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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/08/11

SPONSOR Park LAST UPDATED \_\_\_\_\_ HB 230

SHORT TITLE Merge HED With DFA SB \_\_\_\_\_

ANALYST Aguilar

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		See Fiscal Implications				

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with HB-66

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Higher Education Department (HED)  
 Public Education Department (PED)  
 Attorney General's Office (AGO)  
 New Mexico Independent Community Colleges (NMICC)

### SUMMARY

#### Synopsis of Bill

House Bill 230 repeals the Higher Education Act, creates the higher education division within DFA, transfers all responsibilities and duties of the Higher Education Department and the Commission on Higher Education to the division, transfers to the division the duties of the Board of Educational Finance related to Student Loan Act, the Student Loan Guarantee Act, the Fire Fighter and Peace Officer Survivors Scholarship Act, the Osteopathic Intern Act, and provides for entering into contracts with attorneys to collect on delinquent student loans under the Student Loan Act and Student Loan Guarantee Act.

### FISCAL IMPLICATIONS

HB-230 transfers all responsibilities of HED to DFA. It is unclear whether this will result in any major savings to the general fund as it appears that all current functions of HED will continue. A modest savings could occur in salary savings as all current division director positions should be

reclassified to bureau chief positions and the secretary's position reclassified to a division director.

The bill does not contain an appropriation to cover any one-time costs associated with the merger. Some relocation costs may be involved. It is unclear if the department can absorb these costs within existing budget levels.

### **SIGNIFICANT ISSUES**

An issue raised during interim discussions regarding the consolidation of HED functions or the elimination of the department is the lack of oversight of the institutions of higher education. Many of the difficulties identified with the funding formula resulted from the institutions making modifications to the funding formula without oversight. In addition, the proliferation of campuses, branches and sites is the result of a lack of oversight over time. It will be critical that DFA implement a strong oversight function of the institutions both financially and programmatically to ensure the system proceeds in an orderly manner.

The purpose of the Department of Finance and Administration Act is to make state government more efficient and responsive through consolidating, and eliminating the overlapping of, certain state government functions; to establish a single, unified department to administer laws relating to finance of state government; and to perform other duties as provided by law. All of the existing divisions within DFA are fiduciary in nature and DFA serves as custodian of the State's funds.

There are certain fiduciary aspects of HED's organizational structure that would appear to be within DFA statutory authority (e.g. Institutional Finance and the administration of capital projects). Many of HED's functions are not fiduciary or administrative in nature, and may fall outside of DFA statutory purpose. These include, but are not limited to Adult Basic Education, Pre-kindergarten through grade 20 programs, Workforce education, Planning and research, statewide information technology programs.

It appears that additional legislation may be required to address the non-fiduciary aspects of the higher education department or the reassignment of certain division duties into other state agencies.

Some of the statutory responsibilities of the current Higher Education Department tend to be of an operational nature that extends beyond the traditional scope of the Department of Finance and Administration. For example, HED administers a number of state-funded financial aid programs.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

This bill conflicts with HB-66 which proposes to establish an "educational finance and accountability division" within DFA. This unit would provide an independent evaluation of both public school and higher education systems.

### **TECHNICAL ISSUES**

In Section 30 of the bill on page 43, subsection C, the new division is given its own rulemaking authority. Currently HED has rulemaking authority as an executive cabinet agency and it should

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be noted that DFA as well has rulemaking authority. It is somewhat inconsistent that a division within a cabinet-level agency would have its own rulemaking authority, independent of the agency's cabinet secretary. This could result in chain-of-command and policy difference issues.

The Legislature may wish to consider on page 2 line 24 strike the word "cooperate" and replace it with "coordinate" and after the word "universities" add the words "and their regents". This is because under New Mexico Constitution, Article XII, Section 13, it is the respective boards of regents of the educational institutions listed in Section 11 that have control and management of the state's educational institution.

The Legislature may wish to consider adding on page 2, line 24 a reference to the three special schools as they are included in the Constitution, Article XII, Section 13.

The Attorney General notes that the effective date is September 1, 2011 which is 60 days after the start of the fiscal year and may create some confusion in the start-up of the fiscal year and perhaps over tracking contractual services from July 1 to August 30, 2011 in FY 12.

HJA/bym