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December 12, 2005

MEMORANDUM

TO: Legislative Education Study Committee

FR: Kathleen Forrer

**RE: STAFF BRIEF: *HIGHER EDUCATION DEPARTMENT ACT*
IMPLEMENTATION AND OTHER ACTIVITIES**

The 2005 Legislature passed the *Higher Education Department Act* (see Attachment 1), the purpose of which is to “establish a single, unified department to administer laws and exercise functions formerly administered and exercised by the commission on higher education.” The 2005 Interim Workplan of the Legislative Education Study Committee (LESC) includes a presentation on the progress being made in transitioning oversight of New Mexico’s public postsecondary institutions from the former Commission on Higher Education (CHE) to the new cabinet-level Higher Education Department (HED).

Issues: Implementation

- The *Higher Education Department Act*, among other provisions, contains language which gives the Secretary of Higher Education until the 2006 legislative session to make recommendations to the Legislature regarding how the organization of HED should be reflected in statute: “The secretary shall organize the department so that bureaus and divisions exist 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 shall make recommendations to the second session of the forty-seventh legislature on the statutory organization of the department.”

Issues: Other Activities

- In 2003, the LESC endorsed and the Legislature enacted a new provision in the *Public School Code* requiring that high school curricula and end-of-course tests be aligned with the placement tests administered by two- and four-year public educational institutions in New Mexico (see Attachment 2). The statute requires the Public Education Department (PED) to collaborate with the CHE (now HED) in aligning high school curricula and end-of-course tests with placement tests; however, the statute does not specify a date by which the alignment must be accomplished.
- Because of its interest in seeing this alignment proceed, for the 2004 interim the LESC requested that PED and CHE provide it with three progress reports concerning efforts to address the statutory mandate. A November 2004 written report summarized the activities of PED and CHE in collaboration with the New Mexico Association of Community Colleges (NMACC) to address the alignment issue. According to the report, the work focused primarily on the alignment of standards in mathematics, reading, and language arts at the high school and postsecondary level with national standards such as those delineated in the *Standards for Success* report of the Association of American Universities. The report proposed an amendment to current statute that would have deleted the current law and replaced it with a provision that would have aligned high school end-of-course tests with New Mexico content standards and postsecondary entrance competencies.
- Consequently, in 2005, the Legislature considered HEC/HB 136, *Placement Tests in Public Colleges* (the original bill, HB 136, had been endorsed by the LESC). HEC/HB 136 (see Attachment 3) would have required that CHE develop standardized English and mathematics placement tests for use by institutions of higher education; that 11th grade students whose Next Step Plans indicate that they intend to pursue postsecondary education take these tests; and if the test scores indicate a need, that prior to graduation the student's high school provide the student with the developmental coursework needed to enroll in freshman-level coursework. The bill did not pass.
- At the September 2005 meeting of the LESC, Dr. Beverlee J. McClure, Secretary Designee of Higher Education, testified that her philosophy is to reinforce student skills in high school so that students will be ready for college. Noting that in order to succeed in college, students must be made aware in high school of what competencies colleges expect entering students to have, she announced that Dr. Elizabeth Gutierrez would be assigned to oversee the P-20 initiative for HED and to make regular progress reports to the LESC. At the close of Dr. McClure's presentation, Senator Cynthia Nava, Chair of the LESC, requested HED to provide recommendations regarding the provisions in HEC/HB 136.
- In an email from HED entitled "Updates from the Cabinet Secretary of Higher Education, December 5, 2005," Dr. McClure includes the following proposal among the department's priorities for the 2006 legislative session:

\$1 million for Alignment of High School Competencies and College Placement

Establish statewide use of a common exam to be administered to students in high school to determine college readiness and placement for English and mathematics courses. The NMHED/PED Task Force on Alignment of High School Competencies

and College Placement may recommend annual review of correlation of test scores with student success in colleges and universities, adjustment of cut score levels by subject, and measurement of effectiveness of high school exams to address students' academic needs.

Background:

- In March 2004, Governor Bill Richardson announced the formation of the Governor's Task Force on Higher Education. Composed of 30 members and chaired by former Governor Toney Anaya, the task force was charged with, among other tasks, evaluating the role of the CHE and recommending "any necessary changes."

- On November 8, 2004, the Governor's Task Force on Higher Education issued its final report. In a cover letter addressed to Governor Richardson, the task force stated the following:

... there is no central authority nor statewide plan that focuses on the needs and priorities of the state as a whole, as opposed to the needs and goals of each individual institution. This lack of centralized, statewide authority combined with weak funding mechanisms to coordinate the institutions' efforts toward a common goal for the state, have left us with the inefficient, costly higher education environment that we inaccurately refer to as a "system" of higher education. Currently, when issues of accountability are raised by the Legislature or the taxpayers, there is no single source within the Executive Branch with the authority to address these statewide issues.

- With regard to the governance of higher education in New Mexico, the task force recommended (1) the creation of a state Department of Higher Education, headed by a cabinet-level Secretary of Higher Education, appointed by the governor and confirmed by the New Mexico State Senate and (2) the abolition of the CHE.
- The *Higher Education Act*, passed by the 2005 Legislature and signed by the Governor, implements the recommendations of the task force and also creates the Higher Education Advisory Board "to advise the department and the governor on policy matters and perform other functions as provided by law." Administratively attached to HED, the board consists of the following fourteen members appointed by the Secretary of Higher Education, who, in making the appointments, must give "due regard to geographic representation, cultural diversity and the composition of higher education institutions in New Mexico":
 - four members representing the four-year public post-secondary educational institutions, one of whom shall represent the University of New Mexico, one of whom shall represent New Mexico State University, one of whom shall represent New Mexico Institute of Mining and Technology, and one of whom shall represent either New Mexico Highlands University, Eastern New Mexico University or Western New Mexico University;
 - three members representing the two-year public post-secondary educational institutions;
 - one member representing the accredited private post-secondary educational institutions;
 - one member representing the business community;
 - one member representing college and university faculty;

- one member representing college and university nonfaculty staff;
- one member who is a college or university student;
- one member representing the tribal colleges in New Mexico; and
- one member representing the Indian nations, tribes and pueblos in New Mexico.

Presenters:

For this presentation, Dr. McClure will provide a status report on the organization and activities of HED, as well as recommendations for language regarding the structure of HED to be included in the *Higher Education Department Act*. Dr. Jozi De Leon, Deputy Secretary, Academic Affairs, Planning, and Research, HED, will provide a progress report on the efforts being made to align high school curricula and end-of-course tests with the various placement tests used by New Mexico's postsecondary institutions.

Questions the committee may wish to consider:

1. What input have the Governor, the Department of Finance and Administration, and the State Personnel Office had with regard to HED's proposed statutory language?
2. How do the organizational changes made to date by the Secretary Designee of Higher Education and the Secretary's recommended statutory language support HED's mission and goals?
3. When is it reasonable to expect PED and HED to comply with the mandate for alignment of high school end-of-course tests and college placement tests?
4. How does HED propose to use the \$1.0 million it is requesting for the alignment of high school competencies and college placement?

**ARTICLE 25
Higher Education Department**

Section	
9-25-1	Short title.
9-25-2	Purpose.
9-25-3	Definitions.
9-25-4	Department created.
9-25-4.1	Temporary provision; transfers.
9-25-5	Secretary; appointment.
9-25-6	Division directors.
9-25-7	Bureau chiefs.
9-25-8	Secretary; duties and general powers.
9-25-9	Additional duties.
9-25-10	Higher education advisory board; membership; terms; administrative attachment.
9-25-11	Organizational units of the department; powers and duties specified by law; access to information.
9-25-12	Cooperation with the federal government; authority of secretary; single state agency status.
9-25-13	Advisory committees.

9-25-1. Short title.

Sections 1 through 13 of this act [9-25-1 to 9-25-13 NMSA 1978] may be cited as the “Higher Education Department Act”.

History: Laws 2005, ch. 289, § 1.

Effective dates. — Laws 2005, ch. 289, § 31 makes the act effective April 7, 2005.

9-25-2. Purpose.

The purpose of the Higher Education Department Act [9-25-1 NMSA 1978] is to establish a single, unified department to administer laws and exercise functions formerly administered and exercised by the commission on higher education.

History: Laws 2005, ch. 289, § 2.

Effective dates. — Laws 2005, ch. 289, § 31 makes the act effective April 7, 2005.

9-25-3. Definitions.

As used in the Higher Education Department Act [9-25-1 NMSA 1978]:

- A “board” means the higher education advisory board;
- B “department” means the higher education department; and
- C “secretary” means the secretary of higher education.

History: Laws 2005, ch. 289, § 3.

Effective dates. — Laws 2005, ch. 289, § 31 makes the act effective April 7, 2005.

9-25-4. Department created.

The "higher education department" is created in the executive branch. The department is a cabinet department. The secretary shall organize the department so that bureaus and divisions exist 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 shall make recommendations to the second session of the forty-seventh legislature on the statutory organization of the department.

History: Laws 2005, ch. 289, § 4.

Effective dates. — Laws 2005, ch. 289, § 31 makes the act effective April 7, 2005.

9-25-4.1. Temporary provision; transfers.

A. On the effective date of this act, all functions, appropriations, money, personnel, records, files, furniture, equipment and other property of the commission on higher education shall be transferred to the higher education department.

B. On the effective date of this act, all contractual obligations of the commission on higher education shall be binding on the higher education department.

C. On the effective date of this act, all references in law to the commission on higher education shall be deemed to be references to the higher education department and all references in law to the executive director of the commission on higher education shall be deemed to be references to the secretary of higher education.

History: Laws 2005, ch. 289, § 29.

Effective dates. — Laws 2005, ch. 289, § 31 makes the act effective April 7, 2005.

9-25-5. Secretary; appointment.

A. The administrative head of the department is the "secretary of higher education", who shall be appointed by the governor with the consent of the senate and who shall serve in the executive cabinet. The secretary shall possess a terminal degree from a regionally accredited post-secondary educational institution, a minimum of five years of senior administrative experience, experience in higher education and experience in the development of public policy at the state or federal level.

B. An appointed secretary shall serve and have all of the duties, responsibilities and authority of that office during the period of time prior to final action by the senate confirming or rejecting the secretary's appointment.

History: Laws 2005, ch. 289, § 5.

Effective dates. — Laws 2005, ch. 289, § 31 makes the act effective April 7, 2005.

9-25-6. Division directors.

The secretary shall appoint directors of the divisions established within the department. Division directors are exempt from the Personnel Act [10-9-1 NMSA 1978].

History: Laws 2005, ch. 289, § .6

Effective dates. — Laws 2005, ch. 289, § 31 makes the act effective April 7, 2005.

9-25-7. Bureau chiefs.

The secretary may establish within each division of the department such bureaus as the secretary deems necessary to carry out the provisions of the Higher Education Department Act [9-25-1 NMSA 1978]. The secretary shall employ a chief to be the administrative head of each bureau. The chiefs and all subsidiary employees of the department shall be covered by the Personnel Act [10-9-1 NMSA 1978].

History: Laws 2005, ch. 289, § 7.

Effective dates. — Laws 2005, ch. 289, § 31 makes the act effective April 7, 2005.

9-25-8. Secretary; duties and general powers.

A. The secretary is responsible to the governor for the operation of the department. It is the secretary's duty to manage all operations of the department and to administer and enforce the laws with which the secretary or the department is charged.

B. To perform the duties of the secretary, the secretary has every power expressly enumerated in the law, whether granted to the secretary, the department or any division of the department, except when any division is explicitly exempted from the secretary's power by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Higher Education Department Act [9-25-1 NMSA 1978] or Chapter 21 NMSA 1978, exercise general supervisory and appointing power over all department employees, subject to applicable personnel laws and rules;

(2) delegate power to subordinates as the secretary deems necessary and appropriate, clearly delineating such delegated power and the limitations to that power;

(3) organize the department into organizational units as necessary to enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge the duties of the secretary;

(5) take administrative action by issuing orders and instructions, not inconsistent with law, to ensure implementation of and compliance with the provisions of law for which administration or execution the secretary is responsible and to enforce those orders and instructions by appropriate administrative action in the courts;

(6) conduct research and studies that will improve the operation of the department and the provision of services to the citizens of the state;

(7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objectives of improving the operations and efficiency of administration;

(8) prepare an annual budget for the department; and

(9) provide cooperation, at the request of administratively attached agencies and adjunct agencies, in order to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, record keeping and related clerical assistance to administratively attached agencies.

C. The secretary may apply for and receive, with the governor's approval, in the name of the department, any public or private funds, including United States government funds, available to the department to carry out its programs, duties or services.

D. The secretary may make and adopt such reasonable and procedural rules as may be necessary to carry out the duties of the department and its divisions. No rule promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary. Unless otherwise provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. No rule promulgated by the department shall infringe upon the authority vested by Article 12 of the constitution of New Mexico in the boards of regents of the educational institutions specified in that article. The final public hearing on adoption, amendment or repeal of a rule shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule or proposed amendment or repeal of an existing rule may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules shall be filed in accordance with the State Rules Act [14-4-1 NMSA 1978].

History: Laws 2005, ch. 289, § 8.

Effective dates. — Laws 2005, ch. 289, § 31 makes the act effective April 7, 2005.

9-25-9. Additional duties.

Consistent with constitutional provisions relating to the control and management of the educational institutions enumerated in Article 12, Section 11 of the constitution of New Mexico, the department shall:

A. cooperate with colleges and universities to create a statewide public agenda to meet higher education needs and goals;

B. periodically study and report to the governor and the legislative finance committee on enrollment capacity needs over a ten-year period, based on state demographic models, academic program demands, institutional competencies and infrastructure, state workforce needs, economic development goals and other factors; and

C. by November 1 of each year, present to the legislature a comprehensive funding request and a legislative priorities list for all higher education. The funding request and priorities shall encompass the needs of all public post-secondary educational institutions and programs.

History: Laws 2005, ch. 289, § 9.

Effective dates. — Laws 2005, ch. 289, § 31 makes the act effective April 7, 2005.

9-25-10. Higher education advisory board; membership; terms; administrative attachment.

A. The “higher education advisory board” is created to advise the department and the governor on policy matters and perform other functions as provided by law. The board is administratively attached to the department, with administrative staff provided by the department.

B. The secretary shall appoint fourteen members giving due regard to geographic representation, cultural diversity and the composition of higher education institutions in New Mexico. Four members shall represent the four-year public post-secondary educational institutions, one of whom shall represent the university of New Mexico, one of whom shall represent New Mexico state university, one of whom shall represent New Mexico institute of mining and technology and one of whom shall represent either New Mexico highlands university, eastern New Mexico university or western New Mexico university; three members shall represent the two-year public post-secondary educational institutions; one member shall represent the accredited private post-secondary educational institutions; one member shall represent business; one member shall represent college and university faculty; one member shall represent college and university nonfaculty staff; one member shall be a college or university student; one representative of the tribal colleges in New Mexico; and one representative of the Indian nations, tribes and pueblos in New Mexico. The members representing the categories of post-secondary educational institutions shall be the chief executive officers of the institutions of those categories or the chief executive officers' designees. The members representing faculty and nonfaculty staff and the student member shall be the leaders of faculty, staff and student organizations at their respective institutions.

C. Four members of the initial board, including the student member, shall be appointed for two years, five members shall be appointed for three years and five members shall be appointed for four years; thereafter, the student member shall serve a two-year term and the other members shall serve four-year terms. Members are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978] and shall receive no other perquisite, compensation or allowance.

D. The board shall annually elect a chair, vice chair and secretary from among its membership. A majority of the members constitutes a quorum for the conduct of business.

E. The board shall meet at the call of the chair at least quarterly. Meetings of the board shall be held in Santa Fe and at other sites within the state at the direction of the board.

History: Laws 2005, ch. 289, § 10.

Effective dates. — Laws 2005, ch. 289, § 31 makes the act effective April 7, 2005.

9-25-11. Organizational units of the department; powers and duties specified by law; access to information.

Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, who shall retain the final decision-making authority and responsibility for the administration of any laws as provided in Subsection B of Section 8 of the Higher Education Department Act. The department shall have access to all records, data and information of other state departments, agencies and institutions, including its own organizational units, not specifically held confidential by law; provided, however, that when the department requires confidential institutional data, including student records and other information necessary to fulfill the functions of the department, the secretary and the institution shall cooperate to provide the department with information adequate to meet its needs while meeting all legal requirements to ensure the confidentiality of such information and records.

History: Laws 2005, ch. 289, § 11.

Effective dates. — Laws 2005, ch. 289, § 31 makes the act effective April 7, 2005.

9-25-12. Cooperation with the federal government; authority of secretary; single state agency status.

A. The department is authorized to cooperate with the federal government in the administration of higher education programs in which financial or other participation by the federal government is authorized or mandated under state or federal laws, rules or orders. The secretary may enter into agreements with agencies of the federal government to implement higher education programs subject to availability of appropriated state funds and any provisions of state laws applicable to such agreements or participation by the state.

B. The governor or the secretary may by appropriate order designate the department or any organizational unit of the department as the single state agency for the administration of any higher education program when that designation is a condition of federal financial or other participation in the program under applicable federal law, rule or order. Whether or not a federal condition exists, the governor may designate the department or any organizational unit of the department as the single state agency for the administration of any federally funded higher education program not targeted for specific post-secondary educational institutions. No designation of a single state agency under the authority granted in this section shall be made in contravention of state law.

History: Laws 2005, ch. 289, § 12.

Effective dates. — Laws 2005, ch. 289, § 31 makes the act effective April 7, 2005.

9-25-13. Advisory committees.

A. In addition to the higher education advisory board, the department may create other advisory committees. "Advisory" means furnishing advice, gathering information, making recommendations and performing such other activities as may be instructed or delegated and as may be necessary to fulfill advisory functions or to comply with federal or private funding requirements and does not extend to administering a program or function or setting policy unless specified by law. Advisory committees shall be appointed in accordance with the provisions of the Executive Reorganization Act [9-1-1 NMSA 1978].

B. All members of advisory committees are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

History: Laws 2005, ch. 289, § 13.

Effective dates. — Laws 2005, ch. 289, § 31 makes the act effective April 7, 2005.

ATTACHMENT 2

22-2-8.11. High school curricula and end-of-course tests; alignment.

High school curricula and end-of-course tests shall be aligned with the placement tests administered by two- and four-year public educational institutions in New Mexico.

The department of education shall collaborate with the commission on higher education in aligning high school curricula and end-of-course tests with the placement tests.

History: Laws 2003, ch. 37, § 1.

Cross references. — As to student achievement, see 22-2C-1 NMSA 1978 et seq.

Duplicate laws. Laws 2003 ch. 37, § 1, and Laws 2003, ch. 71, § 1 enact identical new sections of the law, effective on June 20, 2003. Both have been compiled as 22-2-8.11 NMSA 1978.

ATTACHMENT 3

HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR
HOUSE BILL 136

47TH LEGISLATURE - STATE OF NEW MEXICO –FIRST SESSION, 2005

AN ACT

RELATING TO HIGHER EDUCATION; REQUIRING STANDARDIZED PLACEMENT TESTS IN ENGLISH AND MATHEMATICS FOR PUBLIC POST-SECONDARY EDUCATIONAL INSTITUTIONS; PROVIDING THAT DEVELOPMENTAL COURSEWORK MAY BE COMPLETED PRIOR TO GRADUATION.

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

Section 1. STANDARDIZED PLACEMENT TESTS.--

A. The commission on higher education, in consultation with academic officers of two- and four-year public post-secondary educational institutions, shall develop or adopt standardized placement tests for English and mathematics requirements that will be used by all public post-secondary educational institutions for course placement of entering freshmen. The commission on higher education shall ensure that the placement tests are included in the alignment of high school curricula and post-secondary standardized placement tests, pursuant to Section 22-13-1.2 NMSA 1978.

B. If a high school student intends to pursue postsecondary education or training as reflected in the student's next-step plan pursuant to Section 22-13-1.1 NMSA 1978, the student shall take a commission on higher education-adopted standardized post-secondary placement test during grade eleven administered by a two-year or four-year educational institution; provided that no student shall be required to participate who provides to the appropriate school official a written waiver of participation signed by the student's parent. A student is not precluded from taking or retaking any tests to determine course placement.

C. The two- and four-year post-secondary educational institutions shall provide that the test results of a student who takes the test are transferred to the public school that the student is attending prior to the end of grade eleven. If the score in English or mathematics indicates that the student will be required to take developmental coursework as a prerequisite to entry into freshman-level post-secondary English or mathematics courses, the high school shall provide the student the required developmental coursework or its equivalent prior to graduation. The high school shall provide a written notice to the student and the student's parent explaining the academic necessity for the developmental coursework.