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**HOUSE BILL 464**

**44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**

**INTRODUCED BY**

**Raymond G. Sanchez**

**AN ACT**

**RELATING TO THE EDUCATION TRUST ACT; PROVIDING THAT PROCEEDS  
OF A COLLEGE INVESTMENT AGREEMENT OR PREPAID TUITION CONTRACT  
MAY BE USED AT ADDITIONAL INSTITUTIONS OF HIGHER EDUCATION;  
PROVIDING PROCEDURES FOR STATE MATCHING FUNDS FOR LOW-INCOME  
BENEFICIARIES; AMENDING CERTAIN SECTIONS OF THE NMSA 1978;  
MAKING AN APPROPRIATION.**

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

**Section 1. Section 21-21K-2 NMSA 1978 (being Laws 1997,  
Chapter 259, Section 2) is amended to read:**

**"21-21K-2. DEFINITIONS. -- As used in the Education Trust  
Act:**

**A. "beneficiary" means a person who is entitled to  
receive benefits under a college investment agreement or a  
prepaid tuition contract;**

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- 1                   B. "board" means the education trust board;
- 2                   C. "commission" means the commission on higher  
3 education;
- 4                   D. "college investment agreement" means an  
5 agreement entered into by the board and an investor, pursuant  
6 to the provisions of the Education Trust Act, to defray the  
7 costs of attendance of a beneficiary at an institution of  
8 higher education;
- 9                   E. "council" means the state investment council;
- 10                  F. "fund" means the education trust fund;
- 11                  G. "institution of higher education" means a state  
12 public post-secondary educational institution as defined in  
13 Section 6-17-1.1 NMSA 1978, a branch college, an independent  
14 community college, [or] a technical and vocational institute  
15 or, if approved by the board, another public or private post-  
16 secondary educational institution located in this state or any  
17 other state;
- 18                  H. "investor" means a person who has entered into  
19 a college investment agreement with the board;
- 20                  I. "prepaid tuition contract" means a contract  
21 entered into by the board and a purchaser, pursuant to the  
22 provisions of the Education Trust Act, to provide for the  
23 payment of higher education tuition and required fees of a  
24 beneficiary; and
- 25                  J. "purchaser" means a person who is obligated to

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1 make payments under a prepaid tuition contract. "

2 Section 2. Section 21-21K-3 NMSA 1978 (being Laws 1997,  
3 Chapter 259, Section 3) is amended to read:

4 "21-21K-3. EDUCATION TRUST FUND-- CREATION. --

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

25 B. Expenditures from the fund shall be for

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1 payments to institutions of higher education on behalf of  
2 beneficiaries or for refunds, in accordance with the  
3 provisions of the Education Trust Act, and for costs of  
4 administering that act.

5 ~~[C. If, prior to the end of fiscal year 2003, the~~  
6 ~~assets of the fund are sufficiently in excess of those~~  
7 ~~required to meet the obligations of the fund, the fund shall~~  
8 ~~refund to the general fund the non-reverted portion of the~~  
9 ~~appropriation provided for in Section 10 of the Education~~  
10 ~~Trust Act.~~

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

21 D. In consultation with the human services  
22 department, the board shall promulgate rules for matching  
23 payments made into the fund by individuals who are  
24 participants under the New Mexico Works Act; provided the  
25 matching payments shall only be made from appropriations made

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1 to the fund for that purpose. "

2 Section 3. Section 21-21K-5 NMSA 1978 (being Laws 1997,  
3 Chapter 259, Section 5) is amended to read:

4 "21-21K-5. COLLEGE INVESTMENT AGREEMENT. --

5 A. An investor may enter into a college investment  
6 agreement with the board under which the investor agrees to  
7 make investments into the fund from time to time for the  
8 purpose of defraying the costs of attendance billed by  
9 institutions of higher education. An investor may enter into  
10 a college investment agreement on behalf of any beneficiary  
11 under the age of nineteen. The board shall adopt a form of  
12 the college investment agreement to be used by the board and  
13 investors.

14 B. The beneficiary under a college investment  
15 agreement must be younger than nineteen years of age at the  
16 time the investor enters into the agreement and must be:

17 (1) a resident of this state at the time the  
18 investor enters into the agreement; or

19 (2) a nonresident who is the child of a  
20 parent who is a resident of this state at the time that parent  
21 enters into the agreement.

22 C. The board shall provide for the direct payment  
23 of principal, investment earnings and capital appreciation  
24 accrued pursuant to a college investment agreement to the  
25 institution of higher education that the beneficiary actually

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1 attends.

2 D. The board may require a reasonable period of  
3 residence in this state, together with other related criteria,  
4 for a beneficiary or an investor. [~~A beneficiary is~~  
5 ~~considered a resident for purposes of tuition regardless of~~  
6 ~~the beneficiary's residence on the date of enrollment.~~]

7 E. [~~The~~] A college investment agreement may be  
8 terminated by the investor at any time. The investor may  
9 modify the college investment agreement to designate a new  
10 beneficiary [~~or beneficiaries~~] instead of the original  
11 beneficiary if the new beneficiary [~~or beneficiaries meet~~]  
12 meets the requirements of the original beneficiary on the date  
13 the designation is changed and if the original beneficiary:

- 14 (1) dies;
- 15 (2) is not admitted to [~~the~~] an institution  
16 of higher education following proper application;
- 17 (3) elects not to attend [~~the~~] an institution  
18 of higher education or, if attending, elects to discontinue  
19 higher education; or
- 20 (4) for any other circumstance approved by  
21 the board, does not exercise his rights under the college  
22 investment agreement.

23 F. [~~If the~~] The board shall provide, by rule,  
24 procedures for determining the amount to be refunded for  
25 college investment [~~agreement is~~] agreements terminated

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1 pursuant to the provisions of this section [ ~~the board shall~~  
2 ~~refund to the investor an amount equal to all the principal~~  
3 ~~contributed or paid in by the investor plus interest not to~~  
4 ~~exceed four percent annually~~]. The balance of the accrued  
5 investment earnings and capital appreciation less the amount  
6 refunded and administrative costs shall be credited to the  
7 fund.

8 G. The board shall establish a refund policy if a  
9 beneficiary receives additional student financial aid.

10 H. A college investment agreement terminates on  
11 the tenth anniversary of the date the beneficiary is projected  
12 to graduate from high school, not counting time spent by the  
13 beneficiary as an active-duty member of the United States  
14 armed services.

15 I. Gifts and bequests to the fund may be made in  
16 the name of a specific beneficiary or in the name of the fund  
17 in general. Gifts and bequests given for the benefit of a  
18 specific beneficiary shall be credited to that beneficiary,  
19 and gifts and bequests given to the fund in general shall be  
20 credited equally to each beneficiary of a college investment  
21 agreement.

22 J. Principal paid into the fund, together with  
23 accrued investment earnings and capital appreciation, shall be  
24 excluded from any calculation of a beneficiary's state student  
25 financial aid eligibility.

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1                   K. The board shall annually notify each investor  
2 of the [~~balance of his college savings agreement principal,~~  
3 ~~accrued investment earnings and capital appreciation~~] status  
4 of the education trust fund."

5                   Section 4. Section 21-21K-6 NMSA 1978 (being Laws 1997,  
6 Chapter 259, Section 6) is amended to read:

7                   "21-21K-6. PREPAID HIGHER EDUCATION TUITION PROGRAM -  
8 RULES [~~AND REGULATIONS~~]. --

9                   A. The board [~~is authorized to adopt and~~] may  
10 promulgate rules [~~and regulations~~] in order to establish a  
11 prepaid higher education tuition program. Prior to the  
12 establishment of the program, the board will contract for a  
13 thorough feasibility study of the proposed prepaid higher  
14 education tuition program, including an actuarial analysis of  
15 the assumptions underlying the proposed program, and report to  
16 the appropriate interim committee of the legislature [~~prior to~~  
17 ~~November 1, 1997~~]. The report shall include a recommendation  
18 from the board regarding whether it is feasible to proceed  
19 with the adoption of the proposed program based on the  
20 findings of the feasibility study.

21                   B. The rules [~~and regulations~~] regarding the  
22 prepaid higher education tuition program shall specify at  
23 least the following:

24                                 (1) that prepaid tuition contracts, once  
25 paid, will cover all tuition and required fees of state public



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1 institutions of higher education;

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

4 (3) that the prepaid tuition contracts shall  
5 include at least the following:

6 (a) provisions that allow purchasers to  
7 choose from payment plans that pay the tuition and required  
8 fees for [~~state public~~] institutions of higher education;

9 (b) provisions that allow for rollover  
10 of prepaid higher education tuition benefits from one plan to  
11 another and that provide that benefits may be used at any  
12 [~~state public~~] institution of higher education;

13 (c) penalties for termination of the  
14 contract or default on any of the contract's terms or  
15 conditions; and

16 (d) provisions that allow purchasers to  
17 change or switch beneficiaries;

18 (4) that beneficiaries must meet certain  
19 minimum eligibility requirements as determined by the board;

20 (5) that the board shall consider at least  
21 the following variables when setting contract prices:

22 (a) the amount and estimated rate of  
23 increase of tuition and fees at [~~state public~~] institutions of  
24 higher education;

25 (b) estimated investment returns;

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1 (c) estimated administrative costs; and  
2 (d) the period between the date the  
3 contract is entered into and the date the beneficiary is  
4 projected to graduate from high school;

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

8 (7) [~~that state public institutions of higher~~  
9 ~~education are either required to participate or that the board~~  
10 ~~may specify~~] how and when [~~state public~~] institutions of  
11 higher education become eligible to participate in the  
12 program;

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

16 (9) that the board shall annually provide for  
17 audited statements and actuarial studies on the condition of  
18 the fund. "

19 Section 5. Section 21-21K-7 NMSA 1978 (being Laws 1997,  
20 Chapter 259, Section 7) is amended to read:

21 "21-21K-7. REPORTS. --

22 A. [~~Not later than November 1 of each year~~] The  
23 board shall annually submit to the governor and to the  
24 appropriate interim legislative committee a report including:

25 (1) the board's fiscal transactions during

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- 1 the preceding fiscal year;
- 2 (2) the market and book value of the fund as
- 3 of the end of the preceding fiscal year;
- 4 (3) the asset allocations of the fund
- 5 expressed in percentages of stocks, fixed income securities,
- 6 cash or other financial assets;
- 7 (4) the rate of return on the investment of
- 8 the fund's assets during the preceding fiscal year;
- 9 (5) an actuarial valuation of the assets and
- 10 liabilities of the program, including the extent to which the
- 11 program's liabilities are unfunded; and
- 12 (6) complete prepaid tuition contract sales
- 13 information, including projected enrollments of beneficiaries
- 14 at institutions of higher education.

15 B. The board shall make the report described by  
16 Subsection A available to purchasers of prepaid tuition  
17 contracts and investments under college investment  
18 agreements. "

19 Section 6. APPROPRIATION. --Six hundred eight thousand  
20 seven hundred dollars (\$608,700) is appropriated from the  
21 general fund to the commission on higher education for  
22 expenditure in fiscal years 2000 through 2003 to implement and  
23 administer programs under the Education Trust Act. Any  
24 unexpended or unencumbered balance remaining at the end of  
25 fiscal year 2003 shall revert to the general fund. Until the

1 amount of the appropriation made by this section has been  
2 returned to the general fund, if at the end of a fiscal year  
3 beginning after July 1, 2003 the assets of the education trust  
4 fund are in excess of those required to meet the obligations  
5 of that fund, the excess shall be transferred to the general  
6 fund.

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1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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4  
5  
6 February 26, 1999

7  
8 Mr. Speaker:

9  
10 Your EDUCATION COMMITTEE, to whom has been referred

11  
12 HOUSE BILL 464

13  
14 has had it under consideration and reports same with  
15 recommendation that it DO PASS, amended as follows:

16 1. On page 4, line 20, after the period, insert a  
17 quotation mark.

18  
19 2. On page 4, line 21 through page 5, line 1, strike  
20 Subsection D in its entirety and on page 5, line 1, strike the  
21 quotation mark.

22  
23 3. On page 11, line 22, strike "2003" and insert in lieu  
24 thereof "2004".

25 4. On page 11, line 25, strike "2003" and insert in lieu

FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

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thereof "2004".

5. On page 12, line 3, strike "2003" and insert in lieu thereof "2004".,

and thence referred to the APPROPRIATIONS AND FINANCE COMMITTEE.

Respectfully submitted,

\_\_\_\_\_  
Rick Mi era, Chair man

Adopted \_\_\_\_\_  
(Chi ef Clerk)

Not Adopted \_\_\_\_\_  
(Chi ef Clerk)

Date \_\_\_\_\_

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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

3 HEC/HB 464

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4 The roll call vote was 15 For 0 Against

5 Yes: 15  
6 Excused: Burpo  
7 Absent: None

10 .128197.1

11 J:\99Bill\SWP\H0464

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1 FORTY- FOURTH LEGISLATURE  
2 FIRST SESSION, 1999

3  
4 March 4, 1999

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6  
7 Mr. Speaker:

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9 Your APPROPRIATION AND FINANCE COMMITTEE, to  
10 whom has been referred

11 HOUSE BILL 464, as amended

12  
13 has had it under consideration and reports same with  
14 recommendation that it DO PASS, amended as follows:

- 15  
16 1. Strike House Education Committee Amendments 3, 4 and  
17 5.  
18  
19 2. On page 1, strike line 14 and strike line 15 through  
20 "BENEFICIARIES;".  
21  
22 3. On page 1, line 15, after "1978" strike the semicolon  
23 and strike all of line 16 and insert in lieu thereof a period.  
24  
25 4. On page 11, lines 19 through 25 and on page 12, lines  
1 through 6, strike Section 6 in its entirety.

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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

3 HARC/HB 464, aa

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4  
5 Respectfully submitted,

8 \_\_\_\_\_  
9  
10 Max Coll, Chairman

11  
12 Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

13  
14 (Chief Clerk)

(Chief Clerk)

15  
16 Date \_\_\_\_\_

17  
18 The roll call vote was 11 For 0 Against

19 Yes: 11

20 Excused: Buffett, Heaton, Larrañaga, Marquardt, Pearce, Picraux

21 Absent: None

22  
23 128576.1

24 J:\99Bill\SWP\H0464

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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

1 HAF/ HB 464, aa

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FORTY- FOURTH LEGI SLATURE  
FIRST SESSI ON, 1999

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March 11, 1999

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Mr. Presi dent:

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Your EDUCATION COMMITTEE, to whom has been referred

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HOUSE BILL 464, as amended

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has had it under consideration and reports same with  
recommendation that it DO PASS.

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Respectfully submit ted,

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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

1 HAF C/HB 464, aa

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2 Adopted \_\_\_\_\_ Not

3 Adopted \_\_\_\_\_

4 (Chief Clerk)

(Chief Clerk)

5

6

7 Date \_\_\_\_\_

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9

The roll call vote was 6 For 0 Against

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Yes: 6

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No: 0

12

Excused: Adair, Duran, Gorham, Jennings

13

Absent: None

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