

This is an amendment to 2.61.5 NMAC, Sections 6, 7, 12, 13, 16

2.61.5.6 OBJECTIVE: This rule provides general guidance regarding the financial and legal requirements for board approval of certain bond issues and exchange agreements as required by state statute. The rule is intended to benefit the state and its agencies and political subdivisions in their financing policies. Board approval of a proposed bond issue or exchange agreement is not intended to protect investors and does not evidence the soundness of any investment. Board approval is based solely on information provided by the issuing authority or public body. The board has no duty to independently investigate, and does not independently investigate, the merits and risks involved in the financing, although it may require review and analysis by its advisors, under the terms and conditions set forth in Section 2.61.5.16 of this rule, whenever it deems such review and analysis advisable.
[2.61.5.6 NMAC - N, 4-28-2000; A, 7-15-2003]

2.61.5.7 DEFINITIONS:

- A. "Anticipation notes" means tax and revenue anticipation notes issued by the state pursuant to the Short Term Cash Management Act, sections 6-12A-1 to 6-12A-15 NMSA, and approved by the board pursuant to Section 6-12A-5 NMSA 1978.
- B. "Board" means the state board of finance.
- C. "Bonds" means a written promise to pay a specified sum of money (par value or principal amount) at a specified date or dates in the future (maturity dates) together, if applicable, with interest. Bonds include, for these purposes, but without limitation, highway debentures, higher education institution system or income producing revenue bonds, state fair bonds, game and fish bonds, state park bonds, and anticipation notes.
- D. "Costs of issuance" means all costs incurred by the issuing authority or public body incident to the planning and sale of bonds or the execution and delivery of exchange agreements. Costs of issuance include but are not limited to underwriters' spread, discount, or fees, counsel fees, financial advisor fees, credit enhancement costs, rating agency fees, trustee fees, accountant fees, printing costs, administrative costs and costs incurred in connection with the required public notice process.
- E. "Exchange agreements" means interest rate swap contracts, forward payment conversion contracts, forward supply contracts, futures, or contracts providing for payments based on levels of or changes in interest rate, or contracts including, without limitation, options, puts or calls to hedge payment, rate, price spread or similar exposure.
- F. "Financing documents" means any official statement, bond purchase agreement, indenture, liquidity facility, credit enhancement agreement or other similar agreement associated with the issuance of the bonds.
- G. "Issuing authority" means the state treasurer with respect to anticipation notes and the governmental unit in the name of which other bonds are issued. For these purposes, issuing authorities include, but are not limited to, the state treasurer, state highway commission, state fair commission, regents of state universities, fish and game commission, state agencies, counties, and municipalities.
- H. "Net effective interest rate" means the interest rate of public securities, compounded semi-annually in arrears necessary to discount the scheduled debt service payments of principal and interest to the date of the public securities and to the price paid to the public body for the public securities excluding any interest accrued to the date of delivery and based upon a year with the same number of days as the number of days for which interest is computed on the public securities.
- I. "Parameters resolution" means a resolution of the board approving the issuance of bonds ~~[by an issuing authority]~~ or other financing, including but not limited to interest rate exchange agreements, by a public body which by law require board approval and setting forth the maximum principal amount of the ~~[bonds]~~ transaction, the maximum interest rate and other terms and conditions of the issuance.
- J. "Public body" for purposes of ~~[exchange agreement approval]~~ any financing, including but not limited to bonds or interest rate exchange agreements, which by law requires board approval means any municipality, any county, any school district, any special district, any H-class county located in New Mexico, the New Mexico hospital equipment loan council, state institutions enumerated in Section 6-13-2 NMSA 1978, the water quality control commission, the board, the New Mexico finance authority, and the state.
- K. "Public body" for purposes of net effective interest rate approval means the state or any department, board, agency or instrumentality of the state, any county, city, town village, school district, other district, educational institution or any other governmental agency or political subdivision of the state.
- L. "Public securities" means any bonds, notes, warrants or other obligations now or hereafter

authorized to be issued by any public body pursuant to the provisions of any general or special law enacted by this legislature, but does not include bonds, notes, warrants or other obligations issued pursuant to:

- (1) the Industrial Revenue Bond Act, Sections 3-32-1 to 3-32-16 NMSA 1978;
- (2) the County Improvement District Act, Sections 4-55A-1 to 4-55A-43 NMSA 1978;
- (3) Sections 3-33-1 through 3-33-43 NMSA 1978;
- (4) the Pollution Control Revenue Bond Act Sections 3-59-1 to 3-59-14 NMSA 1978;
- (5) the County Pollution Control Revenue Bond Act, Sections 4-60-1 to 4-60-15 NMSA 1978;
- (6) the County Industrial Revenue Bond Act, Sections 4-59-1 to 4-59-16 NMSA 1978;
- (7) the Metropolitan Redevelopment Code, Sections 3-60A-1 to 3-60A-48 NMSA 1978;
- (8) the Supplemental Municipal Gross Receipts Tax Act, Sections 7-19-10 to 7-19-18 NMSA 1978;
- (9) the Hospital Equipment Loan Act, Section 58-23-1 to 58-23-32 NMSA 1978; or,
- (10) the New Mexico Finance Authority Act, Sections 6-21-1 to 6-21-29 NMSA 1978.

M. "Refunding bonds" means bonds issued to refinance other bonds. These include current and advance refunding within the meaning of the Internal Revenue Code of 1986, as amended.

N. "State agency and commission bonds" means bonds issued by the

(1) state fair pursuant to Section 16-6-15(E) NMSA 1978 and approved by the board pursuant to Section 16-6-15(E) NMSA 1978 and Section 16-6-16 NMSA 1978;

(2) state game commission and approved by the board pursuant to Section 17-1-18 NMSA 1978;

(3) commissioner of public lands and approved by the board pursuant to Section 19-10B-5 NMSA 1978;

(4) state highway commission and approved by the board pursuant to Section 67-3-59.1 NMSA 1978;

(5) state parks division of the energy, minerals and natural resources department pursuant to sections 16-2-20 to 16-2-29 NMSA 1978 and approved by the board pursuant to Section 16-2-22 NMSA 1978; and

(6) the interstate stream commission pursuant to and approved by the board pursuant to Section 72-14-13 ~~and~~, as well as those issued pursuant to Section 72-14-36 NMSA 1978 and approved by the board pursuant to section 72-14-42 NMSA 1978.

~~[N-] Q.~~ "State educational institution" means the university of New Mexico; New Mexico state university; New Mexico Highlands university; western New Mexico university; eastern New Mexico university; New Mexico institute mining and technology; northern New Mexico state school; New Mexico military institute; New Mexico school for the deaf; New Mexico school for the visually handicapped; San Juan college; New Mexico junior college; Santa Fe community college; and any post-secondary technical, vocational and area vocational institutes as defined in Sections 21-16-2 and 21-17-2 NMSA 1978.

~~[O-] P.~~ "State educational institution bonds" means income-producing project bonds or system revenue bonds issued by the board of regents of a state educational institution pursuant to Sections 6-17-1 to 6-17-13 NMSA 1978 (excluding 6-17-1.1) and approved by the board pursuant to Sections 6-17-9 NMSA 1978 and Section 6-17-14 NMSA 1978.

~~[P-] Q.~~ "State Institutions", within the meaning of the Institutional Bond Act, Sections 6-13-1 to 6-13-26 NMSA 1978, means each state educational institution; Los Lunas community program, at Los Lunas, New Mexico; the penitentiary of New Mexico at Santa Fe, New Mexico; the Las Vegas medical center at Las Vegas, New Mexico; the New Mexico boys' school at Springer, New Mexico; and the miners' Colfax medical center at Raton, New Mexico.

~~[Q-] R.~~ "State institution bonds" means bonds issued by state institutions pursuant to the Institutional Bond Act, Sections 6-13-1 to 6-13-26 NMSA 1978, and approved by the board pursuant to Section 6-13-17 NMSA 1978.

~~[R-] S.~~ "True-interest-cost" means that yield which if used to compute the present worth as of the date of the bonds of all payments of principal and interest to be made on the bonds from their date to their respective maturity dates (as specified in the maturity schedule and without regard to the possible optional prior redemption of the bonds), using the interest rate specified in the bid or purchase contract produces an amount equal to the principal amount of the bonds, plus any premium bid or stated in the purchase contract. No adjustment shall be made in such calculation for accrued interest on the bonds from their date to the date of delivery thereof. Such calculation shall be based on a 360-day year consisting of twelve 30-day months and a semi-annual compounding interval.

[2.61.5.7 NMAC - N, 4-28-2000; A, 7-15-2003]

2.61.5.12 FINAL STATUTORY APPROVAL BY THE STATE BOARD OF FINANCE ON ISSUANCE OF BONDS:

A. After review of the financing plan, the board may approve the issuance of bonds by adopting a board resolution establishing parameters for the maximum principal amounts of bonds, the maximum interest rates, and other findings, terms and conditions of the sale. These are subject to confirmation to the board staff from the issuing authority after the sale of the bonds that the parameters and other terms and conditions established in the board resolution were or will be satisfied.

B. Following approval of the financing plan and the adoption of the parameters resolution by the board and the subsequent sale of the bonds, but prior to closing, ~~[issuing authorities]~~ the public body shall present to the board staff the following information:

(1) results of the sale, including coupon, true-interest-cost and demonstration of compliance with all conditions established by the board.

(2) comparisons to other similar sale issues that have same ratings, credit enhancements, and call options. Comparisons should be made by actual yields to maturities.

(3) final versions of financing document.

(4) compliance with terms and conditions set out in the parameters resolution.

C. The bonds shall not be delivered to the purchasers by the issuing authority until after the issuing authority has (1) presented the information required by Section 2.61.5.12.B to the board staff and (2) received written confirmation from board staff that the parameters established in the board resolution and any other terms or conditions set therein are satisfied.

D. The bonds must be delivered to the purchasers by the issuing authority no later than the date set in the parameters resolution adopted by the board. If the bonds are not delivered to the purchasers by the issuing authority by the date set in the parameters resolution, the issuing authority must prepare and present a new financing plan to the board at a subsequent board meeting.

[2.61.5.12 NMAC - N, 4-28-2000; A, 7-15-2003]

2.61.5.13 APPROVAL BY THE STATE BOARD OF FINANCE OF EXCHANGE AGREEMENTS:

A. After review of the information required under Section 2.61.5.13.B below, the board may approve a proposed exchange agreement by adopting a resolution establishing parameters relating to the proposed exchange agreement, subject to confirmation to the board staff from the public body after the final bidding or negotiation of the exchange agreement that the parameters established in the board resolution were satisfied.

B. Information relating to the proposed exchange agreement provided to the board for its review shall include the following items:

(1) resolution or ordinance of the public body relating to the proposed exchange agreement.

(2) evaluation of financial risk~~[, if any including "high" and "low" scenarios, if applicable,]~~ including presentation of detailed scenarios of

(a) the transaction outcome at the maximum rate, representing the upside risk to the public body,

(b) the transaction outcome based on the current market, and

(c) the anticipated transaction outcome based upon the reasonable current expectations of the public body that are the bases for the decision to enter into the transaction

(3) demonstration that financial officials of the public body are knowledgeable regarding the market conditions required for or relevant to the exchange agreement, and explicit written acknowledgement of the range of potential outcomes as demonstrated in the response to item (2) and the acceptance of the financial risks and adverse potential outcomes presented therein.

(a) representation that legal counsel, the financial advisor or bank representing the public body have explained the legal and financial risks, respectively, of the transaction.

(b) explanation of the sizing of the transaction in relation to rating agency risk evaluation criteria.

(4) demonstration of an expected long-term financial benefit to the public body.

(5) representation by and compensation of financial advisor, if any.

(6) method of selection of provider.

(7) anticipated timing of transaction.

(8) on competitive bidding, if applicable, documentation of the bid process and that a minimum of three bona-fide bids will be received.

(9) evidence that the provider is rated in either of the two highest rating categories of a nationally recognized rating agency.

(10) estimated costs associated with the exchange agreement, with a break out of all fees paid to any

natural person, firm, partnership, association or corporation involved in obtaining the exchange agreement.

(11) net amount or benefit estimated to be received from the exchange agreement.

(12) proposed term of the exchange agreement.

(13) draft of proposed exchange agreement reflecting termination provisions and collateralization or other requirements in event counter-party is downgraded below the two highest rating categories and the source of moneys to fund obligations or purchase price by issuing authority.

(14) draft parameters resolution of the board approving the exchange agreement.

C. The exchange agreement shall not be executed by the public body until after the public body has received written confirmation from board staff that the parameters established in the board resolution ~~[are]~~ have been or will be satisfied.

D. The public body must execute the exchange agreement no later than the date set in the parameters resolution as adopted by the board. If the public body does not execute the exchange agreement by the date set in the parameters resolution, then the public body must submit the information required in Section 2.61.5.13.B to the board at a subsequent board meeting.

[2.61.5.13 NMAC - N, 4-28-2000; A, 7-15-2003]

2.61.5.16 PAYMENT BY PUBLIC BODY OF FEES AND COSTS OF REVIEW AND ANALYSIS BY BOARD'S FINANCIAL ADVISOR AND/OR BOND COUNSEL:

A. Effective October 1, 2003, any public body whose financings, including but not limited to issuance of bonds or interest rate exchange agreements, must be law by approved by the board shall, as a condition of such approval, be responsible for the payment, upon closing of the proposed financing, of any fees or costs of the board's financial advisor arising from that advisor's review, analysis and recommendations regarding its proposed financing, should such review, analysis and recommendation be deemed advisable by the board in its discretion. These costs may also include the preparation, printing and making of documents and any other costs approved by the board. Such fees and expenses shall be charged as costs of issuance, and thus shall not be reimbursed if the financing does not close. The public body's payment of any such fees and costs shall be a condition of board approval, and set forth as a parameter in every resolution approving a financing.

B. Effective February 25, 2004, any public body whose financings, including but not limited to issuance of bonds or interest rate exchange agreements, must be law by approved by the board shall, as a condition of such approval, be responsible for the payment, upon closing of the proposed financing, of any fees or costs of the board's bond counsel arising from that advisor's review, analysis and recommendations regarding its proposed financing, should such review, analysis and recommendation be deemed advisable by the board in its discretion. These costs may also include the preparation, printing and making of documents and any other costs approved by the board. Such fees and expenses shall be charged as costs of issuance, and thus shall not be reimbursed if the financing does not close. The public body's payment of any such fees and costs shall be a condition of board approval, and set forth as a parameter in every resolution approving a financing.

[2.61.5.16 NMAC - N, 7-15-2003]