

1 SENATE BILL 266

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

4 George K. Muñoz and Carrie Hamblen

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10 AN ACT

11 RELATING TO HIGHER EDUCATION; PROVIDING FOR REVIEW AND APPROVAL
12 BY THE STATE BOARD OF FINANCE FOR CERTAIN QUALIFYING AGREEMENTS
13 WITH ADMINISTRATORS FOR STATE EDUCATIONAL INSTITUTIONS OR
14 COMMUNITY COLLEGES; PROVIDING FOR REVIEW AND APPROVAL BY THE
15 ATTORNEY GENERAL FOR RELEASE AND INDEMNIFICATION TERMS OF
16 CERTAIN QUALIFYING AGREEMENTS WITH ADMINISTRATORS FOR STATE
17 EDUCATIONAL INSTITUTIONS OR COMMUNITY COLLEGES; REQUIRING
18 ANNUAL REPORTS REGARDING REVIEWED QUALIFYING AGREEMENTS BY THE
19 STATE BOARD OF FINANCE TO THE ATTORNEY GENERAL; CREATING A
20 CIVIL CAUSE OF ACTION AGAINST A BOARD OF REGENTS OR A COMMUNITY
21 COLLEGE GOVERNING BOARD OR A MEMBER OF THOSE BOARDS FOR A
22 BREACH OF A FIDUCIARY DUTY; REQUIRING BOARDS OF REGENTS OR
23 COMMUNITY COLLEGE GOVERNING BOARDS TO SECURE SEPARATE COUNSEL
24 IN THE EVENT OF A BOARD MEMBER'S BREACH OF FIDUCIARY DUTY
25 ACTION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Higher Education Accountability Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Higher Education Accountability Act:

A. "administrator" means a president, chancellor, vice president, vice chancellor, provost or vice provost, regardless of any executive, senior or assistant designation, a director of athletics and any other person that is performing a similar executive function or role at a state educational institution or community college, regardless of that person's title. "Administrator" does not include any executive personnel who are employed by the university of New Mexico health sciences center;

B. "board of regents" means a board created by the legislature to control and manage a state educational institution as provided in Article 12, Section 13 of the constitution of New Mexico;

C. "community college" means a public educational institution that provides not to exceed two years of training in the arts, sciences and humanities beyond the twelfth grade of the public high school curriculum or, in lieu of that training or in addition to it, not to exceed two years of a vocational and technical curriculum and appropriate courses of

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1 study for persons who may or may not have completed the twelfth
2 grade of public high school;

3 D. "community college board" means the governing
4 board of a community college that has a duty to determine the
5 financial and educational policies of that community college as
6 provided in the Community College Act;

7 E. "consideration" means a thing of value that is
8 adequate to support a promise and that is bargained for,
9 including cash, other property, services or a form of
10 compensation that is of a value at least equal to the value of
11 the property interest to be conveyed;

12 F. "duty of care and prudent administration" means
13 the duty of a member of a board of regents or a community
14 college board to carry out the member's responsibilities using
15 the degree of diligence, sound judgment and skill that an
16 ordinarily prudent person would reasonably exercise under
17 similar circumstances in a like position;

18 G. "duty of good faith" means the duty of a member
19 of a board of regents or a community college board to act
20 within the law to advance the interests of the state
21 educational institution or community college for which the
22 member serves and to carry out the member's responsibilities
23 ethically, honestly and with sincere conduct free from malice
24 or ill intent;

25 H. "duty of undivided loyalty" means the duty of a

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1 member of a board of regents or a community college board to
2 faithfully pursue the mission of, and act solely in the best
3 interest of, the state educational institution or community
4 college for which the member serves, rather than for personal
5 gain or the benefit of other organizations, groups or
6 individuals;

7 I. "employment agreement" means a contract between
8 a state educational institution or a community college and an
9 administrator that establishes the terms and conditions of the
10 administrator's employment, including the administrator's
11 duties, salary, benefits, performance expectations, the
12 administrator's role, duration of service and employment
13 relationship with the state educational institution or
14 community college. An "employment agreement" includes any
15 financial instrument, however named, that serves the same
16 purpose;

17 J. "indemnification" means a contractual
18 arrangement that provides the responsibilities of one party to
19 compensate another party for certain damages, losses or
20 liabilities that may arise during the performance of the
21 contract, and may include terms to hold harmless or protect one
22 party from specific financial losses or other legal
23 consequences resulting from the occurrence of certain events or
24 actions;

25 K. "performance or incentive compensation

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1 agreement" means a contract between a state educational
2 institution or a community college and an administrator that
3 links additional compensation, including a bonus or other
4 incentive, to the achievement of a specific performance target
5 or milestone by the administrator, and may include academic,
6 financial, athletic or operational performance goals. A
7 "performance or incentive compensation agreement" includes any
8 financial instrument, however named, that serves the same
9 purpose;

10 L. "qualifying agreement" means an employment
11 agreement, performance or incentive compensation agreement,
12 retention agreement, separation agreement or settlement
13 agreement, including a proposed qualifying agreement or an
14 amended qualifying agreement or any financial instrument,
15 however named, that serves the same purposes;

16 M. "regular full-time employee" means a non-faculty
17 employee of a state educational institution or community
18 college who is not employed in a part-time or temporary status,
19 is hired for an indefinite period of time, subject to
20 satisfactory performance and availability of funding, and who
21 is normally scheduled to work at least forty hours each week;

22 N. "release of liability" means a clause or term,
23 by any name, in a contractual agreement that provides that a
24 party to the contract is released or discharged from liability,
25 including any potential cause of action, obligation, promise or

1 agreement, in exchange for some consideration;

2 O. "retention agreement" means a contractual
3 arrangement that provides an administrator with a specific
4 financial benefit to encourage the administrator's continued
5 employment with a state educational institution or community
6 college. A "retention agreement" includes any financial
7 instrument, however named, that serves the same purpose;

8 P. "separation agreement" means a contractual
9 arrangement between an administrator and a state educational
10 institution or a community college that provides the terms and
11 conditions for the administrator's voluntary or involuntary
12 separation from employment with the state educational
13 institution or community college and includes any severance
14 compensation or benefit upon the administrator's separation,
15 and may include terms related to the release of liability and
16 indemnification of future claims or loss due to actions of a
17 party to the agreement. "Separation agreement" includes any
18 other financial instrument, however named, that serves the same
19 purposes;

20 Q. "settlement agreement" means a contract between
21 an administrator and a state educational institution or
22 community college that is intended to resolve any dispute or
23 potential legal claim that may arise from the administrator's
24 employment or separation from the state educational institution
25 or community college without the need for litigation or further

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1 legal proceedings. A "settlement agreement" may include
2 release of liability or indemnification terms related to
3 future claims or loss due to the actions of a party.

4 "Settlement agreement" includes any other financial instrument,
5 however named, that serves the same purposes;

6 R. "severance compensation" means a financial
7 benefit or payment provided to an administrator upon the
8 separation of that administrator from employment with the state
9 educational institution or community college at which the
10 administrator is employed;

11 S. "state educational institution" means an
12 institution designated in Article 12, Section 11 of the
13 constitution of New Mexico and provided for in Chapter 21,
14 Article 1 NMSA 1978; and

15 T. "total compensation" means the complete package
16 of direct monetary payments and indirect non-monetary benefits
17 that an employee receives from the employee's employer. "Total
18 compensation" may include base salary; performance or retention
19 bonuses; medical, dental, life and disability insurance and the
20 premiums for those insurances; employer and employee
21 contributions to a retirement or pension plan; housing and
22 relocation allowances; professional development funds; tuition
23 discounts; research start-up funds; vehicle and travel
24 allowances; entertainment and networking expenses; equity
25 options or stock grants; deferred compensation payments; club

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1 or gym memberships; contributions to flexible spending accounts
2 or health savings accounts; special annuity payments; or any
3 other fringe benefit that has the purpose of recruiting or
4 retaining the employee. "Total compensation" includes all
5 direct monetary payments and indirect non-monetary benefits,
6 whether provided directly by a state educational institution or
7 community college or through an external entity affiliated with
8 the state educational institution or community college,
9 including any foundation, athletic booster club or other
10 organization of any name with a similar fundraising purpose.

11 SECTION 3. [NEW MATERIAL] REVIEW REQUIRED FOR CERTAIN
12 ADMINISTRATOR QUALIFYING AGREEMENTS--STATE BOARD OF FINANCE--
13 ATTORNEY GENERAL--CONSEQUENCES FOR FAILURE TO SUBMIT FOR
14 REVIEW--RULES.--

15 A. To promote financial stability and the
16 responsible allocation of state funds and to maintain public
17 confidence in the financial management of the state's
18 educational institutions and community colleges, before the
19 execution of a qualifying agreement for an administrator with
20 a state educational institution or community college, the
21 qualifying agreement shall be submitted by the state
22 educational institution or the community college for review and
23 approval, modification or rejection by the state board of
24 finance if the qualifying agreement:

- 25 (1) exceeds an employment term of five years;

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1 or

2 (2) includes a total compensation value that
3 exceeds ten times the total compensation value of the state
4 educational institution's or the community college's lowest-
5 compensated regular full-time employee at the time the
6 qualifying agreement is submitted for review.

7 B. When reviewing a qualifying agreement submitted
8 pursuant to Subsection A of this section, the state board of
9 finance shall endeavor to prevent financial loss, waste or
10 abuse and shall:

11 (1) ensure that any significant expenditures
12 in the qualifying agreement do not impair the financial
13 standing of the state educational institution or community
14 college or limit the ability of the state educational
15 institution or community college to invest in academic programs
16 or student services;

17 (2) ensure that the qualifying agreement does
18 not contain unwarranted terms, including excessive severance
19 compensation or other financial benefits; or

20 (3) identify fiscally imprudent terms deemed
21 anomalous as compared to like or similar agreements at peer
22 institutions.

23 C. Within thirty calendar days of receipt of a
24 qualifying agreement submitted for review to the state board of
25 finance by a state educational institution or a community

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1 college, the state board of finance shall complete the state
2 board of finance's review of the qualifying agreement by taking
3 one of the following actions:

- 4 (1) approving the qualifying agreement;
- 5 (2) requesting modification of the terms of
6 the qualifying agreement and providing the specific
7 modifications requested; or
- 8 (3) rejecting the qualifying agreement and
9 providing clearly stated reasons for the rejection.

10 D. If a qualifying agreement submitted to the state
11 board of finance by a state educational institution or
12 community college results in:

13 (1) an approval by the state board of finance,
14 the state educational institution or community college may
15 formally execute the qualifying agreement;

16 (2) a request for modification, the state
17 educational institution or community college shall modify the
18 qualifying agreement as provided for by the state board of
19 finance; or

20 (3) a rejection, the state educational
21 institution or community college may:

22 (a) revise the qualifying agreement in a
23 manner that addresses the reasons for rejection provided by the
24 state board of finance; and

25 (b) submit the revised qualifying

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1 agreement to the state board of finance for further review.

2 E. If a qualifying agreement that requires review
3 by the state board of finance pursuant to this section includes
4 terms providing for a release of liability or indemnification
5 of a party to the agreement, in addition to submitting the
6 qualifying agreement to the state board of finance for review,
7 the state educational institution or community college shall
8 also submit the qualifying agreement to the attorney general
9 for review of the release of liability or indemnification terms
10 as provided in Section 4 of the Higher Education Accountability
11 Act.

12 F. A qualifying agreement executed without the
13 review and approval of the state board of finance or the
14 attorney general as required pursuant to this section is null
15 and void.

16 G. Approval by the state board of finance of a
17 qualifying agreement submitted for review by a state
18 educational institution or a community college does not
19 preclude the attorney general from instituting an action for
20 breach of fiduciary duty against a board of regents or
21 community college board or a member of those boards as provided
22 in Section 6 of the Higher Education Accountability Act.

23 H. The state board of finance shall promulgate and
24 adopt rules to implement this section pursuant to the State
25 Rules Act.

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1 SECTION 4. [NEW MATERIAL] RELEASE OF LIABILITY--

2 AGREEMENTS--CLAUSES--ATTORNEY GENERAL REVIEW.--

3 A. Before the execution of a qualifying agreement
4 for an administrator with a state educational institution or
5 community college that includes terms related to a release of
6 liability or indemnification, the qualifying agreement shall be
7 submitted by the state educational institution or community
8 college to the attorney general for review and approval,
9 modification or rejection.

10 B. Within thirty calendar days of receipt of a
11 qualifying agreement submitted pursuant to Subsection A of this
12 section, the attorney general shall complete the review and
13 shall:

14 (1) approve the release of liability or
15 indemnification terms within the qualifying agreement;

16 (2) request modification of terms to the
17 release of liability or indemnification within the qualifying
18 agreement and provide the specific modification requested; or

19 (3) reject the release of liability or
20 indemnification terms within the qualifying agreement and
21 clearly state the reasons for the rejection.

22 C. If a qualifying agreement submitted to the
23 attorney general by a state educational institution or
24 community college results in:

25 (1) an approval of the release of liability or

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1 indemnification terms by the attorney general, the state
2 educational institution or community college may formally
3 execute the agreement;

4 (2) a request for modification of the release
5 of liability or indemnification terms, the state educational
6 institution or community college shall modify the qualifying
7 agreement as provided by the attorney general; or

8 (3) a rejection of the release of liability or
9 indemnification terms, the state educational institution or
10 community college may:

11 (a) revise the release of liability or
12 indemnification terms in the qualifying agreement pursuant to
13 the reasons for rejection provided by the attorney general; and

14 (b) submit the revised qualifying
15 agreement to the attorney general for further review, upon
16 which the state educational institution or community college
17 may revise the release of liability or indemnification terms
18 and submit the agreement for further review.

19 D. A qualifying agreement executed without the
20 review and approval of the attorney general as required
21 pursuant to this section is null and void.

22 E. The attorney general shall promulgate and adopt
23 rules to implement the provisions in this section in accordance
24 with the State Rules Act.

25 SECTION 5. [NEW MATERIAL] REPORTING REQUIREMENTS--STATE

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1 EDUCATIONAL INSTITUTION--COMMUNITY COLLEGE--STATE BOARD OF
2 FINANCE REPORT.--

3 A. Beginning with the 2025-2026 academic year, a
4 state educational institution or community college that employs
5 an administrator with an existing qualifying agreement that
6 meets the criteria established in Section 3 or Section 4 of the
7 Higher Education Accountability Act shall submit to the
8 attorney general and the secretary of higher education no later
9 than June 30, 2026 and no later than each June 30 following the
10 completion of an academic year a report containing:

11 (1) the name of each administrator employed
12 with an existing qualifying agreement;

13 (2) the title of the administrator;

14 (3) the total compensation, by category, paid
15 to the administrator; and

16 (4) the total compensation, by category, paid
17 to the lowest-compensated regular full-time employee at the
18 state educational institution or community college where the
19 administrator is employed.

20 B. No later than December 31, 2025 and no later
21 than December 31 of each year thereafter, the state board of
22 finance shall submit to the attorney general and the secretary
23 of higher education a report containing the number of
24 qualifying agreements reviewed and a breakdown of the types of
25 qualifying agreements reviewed and whether the qualifying

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1 agreements were employment, performance or incentive
2 compensation, retention, separation or settlement agreements,
3 and for each qualifying agreement reviewed:

4 (1) a designation of which state educational
5 institution or community college submitted the agreement for
6 review;

7 (2) the name and title of the administrator
8 who is a signatory or a desired signatory to the qualifying
9 agreement;

10 (3) a brief description of the qualifying
11 agreement's terms, including the total compensation paid or
12 intended to be paid to the administrator;

13 (4) the determinations reached by the state
14 board of finance related to the qualifying agreement's
15 approval, modification or rejection as provided in Section 3 of
16 the Higher Education Accountability Act; and

17 (5) a brief explanation of the criteria relied
18 upon to justify the state board of finance's determination.

19 SECTION 6. [NEW MATERIAL] BREACH OF FIDUCIARY DUTY--CIVIL
20 CAUSE OF ACTION AGAINST BOARD OF REGENTS--COMMUNITY COLLEGE
21 BOARD--MEMBERS OF BOARD.--

22 A. A member of a board of regents or a community
23 college board or an administrator of a state educational
24 institution or community college owes the state educational
25 institution or community college for which the member or

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1 administrator serves a fiduciary duty, including a duty of care
2 and prudent administration, a duty of good faith and a duty of
3 undivided loyalty.

4 B. The attorney general may bring a cause of action
5 against a member of a board of regents or community college
6 board or an administrator of a state educational institution or
7 community college who commits a breach of fiduciary duty. The
8 action may be filed in the district where the state educational
9 institution or community college is located or in the first
10 judicial district.

11 C. If the attorney general brings a cause of action
12 against a member of the board of regents or community college
13 board, counsel for the state educational institution or the
14 community college shall:

15 (1) not serve as counsel to a member named in
16 the action;

17 (2) immediately submit a plan to the attorney
18 general setting forth a process for providing independent
19 counsel to a member of the board named in the action; and

20 (3) continue to provide independent counsel to
21 an administrator named in the action consistent with the
22 administrator's independent fiduciary duty to the state
23 educational institution or community college.

24 D. If the court determines that a member of a board
25 of regents or community college board or an administrator of a

1 state educational institution or community college may breach
2 or has breached a fiduciary duty owed by the member or
3 administrator to the state educational institution or community
4 college, the court may:

5 (1) enjoin the board of regents or community
6 college board or administrator of a state educational
7 institution or community college from committing a breach of
8 fiduciary duty;

9 (2) compel performance of duties required of a
10 member of a board of regents or community college board or an
11 administrator of a state educational institution or community
12 college;

13 (3) order the member of the board of regents
14 or community college board or administrator of a state
15 educational institution or community college to reimburse the
16 state for the cost of defending the action;

17 (4) impound public funds related to the breach
18 until the resolution of the action; or

19 (5) order any other legal or equitable relief
20 the court deems appropriate.

21 E. The civil action and remedies provided by this
22 section are not exclusive and are in addition to any other
23 actions or remedies in law or equity otherwise available,
24 including the ability to seek removal of a member of a board of
25 regents under Article 12, Section 13 of the constitution of New

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SECTION 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2025.

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