

This rule was filed as SIC Rule 89-2.

TITLE 2 PUBLIC FINANCE
CHAPTER 60 INVESTMENT AND DEPOSIT OF PUBLIC FUNDS
PART 26 GUIDELINES FOR NEW MEXICO BUSINESS INVESTMENTS IN BONDS

2.60.26.1 ISSUING AGENCY: State Investment Council.
[Recompiled 10/01/01]

2.60.26.2 SCOPE: [RESERVED]
[Recompiled 10/01/01]

2.60.26.3 STATUTORY AUTHORITY: Pursuant to Section 7-27-5.4(B) NMSA 1978 no more than ten percent of the book value of the severance tax permanent fund may be invested in bonds, notes, debentures or other evidence of indebtedness, excluding commercial paper, rated not less than BAA or Bbb or the equivalent or guaranteed by an irrevocable letter of credit to the state of New Mexico issued by a financial institution or corporation rated A or the equivalent by a national rating service of any corporation organized and operating within the United States, excluding regulated public utility corporations, which, as a condition of receiving the proceeds of such evidence of indebtedness, will use such proceeds to establish or expand business outlets or ventures in New Mexico, provided that:

A. the investment in the bonds, notes or debentures or other evidence of indebtedness of any one corporation shall not exceed one hundred percent of the cost of the expansion venture or new outlet, or twenty million dollars (\$20,000,000), whichever is less;

B. the rate of interest to be paid on the bonds, notes or debentures or other evidence of indebtedness shall be equivalent to the yield available on United States treasury issues of a comparable maturity plus fifty to one hundred basis points;

C. the indebtedness shall be approved prior to purchase by the council.

D. the guidelines for initiation of the purchase by the council of the bonds, notes, debentures or other evidence of indebtedness and the terms thereof will be established by the council.
[Recompiled 10/01/01]

2.60.26.4 DURATION: [Permanent]
[Recompiled 10/01/01]

2.60.26.5 EFFECTIVE DATE: [Filed July 12, 1989]
[Recompiled 10/01/01]

2.60.26.6 OBJECTIVE: [RESERVED]
[Recompiled 10/01/01]

2.60.26.7 DEFINITIONS: [RESERVED]
[Recompiled 10/01/01]

2.60.26.8 INVESTMENT MANAGEMENT POLICY: The terms and conditions of each particular financing situation will be approved by the council prior to the purchase of the bond, note, debenture or other evidence. In particular the council must approve:

A. the maturity of investment which shall not exceed twenty years;

B. the rate of interest to be paid on the indebtedness which shall be set at the equivalent to the yield available on U.S. treasury notes or bonds of a comparable maturity plus fifty to one hundred basis points, after taking into account the credit rating and credit history of the borrower, the terms of any letter of credit, call and put provisions of the bonds and any other terms or conditions which effect the creditworthiness and/or value of the investment;

C. the terms of any letter of credit used to secure an investment which must be irrevocable, unconditional, payable to the New Mexico state investment council and extend for the life of the investment or if renewable during the term of the investment contain provisions allowing the council to draw the letter of credit for

the outstanding unpaid principal balance of the indebtedness upon receiving notice at least 60 days prior to expiration that the letter of credit will not be renewed; and

D. the conditions of each investment which may include call protection for five or more years and if the indebtedness is a rated issue include provisions allowing the council to put the investment back to the borrower, if a minimum rating of BAA or the equivalent cannot be maintained.

[Recompiled 10/01/01]

2.60.26.9 PROCEDURE:

A. A corporation which meets the qualifications set forth in Parts I and II [now 2.60.26.3 NMAC and 2.60.26.8 NMAC], above, may request that the state investment council make a purchase of bonds, notes, debentures or other evidence of indebtedness pursuant to Section 7-27-5.4(B) by submitting a proposal containing the following:

(1) A certified copy of the corporation's articles of incorporation.
(2) Evidence that the bond rating on the corporation's debt meets the minimum requirement set by statute or that an irrevocable, unconditional letter of credit from a qualified financial institution or corporation can be provided.

(3) A comprehensive business plan detailing the corporation's proposed expansion venture or new outlet in New Mexico, under Section 7-27-5.4(B), and a projected time frame for completion of the project following approval by the state investment council and subsequent funding.

(4) A project cost analysis which contains a clear and concise statement by the corporation of the planned utilization of funds received pursuant to Section 7-27-5.4(B), including the total estimated cost of the project, the total amount of funding requested pursuant to Section 7-27-5.4(B), other sources of funding for the project, if any, and a quarterly cash flow schedule showing both the amount and purposes of the projected expenditures of funds received pursuant to Section 7-27-5.4(B).

(5) Balance sheet and income statements before the project indicating the financial condition of the corporation and proforma statements of estimated income and cash flows of the corporation after the project.

(6) A description of the debt instrument, including a description of its terms, conditions, collateralization, a proposed repayment schedule and bond rating. Interest payments should be structured on a semi-annual basis. If a letter of credit is being used to qualify the investment a copy of the letter of credit which must be irrevocable, unconditional, for the life of the investment and payable to the state of New Mexico.

(7) Evidence that the debt instrument has been issued in accordance with all state and federal securities regulations, including registration with the securities and exchange commission.

(8) A statement from the corporation's independent auditor attesting to the following:
(a) the receipt, expenditure and utilization of state funds received by or for the corporation pursuant to Section 7-27-5.4 (B) shall be accounted for in such a manner that the receipt, expenditure, and utilization of such funds are clearly identified on the books of the corporation and distinguished from the receipt, expenditure, and utilization of other funds of the corporation, and
(b) any state funds which are received pursuant to Section 7-27-5.4(B) and held by or for the corporation prior to their expenditure shall be recorded on the books of the corporation separately from the other funds of the corporation and shall be earmarked for expenditures related to the project or purposes described in the proposal submitted to the state investment council.

B. Corporations shall submit their formal proposal and any supplementary information, documentation or evidence requested by the members of the council to the state investment office. The proposal and final closing documents will be subject to approval as to legal sufficiency and form by the New Mexico attorney general and/or bond counsel acting for the state. All costs of issuance, including SIC bond counsel, will be paid by the corporation.

[Recompiled 10/01/01]

HISTORY OF 2.60.26 NMAC:

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

Rule No. 85-1, Guidelines for New Mexico Business Investments, 3-28-85.

Rule No. 87-4, New Mexico Business Investments Under Section 7-27-5.1(E) NMSA 1978, 1-5-88.

SIC Rule 89-2, Guidelines for New Mexico Business Investments in Bonds, 7-12-89.

History of Repealed Material: [RESERVED.]