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## FISCAL IMPACT REPORT

**SPONSOR** Trujillo, J. **ORIGINAL DATE** 02/12/14  
**LAST UPDATED** 02/18/14 **HB** 215

**SHORT TITLE** Education Trust Board Changes **SB** \_\_\_\_\_

**ANALYST** Armstrong

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Higher Education Department (HED)

### SUMMARY

#### Synopsis of Bill

House Bill 215 amends the Education Trust Act (Act) to expand the manner in which the Education Trust Board (ETB) administers the New Mexico 529 college savings program and the Education Trust Fund (Fund). The bill provides that no liability of ETB or the program obligates or encumbers the state's funds or treasury, and clarifies the limit of the ETB's obligations and liability in connection with the program and investment of the Fund. It also includes language to protect money deposited in program accounts from the creditors of account owners or beneficiaries. Finally, HB 215 adds a member to the ETB to be appointed by the governor and removes provisions governing the prepaid tuition program that closed in 2005.

HB 215 clarifies that the Fund is a non-reverting fund in the state treasury, consisting of separate trust accounts held in the names of account owners. Income from investment of the Fund shall be credited to the separate accounts. The Fund shall otherwise be administered pursuant to the terms of the college investment agreements with account owners. The bill allows ETB to contract with a program manager to invest contributions to the accounts, and provides that ETB and the program manager shall hold amounts in the Fund in trust for account owners and beneficiaries.

The bill establishes the program administration fund as distinct from the Fund, and provides for all administrative fees and other money received by the ETB to be credited to that fund. Money

in the program administration fund shall be invested by the state treasurer, and may only be used to pay the costs of establishing, marketing, and otherwise administering the 529 college savings program in accordance with the Act.

HB 215 protects the state by confirming that no liability of ETB or the program obligates or encumbers the State's funds or treasury, including but not limited to the general fund. Rather, the bill makes it clear that the source of payment for any obligation or liability of the program or ETB is limited to the program administration fund. HB 215 further protects the state and the ETB by limiting the liability of the ETB and its employees for losses sustained as a result of ETB's investment decisions. Under this bill, liability of the ETB is limited and applies only if the ETB does not carry out its review of the program manager's investment decisions in a manner consistent with the Uniform Prudent Investor Act. HB 215 also protects the individual ETB members from personal liability for actions taken by the ETB while acting within the scope of the members' authority.

### **FISCAL IMPLICATIONS**

The bill does not include an appropriation. According to HED analysis, HB 215 does not impact state revenues or expenditures because the ETB's operations are paid with administrative and other fees, which are credited to the newly created program administration fund under HB 215.

### **SIGNIFICANT ISSUES**

ETB recently experienced significant changes in administration and leadership. Prior to 2012, the board relied more heavily on contract administrators and investment managers to manage the trust's assets. Market activities and fluctuations during the recession resulted in losses for many college savings plans, but New Mexico's plans were impacted more significantly. ETB participated in a multi-state lawsuit against Oppenheimer Funds regarding investments in the Oppenheimer Core Bond Fund during 2008-2009. ETB settled this lawsuit and distributed \$67.3 million to eligible account holders.

HB 215 increases the membership of the ETB from four to five by an additional member appointed by the Governor. According to HED analysis, this is to allow the ETB to function more effectively by making it easier to achieve a quorum and providing a tie-breaking vote, and schedule regular meetings. The ETB had a fifth board member representing the State Investment Council, but this position was eliminated in 2011.

In 1997, the ETB was created pursuant to the Education Trust Act. (Section 21-21k-1 through 21-21k-7 NMSA 1978) The ETB administers the education trust fund, which includes all funds received pursuant to college savings agreements as a part of the state's qualified tuition program authorized by the Internal Revenue Code Section 529. ETB authorizes rules and regulations governing the college savings plans, protects the integrity of the trust, and ensures the proper use of tax benefits.

As of December 31, 2013, ETB manages over \$2.2 billion in gross assets in two college savings plans: the Education Plan and Scholar's Edge. The Education Plan has 20,297 accounts and \$442 million in investments. Scholar's Edge has 126,526 accounts and \$1.8 billion in investments. Most of the accounts are held by non-New Mexicans.

A potential unintended consequence of HB 215 is that an account owner may try to shield money by depositing it into the Fund knowing that it is protected from the owner's creditors. However, this is unlikely for two reasons: (1) money removed from the Fund, and any other 529 savings account, must be used for qualified educational expenses or be subjected to significant penalties; and (2) the amount an account owner may deposit in such accounts is limited to the amount necessary to provide for the beneficiary's qualified education expenses.

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