

AN ACT

RELATING TO STATE AGENCIES; CREATING THE HIGHER EDUCATION DEPARTMENT AS A CABINET DEPARTMENT; CREATING A HIGHER EDUCATION ADVISORY BOARD; PROVIDING POWERS AND DUTIES; PROVIDING FOR THE TRANSFER OF APPROPRIATIONS, MONEY, PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES OF THE COMMISSION ON HIGHER EDUCATION TO THE HIGHER EDUCATION DEPARTMENT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--Sections 1 through 13 of this act may be cited as the "Higher Education Department Act".

Section 2. PURPOSE.--The purpose of the Higher Education Department Act is to establish a single, unified department to administer laws and exercise functions formerly administered and exercised by the commission on higher education.

Section 3. DEFINITIONS.--As used in the Higher Education Department Act:

A. "board" means the higher education advisory board;

B. "department" means the higher education department; and

C. "secretary" means the secretary of higher

education.

Section 4. DEPARTMENT CREATED.--The "higher education department" is created in the executive branch. The department is a cabinet department. The secretary shall organize the department so that bureaus and divisions exist to focus on the needs of and for the diverse categories of post-secondary institutions, including two-year institutions, four-year institutions, research institutions and institutions with academic medical centers. The secretary shall make recommendations to the second session of the forty-seventh legislature on the statutory organization of the department.

Section 5. SECRETARY--APPOINTMENT.--

A. The administrative head of the department is the "secretary of higher education", who shall be appointed by the governor with the consent of the senate and who shall serve in the executive cabinet. The secretary shall possess a terminal degree from a regionally accredited post-secondary educational institution, a minimum of five years of senior administrative experience, experience in higher education and experience in the development of public policy at the state or federal level.

B. An appointed secretary shall serve and have all of the duties, responsibilities and authority of that office during the period of time prior to final action by the senate confirming or rejecting the secretary's appointment.

Section 6. DIVISION DIRECTORS.--The secretary shall appoint directors of the divisions established within the department. Division directors are exempt from the Personnel Act.

Section 7. BUREAU CHIEFS.--The secretary may establish within each division of the department such bureaus as the secretary deems necessary to carry out the provisions of the Higher Education Department Act. The secretary shall employ a chief to be the administrative head of each bureau. The chiefs and all subsidiary employees of the department shall be covered by the Personnel Act.

Section 8. SECRETARY--DUTIES AND GENERAL POWERS.--

A. The secretary is responsible to the governor for the operation of the department. It is the secretary's duty to manage all operations of the department and to administer and enforce the laws with which the secretary or the department is charged.

B. To perform the duties of the secretary, the secretary has every power expressly enumerated in the law, whether granted to the secretary, the department or any division of the department, except when any division is explicitly exempted from the secretary's power by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Higher Education Department Act or Chapter 21 NMSA 1978,

exercise general supervisory and appointing power over all department employees, subject to applicable personnel laws and rules;

(2) delegate power to subordinates as the secretary deems necessary and appropriate, clearly delineating such delegated power and the limitations to that power;

(3) organize the department into organizational units as necessary to enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge the duties of the secretary;

(5) take administrative action by issuing orders and instructions, not inconsistent with law, to ensure implementation of and compliance with the provisions of law for which administration or execution the secretary is responsible and to enforce those orders and instructions by appropriate administrative action in the courts;

(6) conduct research and studies that will improve the operation of the department and the provision of services to the citizens of the state;

(7) provide courses of instruction and practical training for employees of the department and other

persons involved in the administration of programs with the objectives of improving the operations and efficiency of administration;

(8) prepare an annual budget for the department; and

(9) provide cooperation, at the request of administratively attached agencies and adjunct agencies, in order to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, record keeping and related clerical assistance to administratively attached agencies.

C. The secretary may apply for and receive, with the governor's approval, in the name of the department, any public or private funds, including United States government funds, available to the department to carry out its programs, duties or services.

D. The secretary may make and adopt such reasonable and procedural rules as may be necessary to carry out the duties of the department and its divisions. No rule promulgated by the director of any division in carrying out

the functions and duties of the division shall be effective until approved by the secretary. Unless otherwise provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. No rule promulgated by the department shall infringe upon the authority vested by Article 12 of the constitution of New Mexico in the boards of regents of the educational institutions specified in that article. The final public hearing on adoption, amendment or repeal of a rule shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule or proposed amendment or repeal of an existing rule may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules shall be filed in accordance with the State Rules Act.

Section 9. ADDITIONAL DUTIES.--Consistent with constitutional provisions relating to the control and management of the educational institutions enumerated in

Article 12, Section 11 of the constitution of New Mexico, the department shall:

A. cooperate with colleges and universities to create a statewide public agenda to meet higher education needs and goals;

B. periodically study and report to the governor and the legislative finance committee on enrollment capacity needs over a ten-year period, based on state demographic models, academic program demands, institutional competencies and infrastructure, state workforce needs, economic development goals and other factors; and

C. by November 1 of each year, present to the legislature a comprehensive funding request and a legislative priorities list for all higher education. The funding request and priorities shall encompass the needs of all public post-secondary educational institutions and programs.

Section 10. HIGHER EDUCATION ADVISORY BOARD--
MEMBERSHIP--TERMS--ADMINISTRATIVE ATTACHMENT.--

A. The "higher education advisory board" is created to advise the department and the governor on policy matters and perform other functions as provided by law. The board is administratively attached to the department, with administrative staff provided by the department.

B. The secretary shall appoint fourteen members giving due regard to geographic representation, cultural

diversity and the composition of higher education institutions in New Mexico. Four members shall represent the four-year public post-secondary educational institutions, one of whom shall represent the university of New Mexico, one of whom shall represent New Mexico state university, one of whom shall represent New Mexico institute of mining and technology and one of whom shall represent either New Mexico highlands university, eastern New Mexico university or western New Mexico university; three members shall represent the two-year public post-secondary educational institutions; one member shall represent the accredited private post-secondary educational institutions; one member shall represent business; one member shall represent college and university faculty; one member shall represent college and university nonfaculty staff; one member shall be a college or university student; one representative of the tribal colleges in New Mexico; and one representative of the Indian nations, tribes and pueblos in New Mexico. The members representing the categories of post-secondary educational institutions shall be the chief executive officers of the institutions of those categories or the chief executive officers' designees. The members representing faculty and nonfaculty staff and the student member shall be the leaders of faculty, staff and student organizations at their respective institutions.

C. Four members of the initial board, including

the student member, shall be appointed for two years, five members shall be appointed for three years and five members shall be appointed for four years; thereafter, the student member shall serve a two-year term and the other members shall serve four-year terms. Members are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other perquisite, compensation or allowance.

D. The board shall annually elect a chair, vice chair and secretary from among its membership. A majority of the members constitutes a quorum for the conduct of business.

E. The board shall meet at the call of the chair at least quarterly. Meetings of the board shall be held in Santa Fe and at other sites within the state at the direction of the board.

Section 11. ORGANIZATIONAL UNITS OF THE DEPARTMENT--
POWERS AND DUTIES SPECIFIED BY LAW--ACCESS TO INFORMATION.--
Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, who shall retain the final decision-making authority and responsibility for the administration of any laws as provided in Subsection B of Section 8 of the Higher Education Department Act. The

department shall have access to all records, data and information of other state departments, agencies and institutions, including its own organizational units, not specifically held confidential by law; provided, however, that when the department requires confidential institutional data, including student records and other information necessary to fulfill the functions of the department, the secretary and the institution shall cooperate to provide the department with information adequate to meet its needs while meeting all legal requirements to ensure the confidentiality of such information and records.

Section 12. COOPERATION WITH THE FEDERAL GOVERNMENT--
AUTHORITY OF SECRETARY--SINGLE STATE AGENCY STATUS.--

A. The department is authorized to cooperate with the federal government in the administration of higher education programs in which financial or other participation by the federal government is authorized or mandated under state or federal laws, rules or orders. The secretary may enter into agreements with agencies of the federal government to implement higher education programs subject to availability of appropriated state funds and any provisions of state laws applicable to such agreements or participation by the state.

B. The governor or the secretary may by appropriate order designate the department or any organizational unit of the department as the single state

agency for the administration of any higher education program when that designation is a condition of federal financial or other participation in the program under applicable federal law, rule or order. Whether or not a federal condition exists, the governor may designate the department or any organizational unit of the department as the single state agency for the administration of any federally funded higher education program not targeted for specific post-secondary educational institutions. No designation of a single state agency under the authority granted in this section shall be made in contravention of state law.

Section 13. ADVISORY COMMITTEES.--

A. In addition to the higher education advisory board, the department may create other advisory committees. "Advisory" means furnishing advice, gathering information, making recommendations and performing such other activities as may be instructed or delegated and as may be necessary to fulfill advisory functions or to comply with federal or private funding requirements and does not extend to administering a program or function or setting policy unless specified by law. Advisory committees shall be appointed in accordance with the provisions of the Executive Reorganization Act.

B. All members of advisory committees are entitled to receive per diem and mileage as provided in the Per Diem

and Mileage Act and shall receive no other compensation, perquisite or allowance.

Section 14. A new section of Chapter 21, Article 1 NMSA 1978 is enacted to read:

"EDUCATIONAL NEEDS AND GUIDELINES--ACCOUNTABILITY REPORTS.--

A. The higher education department shall, through consultation with all public post-secondary educational institutions, develop and publish a statement of statewide educational needs and guidelines to assist the institutions in the development or modification of institutional strategic plans. The department may conduct studies of statewide educational needs and make recommendations to the governor, the legislature and public post-secondary educational institutions.

B. All public post-secondary educational institutions, including off-campus instruction programs and learning centers, shall:

(1) approve and submit accountability reports prepared in accordance with the statewide public agenda; and

(2) submit budgets for review no later than August 1 each year for the following fiscal year."

Section 15. Section 21-1-26 NMSA 1978 (being Laws 1951, Chapter 190, Section 1, as amended) is amended to read:

"21-1-26. HIGHER EDUCATION DEPARTMENT--GENERAL
POWERS.--

A. The higher education department shall be concerned with the problems of finance of those educational institutions designated in Article 12, Section 11 of the constitution of New Mexico and other public post-secondary educational institutions in the state. The department shall:

(1) be concerned with the adequate financing of these institutions and with the equitable distribution of available funds among them;

(2) receive, adjust and approve the budgets submitted by these institutions prior to the submission of these budgets to the state budget division of the department of finance and administration;

(3) develop and maintain programs, on a regular basis, for the orientation and in-service education of members of the boards of regents of the various educational institutions designated in Article 12, Section 11 of the constitution of New Mexico and the governing bodies of other public post-secondary educational institutions in the state;

(4) analyze the financial impact of each new degree program of each public post-secondary educational institution as part of the department's review of the institution's operating budget; and

(5) exercise such other powers as may be

granted it by law.

B. Effective July 1, 2005, all new state-funded baccalaureate, graduate and professional degree programs shall be offered by public four-year educational institutions and all new associate degree programs shall be offered by public post-secondary educational institutions after a timely and thorough consultation with and review by the department.

C. Notwithstanding any other provisions of law, the higher education department may be designated by the governor to administer funds furnished under acts of congress for post-secondary educational institutions, except for funds specifically appropriated or otherwise designated for those educational institutions enumerated in Article 12, Section 11 of the constitution of New Mexico.

D. The higher education department is also charged with oversight of all private post-secondary educational institutions operating within the state."

Section 16. Section 21-1-26.1 NMSA 1978 (being Laws 1980, Chapter 145, Section 2) is amended to read:

"21-1-26.1. ADDITIONAL DUTIES.--In addition to the duties imposed upon the higher education department by the Post-Secondary Educational Planning Act, the department shall perform the same planning and budgeting functions for the university of New Mexico hospital as it performs for other post-secondary educational institutions."

Section 17. Section 21-1-26.2 NMSA 1978 (being Laws 1981, Chapter 69, Section 1) is amended to read:

"21-1-26.2. POST-SECONDARY EDUCATION--ADULT CORRECTIONAL FACILITIES.--Upon approval by the corrections department in consultation with the higher education department, state-supported post-secondary educational institutions shall receive credit on a full-time equivalency basis for students enrolled in their respective programs within adult correctional facilities. Funding recommendations to implement the provisions of this section shall be developed by the higher education department or the public education department as appropriate in the same manner that funding recommendations for similar programs at other institutions are calculated."

Section 18. Section 21-1-26.3 NMSA 1978 (being Laws 1986, Chapter 24, Section 3, as amended) is amended to read:

"21-1-26.3. VERIFICATION FUNCTION.--The higher education department shall annually conduct special verifications of the institutions of higher education. The verifications shall include enrollments, fund balances, compliance with legislation, comparison of expenditures to budgets and other areas to be determined by the department. Reports on the verifications shall be made annually to the department of finance and administration and the legislative finance committee. The department shall consider the

verification findings in making its annual recommendations to the executive and legislature for higher education funding."

Section 19. Section 21-1-26.7 NMSA 1978 (being Laws 1990 (1st S.S.), Chapter 4, Section 2, as amended) is amended to read:

"21-1-26.7. ANNUAL ACCOUNTABILITY REPORT.--

A. The higher education department shall submit an annual accountability report to the governor and to the legislature by December 31. Prior to publication, the department shall distribute a draft of the accountability report to all public post-secondary educational institutions and shall allow comment upon the draft report.

B. The department in consultation with the public post-secondary educational institution shall develop and adopt the content and a format for the report, including the following information:

- (1) student progress and success;
- (2) student access and diversity;
- (3) affordability and cost of educational services; and
- (4) public and community service by the institutions.

C. The department shall make no funding recommendation, capital outlay recommendation, distribution or certification on behalf of any public post-secondary

educational institution that has not submitted the information required pursuant to this section."

Section 20. Section 21-1-26.9 NMSA 1978 (being Laws 1998, Chapter 61, Section 2) is amended to read:

"21-1-26.9. LIMITATION--HIGHER EDUCATION DEPARTMENT--REVIEW OF PROPOSED CAMPUSES.--Effective January 1, 1998, no new public post-secondary educational institution, branch campus or off-campus instructional center shall be created except as specifically created by the legislature. The higher education department shall review any proposal for the establishment of a new public post-secondary educational institution or campus and submit its recommendations to the legislature. In reviewing proposals, the department may consider:

A. provisions for a local mill levy of at least two mills;

B. population base to provide at least five hundred full-time students;

C. whether at least fifty percent of the costs of initial construction comes from private or local sources;

D. governance structure;

E. means for acquisition of property, including purchase, lease, donations or any other means;

F. eligibility and level of funding request of the state; and

G. brokering of extended learning provisions."

Section 21. Section 21-1-26.10 NMSA 1978 (being Laws 1999 (1st S.S.), Chapter 6, Section 18) is amended to read:

"21-1-26.10. HIGHER EDUCATION DEPARTMENT--PLAN FOR FUNDING SIGNIFICANT POST-SECONDARY EDUCATIONAL INFRASTRUCTURE NEEDS.--The higher education department, in conjunction with the governing bodies of the post-secondary educational institutions and other state educational institutions confirmed in Article 12, Section 11 of the constitution of New Mexico, shall develop and approve a five-year plan for funding the infrastructure renovation and expansion projects designated by the department as the highest priority of significant needs. The department shall determine the projects and amounts to be funded, with a timetable for the projects and amounts to be funded each year over the five-year period, subject to review and comment by the educational institutions and subject to appropriations."

Section 22. Section 21-1-26.11 NMSA 1978 (being Laws 2003, Chapter 394, Section 1) is amended to read:

"21-1-26.11. HIGHER EDUCATION DEPARTMENT--ADDITIONAL DUTIES.--In addition to the duties imposed upon the higher education department by the Post-Secondary Educational Planning Act, the department shall plan and budget for the statewide adult basic education program and shall adopt and promulgate rules for all such adult educational programs. The HEC/HB 745
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department shall establish a uniform protocol for identifying, communicating with and providing direct and equitable access to funding for eligible agencies, which include:

- A. local educational agencies;
- B. community-based organizations;
- C. volunteer literacy organizations;
- D. post-secondary institutions;
- E. public or private nonprofit agencies;
- F. public libraries;
- G. public housing authorities; and
- H. a consortium of agencies, organizations,

institutions, libraries or authorities as described in Section 203 of Public Law 105."

Section 23. Section 21-1-27 NMSA 1978 (being Laws 1965, Chapter 267, Section 1, as amended) is amended to read:

"21-1-27. HIGHER EDUCATION DEPARTMENT--DISTRIBUTION OF AVAILABLE FUNDS.--In its distribution of available funds and its adjustment and approval of budgets, the higher education department shall not, in any event or in any manner, substitute for public funds any gift, donation, private endowment, patent income or other gratuity received or enjoyed by an institution in determining the adequate financing of an institution under its charge."

Section 24. Section 21-1-33 NMSA 1978 (being Laws 1974, Chapter 30, Section 2, as amended) is amended to read:

"21-1-33. SYSTEM OF ACCOUNTING AND REPORTING--MANUAL.--

A. The higher education department, in consultation with the state auditor, shall compile a manual prescribing a uniform classification of accounts and a uniform system for budgeting and reporting that includes the reporting of all funds available. The manual shall apply to all institutions enumerated in Article 12, Section 11 of the constitution of New Mexico and all their branches, except the New Mexico school for the blind and visually impaired and the New Mexico school for the deaf. The manual shall also apply to the two-year public post-secondary educational institutions.

B. The uniform system for budgeting and reporting shall require the submission of at least quarterly financial reports.

C. Following review by the legislative finance committee, the manual shall be reproduced by the department and filed as required by the State Rules Act. Upon the filing, the requirements set forth in the manual shall constitute rules of the department and have the force of law. The department shall review the manual annually. Sections of the manual may be revised or amended from time to time by the department, and revisions or amendments shall become effective upon review by the legislative finance committee and reproduction and filing as provided in this section.

D. All institutions to which this section and Section 21-1-32 NMSA 1978 apply shall comply with all of the requirements in the manual, submit reports to the department as requested and furnish such additional information as the department deems necessary."

Section 25. Section 21-1-34 NMSA 1978 (being Laws 1977, Chapter 330, Section 1, as amended) is amended to read:

"21-1-34. EDUCATIONAL TELEVISION EQUIPMENT REPLACEMENT FUND--DISBURSEMENT.--The "educational television equipment replacement fund" is created. The higher education department shall develop criteria and promulgate rules for the disbursement of money in this fund for the replacement of equipment at educational television stations operated by institutions of higher education. Disbursement shall be made to the institutions by warrant of the department of finance and administration upon vouchers signed by the secretary of higher education. It is the intent of the legislature that in subsequent years a specific line item for educational television replacement shall be included in the appropriations recommended for educational television by the department. The appropriation to the fund in the General Appropriation Act of 1982 shall not revert to the general fund at the end of any fiscal year, and no subsequent appropriation to the fund shall revert unless it contains the sentence "The appropriation to the educational television equipment replacement fund shall

revert."."

Section 26. Section 21-13-11 NMSA 1978 (being Laws 1963, Chapter 17, Section 10, as amended) is amended to read:

"21-13-11. STANDARDS AND ACCREDITING OF COMMUNITY COLLEGES.--

A. The community college board shall prescribe the course of study for the community college and shall define, in conjunction with the higher education department, official standards of excellence in all matters relating to the administration, course of study and quality of instruction, except that the prescribed standards may not be less in quality or quantity than those prescribed for other state institutions of higher learning by the regional accrediting agency that accredits other colleges and universities of the state.

B. The department shall annually inspect, or investigate through the requirement of reports prescribed by the department, each community college. The inspection or investigation by report shall be conducted upon the facilities and program of each community college to determine the extent of compliance with the rules promulgated by the department. A report of each inspection or final investigation by report shall be made to the department.

C. In the event of any serious deviation from established practices and procedures or any deficiencies that

impair the quality of the instructional program in any community college, the department shall first call these to the attention of the president of the community college and the community college board.

D. In the case of repeated failure to meet the standards provided for in Subsection A of this section, the department may take action discontinuing the approval of any community college so delinquent. Upon a showing that the unsatisfactory conditions have been remedied, the department may reinstate its approval of a disapproved community college."

Section 27. Section 21-21B-1 NMSA 1978 (being Laws 1982, Chapter 88, Section 1) is amended to read:

"21-21B-1. SHORT TITLE.-- Chapter 21, Article 21B NMSA 1978 may be cited as the "Work-Study Act"."

Section 28. Section 21-21B-2 NMSA 1978 (being Laws 1982, Chapter 88, Section 2) is amended to read:

"21-21B-2. DEFINITIONS.--As used in the Work-Study Act:

A. "board" or "commission" or "department" means the higher education department; and

B. "institution" means any state post-secondary educational institution and any private nonprofit post-secondary educational institution within New Mexico."

Section 29. TEMPORARY PROVISION--TRANSFERS.--

A. On the effective date of this act, all

functions, appropriations, money, personnel, records, files, furniture, equipment and other property of the commission on higher education shall be transferred to the higher education department.

B. On the effective date of this act, all contractual obligations of the commission on higher education shall be binding on the higher education department.

C. On the effective date of this act, all references in law to the commission on higher education shall be deemed to be references to the higher education department and all references in law to the executive director of the commission on higher education shall be deemed to be references to the secretary of higher education.

Section 30. REPEAL.--Sections 21-1-28 through 21-1-31 NMSA 1978 (being Laws 1977, Chapter 246, Section 49, Laws 1971, Chapter 224, Section 1 and Laws 1951, Chapter 190, Sections 3 and 4, as amended) are repealed.

Section 31. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.
