted "be less than five" and added "in aggregate, be no more than thirty-five", and after "total assets of the", deleted "participating government investment fund" and added "local government investment pool"; and added Paragraphs (4) and (5) of Subsection N.

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

**The 2006 amendment**, effective May 17, 2006, in Subsection I, in the last sentence, changed "shall be made only" to "may be made"; in Subsection J, added the last two sentences relating to delivery of securities to a third-party custodial bank; in Subsection K, provided for the delivery of collateral to the

fiscal agent of New Mexico or its designee; deleted former Subsection L that provided for the delivery of the security required in Subsection J or K to be delivered to the fiscal agent of New Mexico; deleted former Paragraph (1) of Subsection N (formerly Subsection O), which provided for investment in shares of a diversified investment company that invests in certain United States fixed-income securities or debt instruments if the investment company manages assets of at least one billion dollars; and inserted new Subparagraphs (a) through (c) of Paragraph (1) of Subsection N, which provides for investment in an open-ended diversified investment company that meets the listed criteria.

**The 2005 amendment**, effective June 17, 2005, changed "third-party safekeeping financial institution" to "safekeeping financial institution" in Subsection P.

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

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

**The 1999 amendment**, effective January 1, 2000, in Subsection A, deleted "provided that no deposit of public money shall be made in a credit union unless the deposit is insured by an agency of the United States" following "collected by the treasurers"; in Subsection F, substituted "school district that is entrusted" for "school district which are now or may hereafter by law be entrusted"; added Subsection G and redesignated subsequent subsections accordingly; and made stylistic changes throughout.

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

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

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

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

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

**The 1987 amendment**, effective June 19, 1987, substituted "savings and loan association or credit union" for "or savings and loan association" in several places throughout the section, inserting "and may make deposit of that money in credit unions" in Subsection A and added the proviso at the end of that subsection, added all of the language following "counties" in Subsection B, added all of the language beginning with "subject to" in Subsection C, added all of the language following "or deposit" in Subsection E, added "or agencies guaranteed by the United States government" at the end of Subsection G, redesignated former Subsection H as Subsection L while substituting therein "contemporaneous transfer of the securities at the earliest time industry practice permits, but in all cases settlement shall be on a same-day basis" for "simultaneous transfer of the securities," and added Subsections H through K.

**County treasurer's powers.** — Section [6-10-10](#)(F) NMSA 1978 gave the same investment power to the county treasurer – "by and with the advice and consent" of the board of finance" – as that given to the county board of finance, namely to invest sinking funds, unexpended bond proceeds and money not immediately necessary for public use in government bonds and negotiable securities. *Board of Cnty. Comm'rs v. Padilla*, [1990-NMCA-125](#), [111 N.M. 278](#), [804 P.2d 1097](#).

**Meaning of "advice and consent".** — In [6-10-10](#) NMSA 1978, the phrase "advice and consent" constricts the state treasurer's ability to invest public money to the extent that the state treasurer must first obtain consent to do so by the state board of finance. The state board of finance has only the power of approval or denial over the state treasurer's investments, but not the power of investment. 2014 Op. Att'y Gen. [14-05](#).

**The "advice and consent" requirement does not violate balance of powers.** — The legislative requirement of [6-10-10](#) NMSA 1978 that the state treasurer obtain the "advice and consent" of the state board of finance to invest public money does not violate the constitutional doctrine of separation of powers. 2014 Op. Att'y Gen. [14-05](#).

**Governor's power over the state board of finance.** — The governor does not have the power to expand the power of the state board of finance through use of an executive order beyond the power conferred by law. 2014 Op. Att'y Gen. [14-05](#).

Because the governor has the authority under [6-10-10](#) NMSA 1978 to direct the state board of finance to oversee investment decisions by the state treasurer with regard to "advice and consent", the governor had the power to issue an executive order that required the state board of finance to adopt a policy establishing procedures and conditions for giving its advice and consent regarding investments by the state treasurer, but the governor cannot compel the board of finance to extend its oversight over any other duties belonging to the state treasurer or other aspects of running the state treasurer's office. 2014 Op. Att'y Gen. [14-05](#).

**County commissioners may designate depository bank for all county officials.** — County commissioners, as the county board of finance, have the authority to designate the depository bank which must be used by all county officials as a depository for funds of the county. 1959 Op. Att'y Gen. No. [59-04](#).

**Revenue derived from operation of waterworks constitutes public funds.** — Irrespective of whether a village, in operating a waterworks, is operating in a governmental or proprietary capacity, it is nonetheless operating the waterworks for the benefit of the public, and the revenues derived therefrom are for the public uses of the municipality. 1953 Op. Att'y Gen. No. [53-5859](#).

**Funds accumulated by counties for remote contingencies or investment.** — Counties may not accumulate funds as an unreserved general fund balance, for a remote contingency, or for the sole purpose of investment. They must apply excess funds in such categories to the following year's budget estimate. Counties, however, may designate or reserve excess funds for reasonably foreseeable contingencies or capital projects. 1988 Op. Att'y Gen. No. [88-56](#).

**Impermissible investments.** — Investment of public funds is limited to such interest-bearing securities as are provided by statute, which does not include loans to private individuals. 1933 Op. Att'y Gen. No. [33-667](#).

A village cannot legally invest any portion of its water meter deposit fund in revenue bonds, whether of said village or any other municipality or school district of the state. 1953 Op. Att'y Gen. No. [53-5859](#). CATS's (Certificate of Accrual on Treasury Securities), TIGR's (Treasury Interest Growth Receipts), and ETR's (Easy Growth Treasury Receipts) are not bonds, treasury certificates, or negotiable instruments of the United States government. They therefore are not permissible investments for counties. 1988 Op. Att'y Gen. No. [88-11](#).

**Investment of funds in United States government bonds authorized.** — This section is sufficient authority to permit a board of county commissioners to invest moneys in its courthouse and jail sinking

fund, which are not immediately needed to retire outstanding bonds, in United States government bonds. 1941 Op. Att'y Gen. No. [41-3903](#).

**Investment in mutual funds or investment trusts.** — Investment by the state treasurer in a mutual fund acting as an investment conduit (i.e., an open-end mutual fund or a unit investment trust meeting the requirements of Subsection O(1)) is constitutional. 2000 Op. Att'y Gen. No. [00-03](#).

**"Adjusted trading."** — The law does not proscribe specifically the practice of "adjusted trading." However, engaging in adjusted trades for the purpose of hiding a loss is inconsistent with rendering a true account of the county's investments, and a county treasurer thus may be liable on his bond. 1988 Op. Att'y Gen. No. [88-11](#).

**Municipally owned utility may invest in bonds of out-of-state municipalities.** — A municipally owned utility company may invest in bonds of out-of-state municipalities, since operation of the utility is not of such a "governmental nature" as to come within the purview of this section. 1941 Op. Att'y Gen. No. [41-3761](#).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63C Am. Jur. 2d Public Funds §§ 5, 6; 63C Am. Jur. 2d Public Officers and Employees §§ 413 to 423.

Constitutionality of statute authorizing state to loan money or to engage in business of a private nature, 14 A.L.R. 1151, 115 A.L.R. 1456.

Stock of private corporation, constitutional or statutory provisions prohibiting municipalities or subdivisions of state from investing in, 152 A.L.R. 495.

Liability of public officer or his bond for loss of public funds due to insolvency of bank in which they were deposited, 155 A.L.R. 436.

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

20 C.J.S. Counties §§ 126, 197; 64 C.J.S. Municipal Corporations §§ 1880, 1881; 81A C.J.S. States § 225; 87 C.J.S. Towns §§ 121, 167.

## **6-10-10.1. Local government investment pool created; distribution of earnings; report of investments.**

A. There is created in the state treasury the "local government investment pool". The fund shall consist of all deposits from participating governments, including revenues dedicated to repaying bonds, that are placed in the custody of the state treasurer for investment purposes pursuant to this section. The state treasurer shall maintain one or more separate accounts for each participating government having deposits in the local government investment pool and may divide the fund into two or more subfunds, as the state treasurer deems appropriate, for short-term and medium-term investment purposes, including one or more subfunds for bond proceeds deposited by participating governments.

B. If an eligible governing body is unable to receive payment on public money at the rate of interest as set forth in Section [6-10-36](#) NMSA 1978 from financial institutions within the geographic boundaries of the eligible governing body, or if the eligible governing body is not bound by the terms of Section [6-10-36](#) NMSA 1978, the finance officer having control of the money of that eligible governing body not required for current expenditure may, with the consent of the board of finance of the eligible governing body if consent is required by the laws or rules of the eligible governing body, remit some or all of the money to the state treasurer for deposit for the purpose of investment as allowed by this section.

C. Before funds are invested or reinvested pursuant to this section, a finance officer shall notify and make the funds available for investment to banks, savings and loan associations and credit unions located within the geographical boundaries of the participating government or the eligible governing body, subject to the limitation on credit union accounts. To be eligible for deposit of the government funds, the financial institution shall pay to the participating government or eligible governing body the rate established by the state treasurer pursuant to a policy adopted by the state board of finance for the investments.

D. A finance officer shall specify the length of time a deposit shall be in the local government investment pool. The state treasurer through the use of the state fiscal agent shall separately track each deposit and shall make information regarding the deposit available to the public upon written request.

E. The state treasurer shall invest the local government investment pool as provided in Section [6-10-10](#) NMSA 1978 regarding the investment of state funds in investments with a maturity at the time of purchase that does not exceed three years. The state treasurer may elect to have the local government investment pool consolidated for investment purposes with the state funds under the control of the state treasurer; provided that accurate and detailed accounting records are maintained for the account of each participating government and that a proportionate amount of interest earned is credited to each of the separate accounts of a participating government. The fund shall be invested to achieve its objective, which is to realize the maximum return consistent with safe and prudent management.

F. At the end of each month, all net investment income or losses from investment of the local government investment pool shall be distributed by the state treasurer to the accounts of participating governments in amounts directly proportionate to the respective amounts deposited by them in the local government investment pool and the length of time the amounts in each account were invested.

G. The state treasurer shall charge participating governments reasonable audit, administrative and investment expenses and shall deduct those expenses directly from the net investment income for the investment and administrative services provided pursuant to this subsection. The amount of the charges, the manner of the use by the state treasurer and the nature of bond-related services to be offered shall be established in rules adopted and promulgated by the state treasurer subject to approval by the state board of finance.

H. Subject to appropriation by the legislature, amounts deducted from the accounts of participating governments for charges permitted pursuant to this section shall be expended by the state treasurer in fiscal year 2008 and in subsequent fiscal years for the administration and management of the local government investment pool, services provided to participating governments related to investment of their money in that fund and other services authorized by this section. Balances remaining at the end of a fiscal year from the amounts deducted pursuant to this section shall revert to the general fund. Balances in the state treasurer's operating account resulting from deductions taken pursuant to this section in excess of the amount required to provide administration, management and related services required by this subsection or other services authorized by this section shall be offset by reductions in the charges made by the state treasurer to the accounts of participating governments in subsequent deductions from participating governments' accounts.

I. Each fiscal year, the state treasurer shall cause to have the short-term investment portion of the local government investment pool rated by a nationally recognized statistical rating organization. If the rating received by the short-term investment portion of the fund is lower than "AA", the state treasurer shall immediately submit a plan to the state board of finance detailing the steps that will be taken to obtain an "AA" or higher rating.

J. The state treasurer may offer to provide to participating governments services related to requirements of the federal income tax laws applicable to the investment of bond proceeds.

K. A tribe or quasi-governmental body created pursuant to New Mexico statute may become a participating government only if the governing authority of the tribe or quasi-governmental body has adopted a resolution authorizing the tribe or quasi-governmental body to remit money to the state treasurer for investment in the local government investment pool.

L. Deposits by the state treasurer on behalf of the general fund and bond proceeds investment pools shall, in aggregate, be no more than thirty-five percent of the total amount in the local government investment pool at any time.

M. The educational retirement board, the public employees retirement association and the state investment council may remit money to the state treasurer for investment in the local government investment pool.

**History:** 1978 Comp., § 6-10-10.1, enacted by Laws 1988, ch. 61, § 2; 1991, ch. 239, § 1; 1991, ch. 258, § 1; 1992, ch. 61, § 32; 1994, [ch. 71, § 2](#); 1995, [ch. 64, § 1](#); 2001, [ch. 241, § 1](#); 2003, [ch. 399, § 1](#); 2006, [ch. 80, § 2](#); 2008, [ch. 23, § 3](#); 2011, [ch. 158, § 1](#); 2013, [ch. 65, § 3](#); 2019, [ch. 7, § 1](#).

#### ANNOTATIONS

**The 2019 amendment**, effective June 14, 2019, provided that the educational retirement board, the public employees retirement association and the state investment council may participate in the local government investment pool; and added Subsection M.

**The 2013 amendment**, effective June 14, 2013, changed the name of the participating government investment fund to the local government investment pool; deleted the requirement that short-term investments maintain an "AA" or higher rating; at the beginning of the title, deleted "Participating government investment fund" and added "Local government investment pool"; in Subsections A, D, E, F, H, I, K and L, deleted "participating government investment fund" and added "local government investment pool"; in Subsection I, deleted the former first sentence, which required that short-term investments maintain an "AA" or higher rating and in the current first sentence, after "Each fiscal year", deleted "and at such other times as directed by the state board of finance"; and in Subsection L, after "investment pools shall", deleted "not exceed" and added "in aggregate, be no more than".

**The 2011 amendment**, effective July 1, 2011, in Subsection L, increased the authorized deposits on behalf of the general fund and bond proceeds investment pools from five to thirty-five percent of the total amount in the participating government investment fund.

**The 2008 amendment**, effective February 27, 2008, changed the name of the short-term investment fund to the participating government investment fund; included revenues dedicated to repaying bonds in the fund in Subsection A; deleted the 180 day limitation for investment in the fund in Subsection D; extended the time limit for investment of funds from 397 days to three years in Subsection E; authorized the state treasurer to adopt rules to establish charges and the nature of bond-related services in Subsection G; and added Subsections H and J through L.

**The 2006 amendment**, effective May 17, 2006, added Subsection G to provide that investment shall be made in a manner that the fund maintains a "AA" or higher rating; that the short-term investment fund shall be rated annually and if the fund is lower than "AA", the state treasurer shall submit a plan to the state board of finance to obtain an "AA" or higher rating.

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

**The 2001 amendment**, effective June 15, 2001, in Subsection B, substituted "required for current expenditure" for "not required for expenditure within thirty days or less", deleted "bank, savings and loan association or credit union" following "state treasurer"; in Subsection E, deleted "and" following "NMSA 1978" and inserted "in investments with a maturity at the time of purchase that does not exceed three hundred ninety-seven days. The state treasurer", and deleted the former second sentence, which read "The state treasurer may invest a portion of the funds in banks, savings and loan associations or credit unions subject to the requirements of this section."; in Subsection F, substituted "net investment income or losses" for "interest earned", substituted "reasonable audit, administrative and investment expenses to be paid directly from their net investment income for the investment and administrative services" for "a fee of five basis points for the investment services"; deleted the definition of "short term" in Subsection G; and substituted "development council" for "assistance council" in Paragraph H(4).

**The 1995 amendment**, effective June 16, 1995, substituted "one hundred eighty-one days" for "thirty days" at the end of the first sentence in Subsection D, added the second sentence in Subsection E, and rewrote the second sentence of Subsection F which read: "No fees or transfer expenses shall be charged to the participating entities and Indian tribes or pueblos for investment in the short term investment fund".

**The 1994 amendment**, effective July 1, 1994, deleted "Subsection C of" preceding "Section 6-10-10" and substituted "tribe or pueblo" for "tribes or pueblos" in Subsection E, and inserted "District" following "Advancement" in Paragraph H(6).

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

**The 1991 amendment**, effective June 14, 1991, substituted references to entity and Indian tribe or pueblo for "local public body" throughout the section; deleted "local" from the beginning of the catchline and preceding "short-term investment fund" in the first sentence in Subsection A and near the end of Subsection F; inserted "short-term investment" in Subsections D, E and F; and added Subsection H.

**Relationship between county treasurer and board of finance.** — Section [6-10-10.1](#) NMSA 1978, as enacted in 1988, gives the county treasurer power, "with the consent" of the board of finance, to place county funds in the state treasurer's "local short-term investment fund", which means that the county treasurer's decisions must be approved by the county board of finance. The county board of finance has no power to modify the county treasurer's decisions without the treasurer's concurrence and the treasurer cannot impose a unilateral decision on the board of finance. *Board of Cnty. Comm'rs v. Padilla*, [1990-NMCA-125](#), [111 N.M. 278](#), [804 P.2d 1097](#).

## **6-10-16. Security for deposits of public money.**

A. Deposits of public money shall be secured by:

- (1) securities of the United States, its agencies or instrumentalities;
- (2) securities of the state of New Mexico, its agencies, instrumentalities, counties, municipalities or other subdivisions;

(3) securities, including student loans, that are guaranteed by the United States or the state of New Mexico;

(4) revenue bonds that are underwritten by a member of the financial industry regulatory authority, known as FINRA, and are rated "BAA" or above by a nationally recognized bond rating service; or

(5) letters of credit issued by a federal home loan bank.

B. No security is required for the deposit of public money that is insured by the federal deposit insurance corporation or the national credit union administration.

C. All securities shall be accepted as security at market value. The restrictions of Subsection A of this section apply to all securities subject to this subsection.

**History:** 1953 Comp., § 11-2-18.1, enacted by Laws 1969, ch. 243, § 1; 1981, ch. 332, § 5; 1987, ch. 79, § 6; 1987, ch. 307, § 1; 2000, [ch. 47, § 1](#); 2013, [ch. 65, § 4](#).

#### ANNOTATIONS

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

For severance tax bonds as security for public deposits, see [7-27-19](#) NMSA 1978.

**The 2013 amendment**, effective June 14, 2013, changed the authorized underwriters of revenue bonds that may secure deposits of public money; deleted the requirement that obligations of the state of New Mexico be accepted at par value; in Paragraph (4) of Subsection A, after "member of the", deleted "national association of securities dealers" and added "financial industry regulatory authority" and after "known as", deleted "N.A.S.D." and added "FINRA"; and in Subsection C, deleted the former first sentence which required that obligations of the state of New Mexico be accepted at par value, and in the current first sentence, after "All", deleted "other".

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

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

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

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

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

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

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63C Am. Jur. 2d Public Funds §§ 13, 14.  
26A C.J.S. Depositories § 9(1).