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SENATE BILL 246

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY  
George K. Munoz

AN ACT

RELATING TO PUBLIC FINANCE; CHANGING THE ADMINISTRATION OF THE  
EDUCATION TRUST ACT TO THE STATE INVESTMENT COUNCIL;  
ELIMINATING THE EDUCATION TRUST BOARD.

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

**SECTION 1.** Section 21-21K-1 NMSA 1978 (being Laws 1997,  
Chapter 259, Section 1) is recompiled into Chapter 6 NMSA 1978  
and is amended to read:

"SHORT TITLE.--Sections 1 through [7] 6 of this act may be  
cited as the "Education Trust Act".

**SECTION 2.** Section 21-21K-2 NMSA 1978 (being Laws 1997,  
Chapter 259, Section 2, as amended) is recompiled into Chapter  
6 NMSA 1978 and is amended to read:

"DEFINITIONS.--As used in the Education Trust Act:

A. "beneficiary" means a person who is entitled to

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1 receive benefits under a college investment agreement or a  
2 prepaid tuition contract;

3 ~~[B.] "board" means the education trust board;~~

4 ~~C. "commission" means the commission on higher~~  
5 ~~education;~~

6 ~~D.]~~ B. "college investment agreement" means an  
7 agreement entered into by the [~~board~~] council and an investor,  
8 pursuant to the provisions of the Education Trust Act, to  
9 defray the costs of attendance of a beneficiary at an  
10 institution of higher education;

11 ~~[E.]~~ C. "council" means the state investment  
12 council;

13 ~~[F.]~~ D. "fund" means the education trust fund;

14 ~~[G.]~~ E. "institution of higher education" means a  
15 state public post-secondary educational institution as defined  
16 in Section 6-17-1.1 NMSA 1978, a branch college, an independent  
17 community college, a technical and vocational institute or, if  
18 approved by the [~~board~~] council, another public or private  
19 post-secondary educational institution located in this state or  
20 any other state;

21 ~~[H.]~~ F. "investor" means a person who has entered  
22 into a college investment agreement with the [~~board~~] council;

23 ~~[I.]~~ G. "prepaid tuition contract" means a contract  
24 entered into by the [~~board~~] council and a purchaser, pursuant  
25 to the provisions of the Education Trust Act, to provide for

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1 the payment of higher education tuition and required fees of a  
2 beneficiary; and

3 ~~[J-]~~ H. "purchaser" means a person who is obligated  
4 to make payments under a prepaid tuition contract."

5 SECTION 3. Section 21-21K-3 NMSA 1978 (being Laws 1997,  
6 Chapter 259, Section 3, as amended) is recompiled into Chapter  
7 6 NMSA 1978 and is amended to read:

8 "EDUCATION TRUST FUND--CREATION.--

9 A. The "education trust fund" is created in the  
10 state treasury. The ~~[board]~~ council shall deposit all money  
11 received pursuant to college investment agreements and prepaid  
12 tuition contracts into the fund. Money in the fund shall  
13 consist of appropriations, investments, payments, gifts,  
14 bequests and donations. All money invested in the fund is  
15 appropriated to the ~~[board]~~ council. Money in the fund shall  
16 not revert to the general fund at the end of the fiscal year.  
17 The ~~[board]~~ council shall account for each payment from an  
18 investor or purchaser on behalf of a beneficiary pursuant to a  
19 college investment agreement or prepaid tuition contract. The  
20 ~~[board]~~ council shall provide that all money in the fund shall  
21 be invested either by the state investment officer according to  
22 rules promulgated by the council ~~[subject to the approval of~~  
23 ~~the board]~~ or by a private investment advisor approved by the  
24 council pursuant to a contract between the ~~[board]~~ council and  
25 the investment advisor. The ~~[board]~~ council shall review

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1 investments made pursuant to this subsection at least  
2 quarterly.

3 B. Expenditures from the fund shall be for payments  
4 to institutions of higher education on behalf of beneficiaries  
5 or for refunds, in accordance with the provisions of the  
6 Education Trust Act, and for costs of administering that act.

7 C. In no event shall any liability of, or  
8 contractual obligation incurred by, the program established  
9 pursuant to the provisions of the Education Trust Act obligate  
10 or encumber any of the state's land grant permanent funds, the  
11 severance tax permanent fund or any money that is a part of a  
12 state-funded financial aid program. Nothing in the Education  
13 Trust Act creates any obligation, legal, moral or otherwise, to  
14 fulfill the terms of any college investment agreement or  
15 prepaid tuition contract out of any source other than the  
16 education trust fund.

17 D. The [~~board~~] council may create within the fund  
18 separate trust funds or accounts for college investment  
19 agreements and prepaid tuition contracts, and may deposit all  
20 money received pursuant to college investment agreements and  
21 prepaid tuition contracts into the related separate trust funds  
22 or accounts. The [~~board~~] council may appoint one or more  
23 custodians of the separate trust funds or accounts that shall  
24 be a state or national bank authorized to do business in the  
25 United States. No member of the [~~board~~] council, while acting

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1 within the scope of [~~his~~] the member's authority or while  
2 acting as a trustee of any trust fund or account of the [~~board~~]  
3 council, shall be subject to any personal liability for any  
4 action taken or omitted within that scope of authority."

5 SECTION 4. Section 21-21K-5 NMSA 1978 (being Laws 1997,  
6 Chapter 259, Section 5, as amended) is recompiled into Chapter  
7 6 NMSA 1978 and is amended to read:

8 "COLLEGE INVESTMENT AGREEMENT.--

9 A. An investor may enter into a college investment  
10 agreement with the [~~board~~] council under which the investor  
11 agrees to make investments into the fund from time to time for  
12 the purpose of defraying the costs of attendance billed by  
13 institutions of higher education. An investor may enter into a  
14 college investment agreement on behalf of any beneficiary.  
15 The [~~board~~] council shall adopt a form of the college  
16 investment agreement to be used by the [~~board~~] council and  
17 investors.

18 B. The [~~board~~] council shall provide for the direct  
19 payment of principal, investment earnings and capital  
20 appreciation accrued pursuant to a college investment agreement  
21 to the institution of higher education that the beneficiary  
22 actually attends.

23 C. A college investment agreement may be terminated  
24 by the investor at any time. The investor may modify the  
25 college investment agreement to designate a new beneficiary

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1 instead of the original beneficiary if the new beneficiary  
2 meets the requirements of the original beneficiary on the date  
3 the designation is changed and if the original beneficiary:

4 (1) dies;

5 (2) is not admitted to an institution of  
6 higher education following proper application;

7 (3) elects not to attend an institution of  
8 higher education or, if attending, elects to discontinue higher  
9 education; or

10 (4) for any other circumstance approved by the  
11 ~~[board]~~ council, does not exercise ~~[his]~~ the original  
12 beneficiary's rights under the college investment agreement.

13 D. The ~~[board]~~ council shall provide, by rule,  
14 procedures for determining the amount to be refunded for  
15 college investment agreements terminated pursuant to the  
16 provisions of this section. The balance of the accrued  
17 investment earnings and capital appreciation less the amount  
18 refunded and administrative costs shall be credited to the  
19 fund.

20 E. The ~~[board]~~ council shall establish a refund  
21 policy if a beneficiary receives additional student financial  
22 aid.

23 F. The ~~[board]~~ council shall specify, by rule,  
24 appropriate provisions for the term and termination of college  
25 investment agreements.

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1           G. Gifts and bequests to the fund may be made in  
2 the name of a specific beneficiary or in the name of the fund  
3 in general. Gifts and bequests given for the benefit of a  
4 specific beneficiary shall be credited to that beneficiary, and  
5 gifts and bequests given to the fund in general shall be  
6 credited equally to each beneficiary of a college investment  
7 agreement.

8           H. Principal paid into the fund, together with  
9 accrued investment earnings and capital appreciation, shall be  
10 excluded from any calculation of a beneficiary's state student  
11 financial aid eligibility.

12           I. The ~~[board]~~ council shall annually notify each  
13 investor of the status of the fund."

14           SECTION 5. Section 21-21K-6 NMSA 1978 (being Laws 1997,  
15 Chapter 259, Section 6, as amended) is recompiled into Chapter  
16 6 NMSA 1978 and is amended to read:

17           "PREPAID HIGHER EDUCATION TUITION PROGRAM--RULES.--

18           A. The ~~[board]~~ council may promulgate rules in  
19 order to establish a prepaid higher education tuition program.  
20 ~~[Prior to the establishment of the program, the board will~~  
21 ~~contract for a thorough feasibility study of the proposed~~  
22 ~~prepaid higher education tuition program, including an~~  
23 ~~actuarial analysis of the assumptions underlying the proposed~~  
24 ~~program, and report to the appropriate interim committee of the~~  
25 ~~legislature. The report shall include a recommendation from~~

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1 ~~the board regarding whether it is feasible to proceed with the~~  
2 ~~adoption of the proposed program based on the findings of the~~  
3 ~~feasibility study.]~~

4 B. The rules regarding the prepaid higher education  
5 tuition program shall specify at least the following:

6 (1) that prepaid tuition contracts, once paid,  
7 will cover all tuition and required fees of state public  
8 institutions of higher education;

9 (2) that payments for prepaid tuition  
10 contracts may be made either in a lump sum or in installments;

11 (3) that the prepaid tuition contracts shall  
12 include at least the following:

13 (a) provisions that allow purchasers to  
14 choose from payment plans that pay the tuition and required  
15 fees for institutions of higher education;

16 (b) provisions that allow for rollover  
17 of prepaid higher education tuition benefits from one plan to  
18 another and that provide that benefits may be used at any  
19 institution of higher education;

20 (c) penalties for termination of the  
21 contract or default on any of the contract's terms or  
22 conditions; and

23 (d) provisions that allow purchasers to  
24 change or switch beneficiaries;

25 (4) that beneficiaries must meet certain

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1 minimum eligibility requirements as determined by the [~~board~~]  
2 council;

3 (5) that the [~~board~~] council shall consider at  
4 least the following variables when setting contract prices:

5 (a) the amount and estimated rate of  
6 increase of tuition and fees at institutions of higher  
7 education;

8 (b) estimated investment returns;

9 (c) estimated administrative costs; and

10 (d) the period between the date the  
11 contract is entered into and the date the beneficiary is  
12 projected to graduate from high school;

13 (6) that gifts or bequests may be made to the  
14 fund, either on behalf of a beneficiary or to the fund  
15 generally;

16 (7) how and when institutions of higher  
17 education become eligible to participate in the program;

18 (8) that benefits under a prepaid tuition  
19 contract are excluded from any calculation of a beneficiary's  
20 state student financial aid eligibility; and

21 (9) that the [~~board~~] council shall annually  
22 provide for audited statements and actuarial studies on the  
23 condition of the fund."

24 SECTION 6. Section 21-21K-7 NMSA 1978 (being Laws 1997,  
25 Chapter 259, Section 7, as amended) is recompiled into Chapter

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1 6 NMSA 1978 and is amended to read:

2 "REPORTS.--

3 A. The [~~board~~] council shall annually submit to the  
4 governor and to the appropriate interim legislative committee a  
5 report including:

6 (1) the [~~board's~~] council's fiscal  
7 transactions during the preceding fiscal year;

8 (2) the market and book value of the fund as  
9 of the end of the preceding fiscal year;

10 (3) the asset allocations of the fund  
11 expressed in percentages of stocks, fixed income securities,  
12 cash or other financial assets;

13 (4) the rate of return on the investment of  
14 the fund's assets during the preceding fiscal year;

15 (5) an actuarial valuation of the assets and  
16 liabilities of the program, including the extent to which the  
17 program's liabilities are unfunded; and

18 (6) complete prepaid tuition contract sales  
19 information, including projected enrollments of beneficiaries  
20 at institutions of higher education.

21 B. The [~~board~~] council shall make the report  
22 described by Subsection A of this section available to  
23 purchasers of prepaid tuition contracts and investments under  
24 college investment agreements."

25 SECTION 7. REPEAL.--Section 21-21K-4 NMSA 1978 (being  
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1 Laws 1997, Chapter 259, Section 4, as amended) is repealed.

2 SECTION 8. EFFECTIVE DATE.--The effective date of the  
3 provisions of this act is July 1, 2012.

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