



OFFICE OF THE STATE AUDITOR
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GOVERNMENT ACCOUNTABILITY OFFICE

Transparency Report 2025-02

Public Moneys Act Compliance

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Executive Summary

During the Office of the State Auditor's (OSA's) fiscal year 2022-2023 (FY23) financial audit review, special district local public bodies communicated concerns that definitions of agency, local public body, or other political subdivision in state statutes exempt such entities from the Public Moneys Act sections of the New Mexico Statutes Annotated (NMSA 1978, Section 6-10-1 et seq.), including whether such entities are governed by sections regarding securitization and collateralization of deposits. The sections of state law referencing the securitization of public money (NMSA 1978, Sections 6-10-16, -16.1, and -17) do not contemplate agencies or political subdivisions of the state, but instead apply to *public monies* and/or *public funds* (*emphasis added*).¹ Therefore, unless otherwise specifically exempted by other sections of state statute, state entities must comply with the Public Money sections of state statute if they are in receipt of public funds.

Analysis

The Office of the State Auditor views the definitions of agency, local public body or other political subdivision as separate and distinct from the applicable Public Moneys section of state statute that discusses public monies and, more specifically, security requirements of deposits. After review, the sections governing the treatment of public money within the Public Finances statutes do not mention agencies or local public bodies. State entities should comply with provisions regarding public money within the Public Finances sections of statute – including those sections regarding security of deposits.

Case Study of Questioned Compliance

Certain special districts created under the enabling statute of the University Research Park and Economic Development Act are exempted in statute from being considered an agency, local public body, or other political subdivision (see NMSA 1978, Section 21-28-7). In recent 2023 financial audit reviews, some of these entities communicated they are exempt from provisions requiring security of deposits (NMSA 1978, Sections 6-10-16 through 6-10-17) as they are not agencies under the Public Finance Act. Upon review of state statute, no mention or reference is given regarding the definition of government entities applicable to the Public Moneys section of state statute (NMSA 1978, Section 6-10-1 et seq.), and previous sections of the Public Finances statute defining agency (NMSA 1978, Sections 6-3-1 and 6-3-9) govern the state budgeting process. Whereas other agencies may also view themselves as exempt under their enabling statutes, the OSA wants to clarify that applicability of the Public Moneys Act extends to all government entities, absent specific statutory language to the contrary.

¹ See NMSA 1978, Section 6-10-16.1: "All deposits of public funds shall be secured..."

Other Considerations

It is worth expanding on our above example that under other sections of the University Research Park and Economic Development Act, a research park corporation shall be deemed an “agency or other political subdivision of the state for purposes of applying statutes and laws relating to the furnishing of goods and services to the university that operates it and the risk management fund.” Whereas many special districts in our state function as component units for the express purpose of receiving public monies for expenditure on goods and services, they may also be subject to requirements of the Audit Act, the audit rule and other sections of the public finance act governing the treatment of public funds. For example, entities must also comply with capitalization requirements in the Audit Act.

Because the Public Moneys Act does not define “agency” for purposes of the Act, but does define “eligible governing body” as a local governing body, the governing authority of a tribe, or any other governmental or quasi-governmental body, a more expansive definition of applicability is envisioned for the Public Moneys section of state statute. Similarly, the Public Moneys Act also defines the “boards of finance for institutions” as being all other boards (except local school boards which are governed under the Public School Finance Act) handling funds in any manner whatsoever as being responsible for handling and accounting for all public moneys received by the board.

Scope of Public Monies

Additionally, the sections of the Public Moneys Act relevant to the treatment of security of deposits does not consider agencies, local public bodies or political subdivisions and instead has a measurement focus on *deposits* of public funds or monies writ large (*emphasis added*).² As such, the Public Moneys Act section of the Public Finances statutes does not apply solely to agencies or political subdivisions of the state, but instead apply to public funds and monies, irrespective of what sort of entity is in possession of them. This includes relevant sections of the audit rule linked to these sections of the public money statute that govern required pledged collateralization amounts (see NMSA 1978 6-10-17 and NMAC 1978 2.2.2.10 (P) (4)).

Conclusion

Unless specifically exempted elsewhere in statute, eligible governing bodies in receipt of public funds should comply with the requirements of the Public Moneys sections of state statute (see NMSA 1978 6-10-1 et seq.).

² For example, see: NMSA 1978 Section 6-10-16 “*Deposits of public money shall be secured...*” [*emphasis added*]; 6-10-16.1 NMSA 1978 “*All deposits of public funds shall be secured by securities as defined in Section 6-10-16 NMSA 1978 in the amount required by law...*” [*emphasis added*]; and 6-10-17 NMSA 1978 “*Any bank or savings and loan association designated as a depository of public money shall deliver securities of the kind specified in Section 6-10-16 NMSA 1978...*” [*emphasis added*].

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