

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number: HB 230**

**50th Legislature, 1st Session, 2011**

**Tracking Number: .184347.1**

**Short Title: Merge HED with DFA**

**Sponsor(s): Representative Al Park and Others**

**Analyst: David Harrell**

**Date: February 8, 2011**

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**Bill Summary:**

HB 230 repeals the *Higher Education Department Act* and amends numerous sections of state law to merge the Higher Education Department (HED) with the Department of Finance and Administration (DFA). In doing so, the bill creates the Higher Education Division within DFA and assigns these duties to the new division:

- cooperate with colleges and universities to create a statewide public agenda to meet the needs and goals of higher education;
- periodically study and report to the Governor and the Legislative Finance Committee (LFC) on enrollment capacity needs over a 10-year period, based on state demographic models, academic program demands, institutional competencies and infrastructure, state work force needs, economic development goals, and other factors; and
- by November 1 of each year, present to the Legislature a comprehensive funding request and legislative priorities list for all higher education, encompassing the needs of all public postsecondary educational institutions and programs.

HB 230 also transfers to the Higher Education Division in DFA all the functions currently performed by HED, among them:

- annual reporting of school tax rates to the Secretary of Finance and Administration;
- approval of auditors for postsecondary institutions;
- administration and evaluation of the Dual Credit Program;
- definitions of resident and nonresident students for purposes of tuition;
- administration of the higher education funding formula;
- verification of a number of functions of postsecondary institutions, such as enrollment, fund balances, and compliance with legislation;
- annual accountability report to the Governor and the Legislature;

- development and approval of a five-year plan for funding infrastructure renovation and expansion projects, in consultation with postsecondary institutions;
- oversight of adult basic education programs;
- administrative services for the School Leadership Institute;
- oversight of the standards and accrediting of community colleges;
- administration of student loans and scholarship programs and related funds, among them the *Minority Doctoral Assistance Loan for Service Program Act*, the *College Affordability Act* and the *Teacher Loan for Service Act*; and
- administration of numerous other funds, including the Lottery Tuition Fund; the Higher Education Endowment Fund; the Technology Enhancement Fund; the Adult Basic Education Fund; and the Nurse Educators Fund.

Finally, as of its effective date of September 1, 2011, HB 230 transfers to the Higher Education Division of DFA all functions, appropriations, furniture, equipment, other property, contractual obligations, statutory references, and rules of HED.

**Fiscal Impact:**

HB 230 does not contain an appropriation.

**Fiscal Issues:**

Noting the absence of an appropriation, HED’s analysis says there would be costs associated with the dissolution of the existing department and relocating it at DFA. This analysis also notes the “significant General Fund reductions” that HED has already absorbed, evidenced by a staff vacancy rate of 27 percent and the increased duties assumed by present staff.

The fiscal impact report by the Legislative Finance Committee says, “It is unclear whether this [bill] will result in any major savings to the general fund as it appears that all current functions of HED will continue.”

**Substantive Issues:**

HED’s analysis suggests that the department’s fiduciary and administrative functions might be appropriate to transfer to DFA but questions whether it would be appropriate to transfer other functions: “NMHED serves 27 public higher education institutions, three constitutional special schools, and four tribal colleges and is not limited to fiduciary roles and oversight of New Mexico’s higher education institutions,” but also has responsibility for numerous educational programs.

HED’s analysis also questions whether and how New Mexico would continue to be represented in the State Higher Education Executive Officers, a nonprofit, nationwide association of higher education chief executive officers.

The analysis by the Public Education Department (PED) identifies a potential conflict with regard to rule-making authority. Although DFA already has this authority, it is also given to the new Higher Education Division within DFA (see Section 30), creating what the PED analysis calls “chain-of-command and policy difference issues.”

Finally, because of its amendments to those sections, HB 230 conflicts with at least three measures endorsed by the Legislative Education Study Committee – SB 141, SB 157, and SB 215 – which are further identified under “Related Bills,” below.

**Technical Issues:**

Although Section 3 of HB 230 transfers the administration of the Lottery Tuition Fund to the new division in DFA, the bill does not amend Section 21-1-4.3 NMSA 1978, which authorizes the Legislative Lottery Scholarships and requires HED to prepare guidelines for the program.

The analysis by the Attorney General’s Office suggests that the effective date of September 1, 2011 may create some confusion over tracking contractual services from July 1 to August 30, 2011, in FY 12.

**Related Bills:**

- HB 66 *Transfer Depts. & Services to DFA*
- HJM 30 *Higher Education Redesign Governor Task Force*
- SB 141a *No Education Dept. Auditor Approval*
- SB 157 *Dual Credit Reimbursement for Completion*
- SB 215 *Create Dual Credit Textbook Fund*