

TITLE 2 PUBLIC FINANCE
CHAPTER 61 STATE INDEBTEDNESS AND SECURITIES
PART 5 FINANCING APPROVALS

2.61.5.1 ISSUING AGENCY: State Board of Finance, 181 Bataan Memorial Building, Santa Fe, NM
[2.61.5.1 NMAC-N, 4-28-2000]

2.61.5.2 SCOPE: Any financing which, by law, requires board of finance approval and agreements to exchange interest rate cash flows or to limit exposure which, by law, require board of finance approval.
[2.61.5.2 NMAC-N, 4-28-2000]

2.61.5.3 STATUTORY AUTHORITY:

A. Section 6-12A-5 NMSA 1978 provides that the state treasurer may, with the approval of the Board, issue anticipation notes pursuant to the Short-Term Cash Management Act, Sections 6-12A-1 to 6-12A-15 NMSA 1978.

B. Section 6-13-17 NMSA 1978 provides that state institutions may not issue or sell bonds pursuant to the Institutional Bond Act, sections 6-13-1 to 6-13-26 NMSA 1978, until the issue has been approved by the unanimous vote of the board.

C. Section 6-17-3 NMSA 1978 provides that before a board of regents may issue income-producing project revenue bonds, the form of such bonds or other evidence of indebtedness, the time for which same shall run and times when payment of principal thereof shall be made, which shall be in yearly amounts as to payment of principal beginning not later than two years from and after the time when such money is borrowed and continuing to the end of the time for which the same shall run, and the manner and amount for which same shall be sold, and whether to be sold at public or private sale, and the amount which is to be so borrowed for each specific purpose, shall be approved by the board.

D. Section 6-17-9 NMSA 1978 provides that before the issuance of income-producing project bonds under sections 6-17-1 to 6-17-13 NMSA 1978, except 6-17-1.1 NMSA 1978, or system revenue bonds under section 6-17-14 (D) NMSA 1978, the board must approve the borrowing of such money and the amount to be borrowed.

E. Sections 16-6-15 and 16-6-16 NMSA 1978 provide that the New Mexico state fair, with the prior approval of the board, may issue negotiable bonds, negotiate loans and renegotiate loans.

F. Section 17-1-18 NMSA 1978 provides that prior to the issuance of bonds by the state game commission, the board must approve the purposes stated by the commission and the amount of each bond issue.

G. Section 19-10B-5 NMSA 1978 provides that the commissioner of public lands may issue revenue bonds to provide funds for the design, development, acquisition and implementation of the ONGARD system, subject to the approval of the terms, covenants and conditions of the bonds by the board.

H. Section 67-3-59.1(F) NMSA 1978 provides that the state highway commission may issue bonds to finance state highway projects, subject to the limitations contained in the section and subject to the approval of the issuance of the bonds and the principal amount and interest rate or maximum net effective interest rate on the bonds by the board.

I. Section 16-2-22 NMSA 1978 provides that whenever the secretary of the energy, minerals and natural resources department determines by written order that it is necessary to raise funds to provide for developing, operating and maintaining state parks or recreation areas, the state parks division of the energy, minerals and natural resources department may issue and sell bonds of the state as provided in the State Park and Recreation Bond Act, sections 16-2-20 to 16-2-29 NMSA 1978. The purposes for which the bonds are to be issued and the amount of each bond issue must be approved by the board before the issuance of the bonds.

J. Section 72-14-13 NMSA 1978 provides that the interstate stream commission may issue water conservation revenue bonds subject to the limitations of that section and subject to the approval of the board in accordance with the board's adopted policies and procedures on financing approvals.

K. Section 72-14-36 NMSA 1978 provides that the interstate stream commission may issue special water revenue bonds for the purpose of building, operating and maintaining dams on the Canadian river or its tributaries between Conchas dam and the Texas border. Pursuant to section 72-14-42 NMSA 1978, special water revenue bonds may not be issued and sold until after the issue is approved by a majority of the board.

L. Section 6-18-8.1 provides that a public body that has issued or proposes to issue bonds may enter into contracts to exchange interest rates if the governing body of that public issuer finds that such a contract would be in the best interests of that public body and if the board reviews and approves the contract and determines, in its discretion, that the contract results in a long-term financial benefit for the public body.

M. Section 6-14-3 (B) NMSA 1978 provides that a public body may not issue its public securities as provided in Section 6-14-3(A) NMSA 1978 at any net effective interest rate in excess of twelve percent a year, except for general obligation bonds which shall have a net effective interest rate of not more than ten percent a year, unless the board, at any time prior to delivery of the public securities approves such higher net effective interest rate in writing, based upon the determination of the board that the higher rate is reasonable under existing or anticipated bond market conditions.
[2.61.5.3 NMAC-N, 4-28-2000]

2.61.5.4 DURATION: Permanent.
[2.61.5.4 NMAC-N, 4-28-2000]

2.61.5.5 EFFECTIVE DATE: April 28, 2000, unless a later date is cited at the end of a section.
[2.61.5.5 NMAC-N, 4-28-2000]

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 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 transaction, the maximum interest rate and other terms and conditions of the issuance.

J. "Public body" for purposes of 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, 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.

O. "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.

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.

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.

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.

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]

2.61.5.8 FINANCING PLAN FOR ANTICIPATION NOTES:

A. In order to obtain approval of the issuance of anticipation notes, the board will require the state treasurer to prepare a financing plan for presentation to the board at a meeting of the board prior to the sale of the anticipation notes. The financing plan for anticipation notes shall address the following:

- (1) Anticipation notes
 - (a) Debt structure and terms
 - (i) Maturity date of proposed issue.
 - (ii) Estimated interest rate on proposed bonds including true-interest-cost and coupon.
 - (iii) Table showing, for the applicable fiscal year, total future debt payments by; (1) new issue, (2) outstanding issues, and (3) total debt payments (new and outstanding issues).
 - (iv) Estimated terms and conditions of bonds including covenant and call provisions, if applicable.
 - (v) Bond insurance or other credit enhancement costs and benefits, if applicable.
 - (vi) Maximum principal amount and the maximum interest rate allowed for bond sale.
 - (vii) Type of investments of proceeds, if applicable, the procedure to be used in selecting and purchasing the investments and representation that investment contracts will be competitively bid with documentation of the bidding process with at least three bona fide independent bidders.
 - (b) Sales management
 - (i) Representation and compensation of financial advisor, if any, and method of selection.
 - (ii) Method of sale, including justification for a negotiated sale, if any, and if negotiated, method of selection of underwriter.

- (iii) Representation and compensation of bond counsel, special tax counsel, if any, and disclosure counsel, if any, and indication of method of selection.
 - (iv) Breakout of costs of issuance. For negotiated sales, cost of issuance breakout should include underwriters' discount as broken out by management fee, structuring fee, takedown and estimated expenses.
 - (v) Ratings history, target and strategy.
 - (vi) Anticipated timing of sale.
 - (c) Legal documents
 - (i) All resolutions previously adopted by the state treasurer relating to the financing.
 - (ii) Drafts of all resolutions to be adopted by the state treasurer relating to the financing.
 - (iii) Draft parameters resolution of the board approving the bond issue.
 - (iv) Copies (or drafts if not in final form) of all financing documents.
 - (d) Additional information
 - (i) A certification of the state treasurer certifying that the state treasurer has complied with all statutory requirements for the issuance of anticipation notes.
 - (ii) Any other information that the board, in its discretion, needs in order to fulfill its duty to review and approve proposed anticipation notes.
- [2.61.5.8 NMAC-N, 4-28-2000]

2.61.5.9 FINANCING PLAN FOR STATE INSTITUTION BONDS:

- A. In order to obtain approval of the issuance of state institution bonds, the board will require the issuing authority to prepare a financing plan for presentation to the board at a meeting of the board prior to the sale of the state institution bonds. The financing plan for state institution bonds shall address the following:
- (1) Capital program
 - (a) Use of bond proceeds, including individual type and cost of capital projects that bond proceeds will be used for.
 - (b) Need for capital project in relation to agency or institution's long-term strategic plan.
 - (2) Debt management
 - (a) Current outstanding debt and relation of the proposed issue to financial, parity bond and rate limits, if any.
 - (b) Five-year history and five-year forecast of total issuing authority revenue. Historical data should be from fiscal year audited financial statements.
 - (c) Five-year history and five-year forecast of pledged revenues used for proposed debt service. Historical data should be from fiscal year audited financial statements.
 - (d) Current and five-year projected coverage ratios on annual debt service requirements by:
 - (i) Pledged revenue.
 - (ii) Total revenue legally available for debt service.
 - (iii) Maximum fiscal year debt service as a percentage of prior fiscal year audited pledged revenue, if available.
 - (e) The basis for any projections or forecasts of future year revenue should be explained, and if future revenue needed to support debt service is to be derived from new facilities or projects, a feasibility study reflecting the likelihood of such revenue should be furnished. The study should clearly set forth any assumptions upon which the feasibility study is based.
 - (3) Debt structure and terms
 - (a) Maturity structure of proposed issue.
 - (b) Estimated interest rates on proposed bonds including true-interest-cost, all-inclusive interest cost, and average coupon.
 - (c) Estimated life of the bonds.

- (d) Table showing, on a fiscal year basis, total future debt payments by:
 - (i) New issue.
 - (ii) Outstanding issues.
 - (iii) Total debt payments (new and outstanding issues).
- (e) Estimated terms and conditions of bonds including covenant and call provisions, if applicable.
 - (f) Bond insurance or other credit enhancement costs and benefits, if applicable.
 - (g) Maximum principal amount and the maximum interest rate allowed for bond sale.
 - (h) Type of investments of proceeds, if applicable, the procedure to be used in selecting and purchasing the investments and representation that investment contracts will be competitively bid with documentation of the bidding process with at least three bona fide independent bidders.
 - (i) How the proposed debt structures relates to long-term strategic financing plan.
- (4) Sales management
 - (a) Representation and compensation of financial advisor, if any, and method of selection.
 - (b) Method of sale, including justification for a negotiated sale, if any, and, if negotiated, method of selection of underwriter.
 - (c) Representation and compensation of bond counsel, special tax counsel, if any, and disclosure counsel, if any, and indication of method of selection.
 - (d) Breakout of costs of issuance. For negotiated sales, cost of issuance breakout should include underwriters' discount as broken out by management fee, structuring fee, takedown and estimated expenses.
 - (e) Ratings history, target and strategy.
 - (f) Anticipated timing of sale.
- (5) Legal documents
 - (a) All resolutions previously adopted by the issuing authority relating to the financing.
 - (b) Drafts of all resolutions to be adopted by the issuing authority relating to the financing.
 - (c) Draft parameters resolution of the board approving the bond issue.
 - (d) Copies (or drafts if not in final form) of all financing documents.
- (6) In addition, where state institution bonds are refunding bonds
 - (a) Estimated gross and net present value savings annually, if any, by each series of refunded bonds.
 - (b) Interest rate and debt service comparisons between refunding and refunded bonds.
 - (c) Description of sources and uses of funds.
 - (d) Redemption dates and call premiums on refunded bonds with an analysis of the potential costs and benefits of delay of issuing the refunding bonds.
 - (e) Description of re-structuring including reasons and special arbitrage issues, if applicable.
 - (f) Type of proposed investments used for escrow accounts, the procedure to be used in selecting and purchasing the investments.
- (7) Additional information
 - (a) A certification of the issuing authority certifying that the issuing authority has complied with all statutory requirements for the issuance of state institution bonds.
 - (b) Any other information that the board, in its discretion, needs in order to fulfill its duty to review and approve proposed state institution bonds.

[2.61.5.9 NMAC-N, 4-28-2000]

2.61.5.10 FINANCING PLAN FOR STATE EDUCATIONAL INSTITUTION BONDS:

A. Pursuant to 6-17-9 NMSA 1978, in order to obtain board approval of the issuance of state educational institution bonds, the board of regents of a state educational institution must demonstrate to the satisfaction of the board that the building, facility or improvement is needed and that the cost of the building, facility or improvement is reasonable and should and probably will return sufficient net income to repay the money borrowed with interest as the same is due and payable. The board of regents of a state educational institution may seek approval of the issuance of state educational institution bonds by preparing

a financing plan for presentation to the board at a meeting of the board prior to the sale of state educational institution bonds. The financing plan for state educational institution bonds shall address the following:

(1) Where Section 6-17-14 NMSA 1978 Is Not Relied Upon By Issuing Authority

(a) Project information

(i) The need for the project in relation to the state educational institution's long-term strategic plan.

(ii) Estimated amount of net income to be generated from the project.

(iii) Estimated construction or acquisition costs of the building.

The basis for any projections or forecasts of future year revenue should be explained, and if future revenue needed to support debt service is to be derived solely from new facilities or projects, a feasibility study reflecting the likelihood of such revenue should be furnished. The study should clearly set forth any assumptions upon which the feasibility study is based.

(b) Debt management

(i) Current outstanding debt and relation of the proposed issue to financial and parity bond limits.

(ii) Five-year history and five-year forecast of pledged revenue used for proposed debt service. Historical data should be from fiscal year audited financial statements.

(iii) Current and five-year projected coverage ratios on annual debt service requirements by; (1) pledged revenue, (2) total revenue legally available for debt service, and (3) Maximum fiscal year debt service as a percentage of prior fiscal year audited pledged revenue, if available.

(c) Debt structure terms

(i) Maturity structure of proposed issue.

(ii) Estimated interest rates on proposed bonds including true-interest-cost, all-inclusive interest cost, and average coupon.

(iii) Estimated average life of the bonds.

(iv) Table showing, on a fiscal year basis, total future debt payments by; (1) new issue, (2) outstanding issues, and (3) total debt payments (new and outstanding issues).

(v) Estimated terms and conditions of bonds including covenant and call provisions, if applicable.

(vi) Bond insurance or other credit enhancement costs and benefits, if applicable.

(vii) Maximum principal amount and the maximum interest rate allowed for bond sale.

(viii) Type of investments of proceeds, if applicable, the procedure to be used in selecting and purchasing the investments and representation that investment contracts will be competitively bid with documentation of the bidding process with at least three bona fide independent bidders.

How the proposed debt structures relates to long-term strategic financing plan.

(d) Sales management

(i) Representation and compensation of financial advisor, if any, and method of selection.

(ii) Method of sale, including justification for a negotiated sale, if any, and, if negotiated, method of selection of underwriter.

Representation and compensation of bond counsel, special tax counsel, if any, and disclosure counsel, if any, and indication of method of selection.

(iii) Breakout of costs of issuance. For negotiated sales, cost of issuance breakout should include underwriters' discount as broken out by management fee, structuring fee, takedown and estimated expenses.

(iv) Ratings history, target and strategy.

(v) Anticipated timing of sale.

(e) Legal documents

(i) All resolutions previously adopted by the issuing authority relating to the financing.

(ii) Drafts of all resolutions to be adopted by the issuing authority relating to the financing.

(iii) Draft parameters resolution of the board approving the bond issue.

(iv) Copies (or drafts if not in final form) of all financing documents.

- (f) In addition, where bonds are refunding bonds
 - (i) Estimated gross and net present value savings annually, if any, by each series of refunded bonds.
 - (ii) Interest rate and debt service comparisons between refunding and refunded bonds.
 - (iii) Description of sources and uses of funds.
 - (iv) Redemption dates and call premiums on refunded bonds with an analysis of the potential costs and benefits of delay of issuing the refunding bonds.
 - (v) Description of re-structuring including reasons and special arbitrage issues, if applicable.
 - (vi) Type of proposed investments used for escrow accounts, the procedure to be used in selecting and purchasing the investments.
- (g) Additional information
 - (i) A certification of board of regents of the state educational institution certifying that the board of regents of the state educational institution has complied with all statutory requirements for the issuance of income-producing revenue bonds.
 - (ii) Any other information that the board, in its discretion, needs in order to fulfill its duty to review and approve proposed income-producing revenue bonds.
- (2) Where Section 6-17-14 NMSA 1978 Is Relied Upon By Issuing Authority
 - (a) System information
 - (i) The need for the building, facility or improvement in relation to the state educational institution's long-term strategic plan.
 - (ii) Estimated construction or acquisition costs of the building.
 - (iii) Estimated amount of net income to be generated from the system.
 - (iv) The basis for any projections or forecasts of future year revenue should be explained.
 - (b) Debt management
 - (i) Current outstanding debt and relation of the proposed issue to financial and parity bond limits.
 - (ii) Five-year history and five-year forecast of pledged revenue used for proposed debt service. Historical data should be from fiscal year audited financial statements.
 - (iii) Current and five-year projected coverage ratios on annual debt service requirements by: (1) pledged revenue, (2) total revenue legally available for debt service, and (3) maximum fiscal year debt service as a percentage of prior fiscal year audited pledged revenue, if available.
 - (c) Debt structure terms
 - (i) Maturity structure of proposed issue.
 - (ii) Estimated interest rates on proposed bonds including true-interest-cost, all-inclusive interest cost, and average coupon.
 - (iii) Estimated average life of the bonds.
 - (iv) Table showing, on a fiscal year basis, total future debt payments by; (1) new issue, (2) outstanding issues, and (3) total debt payments (new and outstanding issues).
 - (v) Estimated terms and conditions of bonds including covenant and call provisions, if applicable. Explain any absence of, or limitations on, call provisions.
 - (vi) Bond insurance or other credit enhancement costs and benefits, if applicable.
 - (vii) Maximum principal amount and the maximum interest rate allowed for bond sale.
 - (viii) Type of investments of proceeds, if applicable, the procedure to be used in selecting and purchasing the investments and representation that investment contracts will be competitively bid with documentation of the bidding process with at least three bona fide independent bidders.
 - (ix) How the proposed debt structures relates to long-term strategic financing plan.
 - (d) Sales management
 - (i) Representation and compensation of financial advisor, if any, and method of selection.

- (ii) Method of sale, including justification for a negotiated sale, if any, and if negotiated, method of selection of underwriter.
- (iii) Representation and compensation of bond counsel, special tax counsel, if any, and disclosure counsel, if any, and indication of method of selection.
- (iv) Breakout of costs of issuance. For negotiated sales, cost of issuance breakout should include underwriters' discount as broken out by management fee, structuring fee, takedown and estimated expenses.
- (v) Ratings history, target and strategy.
- (vi) Anticipated timing of sale.
- (e) Legal documents
 - (i) All resolutions previously adopted by the issuing authority relating to the financing.
 - (ii) Drafts of all resolutions to be adopted by the issuing authority relating to the financing.
 - (iii) Draft parameters resolution of the board approving the bond issue.
 - (iv) Copies (or drafts if not in final form) of all financing documents.
- (f) In addition, where bonds are refunding bonds
 - (i) Estimated gross and net present value savings annually, if any, by each series of refunded bonds.
 - (ii) Interest rate and debt service comparisons between refunding and refunded bonds.
 - (iii) Description of sources and uses of funds.
 - (iv) Redemption dates and call premiums on refunded bonds with an analysis of the potential costs and benefits of delay of issuing the refunding bonds.
 - (v) Description of re-structuring including reasons and special arbitrage issues, if applicable.
 - (vi) Type of proposed investments used for escrow accounts, the procedure to be used in selecting and purchasing the investments.
- (g) Additional information
 - (i) A certification of board of regents of the state educational institution certifying that the board of regents of the state educational institution has complied with all statutory requirements for the issuance of income-producing revenue bonds.
 - (ii) Any other information that the board, in its discretion, needs in order to fulfill its duty to review and approve proposed income-producing revenue bonds.

[2.61.5.10 NMAC-N, 4-28-2000]

2.61.5.11 FINANCING PLAN FOR STATE AGENCY AND COMMISSION BONDS:

A. In order to obtain approval of the issuance of state agency and commission bonds, the board will require the issuing authority to prepare a financing plan for presentation to the board at a meeting of the board prior to the sale of the state agency and commission bonds. The financing plan for state agency and commission bonds shall address the following:

- (1) Debt Management
 - (a) current outstanding debt and relation of the proposed issue to financial and parity bond limits.
 - (b) five-year history and five-year forecast of pledged revenue used for proposed debt service. Historical data should be from fiscal year audited financial statements.
 - (c) current and five-year projected coverage ratios on annual debt service requirements by:
 - (i) pledged revenue.
 - (ii) total revenue legally available for debt service.
 - (iii) maximum fiscal year debt service as a percentage of prior fiscal year audited pledged revenue, if available.
 - (d) the basis for any projections or forecasts of future year revenue should be explained, and if future revenue needed to support debt service is to be derived from new facilities or projects, a feasibility study reflecting the likelihood of such revenue should be furnished. The study should clearly set forth any assumptions upon which the feasibility study is based.

- (2) Debt Structure Terms
 - (a) maturity structure of proposed issue.
 - (b) estimated interest rates on proposed bonds including true-interest-cost, all-inclusive interest cost, and average coupon.
 - (c) estimated average life of the bonds.
 - (d) table showing, on a fiscal year basis, total future debt payments by:
 - (i) new issue.
 - (ii) outstanding issues.
 - (iii) total debt payments (new and outstanding issues).
 - (e) estimated terms and conditions of bonds including covenant and call provisions, if applicable.
 - (f) Bond insurance or other credit enhancement costs and benefits, if applicable.
 - (g) Maximum principal amount and the maximum interest rate allowed for bond sale.
 - (h) Type of investments of proceeds, if applicable, the procedure to be used in selecting and purchasing the investments and representation that investment contracts will be competitively bid with documentation of the bidding process with at least three bona fide independent bidders.
 - (i) How the proposed debt structures relates to long-term strategic financing plan.
 - (3) Sales Management
 - (a) Representation and compensation of financial advisor, if any, and method of selection.
 - (b) Method of sale, including justification for a negotiated sale, if any, and, if negotiated, method of selection of underwriter.
 - (c) Representation and compensation of bond counsel, special tax counsel, if any, and disclosure counsel, if any, and indication of method of selection.
 - (d) Breakout of costs of issuance. For negotiated sales, cost of issuance breakout should include underwriters' discount as broken out by management fee, structuring fee, takedown and estimated expenses.
 - (e) Ratings history, target and strategy.
 - (f) Anticipated timing of sale.
 - (4) Legal Documents
 - (a) All resolutions previously adopted by the issuing authority relating to the financing.
 - (b) Drafts of all resolutions to be adopted by the issuing authority relating to the financing.
 - (c) Draft parameters resolution of the Board approving the bond issue.
 - (d) Copies (or drafts if not in final form) of all financing documents.
 - (5) In Addition, Where State Agency And Commission Bonds Are Refunding Bonds
 - (a) Estimated gross and net present value savings annually, if any, by each series of refunded bonds.
 - (b) Interest rate and debt service comparisons between refunding and refunded bonds.
 - (c) Description of sources and uses of funds.
 - (d) Redemption dates and call premiums on refunded bonds with an analysis of the potential costs and benefits of delay of issuing the refunding bonds.
 - (e) Description of re-structuring including reasons and special arbitrage issues, if applicable.
 - (f) Type of proposed investments used for escrow accounts, the procedure to be used in selecting and purchasing the investments.
 - (6) Additional Information
 - (a) A certification of the issuing authority certifying that the issuing authority has complied with all statutory requirements for the issuance of state agency and commission bonds.
 - (b) Any other information that the board, in its discretion, needs in order to fulfill its duty to review and approve proposed state agency and commission bonds.
- [2.61.5.11 NMAC-N, 4-28-2000]

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, 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 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 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]

2.61.5.14 APPROVAL BY THE STATE BOARD OF FINANCE OF NET EFFECTIVE INTEREST RATES:

A. After review of the information required under Section 2.61.5.14.B below, the board may approve a proposed net effective interest rate for public securities by adopting a resolution establishing parameters relating to the proposed net effective interest rate for public securities, subject to confirmation to the board staff from the public body that the parameters established in the board resolution were satisfied.

B. Information relating to the proposed net effective interest rate for public securities provided to the board for its review shall include the following items:

(1) Rationale for the request to exceed the statutory net effective interest rate ceiling.

(2) Resolution or ordinance of the public body relating to the proposed net effective interest rate for public securities.

(3) Demonstration that financial officials of the public body are knowledgeable regarding the market conditions required for or relevant to the net effective interest rate for public securities.

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

(5) Draft parameters resolution of the board approving the exchange agreement.

(6) Any other information that the board, in its discretion, needs in order to fulfill its duty to review and approve the net effective interest rate for the securities.

C. The securities shall not be issued or sold 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 satisfied.

[2.61.5.14 NMAC-N, 4-28-2000]

2.61.5.15 SUBMISSION OF FINANCING PLANS, EXCHANGE AGREEMENT APPROVAL REQUESTS AND NET EFFECTIVE INTEREST RATE APPROVAL REQUESTS TO THE STATE BOARD OF FINANCE:

A. Financing plans and exchange agreement approval requests submitted to the board should address each of the specific items in this policy, if applicable, and packages should be tabbed for easy reference.

B. The original and ten copies of the financing plan or exchange agreement approval request should be submitted to the board. In addition, one copy should also be submitted to the board's financial advisor and one copy to the board's bond counsel.

C. Completed packages, in their entirety, must be submitted on or before the board's meeting deadline, as set by the board, and must meet application-formatting criteria. Packages must be three-hole-punched, and page length must be standard letter size, 8 inches by 11 inches.

[2.61.5.15 NMAC-N, 4-28-2000]

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]

HISTORY OF 2.61.5 NMAC

Pre-NMAC History: The material in this part was derived from that previously filed with the Commission of Public Records - State Records Center.

SBF Rule 94-1 Policy on Financing Approvals, 3-9-94.