

TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 3 POST-SECONDARY EDUCATION INSTITUTION FINANCES
PART 7 BUILDING AND IMPROVEMENT BONDS

5.3.7.1 ISSUING AGENCY: State of New Mexico Higher Education Department.
[12/31/98; 5.3.7.1 NMAC - Rn & A, 5 NMAC 3.7.1, 07/31/05]

5.3.7.2 SCOPE: All public post-secondary educational institutions operating within and receiving financial support from the state of New Mexico.
[12/31/98; 5.3.7.2 NMAC - Rn, 5 NMAC 3.7.2, 07/31/05]

5.3.7.3 STATUTORY AUTHORITY: Authority for 5.3.7 NMAC is found in NMSA 1978 Sections 6-13-1 through 6-13-26; Sections 6-17-1 through 6-17-14; and Sections 21-7-13 through 21-7-25.
[12/31/98; 5.3.7.3 NMAC - Rn, 5 NMAC 3.7.3, 07/31/05]

5.3.7.4 DURATION: Permanent.
[12/31/98; 5.3.7.4 NMAC - Rn, 5 NMAC 3.7.4, 07/31/05]

5.3.7.5 EFFECTIVE DATE: December 31, 1998, unless a later date is cited at the end of a section.
[12/31/98; 5.3.7.5 NMAC - Rn & A, 5 NMAC 3.7.5, 07/31/05]

5.3.7.6 OBJECTIVE: The objective and purpose of 5.3.7 NMAC is to establish a process upon which public higher education institutions may initiate their statutory authority to borrow money for certain improvements.
[12/31/98; 5.3.7.6 NMAC - Rn, 5 NMAC 3.7.6, 07/31/05]

5.3.7.7 DEFINITIONS: [RESERVED]

5.3.7.8 REVIEW CRITERIA:

A. The state educational institutions clearly have statutory authority to borrow money.

(1) Sections 6-13-1 through 6-13-26 NMSA 1978 authorizes each of the governing boards to issue and sell bonds for the purpose of erecting, purchasing or otherwise acquiring, altering, improving furnishing and equipping any necessary buildings or structures or acquiring any necessary land. Permanent fund income and income from the lease of the institutions lands may be pledged as security for the repayment of the bonds. Board of finance approval is required prior to the issuance and sale of bonds. Board of finance policy requires higher education department approval prior to their consideration of any matter related to higher education.

(2) Section 6-17-1 through 6-17-13 NMSA 1978 authorizes the boards of regents of each of the state educational institutions to borrow money for the purpose of purchasing, erecting, altering, improving, repairing furnishing and/or the equipping of any income-producing dormitory, auditorium, dining hall, refectory, stadium, swimming pool, or any type of building including classroom buildings and administration buildings. For income-producing projects, the board of regents shall impose charges and student fees in the amount needed to retire the debt plus enough to operate and maintain the facility. Approval by the board of finance is required.

(3) Section 6-17-14 allows the pledge of additional revenues including the net income from all auxiliary facilities, land and permanent fund income, and lease and rental income.

(4) Various articles in Section 21 grant each individual board of regents authority to borrow money through the issuance and sale of bonds. For example, Section 21-7-13 NMSA 1978 states: That for the purpose of erecting, altering, improving, furnishing or equipping any necessary buildings at the university of New Mexico at Albuquerque, or for acquiring any necessary land for the use of said university, or for retiring the whole or any part of any series of bonds previously issued under the provisions hereof, or for any of such purposes, the board of regents of the university of New Mexico is hereby authorized to borrow money in conformity with the terms of this act (Sections 21-7-13 to 21-7-25 NMSA 1978).

(5) Section 21-7-19 describes the income pledged for redemption of building and improvement bonds as follows: "For the faithful and prompt payment of all interest and principal of said bonds as and when the same shall mature according to the tenor thereof, the issue thereof shall constitute an irrevocable pledge by said board of so much of each year's income from the permanent fund of the university of New Mexico in the hands of the treasurer of this state, as shall be necessary to provide the interest and retirement fund herein mentioned, for the ensuing year, and to at all times fully and faithfully keep the same in not less than the amount necessary to pay the

interest and principal maturing as aforesaid; and in addition thereto the issue of said bonds shall constitute an irrevocable pledge by said board of so much of each year's income from the income and current fund derived from the lease of such of its lands as remain unsold, as may be necessary to fully protect the interest and retirement fund for the ensuing year, and keep the same at all times in proper amount as herein provided."

(6) Similar provisions are included in Section 21 for each of the state educational institutions.

B. A proposal to issue revenue bonds must contain the following information:

(1) current bonded debt including debt service requirements and revenue sources being used to meet the principal and interest payments;

(2) amount of new bonds to be issued;

(3) projected bond retirement schedule;

(4) sources of revenue to be used for debt retirement;

(5) projects to be funded with bond issue proceeds.

C. Typical sources of revenue available for debt service include required student fees, net revenues from auxiliaries including athletics, lease and rental income, and land and permanent fund income. It is expected that bonds sold to finance income-producing facilities (auxiliary activities) will be retired without the use of land and permanent fund income. Since the use of land and permanent fund income for debt service reduces the amount of revenue available from that source for operating purposes, it increases the level of need from the general fund. Because of this legislative impact, the higher education department shall report all revenue bond issue approvals to the legislative finance committee, particularly noting any proposed use of land and permanent fund income. [12/31/98; 5.3.7.8 NMAC - Rn & A, 5 NMAC 3.7.8, 07/31/05]

HISTORY OF 5.3.7 NMAC:

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

BEF Rule 410, Building and Improvement Bonds, 2-27-85.

History of Repealed Material: [RESERVED]