

## **6-10-35. Fiscal agent of New Mexico; state checking depositories; state depositories; designation by board of finance.**

A. Except as otherwise provided by law, the state board of finance may designate a bank or savings and loan association doing business in this state and having an unimpaired capital and surplus of at least one hundred fifty thousand dollars (\$150,000) as the "fiscal agent of New Mexico". The designation is subject to change, from time to time, by the state board of finance; however, the board shall formulate and adopt designation procedures, filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], that shall be adhered to on each occasion of designation. The board, after it has designated the fiscal agent, shall apprise the legislature of its action and, in addition to the name of the designated fiscal agent, the communication shall include a brief description of the designee's particular qualifications.

B. The bank or savings and loan association designated as the fiscal agent of New Mexico shall enter into an agreement with the state, acting through the state board of finance, for:

- (1) the collection for the state of all checks and other items received by the state on any account;
- (2) the handling of the checking account of the state treasurer;
- (3) the handling of all transfers of money in connection with the sale or retirement of bonds or obligations of the state or the purchase by the state of bonds or other securities;
- (4) the investment of permanent or other funds of the state;
- (5) the safekeeping of bonds or other securities belonging to or held by the state or any official of the state;
- (6) the rate of interest to be paid upon average daily balances of state funds; and
- (7) acting as the agent of the state in fiscal matters generally, subject always to the supervision and approval of the state board of finance.

C. The agreement shall contain the terms and conditions that are necessary, in the judgment of the state board of finance, for the proper conduct of the fiscal affairs of the state and the safekeeping of the money of the state.

D. The state board of finance shall require the fiscal agent of New Mexico to furnish surety company bond or securities of the kinds specified by law for the security of deposits of public money in an amount not less than two million five hundred thousand dollars (\$2,500,000) as security for the safekeeping of the money of the state and the faithful performance of its duties as the fiscal agent. The state board of finance may adjust the amount of bond or security from time to time, but in no event shall the bond or security be in an amount less than two million five hundred thousand dollars (\$2,500,000). No other bond or security is required of the fiscal agent for the securing of funds deposited by the state treasurer in the fiscal agency account, and the state treasurer is not liable upon the state treasurer's official bond on account of funds deposited in the fiscal agency account when the account is so secured. Nothing in this section shall prevent the bank or savings and loan association

designated as fiscal agent from also qualifying as a state depository pursuant to Chapter 6, Article 10 NMSA 1978.

E. Payment to the fiscal agent of New Mexico for services performed may be made by the state board of finance upon warrants drawn by the secretary upon the state treasury as provided by law for expenditure of state funds or by compensating balances or a combination thereof. The legislature shall appropriate funds to the state board of finance for this purpose annually.

F. The state board of finance may also designate, according to its adopted designation procedures, not more than two other banks or savings and loan associations doing business in this state as "state checking depositories" in which money necessary to meet the current obligations of the state may be deposited in temporary checking accounts. No bank or savings and loan association shall be so designated unless it has an unimpaired capital and surplus of at least one hundred fifty thousand dollars (\$150,000). Not more than twenty percent of all the state's money on hand shall be on deposit in all such checking accounts, including the checking account with the fiscal agent of New Mexico, for any period of time longer than is required to distribute the amount above twenty percent to applying, qualified depository banks or savings and loan associations. The state board of finance shall require a designated state checking depository to furnish surety company bond or securities of the kinds specified by law for the security of deposits of public money in an amount established by the board. Nothing in this section shall prevent a bank or savings and loan association designated as a state checking depository from also qualifying as a state depository pursuant to Chapter 6, Article 10 NMSA 1978, and nothing in this section shall prohibit the state treasurer from transferring to out-of-state banks and keeping on deposit with them funds necessary to pay interest upon and principal of those outstanding bonds, debentures and certificates of indebtedness that, with the interest coupons, were made payable at an out-of-state bank.

G. An authorized bank, savings and loan association or credit union desiring to receive public money deposits may file with the board of finance having control of the money its written proposal to receive the money on deposit, together with its agreement to pay interest on daily balances of the deposits at the rate of interest fixed by the state board of finance as prescribed in Section 6-10-30 NMSA 1978. The proposal shall specify whether the deposit is desired as a time deposit. The board of finance shall, at its next meeting after receipt of the proposal, consider the proposal, and, if it is in accordance with Chapter 6, Article 10 NMSA 1978, the board shall thereupon notify the bank or savings and loan association that upon its furnishing security as provided, it will be designated as a "state depository" of public money in an amount to be fixed by the board, which amount shall not exceed seventy-five percent of the capital and surplus of the applicant bank or savings and loan association if the deposit is secured by surety bond. If, after considering the proposal of a credit union and finding it in accordance with Section 6-10-36 NMSA 1978, the board of finance may designate the credit union a "state depository" of public money in an amount to be fixed by the board, which shall not exceed that amount insured by an agency of the United States. Upon furnishing proper bond or other security authorized by Chapter 6, Article 10 NMSA 1978, a certificate shall be issued to the bank or savings and loan association by the board of finance qualifying it as a depository of public money; and, if designated, a certificate shall be issued to a credit union qualifying it as a depository of public money; provided that a bank located outside the state, acting solely in the capacity of a paying bank for the purpose of paying interest upon and principal of state obligations represented by bonds, debentures and certificates of indebtedness and attached interest coupons, is not required to furnish collateral security in excess of one hundred thousand dollars (\$100,000) regardless of the amount of state public money on deposit.

**History:** Laws 1934 (S.S.), ch. 24, § 3; 1941 Comp., § 7-229; 1953 Comp., § 11-2-32; Laws 1957, ch. 35, § 2; 1971, ch. 18, § 1; 1981, ch. 332, § 14; 1987, ch. 79, § 14; 1987, ch. 87, § 1; 2010, ch. 14, § 7.

## ANNOTATIONS

**The 2010 amendment**, effective March 1, 2010, in Subsection A, in the first sentence, added "Except as otherwise provided by law," and in the third sentence, after "it has designated the", deleted "state"; in Subsection B, after "loan association designated" added "as the fiscal agent of New Mexico"; in Subsection D, in the first sentence, after "fiscal agent", added "of New Mexico" and in the fourth sentence, after "state depository", deleted "under Sections 11-2-18 NMSA 1953 or 6-10-30, 6-10-35 and 6-10-36" and added "pursuant to Chapter 6, Article 10"; in Subsection E, in the first sentence, after "secretary", deleted "of finance and administration"; in Subsection F, in the third sentence, after "fiscal agent", added "of New Mexico"; and in the fifth sentence, after "state depository", deleted "under Sections 11-2-18 NMSA 1953 or 6-10-30, 6-10-35 and 6-10-36" and added "pursuant to Chapter 6, Article 10"; and in Subsection G, in the third sentence, after "if it is in accordance with", deleted "Sections 11-2-18 NMSA 1953 and 6-10-30, 6-10-35 and 6-10-36" and added "pursuant to Chapter 6, Article 10"; in the fourth sentence, after "finding it in accordance with", deleted "Sections 6-10-30 and" and added "Section"; and in the fifth sentence, after "other security authorized by", deleted "Sections 11-2-18 NMSA 1953 and 6-10-30, 6-10-35 and 6-10-36" and added "Chapter 6, Article 10".

**The 1987 amendment**, effective June 19, 1987, inserted Subsection E; relettered the subsequent subsections; in Subsection G, near the beginning of the first sentence, inserted "or credit unions" following "savings and loan association", inserted the fourth sentence, in the fifth sentence, inserted "and, if designated, a certificate shall be issued to a credit union qualifying it as a depository of public money" preceding the proviso, and made minor changes in language throughout the subsection.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d States, Territories, and Dependencies §§ 75 to 86.

81A C.J.S. States §§ 223 to 229.