

AN ACT

RELATING TO EDUCATION; AMENDING PROVISIONS OF THE PROCUREMENT CODE TO PROVIDE THAT AGREEMENTS ENTERED INTO BY THE EDUCATION TRUST BOARD FOR SERVICES RELATING TO THE IMPLEMENTATION, OPERATION AND ADMINISTRATION OF THE EDUCATION TRUST ACT ARE EXEMPT FROM THE FOUR-YEAR LIMITATION APPLICABLE TO PROFESSIONAL SERVICE AGREEMENTS; AMENDING PROVISIONS OF THE EDUCATION TRUST ACT TO PROVIDE THE EDUCATION TRUST BOARD WITH THE AUTHORITY TO CREATE AND ADMINISTER WITHIN THE EDUCATION TRUST FUND SEPARATE TRUST FUNDS OR ACCOUNTS FOR COLLEGE INVESTMENT AGREEMENTS AND PREPAID TUITION CONTRACTS AND TO PROVIDE THAT THE EDUCATION TRUST BOARD SHALL, BY RULE, SPECIFY THE DURATION OF COLLEGE INVESTMENT AGREEMENTS; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 13-1-150 NMSA 1978 (being Laws 1984, Chapter 65, Section 123, as amended) is amended to read:

"13-1-150. MULTI-TERM CONTRACTS--SPECIFIED PERIOD.--

A. A multi-term contract for items of tangible personal property, construction or services except for professional services, in an amount under twenty-five thousand dollars (\$25,000), may be entered into for any period of time deemed to be in the best interests of the

state agency or a local public body not to exceed four years; provided that the term of the contract and conditions of renewal or extension, if any, are included in the specifications and funds are available for the first fiscal period at the time of contracting. If the amount of the contract is twenty-five thousand dollars (\$25,000) or more, the term shall not exceed eight years, including all extensions and renewals, except that for any such contract entered into pursuant to the Public Building Energy Efficiency and Water Conservation Act, the term shall not exceed ten years, including all extensions and renewals. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

B. A contract for professional services may not exceed four years, including all extensions and renewals, except for the following:

(1) services required to support or operate federally certified medicaid, financial assistance and child support enforcement management information or payment systems;

(2) services to design, develop or implement the taxation and revenue information management systems project authorized by Laws 1997, Chapter 125;

(3) a multi-term contract for the services

of trustees, escrow agents, registrars, paying agents, letter of credit issuers and other forms of credit enhancement and other similar services, excluding bond attorneys, underwriters and financial advisors with regard to the issuance, sale and delivery of public securities, may be for the life of the securities or as long as the securities remain outstanding; and

(4) services relating to the implementation, operation and administration of the Education Trust Act. "

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

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

A. The "education trust fund" is created in the state treasury. The board shall deposit all money received pursuant to college investment agreements and prepaid tuition contracts into the fund. Money in the fund shall consist of appropriations, investments, payments, gifts, bequests and donations. All money invested in the fund is appropriated to the board. Money in the fund shall not revert to the general fund at the end of the fiscal year. The board shall account for each payment from an investor or purchaser on behalf of a beneficiary pursuant to a college investment agreement or prepaid tuition contract. The board shall provide that all money in the fund shall be invested either by the state investment officer according to rules promulgated by the

council, subject to the approval of the board, or by a private investment advisor, approved by the council, pursuant to a contract between the board and the investment advisor. The board shall review investments made pursuant to this subsection at least quarterly.

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

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

D. The board may create within the fund separate trust funds or accounts for college investment agreements and prepaid tuition contracts, and may deposit all money received pursuant to college investment agreements and prepaid tuition contracts into the related separate trust funds or accounts.

The board may appoint one or more custodians of the separate trust funds or accounts that shall be a state or national bank authorized to do business in the United States. No member of the board, while acting within the scope of his authority or while acting as a trustee of any trust fund or account of the board, shall be subject to any personal liability for any action taken or omitted within that scope of authority. "

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

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

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

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

C. A college investment agreement may be

terminated by the investor at any time. The investor may modify the college investment agreement to designate a new beneficiary instead of the original beneficiary if the new beneficiary meets the requirements of the original beneficiary on the date the designation is changed and if the original beneficiary:

- (1) dies;
- (2) is not admitted to an institution of higher education following proper application;
- (3) elects not to attend an institution of higher education or, if attending, elects to discontinue higher education; or
- (4) for any other circumstance approved by the board, does not exercise his rights under the college investment agreement.

D. The board shall provide, by rule, procedures for determining the amount to be refunded for college investment agreements terminated pursuant to the provisions of this section. The balance of the accrued investment earnings and capital appreciation less the amount refunded and administrative costs shall be credited to the fund.

E. The board shall establish a refund policy if a beneficiary receives additional student financial aid.

F. The board shall specify, by rule, appropriate provisions for the term and termination of college investment

