

## **6-10-10.1. Local government investment pool created; distribution of earnings; report of investments.**

A. There is created in the state treasury the "local government investment pool". The fund shall consist of all deposits from participating governments, including revenues dedicated to repaying bonds, that are placed in the custody of the state treasurer for investment purposes pursuant to this section. The state treasurer shall maintain one or more separate accounts for each participating government having deposits in the local government investment pool and may divide the fund into two or more subfunds, as the state treasurer deems appropriate, for short-term and medium-term investment purposes, including one or more subfunds for bond proceeds deposited by participating governments.

B. If an eligible governing body is unable to receive payment on public money at the rate of interest as set forth in Section 6-10-36 NMSA 1978 from financial institutions within the geographic boundaries of the eligible governing body, or if the eligible governing body is not bound by the terms of Section 6-10-36 NMSA 1978, the finance officer having control of the money of that eligible governing body not required for current expenditure may, with the consent of the board of finance of the eligible governing body if consent is required by the laws or rules of the eligible governing body, remit some or all of the money to the state treasurer for deposit for the purpose of investment as allowed by this section.

C. Before funds are invested or reinvested pursuant to this section, a finance officer shall notify and make the funds available for investment to banks, savings and loan associations and credit unions located within the geographical boundaries of the participating government or the eligible governing body, subject to the limitation on credit union accounts. To be eligible for deposit of the government funds, the financial institution shall pay to the participating government or eligible governing body the rate established by the state treasurer pursuant to a policy adopted by the state board of finance for the investments.

D. A finance officer shall specify the length of time a deposit shall be in the local government investment pool. The state treasurer through the use of the state fiscal agent shall separately track each deposit and shall make information regarding the deposit available to the public upon written request.

E. The state treasurer shall invest the local government investment pool as provided in Section 6-10-10 NMSA 1978 regarding the investment of state funds in investments with a maturity at the time of purchase that does not exceed three years. The state treasurer may elect to have the local government investment pool consolidated for investment purposes with the state funds under the control of the state treasurer; provided that accurate and detailed accounting records are maintained for the account of each participating government and that a proportionate amount of interest earned is credited to each of the separate accounts of a participating government. The fund shall be invested to achieve its objective, which is to realize the maximum return consistent with safe and prudent management.

F. At the end of each month, all net investment income or losses from investment of the local government investment pool shall be distributed by the state treasurer to the accounts of participating governments in amounts directly proportionate to the respective amounts deposited

by them in the local government investment pool and the length of time the amounts in each account were invested.

G. The state treasurer shall charge participating governments reasonable audit, administrative and investment expenses and shall deduct those expenses directly from the net investment income for the investment and administrative services provided pursuant to this subsection. The amount of the charges, the manner of the use by the state treasurer and the nature of bond-related services to be offered shall be established in rules adopted and promulgated by the state treasurer subject to approval by the state board of finance.

H. Subject to appropriation by the legislature, amounts deducted from the accounts of participating governments for charges permitted pursuant to this section shall be expended by the state treasurer in fiscal year 2008 and in subsequent fiscal years for the administration and management of the local government investment pool, services provided to participating governments related to investment of their money in that fund and other services authorized by this section. Balances remaining at the end of a fiscal year from the amounts deducted pursuant to this section shall revert to the general fund. Balances in the state treasurer's operating account resulting from deductions taken pursuant to this section in excess of the amount required to provide administration, management and related services required by this subsection or other services authorized by this section shall be offset by reductions in the charges made by the state treasurer to the accounts of participating governments in subsequent deductions from participating governments' accounts.

I. Each fiscal year, the state treasurer shall cause to have the short-term investment portion of the local government investment pool rated by a nationally recognized statistical rating organization. If the rating received by the short-term investment portion of the fund is lower than "AA", the state treasurer shall immediately submit a plan to the state board of finance detailing the steps that will be taken to obtain an "AA" or higher rating.

J. The state treasurer may offer to provide to participating governments services related to requirements of the federal income tax laws applicable to the investment of bond proceeds.

K. A tribe or quasi-governmental body created pursuant to New Mexico statute may become a participating government only if the governing authority of the tribe or quasi-governmental body has adopted a resolution authorizing the tribe or quasi-governmental body to remit money to the state treasurer for investment in the local government investment pool.

L. Deposits by the state treasurer on behalf of the general fund and bond proceeds investment pools shall, in aggregate, be no more than thirty-five percent of the total amount in the local government investment pool at any time.

M. The educational retirement board, the public employees retirement association and the state investment council may remit money to the state treasurer for investment in the local government investment pool.

**History:** 1978 Comp., § 6-10-10.1, enacted by Laws 1988, ch. 61, § 2; 1991, ch. 239, § 1; 1991, ch. 258, § 1; 1992, ch. 61, § 32; 1994, ch. 71, § 2; 1995, ch. 64, § 1; 2001, ch. 241, § 1; 2003, ch. 399, § 1; 2006, ch. 80, § 2; 2008, ch. 23, § 3; 2011, ch. 158, § 1; 2013, ch. 65, § 3; 2019, ch. 7, § 1.

## ANNOTATIONS

**The 2019 amendment**, effective June 14, 2019, provided that the educational retirement board, the public employees retirement association and the state investment council may participate in the local government investment pool; and added Subsection M.

**The 2013 amendment**, effective June 14, 2013, changed the name of the participating government investment fund to the local government investment pool; deleted the requirement that short-term investments maintain an "AA" or higher rating; at the beginning of the title, deleted "Participating government investment fund" and added "Local government investment pool"; in Subsections A, D, E, F, H, I, K and L, deleted "participating government investment fund" and added "local government investment pool"; in Subsection I, deleted the former first sentence, which required that short-term investments maintain an "AA" or higher rating and in the current first sentence, after "Each fiscal year", deleted "and at such other times as directed by the state board of finance"; and in Subsection L, after "investment pools shall", deleted "not exceed" and added "in aggregate, be no more than".

**The 2011 amendment**, effective July 1, 2011, in Subsection L, increased the authorized deposits on behalf of the general fund and bond proceeds investment pools from five to thirty-five percent of the total amount in the participating government investment fund.

**The 2008 amendment**, effective February 27, 2008, changed the name of the short-term investment fund to the participating government investment fund; included revenues dedicated to repaying bonds in the fund in Subsection A; deleted the 180 day limitation for investment in the fund in Subsection D; extended the time limit for investment of funds from 397 days to three years in Subsection E; authorized the state treasurer to adopt rules to establish charges and the nature of bond-related services in Subsection G; and added Subsections H and J through L.

**The 2006 amendment**, effective May 17, 2006, added Subsection G to provide that investment shall be made in a manner that the fund maintains a "AA" or higher rating; that the short-term investment fund shall be rated annually and if the fund is lower than "AA", the state treasurer shall submit a plan to the state board of finance to obtain an "AA" or higher rating.

**The 2003 amendment**, effective April 8, 2003, added Paragraph H(18).

**The 2001 amendment**, effective June 15, 2001, in Subsection B, substituted "required for current expenditure" for "not required for expenditure within thirty days or less", deleted "bank, savings and loan association or credit union" following "state treasurer"; in Subsection E, deleted "and" following "NMSA 1978" and inserted "in investments with a maturity at the time of purchase that does not exceed three hundred ninety-seven days. The state treasurer", and deleted the former second sentence, which read "The state treasurer may invest a portion of the funds in banks, savings and loan associations or credit unions subject to the requirements of this section."; in Subsection F, substituted "net investment income or losses" for "interest earned", substituted "reasonable audit, administrative and investment expenses to be paid directly from their net investment income for the investment and administrative services" for "a fee of five basis points for the investment services"; deleted the definition of "short term" in Subsection G; and substituted "development council" for "assistance council" in Paragraph H(4).

**The 1995 amendment**, effective June 16, 1995, substituted "one hundred eighty-one days" for "thirty days" at the end of the first sentence in Subsection D, added the second sentence in Subsection E, and rewrote the second sentence of Subsection F which read: "No fees or transfer expenses shall be charged to the participating entities and Indian tribes or pueblos for investment in the short term investment fund".

**The 1994 amendment**, effective July 1, 1994, deleted "Subsection C of" preceding "Section 6-10-10" and substituted "tribe or pueblo" for "tribes or pueblos" in Subsection E, and inserted "District" following "Advancement" in Paragraph H(6).

**The 1992 amendment**, effective March 9, 1992, added Subsection H(17).

**The 1991 amendment**, effective June 14, 1991, substituted references to entity and Indian tribe or pueblo for "local public body" throughout the section; deleted "local" from the beginning of the catchline and preceding "short-term investment fund" in the first sentence in Subsection A and near the end of Subsection F; inserted "short-term investment" in Subsections D, E and F; and added Subsection H.

**Relationship between county treasurer and board of finance.** — Section 6-10-10.1 NMSA 1978, as enacted in 1988, gives the county treasurer power, "with the consent" of the board of finance, to place county funds in the state treasurer's "local short-term investment fund", which means that the county treasurer's decisions must be approved by the county board of finance. The county board of finance has no power to modify the county treasurer's decisions without the treasurer's concurrence and the treasurer cannot impose a unilateral decision on the board of finance. *Board of Cnty. Comm'rs v. Padilla*, 1990-NMCA-125, 111 N.M. 278, 804 P.2d 1097.