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FISCAL IMPACT REPORT

SPONSOR HEC DATE TYPED 03/14/05 HB 745/HECS/aHEC/aSEC

SHORT TITLE Higher Education as Cabinet Department SB _____

ANALYST Williams

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	None contained		See Text*		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates Senate Bill 677

*Relates to Appropriation in the General Appropriation Act for Commission on Higher Education

* Relates to Executive budget proposal in which the general fund appropriation to the policy development and institutional financial oversight program includes four hundred thousand dollars (\$400,000) for four full-time equivalent positions contingent upon enactment of legislation creating a department of higher education or similar cabinet level agency focused solely on higher education.

SOURCES OF INFORMATION

LFC Files
Public Education Department (PED)

No Response Received From Commission on Higher Education

SUMMARY

Synopsis of SEC Amendment

The Senate Education Committee amendment strikes House Education Committee Amendments 1 and 4 relating to the total number of advisory board members and staggered terms for the members. The amendment removes the requirement the Governor approve the appointment of Department of Higher Education division directors and authorizes the Secretary of Higher Education, rather than the Governor, to appoint members of the advisory board. Further, the amendment expands the total membership of the advisory board to fourteen members. The amendment specifies two new members of the board, specifically a representative of a New

Mexico tribal college and a representative of a New Mexico nation, tribe or pueblo. The amendment also provides for staggered terms for the initial board as follows: 1) Four members, including the student member, would serve two-year terms; 2) five members would serve three-year terms and 3) five members would serve four-years. After the initial appointments, the student member would continue to serve a two-year term, while other members would serve four-year terms

Synopsis of HEC Amendment

The House Education Committee amendments expand and alter the membership of the higher education advisory board to twelve members as follows:

- 4 members representing four-year, public, post-secondary educational institutions, specifically:
 - 1 representing the University of New Mexico
 - 1 representing New Mexico State University
 - 1 representing New Mexico Institute of Mining and Technology
 - 1 representing either New Mexico Highlands University, Eastern New Mexico University or Western New Mexico University
- 3 members representing two-year, public, post-secondary educational institutions
- 1 member representing private, accredited post-secondary educational institutions
- 1 member representing business
- 1 member representing faculty
- 1 member representing staff
- 1 member serving as a post-secondary student

The amendment also provides for staggered terms for the initial board as follows: 1) Four members, including the student member, would serve two-year terms; 2) four members would serve three-year terms and 3) four members would serve four-years. After the initial appointments, the student member would continue to serve a two-year term, while other members would serve four-year terms.

Synopsis of House Education Committee Substitute

The bill is entitled the Higher Education Department Act. The purpose of the act is to establish a single, unified department, known as the Higher Education Department, to administer laws and exercise functions formerly administered and exercised by the Commission on Higher Education. The bill makes clarifying changes in some areas to expand current authority to all public, post-secondary institutions and updates references in current statute from “commission on higher education” to “department of higher education.”

The secretary would be appointed by the Governor, with consent of the Senate and must hold a terminal degree from a regionally accredited post-secondary educational institution along with at least five years senior administrative experience as well as experience in higher education and state or federal public policy development. The first secretary is authorized to serve in full capacity until final action on the appointment by the Senate (presumably at the 2006 legislative session).

The secretary of the department would serve in the governor's cabinet. The Secretary is authorized to reorganize the agency and make recommendations to the 2006 legislature. The Secretary may organize divisions and bureaus within the agency "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 is authorized to appoint division directors. Appointment of these individuals is subject to approval by the Governor. These division directors would be exempt from the State Personnel Act; all bureau chiefs and other employees would be covered under the State Personnel Act.

Duties of the Secretary are provided in Sections 8 and 9. The duties are generally what is expected of cabinet secretaries; among the duties delineated on pages 3 through 7, the secretary could employ and fix compensation of employees within limitation of available appropriations and applicable laws, issue orders and instructions, enforce orders and instructions through administrative action in the courts and provide courses of instruction and practical training for employees and administrators. The Secretary is also authorized to promulgate rules in Section 8, paragraph D. On page 6, lines 16 through 20, the bill directs rules promulgated by the department shall not infringe on the authority of boards of regents as specified in Article 12 of the New Mexico State Constitution. The required rule making process is also described in this section.

Relative to current agency responsibilities, additional planning duties are specified in Section 9. These additional duties are specified as "consistent with constitutional provisions relating to the control and management of the educational institutions enumerated in Article 12, Section 11" of the New Mexico Constitution. The department is directed to cooperate with colleges and universities to create a "statewide public agenda for higher education needs and goals"; study and report to the governor and the legislative finance committee on enrollment capacity needs for a ten-year time frame, based on state demographic models, institutional competencies and infrastructure, state workforce needs, economic development goals and other factors. Finally, the secretary would present to the legislature a comprehensive funding request and legislative priorities list for higher education by November 1 each year.

Additional powers and duties of the agency are specified in Section 11. This section directs the secretary would be the final authority on administration of Subsection B of Section 8 of the Higher Education Department Act. Further, the bill directs the department would have access to all records, data and information of other state departments, agencies and institutions, not specifically held confidential by law. When the department utilizes confidential institutional data, the secretary and the institution are directed to cooperate to provide adequate information, while "meeting all legal requirements to ensure the confidentiality of such information and records."

In Section 12, the department is authorized to cooperate with the federal government in administering higher education programs in which financial or other participation by the federal government is authorized or mandated pursuant to federal or state laws, rules or regulations. The secretary may also enter into agreements with federal government agencies to implement higher education programs. Further, the governor or secretary may designate the department or its organizational unit(s) as the single state agency to administer higher education programs if such designation is required. Further, the governor may also designate the department or its unit(s) as a single state agency for the administration of any federally funded higher education program not targeted for specific post-secondary educational institutions. The designation of a single state agency must be made in concordance with all state laws.

Further, in Section 14, the bill authorizes the higher education department to develop and publish a statement of statewide educational needs and guidelines to assist institutions in the development or modification of institutional strategic plans. The department would consult with all public, post-secondary educational institutions to develop this statement. Further, the department is authorized to develop studies of statewide educational needs and make recommendations accordingly. Institutions are directed to submit accountability reports in line with the statewide public agenda. Further, all public, post-secondary educational institutions, off-campus instruction programs and learning centers must submit budgets by August 1 for the upcoming fiscal year.

Section 15 amends existing statute to delete the authorization for the agency to receive and administer in-plant development training funds. Further, the department is authorized to analyze the financial impacts of proposed new degree programs at each public, post-secondary educational institution as part of the review of institutional operating budgets. Effective July 1, 2005, all new state-funded baccalaureate, graduate and professional degree programs as well as all new associate degree programs offered by public, post-secondary institutions would receive timely and thorough consultation and review by the department of higher education.

Sections 16, 17, 18, 19, 20, 22, 23, 25, 26, 27 and 28 make clarifying and conforming changes to existing statute.

Section 21 deletes references to supplemental severance tax bonds and removes language authorizing the agency to distribute proceeds of supplemental severance tax bonds. The review and approval of a five-year capital funding plan is extended to funding from all state appropriations.

Section 24 makes clarifying changes to the existing statute regarding the requirement of an accounting and reporting manual and further revises statute that the manual and associated revisions and amendments would now be reviewed, but not approved, by the Legislative Finance Committee.

In Section 10, the Higher Education Advisory Board is created to “advise the department and the governor on policy matters and perform other functions...”. The board would be administratively attached to the department and staffed by the department. Board members would serve four-year terms and would be eligible for per diem and mileage. The legislation specifies the board would have annual elections for certain positions and specifies that a majority of members would constitute a quorum. Meetings would be held at the call of the chair at least quarterly. Members would be appointed by the governor to represent geography, cultural diversity and composition of higher education institutions. A total of ten members is specified as follows:

- 3 members representing four-year, public, post-secondary educational institutions, including:
 - 1 representative of an institution with an academic medical center
 - 1 representative with external research funding greater than ten percent of its budget
- 2 members representing two-year, public, post-secondary educational institutions
- 1 member representing private, accredited post-secondary educational institutions
- 1 member representing business
- 1 member representing faculty
- 1 member representing staff

- 1 member serving as a student

Representatives of institutions are designated as the chief executive officers of their respective institutions or their designees. Faculty, staff and student members are specified as leaders of their respective institutional organizations.

In Section 13, the Department is authorized to create additional advisory committees to provide advice, gather information and make recommendations. Appointments to these committees would be made pursuant to the Executive Reorganization Act. Members of these committees would receive per diem and mileage.

The bill repeals:

21-1-28 through 21-1-31 NMSA 1978: Board of educational finance (commission on higher education) administratively attached to department of finance and administration.

21-1-29 Membership of the commission on higher education

21-1-30 Executive director salary

21-1-31 Per diem and mileage allowance

The bill includes temporary provisions related to conversion of the commission on higher education as an agency to the cabinet-level department of higher education. Further, the bill includes an emergency clause.

Significant Issues

The bill is consistent with the recommendations of the Governor's Task Force on Higher Education. The bill essentially elevates the commission on higher education as an agency to cabinet status and renames the agency to Department of Higher Education. The current commission, as an appointed body, would be eliminated. An advisory board would be created, and other advisory committees are authorized. Governor's exempt personnel positions and classified positions are broadly specified.

The language explicitly addresses duties for cabinet secretaries as delineated in the Executive Reorganization Act, but assumes the agency would be subject to other statutory requirements for state agencies such as the Open Meetings Act, the Accountability in Government Act, Article 3, Chapter 3 NMSA 1978 (Public Finances) and other statutory requirements of state government agencies.

With the exception of staffing the commission itself and distribution of in-plant training funds, the bill maintains current functional responsibilities of the agency. Duties of the current commission as assumed by the proposed Secretary of Higher Education are then expanded.

FISCAL IMPLICATIONS

The bill does not include an appropriation; however, the bill relates to appropriation in the General Appropriation Act for Commission on Higher Education for the FY06 general fund appropriation to the policy development and institutional financial oversight program which includes four hundred thousand dollars (\$400,000) for four full-time equivalent positions contingent upon enactment of legislation creating a department of higher education.

TECHNICAL ISSUES

Deadline for operating funding request by the agency for higher education institutions to the legislature might be reset to October 1 to keep budget analysis period for Secretary of Higher Education more consistent with current proposals for Secretary of Education.

Is it the intent of the legislature to include an explicit deadline for capital budget recommendations? IT recommendations?

The legislature may wish to consider an effective date of July 1, 2005 to align with the beginning of the fiscal year.

OTHER SUBSTANTIVE ISSUES

According to the National Governors Association Center for Best Practices, state policy makers must focus on reinvention strategies for higher education to address the workforce and economic development needs of the future. The Governor's Task Force report notes the group identified "common elements among those states that were the most successful in delivering higher education to its students. Among these were a statewide agenda for the goals of higher education, a funding mechanism to drive that agenda, and a centralized authority to help oversee the development and implementation of that statewide agenda" (page vi).

An LFC performance audit report *Commission on Higher Education Review of Statutory Responsibilities and Adequacy of Staffing* was published in January 2005. Among the conclusions: 1) CHE has a wide scope of statutory responsibility; 2) CHE has been consistently criticized for ineffective coordination, lack of capacity and strategic focus; 3) All areas need improvement; 4) CHE is underfunded in comparison to other states; 5) CHE is understaffed given its scope of statutory responsibility; 6) CHE is a weak coordinating agency; 7) Staff turnover affected the management system, organizational culture and technical capacity; 8) CHE has fully performed 76 percent of its statutory responsibilities. These and other findings can be found in the full report.

PED notes: "The federal Family Educational Rights and Privacy Act ("FERPA")... generally provides confidentiality to all student records at educational institutions that receive federal funds pursuant to federal programs. Violations of confidentiality are enforced by the U.S. Secretary of Education and can result in withdrawal of federal funding and termination of federal programs. The department should carefully review Subpart D of 34 CFR Section 99.30 – 99.39 to determine its duties and responsibilities prior to accessing confidential student records."

TECHNICAL ISSUES

Language on page 12, line 20 may need to specify the deadline applies to budget requests, to distinguish between operating budgets which would be proposed and reviewed in the spring.

POSSIBLE QUESTIONS

1. What are the experiences of other states in changing governance structures for higher education? What are the best practices?

2. Who is held accountable for P-20 education pipeline issues with two cabinet secretaries (for example, college and workforce preparation, concurrent enrollment)? How would these issues be addressed?
3. The bill discusses administratively attached agencies and adjunct agencies. Who would these agencies be or are envisioned to be?
4. What are the potential impacts on the budget timeline specified by the bill, receipt of request for operating funding by August 1 and a recommendation to the legislature by November 1? Would the current timeline of reporting by institutions to CHE change? How? How does the analysis time for the Secretary of Higher Education compare to proposals for the Public Education Department?
5. Would Secretary of Higher Education or Secretary of Finance and Administration have authority to finalize operating budgets in late spring for the upcoming fiscal year?
6. What resources are needed (funding, FTE, and office space) for the proposed Secretary of Higher Education to be fully effective?

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