

# CHAPTER 21

## STATE AND PRIVATE EDUCATION INSTITUTIONS

### ARTICLE 1

#### GENERAL PROVISIONS RELATING TO STATE EDUCATIONAL INSTITUTIONS

##### 21-1-1. [Admission requirements to be established by boards of regents.]

The respective boards of regents of the New Mexico college of agriculture and mechanic arts [New Mexico state university], the New Mexico school of mines [New Mexico institute of mining and technology], the university of New Mexico, and the New Mexico military institute at Roswell, shall determine and fix the standard of requirements for admission to their respective institutions.

**History:** Laws 1912, ch. 83, § 2; Code 1915, § 5162; C.S. 1929, § 130-1312; 1941 Comp., § 55-2801; 1953 Comp., § 73-30-1.

#### ANNOTATIONS

**Cross-references.** - For system of accounting and reporting, see 21-1-32 and 21-1-33 NMSA 1978.

For the university of New Mexico, see 21-7-1 to 21-7-25 NMSA 1978.

For New Mexico state university, see 21-8-1 to 21-8-38 NMSA 1978.

For New Mexico institute of mining and technology, see 21-11-1 to 21-11-28 NMSA 1978.

For the New Mexico military institute, see 21-12-1 to 21-12-10 NMSA 1978.

**College of agriculture and mechanic arts renamed.** - New Mexico Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changes the name of the college of agriculture and mechanic arts to the New Mexico state university.

**School of mines renamed.** - New Mexico Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changes the name of the New Mexico school of mines to the New Mexico institute of mining and technology.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 2, 7, 8, 17.

Misconduct of college or university student off campus as grounds for expulsion, suspension or other disciplinary action, 28 A.L.R.4th 463.

Standing to challenge college or professional school admissions program which gives preference to minority or disadvantaged applicants, 60 A.L.R. Fed. 612.

14A C.J.S. Colleges and Universities § 4.

## **21-1-2. Matriculation and tuition fees.**

A. Except as otherwise provided in this section, the boards of regents of the university of New Mexico, New Mexico state university, New Mexico highlands university, western New Mexico university, eastern New Mexico university, New Mexico military institute, New Mexico institute of mining and technology and New Mexico junior college shall establish and charge matriculation fees and tuition fees as follows:

(1) each student shall be charged a matriculation fee of not less than five dollars (\$5.00) upon enrolling in each institution;

(2) each student who is a resident of New Mexico shall be charged a tuition fee of not less than twenty dollars (\$20.00) a year;

(3) each student who is not a resident of New Mexico shall be charged a tuition fee of not less than fifty dollars (\$50.00) a year;

(4) each student shall be charged a tuition fee of not less than ten dollars (\$10.00) for each summer session; and

(5) each student may be charged a tuition fee for extension courses.

B. Except as otherwise provided in this section, the board of regents of northern New Mexico state school shall establish and charge each student a matriculation fee and a tuition fee.

C. The board of regents of each institution may establish and grant gratis scholarships to students who are residents of New Mexico by waiving the matriculation fee or tuition and fees, or both. The number of scholarships established and granted shall not exceed three percent of the preceding fall semester enrollment in each institution and shall not be established and granted for summer sessions. The president of each institution shall select and recommend to the board of regents of his institution, as recipients of scholarships, students who possess good moral character and satisfactory initiative, scholastic standing and personality. At least thirty-three and one-third percent of the gratis scholarships established and granted by each board of regents each year shall be granted on the basis of financial need.

D. The board of regents of each institution set out in this subsection may establish and grant, in addition to those scholarships provided for in Subsection C of this section, athletic scholarships by waiving tuition and fees. In no event shall the board of regents of any institution be allowed to waive the tuition and fees for more than the number of athletic scholarships set out in this subsection and in no event shall more than seventy-five percent of the waivers granted be for out-of-state residents:

(1) the board of regents of the university of New Mexico may grant up to two hundred ninety-three athletic scholarships;

(2) New Mexico state university may grant up to two hundred seventy athletic scholarships;

(3) the boards of regents of New Mexico highlands university, eastern New Mexico university and western New Mexico university may each grant up to one hundred forty athletic scholarships; and

(4) the New Mexico junior college board may grant up to fifty-two athletic scholarships.

E. Notwithstanding the provisions of Subsection D of this section, in computing tuition credits the commission on higher education shall accept the value of waivers of tuition and fees established by the boards of regents of the university of New Mexico, New Mexico state university, eastern New Mexico university, western New Mexico university and New Mexico highlands university for athletes for the seventy-eighth fiscal year and all fiscal years thereafter. In no event shall the board of regents of any such institution be allowed to waive the tuition and fees for more than the number of athletic scholarships permitted that institution by regulations and bylaws of the national collegiate athletic association or the national association of intercollegiate athletics of which that institution is a member.

F. Matriculation fees and tuition fees shall be fixed and made payable as directed by the board of regents of each institution, collected by the officers of each institution and accounted for as are other funds of the institutions. Matriculation fees shall be charged only once for each institution in which a student enrolls.

**History:** 1953 Comp., § 73-30-2, enacted by Laws 1970, ch. 9, § 1; 1977, ch. 327, § 1; 1989, ch. 44, § 3; 1989, ch. 45, § 3; 1989, ch. 68, § 1.

### ANNOTATIONS

**Cross-references.** - As to tuition payments for residents conscripted into military service, see 21-1-4.1 NMSA 1978.

For the authority of the military institute to charge larger tuition fee, see 21-12-7 NMSA 1978.

For Senior Citizens Reduced Tuition Act, see 21-21D-1 NMSA 1978 et seq.

**Repeals and reenactments.** - Laws 1970, ch. 9, § 1, repealed former 73-30-2, 1953 Comp., relating to tuition and matriculation, and enacted a new 73-30-2, 1953 Comp.

**Compiler's note.** - This section originally derived from the General Appropriation Act of 1895.

**Scope of power to grant scholarships.** - The board of regents of the state institution has discretionary power to establish, and to grant, in any one year a number of scholarships not exceeding 2% (now 3%) of the preceding fall semester enrollment, to any students within the institution, regardless of the academic class of such students or their graduate or under graduate status. 1953-54 Op. Att'y Gen. No. 6039.

**All students enrolled for credit may be considered.** - All students enrolled for credit at the college may be considered for computation of scholarships. 1959-60 Op. Att'y Gen. No. 59-76.

**Charges must be for instruction.** - Only those charges which are for instruction may be granted as scholarships. 1959-60 Op. Att'y Gen. No. 59-76.

**Meaning of "tuition".** - The word "tuition" contemplates a charge for instruction as opposed to a charge for student activities, library, room and board and the like. 1959-60 Op. Att'y Gen. No. 59-76.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. Colleges and Universities §§ 19, 20.

14A C.J.S. Colleges and Universities §§ 31, 33.

### **21-1-3. State educational institutions; resident students.**

A. For the purpose of tuition payment at the resident student rates at state educational institutions, as defined in Article 12, Section 11 of the constitution of New Mexico, "resident student" includes:

(1) any person not otherwise entitled to claim residence who is a member of the armed forces of the United States assigned to active duty within the exterior boundaries of this state; and

(2) the spouse or dependent child of any person who qualifies under Paragraph (1) of this subsection.

B. Assignment to active duty within the exterior boundaries of this state may be established by a certificate of assignment from the commanding officer of the person so assigned.

C. For the purpose of tuition payment at resident student rates at New Mexico highlands university, "resident student" may include any person who is a Native American and a citizen of the United States.

**History:** 1953 Comp., § 73-30-2.1, enacted by Laws 1970, ch. 47, § 1; 1976 (S.S.), ch. 42, § 1; 1994, ch. 136, § 1.

## ANNOTATIONS

**The 1994 amendment**, effective July 1, 1994, added Subsection C.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 21.

### **21-1-4. Tuition charges; definitions.**

A. The state educational institutions set forth in Article 12, Section 11 of the state constitution shall charge tuition, which is in addition to earmarked fees, at rates provided by law.

B. During the regular academic year, "full-time student" means a student who is taking twelve or more credit-hours in one semester or quarter. Full-time students during the academic year shall be charged tuition at rates provided by law.

C. During the summer session, "full-time student" means a student who is taking at least a minimum number of credit-hours, which minimum is in the same proportion to twelve credit-hours as the duration and normal credit-hour load of the summer session in the particular institution is to the duration and normal credit-hour load of the institution's regular semester or quarter. Full-time students in the summer session shall be charged tuition at resident and nonresident rates in each institution, which rates shall be in the same proportion to the full-time resident and nonresident rates of that institution for the regular semester or quarter as the minimum number of credit-hours is to twelve hours.

D. "Part-time student" means a student who is taking less than the minimum number of credit-hours in a semester, quarter or summer session than that required for full-time student status. Part-time students shall be charged tuition at rates per semester- or quarter-credit-hour as provided by law.

E. The board of educational finance shall define resident and nonresident students for the purpose of administering tuition charges in accordance with the constitution and statutes of the state, and after consultation with the appropriate officials of the institutions concerned; each institution shall use the uniform definitions so established in assessing and collecting tuition charges from students.

**History:** 1953 Comp., § 73-30-2.2, enacted by Laws 1971, ch. 235, § 1.

## ANNOTATIONS

**Who may define "resident".** - Within the scope of the language of the statutes, constitutional provisions and case law, the state board of educational finance may define "resident" for use by the state universities and colleges in determining which adult individuals are in fact "resident" persons for college tuition purposes. 1964 Op. Att'y Gen. No. 64-26.

**Requisites for residence.** - The requisites for establishing a valid residence for college tuition purposes for an adult person are: (1) actual physical presence in the state, and (2) a bona fide intention to establish and maintain such residency in the state permanently or indefinitely. 1964 Op. Att'y Gen. No. 64-26.

**Effect of payment of taxes.** - Payment of state taxes may be considered as indicia of mental intent to maintain and keep New Mexico residency. 1964 Op. Att'y Gen. No. 64-26.

**Out-of-state minor marrying New Mexico spouse.** - A minor moving into the state and marrying a spouse from New Mexico does not by the act of marriage alone establish New Mexico residency. 1964 Op. Att'y Gen. No. 64-26.

**Mere temporary absence.** - Once a bona fide residence is established in New Mexico, mere temporary absence from the state would not in and of itself alter residency. 1964 Op. Att'y Gen. No. 64-26.

**Husband's residence governs wife's.** - Generally, the husband's residence governs that of the wife living with him. 1964 Op. Att'y Gen. No. 64-26.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 21.

Validity and application of provisions governing determination of residency for purpose of fixing fee differential for out-of-state students in public college, 56 A.L.R.3d 641.

Absence from or inability to attend school or college as affecting liability for or right to recover payments for tuition or board, 20 A.L.R.4th 303.

14A C.J.S. Colleges and Universities § 31.

### **21-1-4.1. Tuition payments; residents conscripted into military service.**

Educational institutions under the exclusive control of the state shall forgive any tuition payments owed by residents of New Mexico enrolled as part-time or full-time students when the student is conscripted, deployed to a remote duty location, or is called into active service as a member of the military reserves or national guard on or after August

1, 1990. Forgiveness of tuition payments under this section shall apply only to tuition payments owed for the semester when a student is conscripted, deployed or called to active military service. When a student has made tuition payments in part or in whole at the time of his conscription, deployment or call to active military service on or after August 1, 1990, the educational institution in receipt of those payments shall give the student a credit for the full amount of the payments when the student re-enrolls in that educational institution at a future date.

**History:** Laws 1991, ch. 236, § 1.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1991, ch. 236, § 2 makes the act effective immediately. Approved April 4, 1991.

### **21-1-4.2. Native American students; resident status at New Mexico highlands university. (Effective until July 1, 1999.)**

The board of regents of New Mexico highlands university shall establish a Native American tuition program. Pursuant to that program, any person who is a Native American and a citizen of the United States shall be entitled to resident student status for purposes of tuition payment.

**History:** Laws 1994, ch. 136, § 2.

#### **ANNOTATIONS**

**Delayed repeals.** - Laws 1994, ch. 136, § 3 provides that this section is repealed effective July 1, 1999.

**Effective dates.** - Laws 1994, ch. 136, § 4 makes the act effective on July 1, 1994.

### **21-1-5. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1986, ch. 24, § 11 repeals 21-1-5 NMSA 1978, as enacted by Laws 1971, ch. 235, § 2, relating to fees, fee increases, and board review, approval and report, effective February 21, 1986. For provisions of former section, see 1982 Replacement Pamphlet.

### **21-1-6. Waiving of nonresident differential in tuition rates on a reciprocal basis with other states.**

The commission on higher education shall identify those circumstances where the waiving of the nonresident differential in tuition rates, on a reciprocal basis with other states, including the states of the foreign country contiguous to New Mexico, would enhance educational opportunities for New Mexico residents. Relative to the identified circumstances, the commission shall negotiate with the other states involved with the objective of establishing reciprocal agreements for the waiving of the nonresident differential for New Mexico residents attending institutions in other states in exchange for New Mexico institutions waiving the nonresident differential for residents of the other states. Upon successful completion of the negotiations, the commission may identify those classes and numbers of New Mexico residents whose educational opportunities would be enhanced and the number and classes of nonresident students for whom the nonresident differential is to be waived by the New Mexico institutions and may direct that the institutions grant such waivers. The commission shall establish regulations for the administration of the waivers and for the reporting of the cases in which the waivers are given.

**History:** 1953 Comp., § 73-30-2.4, enacted by Laws 1975, ch. 308, § 1; 1993, ch. 53, § 1.

#### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, substituted "commission on higher education" for "board of educational finance" and inserted "including the states of the foreign country contiguous to New Mexico" in the first sentence; substituted "commission" for "board" three times; and made minor stylistic changes.

#### **21-1-7. Removal of faculty members; compensation of secretary and treasurer restricted.**

No member of the faculty of any state educational institution shall be removed during the term for which he is elected or appointed, except for cause, following notice and an opportunity for a hearing under rules adopted by the board of regents of his institution. No secretary or treasurer of any state educational institution except those supported in whole or in part by United States appropriation shall receive any compensation as secretary or treasurer.

**History:** Laws 1897, ch. 72, § 5; C.L. 1897, § 4181; Code 1915, § 5163; C.S. 1929, § 130-1313; 1941 Comp., § 55-2803; 1953 Comp., § 73-30-3; 1991, ch. 178, § 1.

#### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, added the present catchline; deleted "president or" preceding "member" and substituted "following notice and an opportunity for a hearing under rules adopted" for "and after trial" in the first sentence; and made minor stylistic changes throughout the section.



**Where summary dismissal void.** - An attempted summary dismissal of the president of a university, without formal charges having been made, without giving him an opportunity to be heard, and without any trial whatever, is an absolute nullity. Eyring v. Board of Regents, 59 N.M. 3, 277 P.2d 550 (1954).

**But further action not barred.** - The fact that an attempted dismissal of president was a nullity does not bar the board from further action against the president if conducted according to law. Eyring v. Board of Regents, 59 N.M. 3, 277 P.2d 550 (1954).

**Where suit against state.** - A claim for damages because of an alleged malicious breach of contract and the resulting damage to reputation sounds in tort and is really against the state. Such an action may not be maintained against the state without its consent. Eyring v. Board of Regents, 59 N.M. 3, 277 P.2d 550 (1954).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 11 to 16.

Dismissal or rejection of public schoolteacher because of disloyalty, 27 A.L.R.2d 487.

Elements and measure of damages in action by schoolteacher for wrongful discharge, 22 A.L.R.3d 1047.

Construction and effect of tenure provisions of contract on statute governing employment of college or university faculty member, 66 A.L.R.3d 1018.

Academic peer review privilege in federal court, 85 A.L.R. Fed. 691.

14A C.J.S. Colleges and Universities §§ 16, 19, 25.

## **21-1-8. [Eligibility for retirement pension.]**

When any member of the faculty or other employee of any one of said institutions shall have taught or rendered service for not less than twenty (20) years in the schools of this state, the last ten (10) years of which service shall have been rendered at the institution retiring such person, and when such person shall have reached or passed the age of sixty (60) years, he or she shall have the right to request retirement and receive thereafter the full pension provided by this act, and after any such person who has rendered the service hereinabove described shall have reached or passed the age of sixty-five (65) years, the regents or governing body of said institution shall have the right in their discretion to order the retirement of such person with the maximum pension hereinabove set forth; provided, that when any member of the faculty or other employee of any one of said institutions shall have taught or rendered service for not less than twenty-five (25) years in the same institution, such person shall be eligible to request retirement and receive the pension provided when he or she shall have reached or passed the age of fifty-five (55) years.

**History:** Laws 1941, ch. 210, § 3; 1941 Comp., § 55-2806; 1943, ch. 51, § 1; 1945, ch. 131, § 1; 1953 Comp., § 73-30-4.

## ANNOTATIONS

**Meaning of "this act".** - "This act" refers to Laws 1941, ch. 210, §§ 1 to 6. Sections 1, 2, 4 to 6, were repealed by Laws 1945, ch. 50, § 12, leaving 21-1-8 NMSA 1978 the only remaining compiled section.

**Effect of section.** - Even though the amendment by Laws 1945, ch. 131, § 1, of this section is successful, Chapter 131 still cannot be given effect as it is not a complete law, but is rather a provision with respect to the ages of certain persons who under other provisions of the original act (now repealed) were given certain benefits. No person can be retired under Chapter 131. As Laws 1945, ch. 50, is a complete act, eligibility must be determined under that act. 1945-46 Op. Att'y Gen. No. 4883.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 60A Am. Jur. 2d Pensions and Retirement Funds §§ 1614, 1615.

Services included in computing period of service for purpose of teachers' seniority, salary, or retirement benefits, 2 A.L.R.2d 1033.

67 C.J.S. Officers and Public Employees §§ 245, 246; 81A C.J.S. States § 113.

### **21-1-9. [Expenses of members of boards of regents.]**

The members of the several boards of the university of New Mexico, the New Mexico college of agriculture and mechanic arts [New Mexico state university], [the New Mexico institute of mining and technology,] and the New Mexico insane asylum [the Las Vegas medical center] shall be allowed their actual and necessary traveling expenses in going to and returning from all necessary sessions of their respective boards, and also their necessary expenses while in actual attendance upon the same.

**History:** Laws 1889, ch. 138, § 56; C.L. 1897, § 3633; Code 1915, § 5165; C.S. 1929, § 130-1401; 1941 Comp., § 55-2811; 1953 Comp., § 73-30-5.

## ANNOTATIONS

**Cross-references.** - For Per Diem and Mileage Act, see 10-8-1 to 10-8-8 NMSA 1978.

**Compiler's note.** - Laws 1889, ch. 138, § 56, read "The members of the several boards of the institutions established by this act shall be . . ." The 1915 compilers inserted the names of the institutions. However, among the institutions created was the New Mexico school of mines, (now the New Mexico institute of mining and technology) which, although omitted by the 1915 compilers, has been inserted in brackets.

**College of agriculture and mechanic arts renamed.** - See same catchline in notes to 21-1-1 NMSA 1978.

**New Mexico insane asylum renamed.** - An amendment to N.M. Const., art. XIV, § 1, adopted September 20, 1955, changed the name of the New Mexico insane asylum to the New Mexico state hospital. The New Mexico state hospital is now known as the Las Vegas medical center. See 23-1-13 NMSA 1978.

**School of mines renamed.** - See same catchline in notes to 21-1-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63A Am. Jur. 2d Public Officers and Employees §§ 460 to 462.

Public officer's right and duties in respect of mileage and other allowances incident to duties of his office but which represented no actual expense or outlay by him, 81 A.L.R. 493.

Allowance of mileage or traveling expenses to officer as affected by use of his own vehicle for transportation, 112 A.L.R. 172.

### **21-1-10. [Method of disbursing funds.]**

The secretary and treasurer of all of such boards shall make disbursements of the funds in his hands on the order of the board, which order shall be countersigned by the president of the board, and shall state on what account the disbursement is made.

**History:** Laws 1889, ch. 138, § 58; C.L. 1897, § 3635; Code 1915, § 5167; C.S. 1929, § 130-1402; 1941 Comp., § 55-2812; 1953 Comp., § 73-30-6.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 81A C.J.S. States § 226.

### **21-1-11. [Allocation of funds.]**

Whenever there shall be any money in the hands of the state treasurer to the credit of any of the specific funds set apart for said institutions deemed sufficient by such board to commence the erection of any of the necessary buildings or improvements or pay the running or other expenses of such institution, the state auditor, on the request in writing of any such boards shall, and it is hereby made his duty, to draw his warrant in favor of the treasurer of said board and institution upon the state treasurer against the specific fund belonging to such institution in such sum, not exceeding the amount on hand in such specific fund at such time, as said board may deem necessary: provided, that any such board shall only draw said money as it may be necessary to disburse the same.

**History:** Laws 1889, ch. 138, § 59; C.L. 1897, § 3636; Code 1915, § 5168; C.S. 1929, § 130-1403; 1941 Comp., § 55-2813; 1953 Comp., § 73-30-7.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 5, 35.

14A C.J.S. Colleges and Universities § 41.

#### **21-1-12. [Annual reports; contents.]**

All of the managing boards of the said institutions shall annually, on or before the first day of December, make a full and true report in detail under oath, of all their acts and doings during the previous year, their receipts and expenditures, the exact status of their institution and any other information that they may deem proper and useful or which may be called for by the governor, which said reports shall be made to the governor and he shall transmit the same to the succeeding session of the legislature.

**History:** Laws 1889, ch. 138, § 60; C.L. 1897, § 3637; Code 1915, § 5169; C.S. 1929, § 130-1404; 1941 Comp., § 55-2814; 1953 Comp., § 73-30-8.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools § 47.

#### **21-1-13. [Ex-officio board memberships of governor and superintendent of public instruction.]**

The governor of the state and the superintendent of public instruction, if there be one, shall ex officio be advisory members of all boards of the said institutions, but shall not have the right to vote or be eligible to office therein.

**History:** Laws 1889, ch. 138, § 62; C.L. 1897, § 3639; Code 1915, § 5170; C.S. 1929, § 130-1405; 1941 Comp., § 55-2815; 1953 Comp., § 73-30-9.

#### **ANNOTATIONS**

**Cross-references.** - For management of state educational institution, see N.M. Const., art. XII, § 13.

#### **21-1-14. [Quarterly and special meetings of boards.]**

The regular meeting of all said boards shall be held quarterly: provided, that they may hold as many special sessions as they shall deem necessary.

**History:** Laws 1889, ch. 138, § 64; C.L. 1897, § 3641; Code 1915, § 5171; C.S. 1929, § 130-1406; 1941 Comp., § 55-2816; 1953 Comp., § 73-30-10.

### **21-1-15. [One member of board to reside in adjacent municipality.]**

At least one member of the said several boards shall be a resident of the town or city at or near which the institution is located.

**History:** Laws 1889, ch. 138, § 66; C.L. 1897, § 3643; Code 1915, § 5172; C.S. 1929, § 130-1407; 1941 Comp., § 55-2817; 1953 Comp., § 73-30-11.

### **21-1-16. [Public inspection of board records.]**

The records of the said boards shall be open at all reasonable times for the inspection of any citizen.

**History:** Laws 1889, ch. 138, § 67; C.L. 1897, § 3644; Code 1915, § 5173; C.S. 1929, § 130-1408; 1941 Comp., § 55-2818; 1953 Comp., § 73-30-12.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 66 Am. Jur. 2d Records and Recording Laws §§ 12 to 30.

76 C.J.S. Records § 60 et seq.

### **21-1-17. Interest in contracts by board members or employees prohibited.**

No employee or member of a board of regents of any state educational institution shall have any direct or indirect financial interest in any contract for building or improving any of that state educational institution or for the furnishing of supplies or services to that institution except as permitted pursuant to the University Research Park Act [21-28-1 to 21-28-25 NMSA 1978].

**History:** Laws 1889, ch. 138, § 68; C.L. 1897, § 3645; Code 1915, § 5174; C.S. 1929, § 130-1409; 1941 Comp., § 55-2819; 1953 Comp., § 73-30-13; Laws 1986, ch. 24, § 1; 1989, ch. 264, § 28.

#### **ANNOTATIONS**

**Scope of section.** - Members of boards of state institutions, their employees and officials or employees of state, or of any institution or agency thereof, are prohibited from becoming interested in any contract for expenditure of public money or for

furnishing supplies to institutions of which they are board members or employees. 1931-32 Op. Att'y Gen. 134.

**As to insurance policies.** - A member of the board of regents of the state school of mines (now New Mexico institute of mining and technology) may not write an insurance policy on buildings of the institution. 1921-22 Op. Att'y Gen. 100.

**And bidding on supplies.** - A firm of which a trustee is a member may not bid on supplies for a state institution. 1917-18 Op. Att'y Gen. No. 46.

### **21-1-18. [No personal liability for official actions.]**

Members of the boards of regents of the educational institutions of the state shall not be held personally liable in any action at law based upon a claim for damages arising out of any act or failure to act of that board of regents.

**History:** 1953 Comp., § 73-30-13.1, enacted by Laws 1957, ch. 156, § 1.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15 Am. Jur. 2d Colleges and Universities § 41.

Personal liability of public school executive or administrative officer in negligence action for personal injury or death of student, 35 A.L.R.4th 272.

Tort liability of college, university, fraternity, or sorority for injury or death of member or prospective member by hazing or initiation activity, 68 A.L.R.4th 228.

14A C.J.S. Colleges and Universities § 17.

### **21-1-19. [Oaths of board members; filing.]**

Each and every member of the said boards shall, before entering upon their respective duties, take and subscribe an oath to faithfully and honestly discharge their duties in the premises and strictly and impartially perform the same to the best of their several abilities. Said oath shall be filed with the secretary of state.

**History:** Laws 1889, ch. 138, § 69; C.L. 1897, § 3646; Code 1915, § 5175; C.S. 1929, § 130-1410; 1941 Comp., § 55-2820; 1953 Comp., § 73-30-14.

#### **ANNOTATIONS**

**Cross-references.** - For oath of public officer, see N.M. Const., art. XX, § 1.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 12; 63 Am. Jur. 2d Public Officers and Employees §§ 131, 132.

## **21-1-20. Power to hold property.**

All of the said institutions, including the New Mexico military institute, shall be entitled to receive all the benefits and donations made and given to similar institutions of learning and charity in other states and territories of the United States, by the legislation of the congress of the United States, or from private individuals or corporations, and for the benefit of said institutions they shall have power to buy and sell or lease or mortgage realty, and do all things that, in the opinion of the several boards, will be for the best interests of said institutions, and are in the line of its object.

**History:** Laws 1889, ch. 138, § 70; C.L. 1897, § 3647; Code 1915, § 5176; Laws 1921, ch. 177, § 1; C.S. 1929, § 130-1411; 1941 Comp., § 55-2821; 1953 Comp., § 73-30-15.

### **ANNOTATIONS**

**Cross-references.** - As to restrictions on the sale or other disposition of property by state educational institutions and other state entities, see 13-6-1 et seq. NMSA 1978.

**Compiler's note.** - Laws 1937, ch. 95, § 1, ratifies and confirms any and all "deeds, grants and conveyances heretofore made by any city, town or village in this state to the state of New Mexico conveying land or other property for the use of any institution of this state."

**Property conveyance upheld.** - Arms-length conveyance of property from the New Mexico Military Institute to the New Mexico Military Institute Foundation was proper, and did not violate N.M. Const., art. IX, § 14, prohibiting state aid to private enterprise, where the \$250,000 contract price bore a sufficient relationship to the actual value of the property. 1988 Op. Att'y Gen. No. 88-79.

**Power to sell real property in board of directors.** - The board of directors of state insane asylum (now New Mexico state hospital) has the power to sell real property. 1935-36 Op. Att'y Gen. 81.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 32, 33, 35, 37.

Implied power of corporation belonging to one of the three classes, religious, charitable, or educational, to promote, or to accept gifts for objects which more appropriately pertain to the purposes of those in one of the other classes, 121 A.L.R. 1526.

14A C.J.S. Colleges and Universities §§ 10 to 14, 17.

## **21-1-21. Capital expenditures.**

No expenditure shall be made by any state educational institution confirmed by Article 12, Section 11 of the state constitution for the purchase of real property or the construction of buildings or other major structures or for major remodeling projects without prior approval of the proposed purchase or construction or remodeling by the board of educational finance and the state board of finance.

**History:** 1953 Comp., § 73-30-15.1, enacted by Laws 1971, ch. 235, § 4.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 35.

14A C.J.S. Colleges and Universities §§ 10, 11, 14.

### **21-1-22. [Nonsectarian operation required.]**

All the said institutions shall forever remain strictly nonsectarian in character, and no creed or system of religion shall be taught in any of them.

**History:** Laws 1889, ch. 138, § 71; C.L. 1897, § 3648; Code 1915, § 5177; C.S. 1929, § 130-1412; 1941 Comp., § 55-2822; 1953 Comp., § 73-30-16.

### **ANNOTATIONS**

**Effect on school for the deaf.** - Since the school for the deaf is confirmed as a state educational institution, religious instruction by representatives of local churches should not be permitted in the school. 1947-48 Op. Att'y Gen. No. 5066.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 16 Am. Jur. 2d Constitutional Law §§ 465, 466, 481.

Sectarianism in schools, 5 A.L.R. 866, 141 A.L.R. 1144, 45 A.L.R.2d 742.

Validity, under state constitution and laws, of issuance by state or state agency of revenue bonds to finance or refinance construction projects at private, religious-affiliated colleges or universities, 95 A.L.R.3d 1000.

14A C.J.S. Colleges and Universities § 7; 16A C.J.S. Constitutional Law §§ 518 to 521, 523.

### **21-1-23. State higher educational institutions; public funds; limitation upon payment for certain purposes.**

Public funds shall not be expended for the purpose of paying compensation to any faculty member or employee of a state higher educational institution for any period of



absence from his assigned duties with such state higher educational institution unless the period of absence:

A. is a holiday or vacation period established in the published calendar of the institution;

B. comes within the official sick leave or annual leave policies promulgated by the regents of the institution; or

C. is approved by a designated administrative authority according to procedures established for this purpose by the regents.

**History:** 1953 Comp., § 73-30-32, enacted by Laws 1971, ch. 228, § 2.

### **ANNOTATIONS**

**Legislative intent.** - Laws 1971, ch. 228, § 1, provides that it is the intent of this act (Laws 1971, ch. 288) that the appropriate administrative authority shall insure full service be given by the faculty members and employees of a state higher educational institution in keeping with the published calendar of the institution.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 33.

14A C.J.S. Colleges and Universities § 22; 78 C.J.S. Schools §§ 179, 203, 206, 231.

### **21-1-24. Graduate programs.**

None of the funds appropriated in the general appropriations act to the state educational institutions confirmed by Article 12, Section 11 of the state constitution may be used for the support of any program or programs of graduate study beyond the level of the bachelor's degree other than programs that were maintained by each institution previous to September 1, 1954, except by explicit approval of each program by the board of educational finance and the state board of finance prior to such use of the funds.

**History:** 1953 Comp., § 73-30-33, enacted by Laws 1971, ch. 235, § 3.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 1, 32, 35.

14A C.J.S. Colleges and Universities §§ 2, 4, 14, 15.

### **21-1-25. Repealed.**

## ANNOTATIONS

**Repeals.** - Laws 1979, ch. 273, § 7, repeals 21-1-25 NMSA 1978, relating to out-of-state travel by personnel of state educational institutions.

### **21-1-26. Commission on higher education created; powers.**

A. There is created a "commission on higher education" whose function is to deal with the problems of finance of those educational institutions designated in Article 12, Section 11 of the constitution of New Mexico. The commission shall:

(1) be concerned with the adequate financing of these institutions and with the equitable distribution of available funds among them;

(2) be authorized to receive funding for the in-plant development training program and to administer the funds in accordance with the provisions of Section 21-19-7 NMSA 1978;

(3) receive, adjust and approve the budgets submitted by these institutions prior to the submission of these budgets to the state budget division of the department of finance and administration;

(4) develop and maintain programs, on a regular basis, for the orientation and in-service education of members of the boards of regents of the various educational institutions designated in Article 12, Section 11 of the constitution of New Mexico; and

(5) exercise such other powers as may be granted it by law.

B. Notwithstanding any other provisions of law, the commission on higher education, which is a commission broadly representative of the public and of institutions of higher education, may be designated by the governor to administer funds furnished under acts of congress for those educational institutions enumerated in Article 12, Section 11 of the constitution of New Mexico and for any other educational institutions over which the commission has been granted approval authority or supervisory powers or both.

C. The commission on higher education is also charged with oversight of all private post-secondary educational institutions operating within the state.

**History:** 1941 Comp., § 55-2714, enacted by Laws 1951, ch. 190, § 1; 1953 Comp., § 73-29-15; Laws 1964 (1st S.S.), ch. 19, § 1; 1985, ch. 43, § 1; 1986, ch. 24, § 2; 1989, ch. 354, § 1; 1994, ch. 108, § 1.

## ANNOTATIONS

**Cross-references.** - For designation of the board of educational finance as the state commission on post-secondary education, see 21-2-3 NMSA 1978.

As to powers of the commission relating to the Work-Study Act, see 21-21B-3 NMSA 1978 et seq.

**The 1994 amendment**, effective July 1, 1994, inserted "on higher education" following "commission" near the beginning of Subsection B and added Subsection C.

**Temporary provisions.** - Laws 1988, ch. 65, § 7, in order that the transfer of budget authority to the commission as provided in that act not produce instability in the funding of the institutions being transferred, directs the commission to consider the specific characteristics and needs of each institution being transferred pursuant to that act as funding formulas are developed for those and other two-year institutions.

**Appropriations.** - Laws 1992, ch. 87, § 1, effective May 20, 1992, appropriates \$25,000 from the general fund to the commission on higher education for expenditure in the eightieth and eighty-first fiscal years for the purpose of collecting data regarding the child care needs of the student parents attending all state post-secondary educational institutions, provides that the commission shall allocate the funds to the institution proportionately according to the student population, and provides that any unexpended or unencumbered balance remaining the end of the eighty-first fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 2T, effective June 18, 1993, appropriates \$30,000 from the computer systems enhancement fund to the commission on higher education for expenditure in the eighty-second fiscal year to pay expenses associated with development and implementation of a higher education database.

Laws 1993, ch. 366, § 3UU, effective June 18, 1993, appropriates \$15,000 from the general fund to the commission on higher education for expenditure in the eighty-first and eighty-second fiscal years to expand cooperative education efforts to underrepresented groups in specified fields, particularly women and minorities in engineering. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 5 provides for the severability of that act if any part or application thereof is held invalid.

**Higher education distribution.** - Laws 1994, ch. 6, § 10, effective May 18, 1994, appropriates \$3,400,000 to the commission on higher education for two-year branch, independent, vocational-technical and four-year institutions.

**Gender equity.** - Laws 1994, ch. 6, § 11, effective May 18, 1994, includes in the appropriations for national collegiate athletic association athletics programs in § 4J of the General Appropriation Act of 1994, \$918,000 to be used for the purpose of gender equity adjustments.

Subsections QQQQQQ and RRRRRR of Laws 1994, ch. 147, § 6, effective March 9, 1994, appropriate \$250,000 and \$200,000 from the general fund to the commission on higher education for expenditure in the eighty-second and eighty-third fiscal years to expand daycare services at all two- and four-year institutions, and to expand the services of the math, engineering and science achievement (MESA) program. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1994, ch. 147, § 6LLLLLLL, effective March 9, 1994, appropriates \$150,000 from the general fund to the small business development centers of the commission on higher education for expenditure in the eighty-second and eighty-third fiscal years for a project in the south valley of Bernalillo county to provide technical assistance to small businesses for obtaining commercial financing and improving business operations. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1994, ch. 147, § 6NNNNNNN, effective March 9, 1994, appropriates \$800,000 from the general fund to the governing board of San Juan college for expenditure in the eighty-second through eighty-fifth fiscal years to construct, improve and equip the San Juan college west facility in San Juan county. Any unexpended or unencumbered balance remaining at the end of the eighty-fifth fiscal year shall revert to the general fund.

Laws 1994, ch. 147, § 6TTTTTTT, effective March 9, 1994, appropriates \$50,000 from the general fund to the community college board of Santa Fe community college for expenditure in the eighty-second and eighty-third fiscal years to expand services of the intercultural community leadership project. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1994, ch. 147, § 7JJ, effective March 9, 1994, appropriates various amounts from the general fund to the commission on higher education for expenditure in the eighty-second through eighty-fourth fiscal years for various purposes. Unexpended or unencumbered balances remaining shall revert to the general fund.

**Commission on higher education.** - Laws 1986, ch. 24, § 10 provides that all references to the board of educational finance shall be construed to be references to the commission on higher education. In subsequent sections, references to the commission on higher education have been inserted in brackets by the compiler following references to the board of educational finance. The bracketed material was not enacted by the legislature and is not part of the law.

**Meaning of "adjust and approve".** - The words "adjust and approve" are not dictatorial but mean that the new board shall have the power to "adjust and approve" the budget within reason and only insofar as the direct appropriation from the legislature is concerned and not upon any moneys derived from lands placed in trust of the board of regents for the school for the deaf. 1951-52 Op. Att'y Gen. No. 5468.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Validity, under state constitution and laws, of issuance by state or state agency of revenue bonds to finance or refinance construction projects at private, religious-affiliated colleges or universities, 95 A.L.R.3d 1000.

### **21-1-26.1. Additional duties.**

In addition to the duties imposed upon the board of educational finance [commission on higher education] by the Post-Secondary Educational Planning Act [Chapter 21, Article 2 NMSA 1978], the board [commission] shall have the responsibility of performing the same planning and budgeting functions for the Bernalillo county medical center as it performs for other post-secondary educational institutions.

**History:** Laws 1980, ch. 145, § 2.

#### **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

### **21-1-26.2. Post-secondary education; adult correctional facilities.**

Upon approval by the corrections and criminal rehabilitation department in consultation with the board of educational finance [commission on higher education], state-supported post-secondary educational institutions shall receive credit on a full-time equivalency basis for students enrolled in their respective programs within adult correctional facilities. Funding recommendations to implement the provisions of this section shall be developed by the board of educational finance [commission on higher education] or the public school finance division of the department of finance and administration as appropriate in the same manner that funding recommendations for similar programs at other institutions are calculated.

**History:** Laws 1981, ch. 69, § 1.

#### **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 60 Am. Jur. 2d Penal and Correctional Institutions § 100.

72 C.J.S. Prisons and Rights of Prisoners § 59.

### **21-1-26.3. Audit function.**

The commission on higher education shall annually conduct special audits of the institutions of higher education. These audits shall include but not be limited to

enrollments, fund balances, compliance with legislation, comparison of expenditures to budgets and other areas to be determined by the commission. Reports on these audits shall be made annually to the department of finance and administration and the legislative finance committee. The commission shall consider the audit findings in making its annual recommendations to the executive and legislature for higher education funding.

**History:** 1978 Comp., § 21-1-26.3, enacted by Laws 1986, ch. 24, § 3.

#### **21-1-26.4. Legislative findings.**

A. The legislature finds that it is in the interest of the state and its citizenry that a statewide articulation plan be developed and followed by all public post-secondary educational institutions.

B. The legislature further finds that the commission on higher education has acted responsibly in its role as the state's post-secondary planning authority by identifying policy changes necessary to improve the articulation of coursework among public post-secondary institutions and now needs to move further toward implementation.

C. The legislature further finds that, despite these continued efforts to encourage articulation of coursework among New Mexico's post-secondary educational institutions, some instances continue to occur where students are denied transfer of credits from one institution to another.

**History:** Laws 1989, ch. 381, § 1.

#### **21-1-26.5. Commission on higher education; articulation plan development.**

A. The commission on higher education, in conjunction with the governing boards of all post-secondary educational institutions in the state, shall develop and implement a statewide articulation plan no later than the beginning of the fall semester of 1989 which may include comprehensive articulation agreements to facilitate the flow of students among the state's post-secondary educational institutions.

B. Each state post-secondary educational institution shall submit to the commission annually a report of the following:

(1) all instances during the prior year in which the institution has denied transfer of credits from another state post-secondary educational institution and the grounds for any denial; and

(2) all instances during the prior year in which the institution has had the transfer of its credits denied by another state post-secondary educational institution. The report shall be submitted in time for use in the commission's adjustment and approval of state post-

secondary educational institution budgets and may be considered in the commission's audits of state post-secondary educational institutions.

C. Beginning with the first session of the fortieth legislature, the commission shall report annually to the legislative finance committee, the legislative education study committee and the governor on the status and progress of the statewide articulation plan.

**History:** Laws 1989, ch. 381, § 2.

### **21-1-26.6. Purpose.**

The purpose of this act is to create a report card for New Mexico's educational institutions and to provide information to the citizens of the state on the significant indicators of performance of elementary, secondary and post-secondary schools. The indicators are to be published annually in order to draw comparisons among school districts and among institutions of higher learning.

**History:** Laws 1990 (1st S.S.), ch. 4, § 1.

## **ANNOTATIONS**

**Cross-references.** - As to additional statewide testing, see 22-2-8.5 NMSA 1978.

**Meaning of "this act".** - The phrase "this act", referred to in this section, means Laws 1990 (1st S.S.), ch. 4, which enacted the sections designated 21-1-26.6 and 21-1-26.7 NMSA 1978 and amended 22-1-6 NMSA 1978.

### **21-1-26.7. Annual report card.**

A. The commission on higher education shall submit an annual report card to the governor and to the legislature. Beginning in 1990, the annual report card shall be published prior to November 15 and presented in a readable format so as to easily compare the state's public, post-secondary institutions. Prior to publication, the commission on higher education shall distribute a draft of the report card to all public, post-secondary institutions and shall allow comment upon the draft report.

B. The commission on higher education shall develop and adopt a format for the report card. Each four-year, post-secondary institution shall submit to the commission on higher education the following information:

(1) the results of the institution's learner outcomes assessment program and steps taken to improve learner outcomes;

(2) the retention rate of students;

(3) the percent of lower division instructional courses taught by full professors;

(4) the number of hours per student per semester spent by faculty members in student advisement;

(5) the percent of graduate and undergraduate students participating in sponsored research programs;

(6) placement data on graduates;

(7) the percent change in the participation rate of students from minority groups and other underrepresented populations;

(8) the percent of graduate students who received undergraduate degrees at the institution, within the state, within the United States and from other nations; and

(9) the number of full-time students who have transferred from a two-year, post-secondary institution.

C. The commission on higher education shall develop and adopt a format for the report card. Each two-year, post-secondary institution shall submit to the commission on higher education the following information:

(1) the results of the institution's learner outcomes assessment program and steps taken to improve learner outcomes;

(2) the retention rate of students;

(3) the percent of remedial or developmental education courses taught by full-time faculty members;

(4) the number of hours per student per semester spent by faculty members in student advisement;

(5) placement data on graduates;

(6) the percent change in the participation rate of students from minority groups and other underrepresented populations; and

(7) the number of students who have transferred into a four-year, post-secondary institution.

D. The commission on higher education shall make no funding recommendation, capital outlay recommendation, distribution or certification on behalf of any public, post-secondary institution that has not submitted the information required pursuant to this section.

**History:** 1978 Comp., § 21-1-26.6, enacted by Laws 1990 (1st S.S.), ch. 4, § 2.



## ANNOTATIONS

**Compiler's note.** - Laws 1990 (1st S.S.), ch. 4, § 2 enacted this section as 21-1-26.6 NMSA 1978, but the section has been redesignated by the compiler.

### **21-1-27. Commission on higher education; distribution of available funds.**

In its distribution of available funds and its adjustment and approval of budgets, the commission on higher education shall not, in any event or in any manner, substitute for public funds any gift, donation, private endowment, patent income or other gratuity received or enjoyed by an institution in determining the adequate financing of an institution under its charge.

**History:** 1953 Comp., § 73-29-15.1, enacted by Laws 1965, ch. 267, § 1; 1986, ch. 24, § 4.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 2, 33, 37.

14A C.J.S. Colleges and Universities §§ 10, 12.

### **21-1-28. Board of educational finance [commission on higher education] administratively attached to department of finance and administration.**

The board of educational finance [commission on higher education] is administratively attached to the department of finance and administration. Administrative services, including bookkeeping, budget preparation and clerical assistance, may be provided the board by the department unless otherwise provided by law. This section shall not be construed to affect the exercise of any board power or duty.

**History:** 1953 Comp., § 73-29-15.2, enacted by Laws 1977, ch. 246, § 49; 1980, ch. 151, § 44.

## ANNOTATIONS

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

### **21-1-29. Membership; terms; qualifications.**

A. The commission on higher education shall consist of fifteen members. The governor shall appoint with the consent of the senate thirteen members who are qualified electors

of the state, no more than seven of whom are, at the time of their appointment, members of the same political party. The appointments shall be made as follows:

- (1) one member from the first board of education district as created in the Educational Apportionment Act;
- (2) one member from the second board of education district as created in the Educational Apportionment Act;
- (3) one member from the third board of education district as created in the Educational Apportionment Act;
- (4) one member from the fourth board of education district as created in the Educational Apportionment Act;
- (5) one member from the fifth board of education district as created in the Educational Apportionment Act;
- (6) one member from the sixth board of education district as created in the Educational Apportionment Act;
- (7) one member from the seventh board of education district as created in the Educational Apportionment Act;
- (8) one member from the eighth board of education district as created in the Educational Apportionment Act;
- (9) one member from the ninth board of education district as created in the Educational Apportionment Act;
- (10) one member from the tenth board of education district as created in the Educational Apportionment Act; and
- (11) three members from a district consisting of the state at large.

Members appointed from the board of education districts and the state at large shall be appointed from their respective districts for terms of six years. Commission members shall be residents of the districts that they represent, and change of residence of a commission member to a place outside the district from which he was appointed automatically terminates the term of that member. Appointments to fill vacancies shall be made for the remainder of the unexpired term of the member creating the vacancy. After having served for a full term of six years, no member shall be appointed for a second full term until two years have intervened.

B. The governor shall appoint two members, one voting and one nonvoting, from among the student body presidents, either graduate or undergraduate, of the university of New

Mexico, New Mexico state university, New Mexico highlands university, western New Mexico university, eastern New Mexico university, New Mexico institute of mining and technology, New Mexico military institute, northern New Mexico state school, New Mexico junior college, San Juan junior college and Santa Fe community college. The governor shall appoint these student members to the commission in order that:

(1) their terms as student body presidents of their respective universities, colleges or institutes coincide with their membership on the commission;

(2) each university, college or institute is represented on the commission every eleven years on a rotating basis for two successive years, the first year by a nonvoting member and the second year by a voting member. The first eleven-year rotation schedule of universities, colleges or institutes to serve on the commission shall be as follows and shall be continued for subsequent rotation cycles:

(a) the first nonvoting member shall be from New Mexico institute of mining and technology, and the first voting member shall be from western New Mexico university;

(b) the second nonvoting member shall be from eastern New Mexico university, and the second voting member shall be from New Mexico institute of mining and technology;

(c) the third nonvoting member shall be from New Mexico highlands university, and the third voting member shall be from eastern New Mexico university;

(d) the fourth nonvoting member shall be from New Mexico state university, and the fourth voting member shall be from New Mexico highlands university;

(e) the fifth nonvoting member shall be from the university of New Mexico, and the fifth voting member shall be from New Mexico state university;

(f) the sixth nonvoting member shall be from New Mexico military institute, and the sixth voting member shall be from the university of New Mexico;

(g) the seventh nonvoting member shall be from northern New Mexico state school, and the seventh voting member shall be from New Mexico military institute;

(h) the eighth nonvoting member shall be from New Mexico junior college, and the eighth voting member shall be from northern New Mexico state school;

(i) the ninth nonvoting member shall be from San Juan junior college, and the ninth voting member shall be from New Mexico junior college;

(j) the tenth nonvoting member shall be from western New Mexico university, and the tenth voting member shall be from San Juan junior college; and

(k) the eleventh nonvoting member shall be from Santa Fe community college, and the eleventh voting member shall be from western New Mexico university; and

(3) the appointed student body presidents shall be residents of New Mexico; provided that in the event that both the graduate and the undergraduate student body presidents of the selected university, college or institute are nonresidents, the governor shall select a student body president to serve in the nonvoting or voting capacity, whichever is applicable, from the remaining eligible universities, colleges or institutes and reorder the appointments to effectuate the intent of this subsection.

C. In the event the selected university, college or institute does not have a student body president, the governor shall select a student body president to serve in the nonvoting or voting capacity, whichever is applicable, from the remaining eligible universities, colleges or institutes and reorder the appointments to effectuate the intent of this subsection.

D. Members of the commission shall not be removed except for incompetence, neglect of duty or malfeasance in office. Provided, however, that no member shall be removed without having first been given notice of hearing and an opportunity to be heard. The senate shall be given exclusive original jurisdiction over proceedings to remove members under such rules as the senate may adopt. The senate's decision in connection with such matters shall be final.

**History:** 1978 Comp., § 21-1-29, enacted by Laws 1990, ch. 77, § 1; 1991, ch. 241, §§ 1, 2.

## ANNOTATIONS

**Repeals and reenactments.** - Laws 1971, ch. 224, § 1 repealed 73-29-16, 1953 Comp., relating to membership, terms and qualifications of board of educational finance, and enacted a new 21-1-29 NMSA 1978.

**The 1990 amendment,** effective July 1, 1991, added Subsection D.

**1991 amendments.** - Laws 1991, ch. 241, § 1, effective June 14, 1991, amended that version of 21-1-29 NMSA 1978 effective until July 1, 1991. That amendment, in the introductory paragraph in Subsection A, substituted "fifteen members" for "thirteen members" in the first sentence and "thirteen members" for "eleven members" and "seven of whom" for "six of whom" in the second sentence; substituted "three members" for "one member" in Paragraph (11) of Subsection A; and inserted "one voting and one nonvoting" in the introductory paragraph in Subsection B.

Laws 1991, ch. 241, § 2, effective June 14, 1991, amends that version of 21-1-29 NMSA 1978 effective July 1, 1991. That amendment made all of the changes made by Laws 1991, ch. 241, § 1, but, additionally, in the final paragraph in Subsection A,

substituted the first sentence for two sentences pertaining to terms of initial members and made a minor stylistic change and made a minor stylistic change in Subsection D.

**Compiler's note.** - The Educational Apportionment Act, referred to in Subsection A(1), appeared as 22-3-17 to 22-3-35 NMSA 1978, and was repealed by Laws 1991 (1st S.S.), ch. 4, § 19, effective December 18, 1991. For present comparable provisions, see 22-3-37 to 22-3-54 NMSA 1978.

**Where bylaws require quorum.** - Where bylaws require that a majority of the members of the board (of educational finance) shall constitute a quorum, a quorum consists of a majority of the statutory membership, and not a majority of the legally qualified membership at any given time. 1959-60 Op. Att'y Gen. No. 59-139.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d School §§ 23, 27.

Constitutionality of statute requiring, or limiting, selection or appointment of public officers or agents from members of a political party or parties, 140 A.L.R. 471, 170 A.L.R. 198.

29 C.J.S. Elections § 1(7); 67 C.J.S. Officers and Public Employees §§ 36, 40 to 43.

### **21-1-30. Executive director; salary.**

In order to execute its functions, the commission on higher education shall appoint a full-time executive director who shall be an experienced educator of demonstrated competence in the fields of institutional management and finance. The salary of the executive director shall be fixed in accordance with the exempt-salaries plan of the executive branch authorized in Section 10-9-5 NMSA 1978.

**History:** 1941 Comp., § 55-2716, enacted by Laws 1951, ch. 190, § 3; 1953 Comp., § 73-29-17; Laws 1977, ch. 365, § 2; 1986, ch. 24, § 6.

## **ANNOTATIONS**

**Executive director of the commission on higher education.** - Laws 1986, ch. 24, § 10 provides that all references to the executive secretary of the board of educational finance shall be construed to be references to the executive director of the commission on higher education. In subsequent sections, references to the executive director of the commission on higher education have been inserted in brackets by the compiler following references to the executive secretary of the board of educational finance. The bracketed material was not enacted by the legislature and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63A Am. Jur. 2d Public Officers and Employees §§ 23, 26.

67 C.J.S. Officers and Public Employees § 36.

## **21-1-31. Per diem and mileage allowance.**

Members of the board [commission] shall obtain no compensation for their services other than a per diem and mileage allowance authorized in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** 1941 Comp., § 55-2717, enacted by Laws 1951, ch. 190, § 4; 1953 Comp., § 73-29-18; Laws 1973, ch. 82, § 1.

### **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63A Am. Jur. 2d Public Officers and Employees §§ 460, 462.

Public officer's right and duties in respect of mileage and other allowances incident to duties of his office but which represented no actual expense or outlay by him, 81 A.L.R. 493.

Allowances of mileage or traveling expenses to officer as affected by use of his own vehicle for transportation, 112 A.L.R. 172.

67 C.J.S. Officers and Public Employees §§ 224, 225.

## **21-1-32. Purpose of act.**

It is the purpose of this act [21-1-32, 21-1-33 NMSA 1978] to provide for the compilation and utilization of an accounting, budgeting and reporting manual for institutions of higher learning for the purpose of ensuring full disclosure and consistent reporting of all financial data.

**History:** 1953 Comp., § 73-29-19, enacted by Laws 1974, ch. 30, § 1.

## **21-1-33. System of accounting and reporting; manual.**

A. The board of educational finance [commission on higher education] shall compile a manual prescribing a uniform classification of accounts and a uniform system for budgeting and reporting which includes the reporting of all funds available. Such manual shall apply to all institutions enumerated in Article XII, Section 11 of the constitution of New Mexico and all branches thereof except the New Mexico school for the visually handicapped and the New Mexico school for the deaf. The manual shall also apply to the New Mexico junior college. The uniform system for budgeting and reporting shall be implemented no later than July 1, 1974. The uniform classification of accounts required by this section shall be implemented no later than July 1, 1975.

B. Following approval by the legislative finance committee, the manual shall be reproduced by the board of educational finance [commission on higher education] and filed as required by the State Records Act [State Rules Act, 14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978]. Upon such filing the requirements set forth in the manual shall constitute regulations of the board of educational finance [commission on higher education] and have the force of law. The board of educational finance [commission on higher education] shall review the manual annually. Sections of the manual may be revised or amended from time to time by the board of educational finance [commission on higher education] and such revisions or amendments shall become effective upon approval by the legislative finance committee, reproduction and filing as provided in this section.

C. All institutions to which this act [21-1-32, 21-1-33 NMSA 1978] applies shall comply with all of the requirements in the manual, submit reports to the board of educational finance [commission on higher education] as requested and furnish such additional information as the board of educational finance [commission on higher education] deems necessary.

**History:** 1953 Comp., § 73-29-20, enacted by Laws 1974, ch. 30, § 2.

## **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 2 Am. Jur. 2d Administrative Law §§ 92 to 137.

73 C.J.S. Public Administrative Law and Procedure §§ 87 to 102.

### **21-1-34. Educational television equipment replacement fund; disbursement.**

The "educational television equipment replacement fund" is created. The board of educational finance [commission on higher education] shall develop criteria and promulgate regulations for the disbursement of money in this fund for the replacement of equipment at educational television stations operated by institutions of higher education. Disbursement shall be made to the institutions by warrant of the department of finance and administration upon vouchers signed by the executive secretary of the board of educational finance [executive director of the commission on higher education]. It is the intent of the legislature that in subsequent years a specific line item for educational television replacement shall be included in the appropriations recommended for educational television by the board of educational finance [commission on higher education]. The appropriation to the fund in the General Appropriation Act of 1982 shall not revert to the general fund at the end of any fiscal year, and no subsequent appropriation to the fund shall revert unless it contains the

sentence "The appropriation to the educational television equipment replacement fund shall revert."

**History:** 1953 Comp., § 73-26-36, enacted by Laws 1977, ch. 330, § 1; 1983, ch. 66, § 1.

## ANNOTATIONS

**Bracketed material.** - See 21-1-26 and 21-1-30 NMSA 1978 and notes thereto.

**General Appropriation Act.** - The General Appropriation Act of 1982, referred to in the last sentence, is Laws 1982, ch. 4, §§ 1 to 8.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 74 Am. Jur. 2d Telecommunications § 192.

### **21-1-35. Sales by boards, officers or employees prohibited; parties to contracts receiving commission or profit; penalty.**

No board of regents of a state educational institution, no member of a board and no school official or teacher, either directly or indirectly, shall sell to any state educational institution that he is connected with by reason of being a member of a board of regents of a state educational institution or to any school official or teacher, any school books, school furniture, equipment, apparatus or any other kind of school supplies, sell property insurance or life insurance to any employee of that state educational institution or do any work under contract, nor shall any such board or members thereof or school officers or teachers receive any commission or profit on account thereof, and all such persons are prohibited from being parties directly or indirectly to any such contract or transaction; provided, that the provisions of this section shall not apply to contracts entered into pursuant to the provisions of the University Research Park Act [21-28-1 to 21-28-25 NMSA 1978]. Any person violating the provisions of this section shall be fined not exceeding one thousand dollars (\$1,000) or imprisoned not exceeding one year in the penitentiary of New Mexico or be fined and imprisoned as set forth in this section in the discretion of the court.

**History:** Laws 1923, ch. 148, § 1415; 1927, ch. 139, § 5; C.S. 1929, § 120-1415; 1941 Comp., § 55-715; Laws 1943, ch. 119, § 1; 1953 Comp., § 73-8-15; Laws 1979, ch. 17, § 1; 1989, ch. 264, § 29.

## ANNOTATIONS

**Cross-references.** - For Procurement Code, see 13-1-21 et seq. NMSA 1978.

**Purpose of 22-21-1 NMSA 1978 and this section** is to prevent a conflict of interest between school board members and the districts with which they are connected. State ex rel. Martinez v. Padilla, 94 N.M. 431, 612 P.2d 223 (1980).



**When sales by school board members permissible.** - Members of school boards could sell to schools under the jurisdiction of their boards, so long as the provisions of the former Public Purchases Act were complied with, which included purchases made in the regular course of business or upon competitive bids of not to exceed the regularly established prices and when such members received no compensation other than from profits from their business. 1957-58 Op. Att'y Gen. No. 5753.

**Where termination of employment required.** - Under this section in order for an enumerated individual to properly perform work or supply services by contract and which involve tasks other than those covered under his official capacity or employment, such person must first terminate his official position or employment prior to entering into any such contract. 1964 Op. Att'y Gen. No. 64-88.

**Where bus driver is board member.** - Should any school bus driver qualify and serve as a member of the board of education with whom he holds a contract, without first terminating the contract, such person would be in violation of this section. 1953-54 Op. Att'y Gen. No. 5727.

**And board member wants to be bus driver.** - A member of a local school district board may not enter into a contract with the school district to drive a school bus on behalf of the district. 1964 Op. Att'y Gen. No. 64-88.

**Where wife of board member is bus driver.** - No violation of this section would result where a school board transfers a school bus transportation contract to the wife of a member of the local board making such transfer, as the board member is neither directly nor indirectly working under contract to his school district and the contract is truly between the school board and the wife only, with the husband having no personal interest, pecuniary or otherwise, in the contract. 1971 Op. Att'y Gen. No. 71-36.

**Practice restricting bus drivers in place of purchasing gas prohibited.** - The practice of requiring certain district bus drivers to buy their gas at a school board member's gas station is exactly the type of improper conflict this section was designed to prohibit, and the activity does not fall within the "regular course of business," exception of 22-21-1B NMSA 1978. *State ex rel. Martinez v. Padilla*, 94 N.M. 431, 612 P.2d 223 (1980).

**Where truck route not permissible.** - It is not permissible for a member of the municipal school board to have a truck route for his school. 1935-36 Op. Att'y Gen. 125.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63A Am. Jur. 2d Public Officers and Employees §§ 321, 338 to 343, 411; 68 Am. Jur. 2d Schools § 57.

Relationship as disqualifying interest within statute making it unlawful for an officer to be interested in a public contract, 74 A.L.R. 792.

67 C.J.S. Officers and Public Employees §§ 204, 255 to 259; 78 C.J.S. Schools and School Districts § 279.

### **21-1-36. New Mexico cooperative education program; purpose.**

The purpose of the New Mexico cooperative education program is to provide an opportunity for students in New Mexico post-secondary educational institutions to combine academic and employment experience by creating and expanding cooperative education programs in New Mexico colleges and universities, thereby enhancing the educational benefits and job training received by students who participate in cooperative education. The program shall encourage cooperative education for students from groups most severely underrepresented in specified fields of study or employment, particularly women and minorities in engineering.

**History:** Laws 1988, ch. 117, § 1; 1993, ch. 236, § 1.

#### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, added the second sentence.

### **21-1-37. New Mexico cooperative education program created; administration; duties.**

There is created the "New Mexico cooperative education program" which shall be administered by the commission on higher education. The New Mexico cooperative education program shall supplement existing cooperative education programs to allow cooperative education to incorporate employment experience in rural areas, small businesses and fields not included in traditional campus-based programs. The commission shall establish procedures to identify employment opportunities for cooperative education throughout New Mexico in private, governmental and nonprofit sectors and shall work with the public post-secondary institutions to encourage involvement of students in the cooperative education program. The commission shall identify those groups of students and fields of study or employment for which the most severe underrepresentation exists and for which cooperative education shall be encouraged. The program shall include:

A. parallel cooperative education, in which students who are enrolled full-time in public post-secondary institutions may be employed a maximum of twenty hours in a career-related work assignment;

B. alternating cooperative education, in which students who are enrolled full-time in public post-secondary institutions may alternate employment in a career-related field with academic study; and

C. summer cooperative education, in which students who are enrolled full-time in public post-secondary institutions may be employed in a career-related work assignment during the summer months.

**History:** Laws 1988, ch. 117, § 2; 1993, ch. 236, § 2.

## **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, added the present fourth sentence.

### **21-1-38. Definition; requirements for adoption of investment policy for investing endowment funds.**

A. As used in this section:

(1) "endowment funds" means funds:

(a) acquired by gift by an educational institution with respect to which the donors or other outside agencies have stipulated as a condition of the gift, and the stipulation is expressed specifically in the gift instrument, that the principal is to be maintained and invested for the purpose of producing present and future income that may either be added to the principal or expended, and the maintenance of the principal may be either: 1) held inviolate and in perpetuity; or 2) expended after the passage of a stated period of time or upon the happening of a specified event; and

(b) notwithstanding the source of acquisition, that the governing board of the educational institution have determined and have designated by a written instrument, either revocable or irrevocable, to be retained for long-term investment; and

(2) "educational institution" means an educational institution designated in Article 12, Section 11 of the constitution of New Mexico, and any post-secondary educational institution, which term includes, but is not limited to, an academic, vocational, technical, business, professional or other school, college or university or other organization or person offering or purporting to offer courses, instruction, training or education through correspondence or in person, to any individual within this state over the compulsory school attendance age, if that post-secondary educational institution is directly supported in whole or in part by state or local taxation.

B. The board of finance, as that term is defined in Section 6-10-9 NMSA 1978, for each of the educational institutions:

(1) shall adopt regulations governing the investment of endowment funds by the institution's board of finance, which regulations shall provide at least for:

(a) the application of the investment standard described in Section 6-8-10 NMSA 1978 as the standard for evaluating an investment;

(b) the appointment of an investment advisory committee made up of individuals having demonstrated experience and skill in the field of the investment of endowment funds; and

(c) the development of a comprehensive investment policy for the investment of endowment funds by the institution, with the advice and upon the recommendation of the investment committee; and

(2) may employ an institutional endowment funds investment manager and delegate to him the power to make purchases, sales exchanges, investments and reinvestments of endowment funds.

**History:** Laws 1991, ch. 69, § 1.

### **ANNOTATIONS**

**Effective dates.** - Laws 1991, ch. 69 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

## **ARTICLE 1A UNIVERSITY ENDOWMENTS**

### **21-1A-1. Short title. (Effective until July 1, 2000.)**

This act [21-1A-1 to 21-1A-5 NMSA 1978] may be cited as the "University Endowment Act".

**History:** Laws 1989, ch. 390, § 1.

### **ANNOTATIONS**

**Delayed repeals.** - Laws 1989, ch. 390, § 6 repeals 21-1A-1 to 21-1A-5 NMSA 1978, as enacted by Laws 1989, ch. 390, §§ 1 to 5, effective July 1, 2000.

### **21-1A-2. Purpose. (Effective until July 1, 2000.)**

The purpose of the University Endowment Act [21-1A-1 to 21-1A-5 NMSA 1978] is to establish a fund for the purpose of matching donations to the public post-secondary education institutions of this state to be used for endowment programs of those institutions.

**History:** Laws 1989, ch. 390, § 2.

### **ANNOTATIONS**

**Delayed repeals.** - Laws 1989, ch. 390, § 6 repeals 21-1A-1 to 21-1A-5 NMSA 1978, as enacted by Laws 1989, ch. 390, §§ 1 to 5, effective July 1, 2000.

### **21-1A-3. Definitions. (Effective until July 1, 2000.)**

As used in the University Endowment Act [21-1A-1 to 21-1A-5 NMSA 1978]:

- A. "commission" means the commission on higher education;
- B. "donation" means a private bequest or gift to an institution which is available for purposes set forth in the University Endowment Act;
- C. "fund" means the university fund for endowments created by the University Endowment Act; and
- D. "institution" means the public post-secondary education institutions in this state.

**History:** Laws 1989, ch. 390, § 3.

### **ANNOTATIONS**

**Delayed repeals.** - Laws 1989, ch. 390, § 6 repeals 21-1A-1 to 21-1A-5 NMSA 1978, as enacted by Laws 1989, ch. 390, §§ 1 to 5, effective July 1, 2000.

### **21-1A-4. Fund created. (Effective until July 1, 2000.)**

There is created in the state treasury a fund which shall be known as the "university fund for endowments". The fund shall consist of any federal in lieu of taxes payment allocated to the state by reason of the waste isolation pilot project, undistributed annual balances and earnings of the fund and any donations made to the fund; except that any federal money provided to finance those state highway projects that are required or permitted by law and are eligible for federal reimbursement as authorized by federal waste isolation pilot project legislation shall not be allocated to the fund. Further, if the federal in lieu of taxes payment allocated to the state for the waste isolation pilot project is not segregated for specific purposes related to the waste isolation pilot project, then five-sixths of that allocated federal in lieu of taxes payment shall be allocated for highway projects required or permitted by law as authorized by federal waste isolation pilot project legislation and one-sixth of the allocated federal in lieu of taxes payment shall be deposited in the university fund for endowments. Money in the fund, except for investment by the state treasurer in short-term obligations of the United States, shall be applied only for the purpose of matching donations for the creation of endowments for professorships, lectureships, faculty chairs, scholarships and graduate fellowships. Money shall be disbursed from the fund only upon authorization of the commission. The money in the fund is appropriated for the purposes of the University Endowment Act [21-1A-1 to 21-1A-5 NMSA 1978].

**History:** Laws 1989, ch. 390, § 4; 1991, ch. 241, § 3.

## **ANNOTATIONS**

**Delayed repeals.** - Laws 1989, ch. 390, § 6 repeals 21-1A-1 to 21-1A-5 NMSA 1978, as enacted by Laws 1989, ch. 390, §§ 1 to 5, effective July 1, 2000.

**The 1991 amendment,** effective June 14, 1991, substituted "in lieu of taxes payment" for "money" throughout the section.

### **21-1A-5. Allocation of fund. (Effective until July 1, 2000.)**

A. By March 30 each year until 1998 the commission shall set aside for each institution of this state a tentative share of amounts available in the fund for matching funds which bears the same relation to the total amount available as the total full-time equivalent students in that institution at the end of the most recently completed school year bears to the total full-time equivalent students in all institutions at the end of the year. Any amount set aside for which an application is not approved by January 1 of any year or any amount for which the required donation has not been adopted shall be added to the amount available for applications for matching funds beginning April 1 of that year.

B. The amount in the fund on April 1, 1998 and on April 1, 1999 available for applications for matching shall be available to institutions which have not received approvals for matching funds in prior years equal to fifty percent of the amounts set aside for those institutions in those prior years. By March 30 of 1998 and March 30 of 1999 the commission shall set aside for each institution not having received approval for matching funds in prior years a share of the fund available for applications which bears the same relation to the total available for applications as the total full-time equivalent students in that institution at the end of the most recently completed school year bears to the total full-time equivalent students in all such institutions at that time.

C. In April of each year commencing in 1990 and ending in 1999, the commission shall consider applications by institutions for matching funds. Approval shall be conditioned upon the institution committing an amount from donations for endowments for a specific purpose equal to two-thirds of the match sought for that purpose from the fund. No institution shall receive all or any portion of the matching fund approved until that institution has notified the commission within two years of approval that it is in receipt of and has committed ninety percent of the required donation to the endowment sought for the specific purpose. If the matching donations sought by an institution are less than fifty thousand dollars (\$50,000) for a fiscal year, the commission shall approve only one application from that institution for that fiscal year. If the matching donations sought by an institution are fifty thousand dollars (\$50,000) or more, the commission may approve more than one application from that institution for a fiscal year.

D. The commission may adopt rules and regulations pertaining to the form for applications for annual allocations from the fund, provided that each application shall be

for a specific purpose and shall require the institution's commitment to use the allocation and the donations for that endowment purpose.

E. The endowment, including all donations and allocations from the fund, shall not be expended, but shall be invested by the institutions in accordance with the prudent man rule. The income from the investments shall be used by the institutions for the purpose of providing funds for professorships, lectureships, faculty chairs, scholarships and graduate fellowships.

F. The commission shall annually report to the legislature the amount of allocations from the fund for the previous fiscal year, the institutions to which the allocations were made, the unallocated balance remaining in the fund and the earned income from investment of the fund.

G. Upon the repeal of the University Endowment Act [21-1A-1 to 21-1A-5 NMSA 1978], the unallocated balance in the fund shall revert to the general fund.

**History:** Laws 1989, ch. 390, § 5.

## **ANNOTATIONS**

**Delayed repeals.** - Laws 1989, ch. 390, § 6 repeals 21-1A-1 to 21-1A-5 NMSA 1978, as enacted by Laws 1989, ch. 390, §§ 1 to 5, effective July 1, 2000.

## **ARTICLE 2 POST-SECONDARY EDUCATIONAL PLANNING**

### **21-2-1. Short title.**

Chapter 21, Article 2 NMSA 1978 may be cited as the "Post-Secondary Educational Planning Act".

**History:** 1953 Comp., § 73-44-1, enacted by Laws 1973, ch. 233, § 1; 1986, ch. 24, § 7.

### **21-2-2. Definitions.**

As used in the Post-Secondary Educational Planning Act [this article]:

A. "post-secondary education":

(1) means education, training or retraining for persons sixteen years of age or older who have graduated from secondary school or left elementary or secondary school without graduating from secondary school, which is designed to provide for such persons:

(a) adult basic education;

- (b) high school equivalency education;
- (c) prevocational education;
- (d) vocational education;
- (e) technical education;
- (f) general academic education;
- (g) undergraduate academic education leading to associate's and bachelor's degrees;
- (h) graduate academic education leading to master's and doctor's degrees;
- (i) undergraduate and graduate professional education leading to professional degrees;
- (j) continuing education; or
- (k) some combination of the above; and

(2) includes public, private, nonprofit and proprietary educational institutions and programs of the following types, among others:

- (a) technical and vocational institutes;
- (b) junior colleges;
- (c) branch community colleges;
- (d) colleges and universities;
- (e) post-secondary military institutes;
- (f) post-secondary vocational schools;
- (g) adult vocational and prevocational manpower and training programs;
- (h) programs designed to identify persons who can benefit from post-secondary education and to assist them in enrolling in appropriate programs; and
- (i) programs providing guidance, counselling and placement services for persons in connection with their participation in post-secondary education; and

B. "state commission" means the state commission on post-secondary education.

**History:** 1953 Comp., § 73-44-2, enacted by Laws 1973, ch. 233, § 2.



## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 1, 2; 68 Am. Jur. 2d Schools § 64.

14A C.J.S. Colleges and Universities §§ 2, 5; 78 C.J.S. Schools and School Districts § 56.

### **21-2-3. State commission created; designated members; designation of supplementary members for specific functions.**

There is created the "state commission on post-secondary education". The commission on higher education is designated the state commission. For the purposes of the Post-Secondary Educational Planning Act [this article], the commission on higher education, in functioning as the state commission, is charged with a concern for all types of post-secondary education and all types of educational institutions and programs as enumerated in Section 21-2-2 NMSA 1978. Whenever federal statutes and regulations so require, the state commission may request the governor to appoint, for specific functions relating to federally sponsored programs, supplementary members to the state commission, and members shall be appointed by the governor to fulfill those specific functions as requested. When sitting with the state commission, the supplementary members shall have, for purposes of the specific functions for which they were appointed, all the powers and perquisites of regular members of the state commission.

**History:** 1953 Comp., § 73-44-3, enacted by Laws 1973, ch. 233, § 3; 1986, ch. 24, § 8.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 3, 11.

14A C.J.S. Colleges and Universities §§ 14, 15.

### **21-2-4. State commission; appointment of committees and task forces.**

The state commission may establish committees or task forces, not necessarily consisting of commission members, and may use existing agencies or organizations to make studies, conduct surveys, submit recommendations or otherwise contribute expertise from the post-secondary educational institutions, programs, interest groups and segments of the society most concerned with a particular aspect of the state commission's work.

**History:** 1953 Comp., § 73-44-4, enacted by Laws 1973, ch. 233, § 4.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63A Am. Jur. 2d Public Officers and Employees § 97.

81A C.J.S. States § 120.

### **21-2-5. Statewide planning.**

The state commission shall carry out a continuing program of statewide planning for post-secondary education. Planning activities shall include:

- A. assessment of present and projected needs for the various types of post-secondary education in all parts of the state;
- B. assessment of existing capabilities and facilities for the provision of the various types of post-secondary education and the utilization of these capabilities and facilities;
- C. analysis of the effectiveness and productivity of post-secondary educational programs and an identification of marginal programs and of unnecessary or excessive duplication of programs;
- D. analysis of the most effective means of utilizing all existing institutions and programs to meet the present and projected needs for the various types of post-secondary education;
- E. identification of cases where expansion or improvement of existing institutions and programs, contraction or elimination of existing institutions and programs, and establishment of new institutions and programs are needed in order to meet the present and projected needs for post-secondary education on a statewide basis in an effective and efficient manner;
- F. identification of steps required to coordinate the activities of the various institutions and programs of post-secondary education in order that they will be most effective and efficient in meeting the statewide needs;
- G. development of strategies for infusing occupational education and career education into the educational system at all levels on an equal basis with traditional academic education;
- H. development of logical, consistent and equitable organizational and fiscal provisions for the operation of post-secondary education and for the effective utilization of federal, state and local funding available for such education;
- I. the making of specific recommendations to the cognizant governing authorities of post-secondary educational institutions and programs, as to the steps necessary to

adjust the operations of the particular institution or program in order that they will best serve a coordinated statewide system of post-secondary education meeting the statewide needs for post-secondary education;

J. the making of recommendations to appropriate state executive agencies and to the legislature regarding the legislation and the administrative actions necessary to implement a coordinated statewide system of post-secondary education;

K. the making of recommendations to the executive and to the legislature which provide consistent standards for determining the necessary appropriation from the state general fund to implement the planned system of post-secondary education. Such standards shall pertain to, but not necessarily be limited to:

(1) all income to the institution or to any connected corporation to the institution from any source whatsoever, except that gifts, donations, private endowments or other gratuities received by an institution shall not be used in any manner as a substitute for public funds;

(2) all balances whether fund balances or cash balances and the operational need for such balances;

(3) the consistent application of overhead income among institutions;

(4) full-time equivalent (FTE) student costs by level of instruction and subject area;

(5) an equitable distribution of funds to support research;

(6) expenditures and revenues necessary for operation of each auxiliary enterprise;

(7) the translation of institutional internal accounts to the board of educational finance budget forms;

(8) funding of intercollegiate athletics; and

(9) funding of institutional branches and other state vocational facilities; and

L. tuition equalization grants to students.

**History:** 1953 Comp., § 73-44-5, enacted by Laws 1973, ch. 233, § 5.

### **21-2-5.1. Funding formula.**

A. The commission on higher education shall develop a funding formula that will provide funding for each institution of higher education to accomplish its mission as determined by a statewide planning effort.

B. The commission on higher education may include factors in the funding formula which when implemented will achieve the following:

- (1) improvement of the quality of programs central to each institution's mission;
- (2) development and enhancement of programs geared to meet identifiable areas of need within the state including programs directed towards the specific needs of public schools;
- (3) elimination of unnecessary, unproductive or duplicative programs;
- (4) faculty salaries and benefits at a competitive level with similar institutions in similar states and nonteaching staff salaries and benefits at a competitive level with other similar public or private sector employment in the community in which the institution is situated;
- (5) funding that will recognize additional costs incurred through increases in enrollment;
- (6) funding of cost increases for equipment and equipment maintenance and library acquisitions and operations since the development of the prior funding formula;
- (7) funding of off-campus courses and other nontraditional course delivery systems at a level sufficient to allow their development;
- (8) provision of incentives to institutions to pursue private or alternative funding sources;
- (9) sharing of expertise, equipment and facilities and development of joint instructional programs, research and public service projects;
- (10) energy conservation; and
- (11) mechanisms to track expenditures to ensure greater accountability.

**History:** 1978 Comp., § 21-2-5.1, enacted by Laws 1988, ch. 164, § 1.

### **21-2-6. Statewide planning; participating agencies and persons.**

A. The state commission in carrying out its planning activities for post-secondary education shall consult with and invite the active participation of:

- (1) representatives of post-secondary educational institutions of the several types enumerated in Paragraph (2) of Subsection A of Section 21-2-2 NMSA 1978;
- (2) the state board of education;
- (3) the state department of public education;

- (4) representatives of public and private elementary and secondary schools;
- (5) the secretary of labor;
- (6) the tourism department;
- (7) the apprenticeship council;
- (8) the economic development department;
- (9) the state advisory council on vocational education;
- (10) the secretary of finance and administration or his designee;
- (11) persons familiar with the education needs of the disadvantaged, of the handicapped and of minority groups;
- (12) representatives of business, industry, organized labor and agriculture;
- (13) the general public; and
- (14) private in-state post-secondary institutions.

B. Whenever the planning activities carried out under the provisions of Section 21-2-5 NMSA 1978 are concerned with the types of post-secondary education enumerated in Subparagraphs (a) through (e) of Paragraph (1) of Subsection A of Section 21-2-2 NMSA 1978, the state commission shall directly involve the state board of education and the state department of public education in all planning activities.

**History:** 1953 Comp., § 73-44-6, enacted by Laws 1978, ch. 54, § 1; 1986, ch. 24, § 9; 1991, ch. 21, § 33.

### **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1978, ch. 54, § 1, repealed former 73-44-6, 1953 Comp. (former 21-2-6 NMSA 1978), relating to participating agencies and persons in statewide planning, and enacted a new 73-44-6, 1953 Comp.

**The 1991 amendment,** effective March 27, 1991, in Subsection A, substituted "labor" for "employment security" in Paragraph (5), substituted "tourism department" for "labor commissioner" in Paragraph (6), and deleted "and tourism" following "development" in Paragraph (8).

### **21-2-7. Annual report.**

The state commission shall submit an annual report to the governor and the legislature prior to November 15 each year. Such report shall describe the planning activities undertaken, present data on the status of all types of post-secondary education and set forth all recommendations developed under Section 5, Items I, J and K [21-2-5 I, J and K NMSA 1978] of the Post-Secondary Educational Planning Act. Prior to the final adoption of the annual report the state commission shall distribute a draft of the report to all institutions and programs of the types enumerated in Section 2A(2) [21-2-2A(2) NMSA 1978] and to representatives of all other interests enumerated in Section 6 and shall then hold a hearing at which all such institutions, programs and interests may comment upon the draft report.

**History:** 1953 Comp., § 73-44-7, enacted by Laws 1973, ch. 233, § 7.

### ANNOTATIONS

**Compiler's note.** - Section 6 of the Post-Secondary Educational Planning Act, referred to near the middle of the last sentence, was compiled as 21-2-6 NMSA 1978, and was repealed by Laws 1978, ch. 54, § 1, which enacted a new 21-2-6 NMSA 1978 relating to the same subject matter and containing only minor differences from the former 21-2-6 NMSA 1978.

### **21-2-8. Designation of state commission as agency required for certain federal programs.**

The state commission is designated the agency required under the provisions of Section 1202 of the Higher Education Act of 1965, as amended (PL 92-318, June 23, 1972). After July 1, 1973, the state commission shall be the successor agency to those agencies required and designated under Sections 105, 603 and 704 of the Higher Education Act of 1965, as amended (20 USCA Sections 1005, 1123 and 715). The state commission is designated the agency to administer any programs for the benefit of post-secondary education or post-secondary education students provided by acts of congress in the future and requiring a state-level agency for their administration, except as otherwise provided by law.

**History:** 1953 Comp., § 73-44-8, enacted by Laws 1973, ch. 233, § 8.

### ANNOTATIONS

**Compiler's note.** - Section 1202 of the Higher Education Act of 1965, as amended by PL 92-518, June 23, 1972, was compiled at 20 U.S.C. 1142a but was repealed by PL 96-374.

Section 105 of the Higher Education Act of 1965, as amended, was compiled at 20 U.S.C. 1005 but was omitted in the general revision by PL 99-498.

Section 704 of the Higher Education Act of 1965, as amended, was compiled at 20 U.S.C. 1132a-3 but was omitted in the general revision by PL 96-374.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 33.

14A C.J.S. Colleges and Universities § 7.

### **21-2-9. Designation of state agency required for certain federal occupational education programs.**

The state board of education is designated as the state agency required under the provisions of Section 1055(a) of the Higher Education Act of 1965, as amended (PL 92-318, June 23, 1972) and shall exercise all the powers and perform all the duties required of that state agency. In exercising such powers and performing such duties, the state board of education shall afford the state commission, on a regular basis, an opportunity to review and comment upon any policies, procedures, programs or allocation of resources prior to their final adoption.

**History:** 1953 Comp., § 73-44-9, enacted by Laws 1973, ch. 233, § 9.

#### **ANNOTATIONS**

**Compiler's note.** - Section 1055(a) of the Higher Education Act of 1965, as amended by PL 92-318, June 23, 1972, was compiled at 20 U.S.C. 1135b-4(a), and was repealed by Pub. L. 94-482, title I, § 176(c).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 33.

14A C.J.S. Colleges and Universities § 7.

## **ARTICLE 3 CERTAIN STATE POST-SECONDARY SCHOOLS**

### **21-3-1. [Names of Las Vegas and Silver City schools.]**

The state educational institution at Las Vegas, shall be known by the name and title of the New Mexico normal university [New Mexico highlands university]; and the state educational institution at Silver City, shall be known by the name and title of the New Mexico normal school [western New Mexico university].

**History:** Laws 1893, ch. 19, § 1; C.L. 1897, § 3650; Laws 1899, ch. 18, § 1; Code 1915, § 4974; C.S. 1929, § 120-1901; 1941 Comp., § 55-2101; 1953 Comp., § 73-22-1.

## ANNOTATIONS

**Cross-references.** - For New Mexico highlands university, see 21-3-2 NMSA 1978.

For western New Mexico university, see 21-3-3 NMSA 1978.

For eastern New Mexico university, see 21-3-29 NMSA 1978.

For designation as state educational institutions, see N.M. Const., art. XII, § 11.

**Bracketed material.** - The bracketed material in this section was inserted by the compiler, as N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changes the name of the New Mexico normal school to the New Mexico western college, which was again changed by constitutional amendment of November 3, 1964, to western New Mexico university. See also 21-3-3 NMSA 1978. That constitutional provision also changes the name of New Mexico normal university to New Mexico highlands university. See also 21-3-2 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

**Compiler's note.** - This section bore no history line in the 1915 Code, but the compilers thereof appear to have correlated the two acts now cited to the history line to create it.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 14A C.J.S. Colleges and Universities § 9.

### **21-3-2. [Use of name "New Mexico highlands university" authorized.]**

That except for financial transactions the use of the name New Mexico highlands university is hereby permitted in lieu of New Mexico normal university, for common convenience.

**History:** Laws 1941, ch. 130, § 1; 1941 Comp., § 55-2102; 1953 Comp., § 73-22-2.

## ANNOTATIONS

**Appropriations.** - Laws 1993, ch. 366, § 3WW, effective June 18, 1993, appropriates \$5,000 from the general fund to New Mexico highlands university in the eighty-first fiscal year to provide for storage and preservation of rare books. Any unexpended or unencumbered balance remaining at the end of the eighty-first fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 5 provides for the severability of that act if any part or application thereof is held invalid.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 14A C.J.S. Colleges and Universities § 9.



### **21-3-3. Use of name "western New Mexico university" authorized; exceptions.**

For all purposes excepting suits, state lands, funds and appropriations the name "western New Mexico university" is hereby authorized for use in lieu of the name New Mexico western college.

**History:** Laws 1923, ch. 22, § 1; C.S. 1929, § 120-1902; 1941 Comp., § 55-2103; 1953 Comp., § 73-22-3; Laws 1963, ch. 3, § 1.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 14A C.J.S. Colleges and Universities § 9.

### **21-3-4. [Boards of regents; appointment and qualifications of members; corporate powers.]**

Said normal schools [universities] shall each be controlled and managed by a board of regents consisting of five members to be appointed by the governor, by and with the advice and consent of the senate for a term of four years, and not more than three of whom shall belong to the same political party at the time of their appointment. The members of such board shall be qualified electors of the state and owners of real estate therein. Each such board shall constitute a body politic and corporate, and shall have power to sue and be sued, to contract and be contracted with, and the title to all property belonging to each such normal school shall be vested in the respective corporate bodies and their successors.

**History:** Laws 1893, ch. 19, § 3; C.L. 1897, § 3652; Code 1915, § 4975; C.S. 1929, § 120-1905; 1941 Comp., § 55-2104; 1953 Comp., § 73-22-4.

#### **ANNOTATIONS**

**Cross-references.** - For board of regents of eastern New Mexico university, see 21-3-30 NMSA 1978.

As to interest in contract for supplies, penalty, see 21-1-35 NMSA 1978.

**Appropriations.** - Laws 1994, ch. 147, § 3EE, effective March 9, 1994, appropriates \$100,000 from the general fund to the regents of New Mexico highlands university for expenditure in the eighty-second and eighty-third fiscal years for golf course improvements. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Subsections FFFFFFFF, JJJJJJJ, OOOOOOO, QQQQQQQ, and RRRRRRR of Laws 1994, ch. 147, § 6, effective March 9, 1994, appropriate various amounts from the

general fund to the board of regents of New Mexico highlands university for expenditure in the eighty-second through eighty-fifth fiscal years for various purposes. Unexpended or unencumbered balances remaining shall revert to the general fund.

Laws 1994, ch. 147, § 6HHHHHHH, effective March 9, 1994, appropriates \$6,200,000 from the general fund to the regents of western New Mexico university for expenditure in the eighty-second through eighty-fifth fiscal years for library renovation including the construction of a media services office and classrooms to support instruction. Any unexpended or unencumbered balance remaining at the end of the eighty-fifth fiscal year shall revert to the general fund.

Laws 1994, ch. 147, § 7NN, effective March 9, 1994, appropriates \$42,000 from the general fund to the board of regents of western New Mexico university for expenditure in the eighty-third fiscal year for the nursing program. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall not revert to the general fund.

Laws 1994, ch. 148, § 47, effective March 9, 1994, appropriates \$2,250,000 from the general fund to the board of regents of New Mexico highlands university for expenditure in the eighty-second through eighty-fourth fiscal years for renovating the natatorium building at New Mexico highlands university in Las Vegas in San Miguel county. Any unexpended or unencumbered balance remaining at the end of the eighty-fourth fiscal year shall revert to the general fund.

**Scope of powers.** - The legislature has expressly recognized the authority of institutions of higher learning to receive benefits and donations from the United States and from private individuals and corporations; to buy, sell, lease or mortgage real estate; and to do all things, which in the opinions of the respective boards of regents, will be for the best interests of the institutions in the accomplishment of their purposes or objects and, therefore, the legislature lacks authority to appropriate these funds or to control the use thereof through the power of appropriation. *State ex rel. Sego v. Kirkpatrick*, 86 N.M. 359, 524 P.2d 975 (1974).

**Scope of powers to contract.** - Eastern New Mexico University, through its regents, has authority to contract and be contracted with and where the issue simply involves the law of contracts the public or private character of the university is not the controlling factor. *Hillis v. Meister*, 82 N.M. 474, 483 P.2d 1314 (Ct. App. 1971).

**Effect where handbook part of contract.** - Where the undisputed evidence shows a course of conduct that made the university handbook a part of plaintiff's contract as the handbook was treated as controlling the relationship between the university administration and its faculty, then a failure of the university administration to follow these procedures constituted a breach of contract by the university. *Hillis v. Meister*, 82 N.M. 474, 483 P.2d 1314 (Ct. App. 1971).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 3, 5, 7, 11, 35, 39; 68 Am. Jur. 2d Schools §§ 23, 27.

Constitutionality of statute requiring or limiting, selection or appointment of public officers or agents from members of a political party or parties, 140 A.L.R. 471, 170 A.L.R. 198.

Tort liability of college, university, fraternity, or sorority for injury or death of member or prospective member by hazing or initiation activity, 68 A.L.R.4th 228.

14A C.J.S. Colleges and Universities §§ 14 to 17; 29 C.J.S. Elections § 1(7); 67 C.J.S. Officers and Public Employees §§ 36, 40 to 43, 66, 69.

### **21-3-5. [Election of officers; bond of secretary-treasurer.]**

Each of such boards shall annually elect one member thereof as president and another member as secretary and treasurer, and such officers shall hold their offices until their successors shall be elected and qualified. The secretary and treasurer shall execute his bond to the state of New Mexico for not less than twenty thousand dollars [(\$20,000)], with at least two freehold sureties, residents of the state, which shall be conditioned for the faithful performance of the duties of such secretary and treasurer, and shall be approved by the governor and filed in the office of the secretary of state.

**History:** Laws 1893, ch. 19, § 4; C.L. 1897, § 3653; Code 1915, § 4976; C.S. 1929, § 120-1906; 1941 Comp., § 55-2105; 1953 Comp., § 73-22-5.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63A Am. Jur. 2d Public Officers and Employees §§ 487, 488.

Malfeasance in office, public officer's bond as subject to forfeiture for, 4 A.L.R.2d 1348.

14A C.J.S. Colleges and Universities § 16.

### **21-3-6. [Meeting of boards of regents; quorum.]**

Each of said boards of regents shall hold at least four meetings during each year at their respective normal schools [universities] for the purpose of discharging their duties, the time of such meetings to be fixed by such board, and the president of such board may call special meetings thereof when in his judgment the business of such schools demands the same. Three members of such boards shall constitute a quorum for the transaction of business.

**History:** Laws 1893, ch. 19, § 5; C.L. 1897, § 3654; Code 1915, § 4977; C.S. 1929, § 120-1907; 1941 Comp., § 55-2106; 1953 Comp., § 73-22-6.

### **21-3-7. [Powers of boards of regents; employment of superintendent or principal and teachers; courses of study; admission; nonresident tuition.]**

Said boards of regents shall have full and complete power and control over their respective normal schools [universities]. Each board shall employ a superintendent or principal for such school who shall have the supervision and control of the school under such rules and regulations as may be provided by such board. Such board shall determine and provide as to what branches of learning shall be taught in such school and the classification and order of the same, and shall also direct the number of teachers that shall be employed, and shall determine the compensation to be paid to the superintendent and teachers. Such board shall also prescribe upon what terms and conditions pupils shall be admitted to such school, but no pupils shall be admitted who are not residents of this state, except on payment of a tuition fee to be prescribed by the board of regents for each term.

**History:** Laws 1893, ch. 19, § 6; C.L. 1897, § 3655; Laws 1899, ch. 18, § 4; Code 1915, § 4978; C.S. 1929, § 120-1908; 1941 Comp., § 55-2107; 1953 Comp., § 73-22-7.

#### **ANNOTATIONS**

**Cross-references.** - For tuition charges, see 21-1-2 NMSA 1978.

**Compiler's note.** - The last sentence, insofar as it relates to tuition, may be superseded by 21-1-2 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 5, 11, 17, 19, 21, 23, 33 to 35.

Mandamus to compel enrollment or restoration of pupil in state school or university, 39 A.L.R. 1019.

Validity and application of provisions governing determination of residency for purpose of fixing fee differential of out-of-state students in public college, 56 A.L.R.3d 641.

College's power to revoke degree, 57 A.L.R.4th 1243.

14A C.J.S. Colleges and Universities §§ 15 to 38.

### **21-3-8. [Duties of board officers.]**

The president of each board shall preside at all meetings thereof and shall sign the proceedings of the same, and shall sign all orders directed by the board to be drawn upon the treasurer thereof for the payment of money. In the absence of the president at any meeting of the board, the members present shall elect a president pro tem. The

secretary of the board shall have charge of the records, books and papers belonging to such board, and shall keep a record of the proceedings of such board and shall issue and attest all orders directed by the board to be drawn upon the treasurer of the same for the payment of money. Such secretary, as treasurer, shall have the care and custody of all moneys belonging to such school, and he shall pay out the same only upon orders drawn upon him by direction of the board of regents and signed by the president thereof; and at each regular meeting of such board such treasurer shall submit to the same a statement showing a full account of the condition of financial affairs of such school.

**History:** Laws 1893, ch. 19, § 7; C.L. 1897, § 3656; Code 1915, § 4979; C.S. 1929, § 120-1909; 1941 Comp., § 55-2108; 1953 Comp., § 73-22-8.

### **21-3-9. [New Mexico highlands university; school of manual training; kindergarten training school.]**

There are hereby established as branches or departments of said New Mexico normal university [New Mexico highlands university], to be carried on at Las Vegas, a school of manual training for the state of New Mexico, the object of which shall be to instruct pupils, and to train and qualify teachers to teach the use of hands and tools in the various useful arts of practical value to the people of the state; and also a kindergarten training school to qualify teachers of the state to use that system of teaching in the primary schools.

**History:** Laws 1899, ch. 18, § 2; Code 1915, § 4982; C.S. 1929, § 120-1914; 1941 Comp., § 55-2111; 1953 Comp., § 73-22-11.

#### **ANNOTATIONS**

**Cross-references.** - For commission on higher education, see 21-1-26 to 21-1-31 NMSA 1978.

**Bracketed material.** - See same catchline in notes to 21-3-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 14A C.J.S. Colleges and Universities §§ 35, 37, 38.

### **21-3-10. [New Mexico highlands university to be nonsectarian.]**

Said institution shall be forever strictly nonsectarian in its character and management, and no creed or system of religion shall be taught, practiced or exercised in it.

**History:** Laws 1899, ch. 18, § 3; Code 1915, § 4983; C.S. 1929, § 120-1915; 1941 Comp., § 55-2112; 1953 Comp., § 73-22-12.

#### **ANNOTATIONS**

**Cross-references.** - For prohibition of religious tests and services in schools, see N.M. Const., art. XII, § 9.

As to free public schools conducted in English, see N.M. Const., art. XXI, § 4.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 16 Am. Jur. 2d Constitutional Law §§ 465, 466, 481.

Sectarianism in schools, 5 A.L.R. 866, 141 A.L.R. 1144, 45 A.L.R.2d 742.

14A C.J.S. Colleges and Universities § 7; 16A C.J.S. Constitutional Law §§ 518 to 521, 523.

### **21-3-11. [Acquisition of land for New Mexico highlands university.]**

That the board of regents of the New Mexico normal university [New Mexico highlands university] is hereby given the right and authority to acquire by purchase or donation any and all land which may be necessary for campus and building site purposes.

**History:** Laws 1927, ch. 60, § 1; C.S. 1929, § 120-1911; 1941 Comp., § 55-2113; 1953 Comp., § 73-22-13.

## **ANNOTATIONS**

**Bracketed material.** - See same catchline in notes to 21-3-1 NMSA 1978.

**Compiler's note.** - Laws 1937, ch. 95, § 1, ratified and confirmed any and all deeds, grants and conveyances heretofore made by any city, town or village in this state to the state of New Mexico, conveying land or other property for the use of any institution of this state.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 32 to 35.

14A C.J.S. Colleges and Universities §§ 10, 11, 17.

### **21-3-12. [Right of eminent domain by New Mexico highlands university regents unaffected.]**

That the provisions of the foregoing section [21-3-11 NMSA 1978] shall in no way change, alter or amend the right given the board of regents of the New Mexico normal university [New Mexico highlands university] to condemn land for university purposes as is now provided by the laws of the state of New Mexico.

**History:** Laws 1927, ch. 60, § 2; C.S. 1929, § 120-1912; 1941 Comp., § 55-2114; 1953 Comp., § 73-22-14.

## ANNOTATIONS

**Bracketed material.** - See same catchline in notes to 21-3-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 26 Am. Jur. 2d Eminent Domain § 61.

Right to condemn property owned or used by private educational, charitable or religious organization, 80 A.L.R.3d 833.

### **21-3-13. [Borrowing by New Mexico highlands university for building, land acquisition or bond retirement purposes.]**

That for the purpose of erecting, altering, improving, furnishing and equipping any necessary buildings or structures at the New Mexico normal university [New Mexico highlands university], or acquiring any necessary land for the use of said institution, or for retiring the whole or any part of any series bonds, previously issued by said institution under the provisions of law or for any or all of such purposes, the board of regents or directors of the New Mexico normal university [New Mexico highlands university] is hereby authorized to borrow money for such purposes in conformity with the terms of this act [21-3-13 to 21-3-28 NMSA 1978].

**History:** Laws 1941, ch. 208, § 1; 1941 Comp., § 55-2115; 1953 Comp., § 73-22-15.

## ANNOTATIONS

**Cross-references.** - For authority of state treasurer to purchase bonds, see 6-12-3 NMSA 1978.

As to regulations concerning sale of bonds, see 6-12-3 to 6-12-5 NMSA 1978.

**Bracketed material.** - See same catchline in notes to 21-3-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 35.

14A C.J.S. Colleges and Universities § 17.

### **21-3-14. [Resolution of New Mexico highlands university regents.]**

That whenever the said board of regents of the New Mexico normal university [New Mexico highlands university], by the affirmative vote of a majority of its members, duly entered in the minutes of said board, shall by resolution determine that it is necessary to erect, alter, improve, furnish or equip any building or buildings, structure or structures at said university, or acquire any land for use thereof, or to retire the whole or any part of any series of bonds previously issued in conformity with law or for any or all of said purposes, said board is hereby empowered and authorized to issue and sell, subject to

the terms of this act [21-3-13, 21-3-14, 21-3-16 to 21-3-28 NMSA 1978], building and improvement bonds of said New Mexico normal university [New Mexico highlands university].

**History:** Laws 1941, ch. 208, § 2; 1941 Comp., § 55-2116; 1953 Comp., § 73-22-16.

### **ANNOTATIONS**

**Bracketed material.** - See same catchline in notes to 21-3-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations § 120.

14A C.J.S. Colleges and Universities §§ 4, 10.

### **21-3-15. Bonds; form; conditions.**

Bonds issued pursuant to Chapter 21, Article 3 NMSA 1978 shall be in such form and denominations as the board determines, due and payable not later than fifty years from date of issue. The bonds shall be payable in consecutive order commencing not later than two years from date of issue.

**History:** 1978 Comp., § 21-3-15, enacted by Laws 1983, ch. 265, § 37.

### **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1983, ch. 265, § 37, repeals former 21-3-15 NMSA 1978, relating to form of bonds of New Mexico highlands university, and enacts the above section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 195, 196, 202, 205, 399 to 453.

Power and discretion of officer or board authorized to issue bonds of governmental units as regards terms or conditions to be included therein, 119 A.L.R. 190.

11 C.J.S. Bonds § 100; 47 C.J.S. Interest and Usury; Consumer Credit § 18.

### **21-3-16. [Sale of New Mexico highlands university bonds; purchase by state treasurer; acceptance by public officials.]**

That said bonds may be sold at public or private sale, in the discretion of the board of regents, provided, however, that no sale shall be made for less than the par value of the bonds, plus accrued interest from the last preceding interest date to the date of delivery of said bonds. Before delivery of the bonds to the purchaser all matured interest coupons shall be detached and cancelled. The state treasurer may, with the approval of



the state board of finance and other officials whose approval may be required by law for the investment of public funds, purchase such bonds at par and accrued interest to date of delivery of such investment. Such bonds shall be accepted at their par value by all public officials in this state as security for the repayment of all deposits of public monies of this state, or of any county, municipality or public institution thereof, and as security for the faithful performance of any obligations or duty to guarantee the performance of which such officials are now authorized by law to accept a deposit of the bonds of this state or of the United States of America.

**History:** Laws 1941, ch. 208, § 4; 1941 Comp., § 55-2118; 1953 Comp., § 73-22-18.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 120, 228, 229, 240, 452, 453, 488.

Sale of municipal or other public bonds at less than par or face value, 91 A.L.R. 7, 162 A.L.R. 396.

11 C.J.S. Bonds §§ 71, 83.

### **21-3-17. [Disposition of proceeds of New Mexico highlands university bonds; building and improvement fund; interest and retirement fund; disbursement; sale expenses.]**

That the proceeds from the sale of said bonds shall be paid to the secretary and treasurer of the board of regents issuing same, and shall by such secretary and treasurer be placed in a separate fund to be known as "building and improvement fund" to be used and paid out only for the specific purposes in this act [21-3-13, 21-3-14, 21-3-16 to 21-3-28 NMSA 1978] enumerated upon order of the board, or checks signed by the president of the board of regents and by the secretary and treasurer thereof, except such portion thereof as may have been received on account of accrued interest on said bonds to date of delivery, which amount shall be placed in the "interest and retirement fund" for the liquidation of said bonds as hereinafter provided. The cost of preparing, advertising and selling said bonds, including any necessary expense for legal services thereon, shall be paid out of the proceeds of the sale of said bonds.

**History:** Laws 1941, ch. 208, § 5; 1941 Comp., § 55-2119; 1953 Comp., § 73-22-19.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 33.

14 C.J.S. Colleges and Universities § 14.

### **21-3-18. [Creation of interest and retirement fund by New Mexico highlands university regents; deposits.]**

That the board of regents issuing said bonds, shall, at the time of issuing said bonds, establish for the payment of the principal and interest thereof a fund to be known as "interest and retirement fund" into which fund said board shall immediately place a sum not less than the amount necessary to pay the interest and maturing principal of said bonds for the ensuing twelve months, and annually thereafter shall continue to place in said fund a sufficient amount to pay principal and interest maturing in the succeeding twelve months.

**History:** Laws 1941, ch. 208, § 6; 1941 Comp., § 55-2120; 1953 Comp., § 73-22-20.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations § 266.

### **21-3-19. [Protection of interest and retirement fund of New Mexico highlands university.]**

That for the faithful and prompt payment of all interest and principal of said bonds as and when the same shall mature according to the tenor thereof, the issue thereof shall constitute an irrevocable pledge by said board of so much of each year's income from the permanent funds of such New Mexico normal university [New Mexico highlands university], so issuing bonds hereunder, in the hands of the treasurer, as shall be needed to provide the "interest and retirement fund" herein mentioned, for the ensuing year, and at all times fully and faithfully to keep the same in not less than the amount necessary to pay the interest and principal maturing as aforesaid; and in addition thereto the issue of said bonds shall constitute an irrevocable pledge by said board of so much of each year's income from the income and current fund derived from the lease of such of said institution's lands as remain unsold, as may be necessary to fully protect the "interest and retirement fund" for the ensuing year, and keep the same at all times in proper amount as herein provided.

**History:** Laws 1941, ch. 208, § 7; 1941 Comp., § 55-2121; 1953 Comp., § 73-22-21.

#### **ANNOTATIONS**

**Bracketed material.** - See same catchline in notes to 21-3-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations § 199.

## **21-3-20. [Income of permanent land funds of New Mexico highlands university pledged.]**

That from and after the passage and approval of this act, all permanent funds thereafter derived from the sale or disposition of the lands held in trust for New Mexico normal university [New Mexico highlands university] shall be invested in the same manner as other permanent funds of the state of New Mexico are authorized to be invested, the income from which shall likewise form a part of the pledged income for the payment of principal and interest of bonds issued by the board of regents of the New Mexico normal university [New Mexico highlands university] under the provisions of this act [21-3-13, 21-3-14, 21-3-16 to 21-3-28 NMSA 1978].

**History:** Laws 1941, ch. 208, § 8; 1941 Comp., § 55-2122; 1953 Comp., § 73-22-22.

### **ANNOTATIONS**

**Bracketed material.** - See same catchline in notes to 21-3-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 35.

14A C.J.S. Colleges and Universities § 14.

## **21-3-21. [Interest payments for New Mexico highlands university bonds.]**

That it shall be the duty of the secretary and treasurer of the board of regents of the New Mexico normal university [New Mexico highlands university], where bonds have been issued hereunder, to forward to the bank at which said bonds are payable, prior to the date on which any coupons or any principal amount of any of said bonds shall mature, out of the "interest and retirement fund," a sufficient sum of money to meet said coupons and maturing bonds as the same become due, plus any service charge which said bank shall be entitled to receive for its services.

**History:** Laws 1941, ch. 208, § 9; 1941 Comp., § 55-2123; 1953 Comp., § 73-22-23.

### **ANNOTATIONS**

**Bracketed material.** - See same catchline in notes to 21-3-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 197, 198.

11 C.J.S. Bonds § 93.

## **21-3-22. [Payments to New Mexico highlands university interest and retirement fund by state treasurer.]**

That it is hereby made the duty of the state treasurer of the state of New Mexico, upon receiving written notice from the secretary and treasurer of the board of regents of the New Mexico normal university [New Mexico highlands university] that such board has issued bonds as herein provided, forthwith to forward and pay over to the secretary and treasurer of such board out of the income from the permanent funds of such institution, a sum sufficient to make and establish the interest and retirement fund, as herein provided, and annually thereafter to pay over a sufficient amount for said purpose, to the end that said interest and retirement fund shall at all times be kept in the proper amount. In the event there should not be sufficient undistributed income from permanent funds of such institution, then said state treasurer shall use so much of the income and current fund of such institution in his hands as shall be necessary to establish and at all times maintain said interest and retirement fund.

**History:** Laws 1941, ch. 208, § 10; 1941 Comp., § 55-2124; 1953 Comp., § 73-22-24.

### **ANNOTATIONS**

**Bracketed material.** - See same catchline in notes to 21-3-1 NMSA 1978.

## **21-3-23. [Series of New Mexico highlands university bonds; restrictions.]**

That in the event the board of regents of the New Mexico normal university [New Mexico highlands university] should find it advisable to issue bonds under this act [21-3-13, 21-3-14, 21-3-16 to 21-3-28 NMSA 1978] in more than one series, or at different times, for any or all of the purposes aforesaid, then each series of said bonds shall be designated by the letter "A," "B" or in some other designation, to the end that each series shall be kept separate, and all of the requirements of this act shall apply to and be faithfully followed, done and carried out as to each of said series; provided, however, that the board of regents of the New Mexico normal university [New Mexico highlands university] shall have no power to issue bonds hereunder, the aggregate interest and principal requirements for which, for any year, together with the aggregate principal and interest requirements for all outstanding bonds of such board for such year, shall exceed the amount of the income from the permanent funds and from the aforesaid income and current fund of said New Mexico normal university [New Mexico highlands university], received by the state treasurer for the fiscal year next preceding the fiscal year in which any bonds of such New Mexico normal university [New Mexico highlands university] are authorized to be issued by resolution of the board of regents.

**History:** Laws 1941, ch. 208, § 11; 1941 Comp., § 55-2125; 1953 Comp., § 73-22-25.

### **ANNOTATIONS**

**Bracketed material.** - See same catchline in notes to 21-3-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 35.

14A C.J.S. Colleges and Universities § 14.

### **21-3-24. [Tax exemption of New Mexico highlands university bonds.]**

That bonds issued under the provisions of this act [21-3-13, 21-3-14, 21-3-16 to 21-3-28 NMSA 1978], and the income thereupon being for the sole purposes specified in Section 1 [21-3-13 NMSA 1978] hereof, shall forever be and remain free and exempt from taxation by the state of New Mexico or any subdivision thereof.

**History:** Laws 1941, ch. 208, § 12; 1941 Comp., § 55-2126; 1953 Comp., § 73-22-26.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 71 Am. Jur. 2d State and Local Taxation §§ 495, 526.

Constitutional enumeration of subjects of tax exemption as affecting power of legislature to free government securities or property from taxation, 9 A.L.R. 436.

84 C.J.S. Taxation § 260.

### **21-3-25. [Restrictions on use of New Mexico highlands university bond proceeds.]**

That none of the funds derived from the sale of bonds issued under the provisions of this act [21-3-13, 21-3-14, 21-3-16 to 21-3-28 NMSA 1978], except so much thereof as shall be necessary to defray the costs of the issuance thereof and the accrued interest from the date thereof to the time of delivery, shall ever be used or expended for any purpose other than those for which authority to issue the same by this act is given.

**History:** Laws 1941, ch. 208, § 13; 1941 Comp., § 55-2127; 1953 Comp., § 73-22-27.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 35.

14A C.J.S. Colleges and Universities § 14.

### **21-3-26. [State board of finance approval of New Mexico highlands university bonds.]**

That no bonds shall be finally issued and sold under the provisions of this act [21-3-13, 21-3-14, 21-3-16 to 21-3-28 NMSA 1978] until the approval of such issue shall have been had by the majority vote of the state board of finance in a regular or called meeting.

**History:** Laws 1941, ch. 208, § 14; 1941 Comp., § 55-2128; 1953 Comp., § 73-22-28.

### **21-3-27. [Lien of New Mexico highlands university bonds.]**

All bonds of the same issue under this act [21-3-13, 21-3-14, 21-3-16 to 21-3-28 NMSA 1978] shall have a prior and paramount lien upon the income from the permanent funds and upon the income and current fund of the institution by which said bonds were issued, under and ahead of all bonds of any series secured by a pledge of said income, and said fund which may be subsequently authorized and over and ahead of all other claims or obligations of any nature against said income and said fund subsequently arising or subsequently incurred. All bonds of the [same] payment series issued under this act shall be equally and ratably secured without priority by reason of number, date of bonds, sale, execution or delivery, by a lien on said income and said fund in accordance with this act.

**History:** Laws 1941, ch. 208, § 15; 1941 Comp., § 55-2129; 1953 Comp., § 73-22-29.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Liens and Encumbrances § 5.

53 C.J.S. Liens §§ 4 to 17.

### **21-3-28. [Refunding bonds issued by New Mexico highlands university.]**

That where bonds heretofore issued by New Mexico normal university [New Mexico highlands university] are held by the state treasurer and which were purchased with the permanent funds of such institution and held for its account, and which by their terms are not now subject to call for the retirement or refunding, the board of regents of New Mexico normal university [New Mexico highlands university], with the approval of the state finance board, may refund such bonds under the provisions of this act [21-3-13, 21-3-14, 21-3-16 to 21-3-28 NMSA 1978] by the issuance of refunding bonds for such time and at a rate of interest not exceeding the interest provided in the original issue as may be determined by such board of regents.

**History:** Laws 1941, ch. 208, § 16; 1941 Comp., § 55-2130; 1953 Comp., § 73-22-30.

### ANNOTATIONS

**Bracketed material.** - See same catchline in notes to 21-3-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 261 to 269.

### **21-3-29. [Eastern New Mexico university; establishment.]**

Pursuant to Section 12 of Article XII of the constitution of New Mexico, there is hereby created, located and established at Portales, Roosevelt county, New Mexico, the institution of learning to be known as the eastern New Mexico normal school [eastern New Mexico university]; said normal school shall be entitled to all of the benefits accruing from the provision of the constitution aforesaid, and shall be the normal school which the legislature is required to locate and establish in one of the following counties: Union, Quay, Curry, Roosevelt, Chaves or Eddy.

**History:** Laws 1927, ch. 9, § 1; C.S. 1929, § 120-1903; 1941 Comp., § 55-2134; 1953 Comp., § 73-22-35.

### ANNOTATIONS

**Cross-references.** - For tuition of nonresident students, see 21-1-2 NMSA 1978.

**Bracketed material.** - The bracketed material in this section was inserted by the compiler, as N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changes the name of the eastern New Mexico normal school to the eastern New Mexico university. See also 21-3-31 NMSA 1978. The bracket material was not enacted by the legislature and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 14A C.J.S. Colleges and Universities §§ 35, 37, 38.

### **21-3-30. [Board of regents of eastern New Mexico university; appointment, qualifications and terms of members; powers.]**

The governor is hereby authorized and empowered to appoint a board of regents for the eastern New Mexico normal school [eastern New Mexico university] at Portales, New Mexico, by and with the advice and consent of the senate, consisting of five members, no more than three of whom shall be of the same political party, at the time of their appointment, and not more than three of whom shall be appointed for a longer term than two years, and the remainder for four years, after which such appointments shall be for four years; and provided that should the senate not be in session when such appointment is made, such appointees shall hold their office until the convening of the

senate, and if confirmed for the period of their appointment. Such board shall have the general powers now conferred on boards of regents of the other normal schools of this state; including the power to acquire by donations, the title to the necessary lands for building site and campus, and the acceptance of such other donations as may be available; and provided further, that such board can incur no indebtedness whatever.

**History:** Laws 1927, ch. 79, § 1; C.S. 1929, § 120-1904; 1941 Comp., § 55-2135; 1953 Comp., § 73-22-36.

## ANNOTATIONS

**Cross-references.** - For commission on higher education, see 21-1-26 to 21-1-31 NMSA 1978.

For election of officers, see 21-3-5 NMSA 1978.

**Bracketed material.** - See same catchline in notes to 21-3-29 NMSA 1978.

**Appropriations.** - Laws 1994, ch. 147, § 6SSSSSSS, effective March 9, 1994, appropriates \$500,000 from the general fund to the board of regents of eastern New Mexico university for expenditure in the eighty-second through eighty-fifth fiscal years for renovation of a theater building into a centralized computer center. Any unexpended or unencumbered balance remaining at the end of the eighty-fifth fiscal year shall revert to the general fund.

**Scope of powers concerning contracts.** - Eastern New Mexico university, through its regents, has authority to contract and be contracted with and where the issue simply involves the law of contracts the public or private character of the university is not the controlling factor. *Hillis v. Meister*, 82 N.M. 474, 483 P.2d 1314 (Ct. App. 1971).

**Effect of university handbook on powers of regents.** - Where the undisputed evidence shows a course of conduct that made the university handbook a part of plaintiff's contract as the handbook was treated as controlling the relationship between the university administration and its faculty, then a failure of the university administration to follow these procedures constituted a breach of contract by the university. *Hillis v. Meister*, 82 N.M. 474, 483 P.2d 1314 (Ct. App. 1971).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 3, 5, 7, 11, 35, 39; 68 Am. Jur. 2d Schools §§ 23, 27.

Constitutionality of statute requiring, or limiting, selection or appointment of public officers or agents from members of a political party or parties, 140 A.L.R. 471, 170 A.L.R. 198.

14A C.J.S. Colleges and Universities §§ 14, 15 to 17; 29 C.J.S. Election § 1(7); 67 C.J.S. Officers and Public Employees §§ 36, 40 to 43, 66, 69.



## **21-3-31. [Use of name "eastern New Mexico university" authorized; exceptions.]**

For all purposes excepting suits, state lands, funds and appropriations the name "eastern New Mexico university" is hereby authorized for use in lieu of the name eastern New Mexico normal school.

**History:** 1953 Comp., § 73-22-37, enacted by Laws 1955, ch. 38, § 1.

### **ANNOTATIONS**

**Eastern New Mexico normal school renamed.** - See note under catchline "bracketed material" in notes to 21-3-29 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 14A C.J.S. Colleges and Universities § 9.

## **ARTICLE 4 NORTHERN NEW MEXICO STATE SCHOOL**

### **21-4-1. Management and control of Spanish-American school [northern New Mexico state school].**

The management and control of the Spanish-American School [northern New Mexico state school] at El Rito, the appointment, qualification, powers and duties of its regents, shall be the same as provided in Article XII, Section 13 of the constitution of New Mexico for the other state educational institutions mentioned in Article XII, Section 11 of the constitution of New Mexico.

**History:** Laws 1909, ch. 97, § 2; Code 1915, § 4986; C.S. 1929, § 120-1918; 1941 Comp., § 55-2132; 1953 Comp., § 73-22-32; Laws 1955, ch. 115, § 1.

### **ANNOTATIONS**

**Bracketed material.** - The bracketed material in this section was inserted by the compiler, as N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changes the name of the Spanish-American school to the northern New Mexico state school. See also 21-4-2 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 3, 5, 7, 11, 35, 39; 68 Am. Jur. 2d Schools §§ 23, 27.

Constitutionality of statute requiring, or limiting, selection or appointment of public officers or agents from members of a political party or parties, 140 A.L.R. 471, 170 A.L.R. 198.

14A C.J.S. Colleges and Universities §§ 14, 15 to 17; 29 C.J.S. Election § 101; 67 C.J.S. Officers and Public Employees §§ 36, 40 to 43, 66, 69.

### **21-4-2. Use of name "northern New Mexico state school" for common convenience.**

Except for financial transactions, the use of the name northern New Mexico state school is hereby permitted in lieu of the Spanish-American school at El Rito for common convenience.

**History:** 1941 Comp., § 55-2132a, enacted by Laws 1947, ch. 97, § 1; 1953 Comp., § 73-22-33; Laws 1955, ch. 115, § 2.

### **ANNOTATIONS**

**Spanish-American school renamed.** - See note under catchline "bracketed material" in notes to 21-4-1 NMSA 1978.

**Effect of failure to fund branch campus.** - The failure to fund a branch campus does not put either the university of New Mexico or the branch campus out of business nor does it constitute an invalid intrusion of the legislature into another branch of government. 1980 Op. Att'y Gen. No. 80-3.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 14A C.J.S. Colleges and Universities § 9; 78 C.J.S. Schools and School Districts § 259.

### **21-4-3. Northern New Mexico state school; purpose of instruction; entrance requirements; academic courses; boarding of students.**

A. The courses of instruction [instruction] at northern New Mexico state school at El Rito shall:

(1) meet the needs of young people of New Mexico who cannot be served adequately by the local public schools in their home communities;

(2) prepare technical and trade students for occupations and vocations which are useful and necessary in the economy of New Mexico; and

(3) provide academic, technical and vocational instruction beyond the high school level and, in the event that the university of New Mexico northern branch is dissolved, may, in addition, also provide not more than two years of accredited college level academic

instruction at those areas presently served by the university of New Mexico northern branch and by the northern New Mexico state school.

B. The regents are authorized to provide quarters for the boarding of resident students.

C. Nothing in this section shall preclude the university of New Mexico from continuing to provide upper college level and graduate courses in any areas in which such courses were being offered prior to January 1, 1977.

**History:** Laws 1909, ch. 97, § 3; Code 1915, § 4987; C.S. 1929, § 120-1919; 1941 Comp., § 55-2133; 1953 Comp., § 73-22-34; Laws 1955, ch. 115, § 3; 1961, ch. 117, § 1; 1963, ch. 77, § 1; 1977, ch. 203, § 1.

### ANNOTATIONS

**Law reviews.** - For comment, "Education and the Spanish-Speaking - An Attorney General's Opinion on Article XII, Section 8 of the New Mexico Constitution," see 3 N.M. L. Rev. 364 (1973).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 28, 35; 68 Am. Jur. 2d Schools §§ 220, 283, 284.

Extent of legislative power with respect to attendance and curriculum, 39 A.L.R. 477, 53 A.L.R. 832.

Power of legislature to impose noneducational function upon state educational institution or instructors therein, 67 A.L.R. 1032.

14A C.J.S. Colleges and Universities §§ 4, 10, 17, 29; 78 C.J.S. Schools and School Districts § 9; 79 C.J.S. Schools and School Districts § 485.

## ARTICLE 5 NEW MEXICO SCHOOL FOR THE VISUALLY HANDICAPPED

### **21-5-1. Purpose of school for the blind [New Mexico school for the visually handicapped]; power to acquire land.**

The New Mexico school for the blind [New Mexico school for the visually handicapped] is intended and meant for the proper formal education of the blind of the state, and for the furtherance of such purpose to acquire land by purchase, gift or otherwise.

**History:** Laws 1903, ch. 2, § 8; 1907, ch. 4, § 1; Code 1915, § 5105; C.S. 1929, § 130-407; 1941 Comp., § 55-2201; Laws 1947, ch. 183, § 1; 1953 Comp., § 73-23-1; Laws 1971, ch. 324, § 6.

## ANNOTATIONS

**Cross-references.** - For the White Cane Law, see 28-7-1 to 28-7-7 NMSA 1978.

**Bracketed material.** - The bracketed material in this section was inserted by the compiler, as Laws 1903, ch. 2, § 3, established the New Mexico institute for the blind. Laws 1947, ch. 183, § 1, amended this section so that it referred to the New Mexico school for the blind. The repeal and reenactment on November 8, 1960, of N.M. Const., art. XII, § 11, changed the name of the New Mexico institute for the blind to the New Mexico school for the visually handicapped. See also 21-5-4 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

**Scope of discretion to refuse admission.** - As the institute for the blind (school for the visually handicapped) is for the blind youth of the state, it is not within the discretion of the superintendent, either with or without the approval of the board of trustees, to refuse admission to a blind applicant. 1925-26 Op. Att'y Gen. No. 31.

**As to granting of tenure.** - Teaching personnel of the New Mexico school for the visually handicapped were not accorded statutory tenure rights unless they met the qualifications of 73-12-15.1, 1953 Comp. (repealed) or unless these privileges were extended by policy of board of regents of the institution or afforded under a written contract. 1964 Op. Att'y Gen. No. 64-89.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools § 25.

When does change in "educational placement" occur for purposes of § 615(b)(1)(C) of the Education for All Handicapped Children Act of 1975 (20 USCS § 1415(b)(1)(C)), requiring notice to parents prior to such change, 54 A.L.R. Fed. 570.

78 C.J.S. Schools and School Districts § 13.

### **21-5-2. Management of state institutions [New Mexico school for the visually handicapped]; corporate powers.**

The management and control of the New Mexico school for the visually handicapped, the care and preservation of all property of which it shall become possessed, the erection and construction of all buildings necessary for its use, and the disbursement and expenditure of all moneys appropriated by the state of New Mexico, or which shall otherwise come into its possession, shall be vested in a board of five trustees. The incumbent trustees shall remain in office for the remainder of their present terms. Said trustees shall possess the same qualifications, shall be appointed in the same manner, and their terms of office shall be the same and the vacancies therein shall be filled in

the same manner as is provided with reference to the regents of the university of New Mexico. Said trustees and their successors in office shall constitute a body corporate, under the name and style of "the trustees of the New Mexico school for the visually handicapped," with the right as such of suing and being sued, of contracting and being contracted with, of making and using a common seal and altering the same at pleasure, and of causing all things to be done necessary to carry out the provisions of this article. A majority of the board shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time. The officers of the board shall be elected in the same manner and possess the same qualifications as the officers of the university of New Mexico now possess. The board shall require corporate surety bonds, in a reasonable amount set by the board, of all officers and employees who have custody of or handle funds of the institutions, conditioned on the faithful performance of their duties. The governor shall be ex officio a member of the board, but shall not have the right to vote or be eligible to [hold] office.

**History:** Laws 1903, ch. 2, § 6; Code 1915, § 5109; C.S. 1929, § 130-606; 1941 Comp., § 5-101; 1953 Comp., § 13-3-1; recompiled as 1953 Comp., § 73-23-1.1; Laws 1968, ch. 17, § 8.

## ANNOTATIONS

**Compiler's note.** - Laws 1903, ch. 2, § 6, previously compiled as 13-3-1, 1953 Comp., was redesignated and compiled by the previous compiler as 73-23-1.1, 1953 Comp.

**Meaning of "this article".** - As enacted by Laws 1903, ch. 2, § 6, the words "this article" at the end of the fourth sentence read "this act." They were changed to "this article" in the 1915 Code and refer to §§ 5101 to 5110, 1915 Code. For disposition of these sections in this compilation, see the Table of Comparative Sections at the end of Volume 13.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 3, 5, 7, 11, 17, 19, 21, 23, 33 to 35, 39; 63A Am. Jur. 2d Public Officers and Employees §§ 487, 488; 68 Am. Jur. 2d Schools §§ 23, 27.

Mandamus to compel enrollment or restoration of pupil in state school or university, 39 A.L.R. 1019.

Constitutionality of statute requiring, or limiting, selection or appointment of public officers or agents from members of a political party or parties, 140 A.L.R. 471, 170 A.L.R. 198.

Malfeasance in office, public officer's bond as subject to forfeiture for, 4 A.L.R.2d 1348.

14A C.J.S. Colleges and Universities §§ 14 to 38; 29 C.J.S. Elections § 1(7); 67 C.J.S. Officers and Public Employees §§ 36, 40 to 43, 66, 69.

### **21-5-3. Recompiled.**

#### **ANNOTATIONS**

**Recompilations.** - Laws 1983, ch. 60, § 3, recompiles 21-5-3 NMSA 1978, relating to the transfer of certain functions to the department of education, as 22-14-20 NMSA 1978.

Laws 1983, ch. 60, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.

### **21-5-4. [Authority to use name "New Mexico school for visually handicapped."]**

For administrative purposes in all matters except suits, state lands, funds and appropriations, the "New Mexico institute for the blind" is hereby authorized to use the name "New Mexico school for the visually handicapped."

**History:** Laws 1925, ch. 13, § 1; C.S. 1929, § 130-403; 1941 Comp., § 55-2202; Laws 1953, ch. 62, § 1; 1953 Comp., § 73-23-2.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 14A C.J.S. Colleges and Universities § 9.

### **21-5-5. Parents and guardians required to send blind students to institute [school]; exceptions.**

Every parent, guardian or person having control or custody of any child who is between the ages of five and the age of majority, and who, on account of a visual handicap[,] cannot be educated in the public schools, and shall send such child to the New Mexico school for the visually handicapped at Alamogordo during each school year for a period of seven years, unless the child is taught the subjects as are taught in the school in a private school, at home, or in a similar institution in another state, or unless the child is suffering from a physical or mental disability sufficient to incapacitate him from attending the school. It shall be the duty of the superintendent of the school to see that each pupil in the school shall have every reasonable opportunity to practice his own religious belief, and that no impediment be placed in the way of such pupils in the practice of their respective religious beliefs. Provided, that whenever admission to the school is requested for any person afflicted with a visual handicap and under five years of age or over the age of majority, the board of regents, or superintendent thereof, is empowered to admit the person under rules and regulations established by the board.

**History:** Laws 1915, ch. 33, § 1; C.S. 1929, § 120-2201; 1941 Comp., § 55-2203; 1953 Comp., § 73-23-3; Laws 1973, ch. 138, § 29.

## ANNOTATIONS

**Bracketed material.** - For change of name of New Mexico institute for the blind, see same catchline in notes to 21-5-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 227 to 233, 290 to 306.

Extent of legislative power with respect to attendance and curriculum, 39 A.L.R. 477, 53 A.L.R. 832.

Use of public school premises for religious purposes during nonschool time, 79 A.L.R.2d 1148.

79 C.J.S. Schools and School Districts §§ 463 to 470, 485.

### **21-5-6. [Transportation of children.]**

That the superintendent of such institute [New Mexico school for the visually handicapped], out of the appropriation made for said institute [school], shall pay for the transportation of such children, to and from such institution whenever the parents, guardian or person having control or custody of any such child shall be unable to pay for same: provided, that said board of regents shall prescribe what portion of said appropriation shall be used for said transportation purposes.

**History:** Laws 1915, ch. 33, § 2; C.S. 1929, § 120-2202; 1941 Comp., § 55-2204; 1953 Comp., § 73-23-4.

## ANNOTATIONS

**Bracketed material.** - For changes in name of the New Mexico institute for the blind, see same catchline in notes to 21-5-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 234 to 241.

Transportation of school pupils at expense of public, 63 A.L.R. 413, 118 A.L.R. 806, 146 A.L.R. 625.

79 C.J.S. Schools and School Districts § 475.

### **21-5-7. Superintendents of school districts required to report blind children.**

Superintendents of all school districts in the state, on August 1 and January 1 in each year, shall report to the superintendent of the New Mexico institute for the blind [New Mexico school for the visually handicapped] whether or not there are blind children of

legal school age within their respective districts; the required report shall include a complete list of all such children. It shall be the duty of the superintendent of the institute [school] to communicate to the parent, guardian or person having custody or control of each blind child the provisions of this act [21-5-5 to 21-5-8 NMSA 1978]. The superintendent of the institute [school] shall notify the state board of education of the failure of any superintendent of a school district to render a report required by this section.

**History:** Laws 1915, ch. 33, § 3; C.S. 1929, § 120-2203; 1941 Comp., § 55-2205; 1953 Comp., § 73-23-5; Laws 1959, ch. 346, § 1.

### ANNOTATIONS

**Bracketed material.** - For change in name of New Mexico institute for the blind, see same catchline in notes to 21-5-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 50 to 52.

78 C.J.S. School and School Districts § 99.

### **21-5-8. [Penalty for violating provisions for compulsory education of the blind.]**

Any person who shall violate this act [21-5-5 to 21-5-8 NMSA 1978], upon conviction thereof, shall be punished by a fine of not more than twenty-five dollars [(\$25.00)] or by imprisonment for not more than thirty days. Provided, that this section shall not apply in case the child of any such parent, guardian or other person cannot be admitted to said institute [school] under the rules and regulations thereof.

**History:** Laws 1915, ch. 33, § 4; C.S. 1929, § 120-2204; 1941 Comp., § 55-2206; 1953 Comp., § 73-23-6.

### ANNOTATIONS

**Bracketed material.** - For change in name of New Mexico institute for the blind, see same catchline in notes to 21-5-1 NMSA 1978.

### **21-5-9 to 21-5-11. Recompiled.**

### ANNOTATIONS

**Recompilations.** - Laws 1983, ch. 60, § 3, recompiles 21-5-9 to 21-5-11 NMSA 1978, relating to products of clients of services for the blind, as 22-14-21 to 22-14-23 NMSA 1978.



Laws 1983, ch. 60, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.

### **21-5-12. [Authority to borrow money; purposes.]**

That for the purpose of erecting, altering, improving, furnishing and equipping any necessary buildings or structures at the New Mexico institute for the blind [New Mexico school for the visually handicapped], or acquiring any necessary land for the use of said institute or for the retiring of the whole or any part of any series bonds, previously issued by said institute [school] under the provisions of law, or for any or all of such purposes, the board of regents or directors of the New Mexico institute for the blind [New Mexico school for the visually handicapped] is hereby authorized to borrow money for such purposes in conformity with the terms of this act [21-5-12, 21-5-13, 21-5-15 to 21-5-23 NMSA 1978].

**History:** 1941 Comp., § 55-2207, enacted by Laws 1949, ch. 44, § 1; 1953 Comp., § 73-23-10.

#### **ANNOTATIONS**

**Bracketed material.** - For change of name of New Mexico institute for the blind, see same catchline in notes under 21-5-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 35.

14A C.J.S. Colleges and Universities § 17.

### **21-5-13. [Power of board to sell and retire bonds.]**

That whenever the said board, by the affirmative vote of a majority of its members, duly entered in the minutes of said board, shall by resolution determine that it is necessary to erect, alter, improve, furnish or equip any building or buildings, structure or structures at said institute [school], or acquire any land for the use thereof, or to retire the whole or any part of any series of bonds previously issued in conformity with law, or for any or all of said purposes, said board is hereby empowered and authorized to issue and sell subject to the terms of this act [21-5-12, 21-5-13, 21-5-15 to 21-5-23 NMSA 1978], building and improvement bonds of said New Mexico institute for the blind [New Mexico school for the visually handicapped].

**History:** 1941 Comp., § 55-2208, enacted by Laws 1949, ch. 44, § 2; 1953 Comp., § 73-23-11.

#### **ANNOTATIONS**

**Bracketed material.** - For change of name of New Mexico institute for the blind, see same catchline in notes to 21-5-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations § 120.

14A C.J.S. Colleges and Universities §§ 4, 10.

## **21-5-14. Form of bonds.**

Bonds issued pursuant to Sections 21-5-12 through 21-5-23 NMSA 1978 shall be in such form and denominations as the board of trustees of the New Mexico school for the visually handicapped shall determine, due and payable not later than twenty years from date of issue. The bonds shall be payable in consecutive order commencing not later than two years from date of issue.

**History:** 1978 Comp., § 21-5-14, enacted by Laws 1983, ch. 265, § 38.

### **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1983, ch. 265, § 38, repeals former 21-5-14 NMSA 1978, relating to form of bonds issued by the New Mexico institute for the blind, and enacts the above section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 195, 196, 202, 205, 399 to 453.

Terms of bond: power and discretion of officer or board authorized to issue bonds of governmental units as regards, terms or conditions to be included therein, 119 A.L.R. 190.

11 C.J.S. Bonds § 100; 47 C.J.S. Interest and Usury; Consumer Credit § 18.

## **21-5-15. [Bonds; publication of notice; award to highest responsible bidder; purchase by state.]**

The board shall offer said bonds for sale, after publication of notice of the time and place of sale, in some newspaper of general circulation in Albuquerque, New Mexico, once each week for four (4) successive weeks prior to the date fixed for said sale. Such notice shall specify the amount, denomination, maturity dates and the hour at which sealed bids therefor will be received and opened, and that only unconditional bids therefor will be considered, and that each bid must be accompanied by a certified check drawn on a solvent bank or trust company, payable to the order of the secretary and treasurer of said board, for not less than five (5) per centum of the par value of the bonds offered for sale, as a guaranty that the bonds will be taken by the bidder if his bid is accepted and the bidder does not take and pay for the bonds in accordance

therewith. At the place and time specified in such notice, the board or the executive committee thereof shall publicly open the bids and award the bonds to the responsible bidder or bidders offering the highest price therefor, but no bid shall be accepted for less than the par value of said bonds, plus the accrued interest from the last preceding interest date to the date of delivery of said bonds. Before delivery of the bonds to the purchaser, the secretary and treasurer of the board shall detach and cancel all matured interest coupons. Said board or the executive committee thereof, shall have and reserve the right to reject any and all bids at such sale, and readvertise the same. The state treasurer may, with approval of the state board of finance and the other officials whose approval may be required by law for the investment of public funds, purchase such bonds at par and accrued interest to date of delivery for such investment, without the necessity of their being advertised or publicly offered for sale by the board, or after rejection of bids for all or any part of any issue. Such bonds may be accepted at their par value by all public officials in this state as security for the repayment of all deposits of public moneys of this state, or of any county, municipality or public institution thereof, and as security for the faithful performance of any obligation or duty to guarantee the performance of which such officials are now authorized by law to accept a deposit of the bonds of this state or of the United States of America.

**History:** 1941 Comp., § 55-2210, enacted by Laws 1949, ch. 44, § 4; 1953 Comp., § 73-23-13.

## ANNOTATIONS

**Cross-references.** - As to legal newspapers, see 14-11-2 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 120, 228, 229, 240, 452, 453, 488.

Sale of municipal or other public bonds at less than par or face value, 91 A.L.R. 7, 162 A.L.R. 396.

11 C.J.S. Bonds §§ 71, 83.

### **21-5-16. [Permanent improvement and interest and retirement funds.]**

The proceeds from the sale of said bonds shall be paid to the secretary and treasurer of said board, and shall be by him placed in a separate fund to be known as "permanent improvement fund" to be used and paid out only for the specified purposes in this act [21-5-12, 21-5-13, 21-5-15 to 21-5-23 NMSA 1978] enumerated upon order of the board, on checks signed by the president or vice president of said board and by the secretary and treasurer thereof, except such portion thereof as may have been received on account of accrued interest on said bonds to date of delivery, which amount shall be placed in the "interest and retirement fund" for the liquidation of said bonds as hereinafter provided. The cost of preparing, advertising and selling said bonds, including

any necessary expense for legal opinions thereon, shall be paid out of the proceeds of the sale of said bonds.

**History:** 1941 Comp., § 55-2211, enacted by Laws 1949, ch. 44, § 5; 1953 Comp., § 73-23-14.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 33.

14A C.J.S. Colleges and Universities § 14.

#### **21-5-17. [Interest and retirement fund established.]**

The board of regents shall at the time of issuing said bonds, establish for the payment of the principal and interest thereof a fund to be known as "interest and retirement fund" into which fund said board shall immediately place a sum not less than the amount necessary to pay the interest and maturing principal of said bonds for the ensuing twelve (12) months and annually thereafter shall continue to place in said fund a sufficient amount to pay principal and interest maturing in the succeeding twelve (12) months.

**History:** 1941 Comp., § 55-2212, enacted by Laws 1949, ch. 44, § 6; 1953 Comp., § 73-23-15.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations § 266.

#### **21-5-18. [Pledge of income for interest and retirement; leased land income.]**

For the faithful and prompt payment of all interest and principal of said bonds as and when the same shall mature according to the tenor thereof, the issue thereof shall constitute an irrevocable pledge by said board of so much of each year's income from the permanent fund of the New Mexico institute for the blind [New Mexico school for the visually handicapped] in the hands of the treasurer of this state, as shall be necessary to provide the "interest and retirement fund" herein mentioned, for the ensuing year, and to at all times fully and faithfully keep the same in not less than the amount necessary to pay the interest and principal maturing as aforesaid; and in addition thereto the issue of said bonds shall constitute an irrevocable pledge by said board of so much of each year's income from the income and current fund derived from the lease of such of its land [lands] as remain unsold, as may be necessary to fully protect the "interest and

retirement fund" for the ensuing year, and keep the same at all times in proper amount as herein provided.

**History:** 1941 Comp., § 55-2213, enacted by Laws 1949, ch. 44, § 7; 1953 Comp., § 73-23-16.

#### **ANNOTATIONS**

**Cross-references.** - For establishment of interest and retirement fund, see 21-5-17 NMSA 1978.

**Bracketed material.** - For change of name of New Mexico institute for the blind, see same catchline in notes to 21-5-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 35.

14A C.J.S. Colleges and Universities § 14.

#### **21-5-19. [Forwarding of funds for payment of coupons and bonds.]**

It shall be the duty of the secretary and treasurer of said board of regents to forward to the bank at which said bonds are payable, prior to the date on which any coupons or any principal amount of any of said bonds shall mature, out of the "interest and retirement fund" a sufficient sum of money to meet said coupons and maturing bonds as the same become due, plus any service charge which said bank shall be entitled to receive for its service.

**History:** 1941 Comp., § 55-2214, enacted by Laws 1949, ch. 44, § 8; 1953 Comp., § 73-23-17.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 197, 198.

11 C.J.S. Bonds § 93.

#### **21-5-20. [Funds restricted to designated purposes.]**

None of the funds derived from the sale of said bonds, except so much thereof as shall be necessary to defray the cost of the issuance thereof and the accrued interest from the date thereof to the time of delivery, shall ever be used or expended by said board for any other purposes than those for which authority is herein given to issue the same, as set forth in Section 1 [21-5-12 NMSA 1978] hereof.

**History:** 1941 Comp., § 55-2215, enacted by Laws 1949, ch. 44, § 9; 1953 Comp., § 73-23-18.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 35.

14A C.J.S. Colleges and Universities § 14.

#### **21-5-21. [State treasurer's duty to establish interest and retirement fund.]**

It is hereby made the duty of the treasurer of this state, upon receiving written notice from the secretary and treasurer of said board that it has issued bonds as provided for herein, to forthwith forward and pay over to the secretary and treasurer of said board out of the income from the permanent funds of said college, a sum sufficient to make and establish the income (interest) and retirement fund, as herein provided, and annually thereafter to pay over a sufficient amount for said purpose, to the end that said interest and retirement fund shall at all times be kept in the proper amount. In the event there should not be sufficient undistributed income from permanent funds of said institution, then said state treasurer shall use so much of the income and current fund of said institution in his hands as shall be necessary to establish and at all times maintain said interest and retirement fund.

**History:** 1941 Comp., § 55-2216, enacted by Laws 1949, ch. 44, § 10; 1953 Comp., § 73-23-19.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 35.

14A C.J.S. Colleges and Universities § 14.

#### **21-5-22. [Authority to designate bonds in series; bonds not to exceed income for preceding fiscal year.]**

In the event the board of regents aforesaid should find it advisable to issue bonds under this act [21-5-12, 21-5-13, 21-5-15 to 21-5-23 NMSA 1978] in more than one series, or at different times, for any of the purposes aforesaid, then each series of said bonds shall be designated by the letter "A" or "B" or in some other proper designation to the end that each series shall be kept separate, and all of the requirements of this act shall apply to and be faithfully followed, done and carried out as to each of said series; provided, however, that said board of regents shall not have power to issue bonds

hereunder, the aggregate interest and principal requirements for which, for any year, together with the aggregate interest and principal requirements for all outstanding bonds of such board of such institution for such year, shall exceed the amount of the income from the permanent funds and from the aforesaid income and current fund of such institution received by the state treasurer for the fiscal year next preceding the fiscal year in which any bonds of such board of such institution are authorized to be issued by resolution of the board adopted pursuant to this act.

**History:** 1941 Comp., § 55-2217, enacted by Laws 1949, ch. 44, § 11; 1953 Comp., § 73-23-20.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 35.

14A C.J.S. Colleges and Universities § 14.

### **21-5-23. [Tax exemption; security for public moneys.]**

Bonds issued under the provisions of this act [21-5-12, 21-5-13, 21-5-15 to 21-5-23 NMSA 1978], being for the sole purposes specified in Section 1 [21-5-12 NMSA 1978] hereof, shall forever be and remain free and exempt from taxation by this state or any subdivision thereof. Such bonds may be deposited as security for public moneys by depositaries thereof within the state of New Mexico.

**History:** 1941 Comp., § 55-2218, enacted by Laws 1949, ch. 44, § 12; 1953 Comp., § 73-23-21.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 71 Am. Jur. 2d State and Local Taxation §§ 495, 526.

Constitutional enumeration of subjects of tax exemption as affecting power of legislature to free government securities or property from taxation, 9 A.L.R. 436.

84 C.J.S. Taxation §§ 260, 375.

## **ARTICLE 6**

## **NEW MEXICO SCHOOL FOR THE DEAF**

**21-6-1. Board of regents; appointment; officers; superintendent; indebtedness; report.**

A. The New Mexico school for the deaf shall be under the control and management of a board of regents consisting of five members, at least one of whom shall be a deaf person and at least one of whom shall be the parent of a deaf child, to be appointed by the governor, by and with the advice and consent of the senate for a term of six years. Not more than three of them shall belong to the same political party at the time of their appointment. The board shall make its own rules and regulations for the government of its meetings and the institution under its care. Annually on the second Monday of April the board shall elect from among its number a president and [a] secretary.

B. The board shall have full power and authority to employ a superintendent, teachers and all other necessary employees to operate the New Mexico school for the deaf in the most efficient manner with the appropriations made therefor, with full power to provide suitable buildings, additions to existing buildings and enlarging and improving the buildings and property now occupied by the school.

C. It is unlawful for any member of the board of regents to incur any indebtedness or provide any improvements, repairs or to enlarge the buildings, except for current expenses, unless there is money on hand in the treasury subject to be used for those purposes.

D. Members of the board of regents shall be reimbursed according to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] for travel and expenses incurred for each day in actual attendance at board meetings or while engaged in the performance of official business.

E. The board of regents shall present to the governor each year a full and detailed report including an itemized statement of all expenditures and of all its actions during the previous year, with that information and those recommendations it deems necessary and advisable for the governor and the legislature to act upon.

**History:** Laws 1899, ch. 42, § 2; Code 1915, § 5102; C.S. 1929, § 130-404; 1941 Comp., § 55-2303; 1953 Comp., § 73-24-3; Laws 1961, ch. 31, § 1; 1979, ch. 44, § 1; 1981, ch. 19, § 1.

## ANNOTATIONS

**Cross-references.** - For penalty for interest in contracts for supplies, see 21-1-35 NMSA 1978.

For state educational institutions, see N.M. Const., art. XII, § 11.

For boards of regents for educational institutions, see N.M. Const., art. XII, § 13.

**Appropriations.** - Laws 1994, ch. 148, § 50D, effective March 9, 1994, appropriates \$200,000 from the general fund to the board of regents of the New Mexico school for the deaf for expenditure in the eighty-second and eighty-third fiscal years to construct



and furnish a preschool at Hodgkin elementary school. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

**Scope and effect of statutory powers.** - The New Mexico school for the deaf is not subject to the Personnel Act (see 10-9-1 NMSA 1978 and notes thereto). Rather, the control of its employees and the appropriations for the school are placed in the hands of the board of regents of that school under this section, which authorizes the board to make rules and regulations governing the institution. 1961-62 Op. Att'y Gen. No. 62-73.

**Implied powers also possessed.** - The board of regents possesses, in addition to the express powers given, those which although not expressly stated are necessarily implied in order that the objects and purposes of the institution may be fully attained. 1955-56 Op. Att'y Gen. No. 6169.

**Power to designate jury duty as vacation.** - The duly constituted board of regents of the school for the deaf is authorized to make decisions according to its sound judgment. It may, or it may not, designate absence of a school employee for jury duty as a vacation period during which time the employee will receive regular pay. 1961-62 Op. Att'y Gen. No. 62-73.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 3, 5, 7, 11, 35, 39; 63A Am. Jur. 2d Public Officers and Employees §§ 460 to 462, 476; 68 Am. Jur. 2d Schools §§ 23, 27.

Public officer's rights and duties in respect of mileage and other allowances incident to duties of his office but which represented no actual expense or outlay by him, 81 A.L.R. 493.

Allowance of mileage or traveling expenses to officer as offended by use of his own vehicle for transportation, 112 A.L.R. 172.

Constitutionality of statute requiring or limiting, selection or appointment of public officers or agents from members of a political party or parties, 140 A.L.R. 471, 170 A.L.R. 198.

When does change in "educational placement" occur for purposes of § 615(b)(1)(C) of the Education for All Handicapped Children Act of 1975 (20 USCS § 1415(b)(1)(C)), requiring notice to parents prior to such change, 54 A.L.R. Fed. 570.

14A C.J.S. Colleges and Universities §§ 14 to 17; 29 C.J.S. Election 1 (7); 67 C.J.S. Officers and Public Employees §§ 36, 40 to 43, 66, 69, 224, 225.

**21-6-2. Purposes; admission age; admission of nonresidents; tuition; change of name; expenditures for graduates in college; audiological clinic; scholarships; president's powers.**

A. Except as otherwise provided in this section, the New Mexico school for the deaf shall be devoted exclusively to the care and instruction of the deaf and the hard of hearing, those who are either deaf or hard of hearing, of both sexes, residents within the state of New Mexico between the ages of five years and the age of majority; provided that the board of regents, in its discretion, may admit residents of this state who have attained the age of one year for daytime care and instruction, but not for residential purposes, and may also admit residents of this state who are over the age of majority.

B. The board of regents may make expenditures for undergraduate collegiate expenses of graduates of the New Mexico school for the deaf. The board of regents may permit the use of facilities of the school by public and private agencies in the state, in carrying on a conservation of hearing program, when such agencies participate in the cost of the operation, upon such terms and conditions as the board of regents may prescribe.

C. The board of regents may contract with the veterans' administration and the division of vocational rehabilitation to provide instruction for handicapped adults in vocations or lip reading taught at the school, but such handicapped adults may not be housed at the school. The board of regents may lease for a nominal sum for periods not to exceed three months, to the public schools, institutions and agencies of the state any hearing test equipment owned by the school.

D. The board of regents, for the purpose of creating a source of teachers of the deaf, may pay tuition and other necessary expenses of graduates of New Mexico colleges desiring to take training to teach the deaf in out-of-state training centers and intending to make the teaching of the deaf in New Mexico their profession.

E. All instruction shall be free. Deaf or hard-of-hearing children from other states or territories may be received and educated in the school, under such rules and regulations as the board of regents may prescribe, but in no event shall such children be admitted except upon the payment or guaranty of at least one thousand dollars (\$1,000) for the school year, on the basis of nine months for such year, and the president of the board of regents is authorized to make and enter into on behalf of the school, all necessary agreements and contracts with the U.S. government and the proper authorities of such other states and territories for the reception and education of such children; and he is further authorized to receive and receipt for all moneys paid upon such account and to endorse and transfer all checks, vouchers or other evidences of payment made or received in behalf of the school.

**History:** Laws 1899, ch. 42, § 3; Code 1915, § 5103; C.S. 1929, § 130-405; 1941 Comp., § 55-2304; Laws 1945, ch. 80, § 1; 1953, ch. 26, § 1; 1953 Comp., § 73-24-4; Laws 1955, ch. 63, § 1; 1973, ch. 138, § 30.

## ANNOTATIONS

**Scope of power to care.** - The board of the deaf school (New Mexico school for the deaf) is vested by law with power to care for children under its control and to provide

food, clothing, quarters, medical and such other care as may be necessary to the children's welfare. 1945-46 Op. Att'y Gen. No. 4803.

**Power to spend funds limited.** - The statute's language would seem to preclude the power to spend the funds of the institution in instructing other than those persons in the institution. The legislature did not intend that personnel from school be dispatched, at institution expense, to places outside the school to prepare others in communicating and otherwise being able to get along with students from the school. 1955-56 Op. Att'y Gen. No. 6170.

**Meaning of "resident".** - The term "resident" as used in this statute means a person who maintains his "domicile" in this state. Domicile is defined as that place where a person maintains his residence with the intention to live there indefinitely. Once established he may leave it and the place may remain his domicile if he intends to return. 1955-56 Op. Att'y Gen. No. 6302.

**Effect of absence from state for military service.** - Mere absence from this state by reason of being in the military service does not change that person's domicile in New Mexico, and thus his or her children would be eligible for admission without payment of the nonresident fee. 1955-56 Op. Att'y Gen. No. 6302.

**Effect of mere presence by nonresident.** - The mere presence of a soldier or sailor from another state at a post in New Mexico does not by that fact alone establish his residence here and for that reason his or her children would not be eligible for admission without payment of a nonresident fee. However, such a person could establish his residence here. 1955-56 Op. Att'y Gen. No. 6302.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 19 to 22; 68 Am. Jur. 2d Schools § 216.

Validity of exaction of fees from children attending elementary or secondary public schools, 41 A.L.R.3d 752.

79 C.J.S. School and School Districts §§ 449, 455, 466.

### **21-6-3. [Reports by clerks of school districts and boards of education; notice to parents; transportation; compulsory attendance; noncompliance; penalty.]**

It is hereby made the duty of the clerks of all school districts and boards of education within the state of New Mexico, to report to the school superintendent of their respective counties, the names, age, sex and residence of all deaf or hard-of-hearing persons of school age residing within their respective districts together with the post-office address of the parents or guardians of such children, this report to be incorporated in the regular report from such school district at the time provided by laws; and it shall be the duty of such school superintendent to at once send a report to the superintendent of the New

Mexico school for the deaf, including the names and addresses of all such children within this county.

It shall then be the duty of the superintendent of the New Mexico school for the deaf to at once notify the parents or guardians of such children to send the same to this school for proper instruction at a time to be fixed by him.

If the parent or guardian of any such child shall make a statement that by reason of his limited financial circumstances he is unable to suitably clothe such child and provide means of transportation for it from its home to such school, or provide for medical care for said child, and a representative of the state department of public welfare or the county superintendent of schools, or the superintendent of any city, town, village or consolidated school, of such county in which the child lives shall certify that such is the fact, then and in that case the superintendent of the New Mexico school for the deaf is authorized to draw a voucher upon the board of trustees for a sufficient amount of money to suitably clothe such child and pay for its transportation to this school and provide for medical care for such child, which voucher shall be honored by such board, and such child shall thereupon be sent by its parents or guardian to such school for instruction; provided that the above statement and certificate shall be renewed each year. The provisions of the laws of New Mexico in regard to compulsory attendance upon the public schools shall be applicable to attendance upon some school for the deaf or the hard of hearing, and the school directors of the several districts are hereby required and directed to enforce the same with regard to this school in the same manner as is provided by those laws for enforcing attendance upon the district schools.

Any failure on the part of any person hereinbefore mentioned to comply with the duties herein provided shall be deemed a misdemeanor and punished as such.

**History:** Laws 1899, ch. 42, § 4; Code 1915, § 5104; C.S. 1929, § 130-406; 1941 Comp., § 55-2305; Laws 1947, ch. 40, § [1]; 1953 Comp., § 73-24-5.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 50 to 52, 227 to 241.

Extent of legislative power with respect to attendance and curriculum, 39 A.L.R. 477, 53 A.L.R. 832.

Transportation of school pupils at expense of public, 63 A.L.R. 413, 118 A.L.R. 806, 146 A.L.R. 625.

78 C.J.S. School and School Districts § 99; 79 C.J.S. Schools and School Districts §§ 463 to 470, 475, 485.

# ARTICLE 7

## UNIVERSITY OF NEW MEXICO

### 21-7-1. [Established as the state university; congressional benefits vested.]

The university of New Mexico is intended to be the state university, and as such is entitled to all the donations of land and all other benefits under all acts of congress enacted for the benefit of such educational institutions in the state.

**History:** Laws 1889, ch. 138, § 7; C.L. 1897, § 3569; Code 1915, § 5117; C.S. 1929, § 130-901; 1941 Comp., § 55-2401; 1953 Comp., § 73-25-1.

### ANNOTATIONS

**Cross-references.** - For confirmation as state educational institution, see N.M. Const., art. XII, § 11.

For acceptance of land grants, see N.M. Const., art. XII, § 12.

As to management and control, see N.M. Const., art. XII, § 13.

**Appropriations.** - Laws 1991, ch. 256, § 4A, effective June 14, 1991, appropriates \$1,500,000 from the general fund to the university of New Mexico medical school for the eightieth fiscal year for the purpose of increasing funding for instruction and general support and provides that any unexpended or unencumbered balance remaining at the end of the eightieth fiscal year shall not revert to the general fund.

Laws 1991, ch. 256, § 4E, effective June 14, 1991, appropriates \$10,000 from the general fund to the university of New Mexico law school for the eightieth fiscal year to provide additional funding for the judicial selection process funded in House Appropriations and Finance Committee Substitute for House Bills 2, 3 and 4, as amended, as passed by the first session of the fortieth legislature, provides that \$30,000 of the total amount appropriated to the law school for the judicial selection process shall be used for personnel and provides that any unexpended or unencumbered balance remaining at the end of the eightieth fiscal year shall revert to the general fund.

Laws 1991, ch. 256, § 2, effective June 14, 1991, provides that all appropriations contained in Laws 1991, ch. 256, § 4 shall be reduced by eighty-two one-hundredths of one percent rounded to the nearest tenth of a thousand dollars and that the department of finance and administration shall adjust all totals, rates of distribution and language accordingly.

Subsections XX and YY of Laws 1993, ch. 366, § 3, effective June 18, 1993, appropriate \$100,000 and \$50,000, respectively, from the general fund to the university

of New Mexico for expenditure in the eighty-first and eighty-second fiscal years for instruction and general purposes for law library book acquisitions and for geographic education. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 4MM, effective June 18, 1993, appropriates \$40,000 from the general fund to the Valencia branch of the university of New Mexico for expenditure in the eighty-second fiscal year for architectural planning and designing of a student services building. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 4NN, effective June 18, 1993, appropriates \$400,000 from the general fund to the Gallup branch of the university of New Mexico for expenditure in the eighty-second fiscal year for a building to house an assembly hall, classrooms and science and computer laboratories. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 5 provides for the severability of that act if any part or application thereof is held invalid.

Laws 1993, ch. 367, § 43, effective April 8, 1993, appropriates \$600,000 from the balances remaining from the project completing the national guard armories from the general fund to the board of regents of the university of New Mexico for expenditure in the eighty-first and eighty-second fiscal years for planning, designing, constructing and equipping the expansion of the university of New Mexico stadium located in Bernalillo county. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 367, § 46, effective April 8, 1993, appropriates \$250,000 from the capital projects fund to the board of regents of the university of New Mexico for expenditure in the eighty-first through eighty-fourth fiscal years for planning, designing, constructing and equipping the expansion of the university of New Mexico stadium located in Bernalillo county. Any unexpended or unencumbered balance remaining at the end of the eighty-fourth fiscal year shall revert to the capital projects fund.

**Extension of expenditure period.** - Laws 1994, ch. 148, § 71A, effective March 9, 1994, provides that certain appropriations made by Chapter 366 of Laws 1993 are extended so that they may be expended through the eighty-fourth fiscal year.

**Effect of misnomer in contract.** - A slight misnomer of the corporation in a contract is immaterial, where the identity of the corporation appears, or can be made to appear, by parol evidence. *State v. Regents of Univ. of N.M.*, 32 N.M. 428, 258 P. 571 (1927).

**Law reviews.** - For note, "Student Discipline Cases in State Universities of New Mexico - Procedural Due Process," see 1 New Mexico L. Rev. 231 (1971).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 14A C.J.S. Colleges and Universities §§ 4, 35, 37, 38.

### **21-7-2. [Object.]**

The object of the university shall be to provide the inhabitants of the state of New Mexico with the means of acquiring a thorough knowledge of the various branches of literature, science and arts.

**History:** Laws 1889, ch. 138, § 8; C.L. 1897, § 3570; Code 1915, § 5118; C.S. 1929, § 130-902; 1941 Comp., § 55-2402; 1953 Comp., § 73-25-2.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 14A C.J.S. Colleges and Universities § 41.

### **21-7-3. Board of regents.**

The management and control of the university of New Mexico, the care and preservation of all its property, the erection and construction of all buildings necessary for its use and the disbursements and expenditures of all money shall be vested in a board of seven regents.

**History:** Laws 1889, ch. 138, § 9; C.L. 1897, § 3571; Code 1915, § 5119; C.S. 1929, § 130-903; 1941 Comp., § 55-2403; 1953 Comp., § 73-25-3; Laws 1987, ch. 53, § 1.

#### **ANNOTATIONS**

**Cross-references.** - For penalty for interest in contracts for supplies, see 21-1-35 NMSA 1978.

For building and improvement bonds, see 21-7-13 NMSA 1978.

For management by board of regents, see N.M. Const., art. XII, § 13.

For cooperation with bureau of mines and mineral resources, see 69-1-2 NMSA 1978.

**Physician assistant training program.** - Laws 1994, ch. 57, § 18, effective March 4, 1994, provides that the board of regents of the university of New Mexico shall establish a primary care physician assistant training program designed to meet the needs of the state.

**Appropriations.** - Subsections AA to CC of Laws 1994, ch. 147, § 3, effective March 9, 1994, appropriate various amounts from the general fund to the board of regents of the university of New Mexico for expenditure in the eighty-second and eighty-third fiscal

years for various purposes. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Subsections TTTTTT to WWWWWW, ZZZZZZ to EEEEEEE, IIIIII, PPPPPP, and TTTTTTTT of Laws 1994, ch. 147, § 6, effective March 9, 1994, appropriate various amounts from the general fund to the board of regents of the university of New Mexico for expenditure in the eighty-second through eighty-fifth fiscal years for various purposes. Unexpended or unencumbered balances remaining shall revert to the general fund.

Laws 1994, ch. 147, § 7KK, effective March 9, 1994, appropriates various amounts from the general fund to the board of regents of the university of New Mexico for expenditure in the eighty-second and eighty-third fiscal years for various purposes. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund, except for the appropriations to expand the cooperative education program's science and engineering women's career development program and for a center for disaster medicine at the medical school, which shall not revert.

Laws 1994, ch. 148, § 46, effective March 9, 1994, appropriates various amounts from the general fund to the board of regents of the university of New Mexico for expenditure in the eighty-second and eighty-third fiscal years for various purposes. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

**Scope of powers.** - The legislature has expressly recognized the authority of institutions of higher learning to receive benefits and donations from the United States and from private individuals and corporations; to buy, sell, lease or mortgage real estate and to do all things which will be for the best interests of the institutions in the accomplishment of their purposes or objects and, therefore, the legislature lacks authority to appropriate these funds or to control the use thereof through the power of appropriation. State ex rel. Seago v. Kirkpatrick, 86 N.M. 359, 524 P.2d 975 (1974).

**Regents to be ultimate authority.** - In establishing the university of New Mexico, the legislature contemplated that the regents would exercise ultimate authority in the management and control of the university. 1969 Op. Att'y Gen. No. 69-104.

**Final action not to be delegated.** - It is not within the power of the regents to delegate the right of final action to any other group or body within the university. 1969 Op. Att'y Gen. No. 69-104.

**Taxpayer's suit in mandamus not allowed.** - The regents of a state university owe their duties to the state of New Mexico, not to a private person, and a taxpayer has no standing to enforce by mandamus a duty owing to the public. Womack v. Regents of Univ. of N.M., 82 N.M. 460, 483 P.2d 934 (1971).



**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 32 to 35.

14A C.J.S. Colleges and Universities §§ 10, 11, 17.

#### **21-7-4. [Corporate powers of board.]**

The regents of the university and their successors in office shall constitute a body corporate under the name and style of, the regents of the university of New Mexico, with the right, as such, of suing and being sued, or contracting and being contracted with, of making and using a common seal and altering the same at pleasure.

**History:** Laws 1889, ch. 138, § 11; C.L. 1897, § 3573; Code 1915, § 5120; C.S. 1929, § 130-904; 1941 Comp., § 55-2404; 1953 Comp., § 73-25-4.

#### **ANNOTATIONS**

**Extent of obligation to injured workmen.** - This statute imposes upon board of regents no legal obligation to compensate financially for injuries sustained by their workmen in the course of their employment. *Zamora v. Regents of Univ. of N.M.*, 60 N.M. 41, 287 P.2d 237 (1955).

**Power to transfer university land.** - A transfer of property owned by the university of New Mexico should be made by the board of regents. 1914 Op. Att'y Gen. No. 93.

**The board of regents is a public corporation** of this state as distinguished from a private or business corporation. 1964 Op. Att'y Gen. No. 64-54.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 3.

Tort liability of college, university, fraternity, or sorority for injury or death of member or prospective member by hazing or initiation activity, 68 A.L.R.4th 228.

14A C.J.S. Colleges and Universities § 2.

#### **21-7-5. [Annual organization meeting of board; election of officers; bond of secretary-treasurer; conditions.]**

The board of regents of the university of New Mexico shall meet and organize by the election of its officers at Albuquerque, in Bernalillo county, on the second Monday in March in each year; all officers so elected shall hold their offices until their successors are duly elected and qualified. At such elections they shall elect a president and a secretary and treasurer from their number. The person so elected as secretary and treasurer shall, before entering upon the discharge of his duties as such, execute a good and sufficient bond to the state of New Mexico, with two or more sufficient

sureties, residents of this state, in the penal sum of not less than twenty thousand dollars [(\$20,000)], conditioned for the faithful performance of his duties as such secretary and treasurer, and that he will faithfully account for and pay over to the person or persons entitled thereto all moneys which shall come into his hands as such officer, which said bond shall be approved by the governor of the state, and shall be filed with the secretary of state.

**History:** Laws 1889, ch. 138, § 12; C.L. 1897, § 3574; Code 1915, § 5121; C.S. 1929, § 130-905; 1941 Comp., § 55-2405; 1953 Comp., § 73-25-5.

## ANNOTATIONS

**Cross-references.** - As to tenure of office of state officers, see N.M. Const., art. XX, § 2.

**Effect on secretary-treasurer of New Mexico state university.** - This section and 21-8-4 NMSA 1978 require the secretary-treasurer of the board of regents of the college of agriculture and mechanic arts (New Mexico state university) to execute a bond to the state of \$20,000 before entering on the discharge of his duties. *State v. Llewellyn*, 23 N.M. 43, 167 P. 414, cert. denied, 245 U.S. 666, 38 S. Ct. 63, 62 L. Ed. 538 (1917).

**Term of treasurer.** - The treasurer of the board would still continue as such until the election and qualification of his successor under this section. *Bowman Bank & Trust Co. v. First Nat'l Bank*, 18 N.M. 589, 139 P. 148 (1914).

**Treasurer of state university may transfer a certificate of deposit** from one depository to another. *State v. Llewellyn*, 23 N.M. 43, 167 P. 414, cert. denied, 245 U.S. 666, 38 S. Ct. 63, 62 L. Ed. 538 (1917); *Bowman Bank & Trust Co. v. First Nat'l Bank*, 18 N.M. 589, 139 P. 148 (1914).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63A Am. Jur. 2d Public Officers and Employees §§ 487, 488.

Malfeasance in office, public officer's bond as subject to forfeiture for, 4 A.L.R.2d 1348.

14A C.J.S. Colleges and Universities § 14.

### **21-7-6. [Duties of officers of board.]**

The president of said board shall be the chief executive officer, shall preside at all meetings thereof, except that when he is absent the board may appoint a president pro tem, and sign all instruments required to be executed by said board. He shall also generally direct the affairs of said university, nominate and by and with the advice and consent of the board of regents, appoint all professors, tutors, instructors and other employees necessary to the proper conduct of said university; and in like manner shall be determined the amount of their respective salaries. The secretary and treasurer shall

be the financial and recording officer of said board, shall keep a true and correct account of all moneys received and expended by him, shall attest all instruments required to be signed by the president, and shall keep a true record of all the proceedings of said board, and generally do all other things required of him by said board.

**History:** Laws 1889, ch. 138, § 13; C.L. 1897, § 3575; Code 1915, § 5122; C.S. 1929, § 130-906; 1941 Comp., § 55-2406; 1953 Comp., § 73-25-6.

## ANNOTATIONS

**Cross-references.** - For prohibition of interest in contracts for supplies, see 21-1-35 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 5, 11, 16.

14A C.J.S. Colleges and Universities §§ 15 to 17.

### **21-7-7. [Rules and regulations for university government.]**

The regents shall have power and it shall be their duty to enact laws, rules and regulations for the government of the university.

**History:** Laws 1889, ch. 138, § 14; C.L. 1897, § 3576; Code 1915, § 5123; C.S. 1929, § 130-907; 1941 Comp., § 55-2407; 1953 Comp., § 73-25-7.

## ANNOTATIONS

**Legislative intent.** - In establishing the university of New Mexico, the legislature contemplated that the regents would exercise ultimate authority in the management and control of the university. 1969 Op. Att'y Gen. No. 69-104.

**Review and approval of actions below.** - The explicit references in 21-7-8 and 21-7-9 NMSA 1978 to the regents' duties and responsibilities require that the board review and approve the actions taken below in exercise of limited power to immediate government. 1969 Op. Att'y Gen. No. 69-104.

**Duty to review mandatory.** - The regents' duty of review and approval of actions below is mandatory and cannot be waived or circumvented by the board. 1969 Op. Att'y Gen. No. 69-104.

**Traffic control jurisdiction.** - The board of regents of the university of New Mexico is specifically given traffic control jurisdiction on its property and may employ and assign duties of campus security officers for the institution. 1969 Op. Att'y Gen. No. 69-48.

**Limited applicability of city's ordinances.** - Ordinances of the city of Albuquerque dealing with crimes do not apply to land under the control of the board of regents of the university of New Mexico except for traffic offenses as provided in 35-14-2 NMSA 1978. 1969 Op. Att'y Gen. No. 69-48.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 25.

Clothes of pupils, validity of regulation as to, 14 A.L.R.3d 1201.

14A C.J.S. Colleges and Universities § 17.

### **21-7-8. [Departmental organization.]**

The university shall have departments, which shall be opened at such times as the board of regents deem best, for instruction in science, literature and the arts, law, medicine, engineering and such other departments and studies as the board of regents may, from time to time, decide upon, including military training and tactics.

**History:** Laws 1889, ch. 138, § 15; C.L. 1897, § 3577; Code 1915, § 5124; C.S. 1929, § 130-908; 1941 Comp., § 55-2408; 1953 Comp., § 73-25-8.

## **ANNOTATIONS**

**Review and approval of actions below.** - The explicit references in this section and 21-7-9 NMSA 1978 to the regents' duties and responsibilities require that the board review and approve the actions taken below in exercise of limited power of immediate government. 1969 Op. Att'y Gen. No. 69-104.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 25.

14A C.J.S. Colleges and Universities § 4.

### **21-7-9. [Departmental faculties; course of instruction; books, degrees and diplomas; removal of officers.]**

The immediate government of the several departments shall be entrusted to their respective faculties, but the regents shall have the power to regulate the course of instruction, and prescribe the books and authorities to be used in the several departments, and also confer such degrees and grant such diplomas as are usually conferred and granted by other universities. The regents shall have power to remove any officer connected with the university when in their judgment the interests require it.

**History:** Laws 1889, ch. 138, § 16; C.L. 1897, § 3578; Code 1915, § 5125; C.S. 1929, § 130-909; 1941 Comp., § 55-2409; 1953 Comp., § 73-25-9.

## ANNOTATIONS

**Cross-references.** - For removal of president or faculty member for cause after trial, see 21-1-7 NMSA 1978.

**Discretion and judgment at lower levels provided for.** - In this section and 21-7-8 NMSA 1978 the legislature provided for the exercise of discretion and judgment at subordinate levels subject to the ultimate control of the regents. 1969 Op. Att'y Gen. No. 69-104.

**Powers of administration and government are permitted various faculty groups,** and are characterized as those of "immediate government." 1969 Op. Att'y Gen. No. 69-104.

**Review and approval of actions below.** - The explicit references in this section and 21-7-8 NMSA 1978 to the regents' duties and responsibilities require that the board review and approve the actions taken below in exercise of limited power of immediate government. 1969 Op. Att'y Gen. No. 69-104.

**Removal of football coach.** - Whether the head football coach is an "officer" under this section is not something an appellate court can resolve as a matter of law; rather it is a question of fact. *Feldman v. Regents of Univ. of N.M.*, 88 N.M. 392, 540 P.2d 872 (Ct. App. 1975).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 1, 5, 11 to 13, 31, 41.

Instructors, imposing noneducational functions upon, 67 A.L.R. 1032.

Teacher in state college or university as officer or employee, 75 A.L.R. 1352.

Validity of governmental requirement of oath of allegiance or loyalty, 18 A.L.R.2d 268.

Dismissal or rejection of public schoolteacher because of disloyalty, 27 A.L.R.2d 487.

Elements and measure of damages in action by school teacher for wrongful discharge, 22 A.L.R.3d 1047.

Student's right to compel school officials to issue degree, diploma, or the like, 11 A.L.R.4th 1182.

14A C.J.S. Colleges and Universities §§ 17, 19, 25, 29.

### **21-7-9.1. Purpose [of Spanish resource center.]**

Pursuant to a memorandum of understanding between the ministry of education and science of Spain and the university of New Mexico providing for the establishment of a Spanish resource center in New Mexico, the center for southwest research will:

A. receive from the ministry of education and science of Spain:

(1) approximately two thousand volumes of Spanish language children's literature representative of the best materials published;

(2) a methodological and pedagogical collection of scholarly Spanish language works, including essays, university studies and special publications;

(3) approximately one thousand volumes of Spanish language classical and contemporary literature;

(4) a significant collection of Spanish language educational, technical and instructional materials;

(5) more than four thousand hours of recorded Spanish language audio and audiovisual materials; and

(6) an important library of current and classical Spanish language movies;

B. make the items received from the ministry of education and science of Spain available to scholars, teachers, university students, bilingual coordinators, administrators and others researching or interested in Hispanic language and culture;

C. organize, coordinate with the state department of public education and sponsor with the ministry of education and science of Spain various workshops, seminars and other educational and training events for bilingual teachers that focus on:

(1) Spanish language;

(2) bilingual and other language instruction methodologies;

(3) Spanish language classroom resources; and

(4) specific topics related to Hispanic history, arts and culture;

D. support, through pilot projects, research related to bilingualism and teaching Spanish as a foreign language;

E. provide exhibitions and showings of the materials in the Spanish resource center's Spanish language collections; and

F. promote statewide cultural activities related to the collections and activities of the Spanish resource center.

**History:** Laws 1992, ch. 73, § 1.

### ANNOTATIONS

**Effective dates.** - Laws 1992, ch. 73 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

### **21-7-10. [Admission of students; rules and regulations.]**

The university shall be open to the children of all residents of this state and such others as the board of regents may determine, under such rules and regulations as may be prescribed by said board, whenever the finances of the institution shall warrant it, and it is deemed expedient by said board of regents.

**History:** Laws 1889, ch. 138, § 16a; C.L. 1897, § 3579; Code 1915, § 5126; C.S. 1929, § 130-910; 1941 Comp., § 55-2410; 1953 Comp., § 73-25-10.

### ANNOTATIONS

**Cross-references.** - For tuition and matriculation fees, see 21-1-2 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 2, 7, 8, 17.

Mandamus to compel enrollment of student, 39 A.L.R. 1019.

Failure of student to attain or maintain prescribed scholastic rating as ground for dropping him, 86 A.L.R. 484.

Standing to challenge college or professional school admissions program which gives preference to minority or disadvantaged applicants, 60 A.L.R. Fed. 612.

### **21-7-11. [Sectarianism prohibited.]**

No sectarian tenets or opinions shall be required to entitle any person to be admitted as a student or employed as a tutor, or other instructor in said university, but the same shall forever be strictly nonsectarian in character.

**History:** Laws 1889, ch. 138, § 17; C.L. 1897, § 3580; Code 1915, § 5127; C.S. 1929, § 130-911; 1941 Comp., § 55-2411; 1953 Comp., § 73-25-11.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 16 Am. Jur. 2d Constitutional Law §§ 465, 466, 481.

Sectarianism in schools, 5 A.L.R. 866, 141 A.L.R. 1144, 45 A.L.R.2d 742.

14A C.J.S. Colleges and Universities § 7; 16A C.J.S. Constitutional Law §§ 518 to 521, 523.

### **21-7-12. [Meetings of board of regents; quorum.]**

The meetings of the board may be called in such manner as the board of regents may prescribe, and the majority of said board shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time.

**History:** Laws 1889, ch. 138, § 18; C.L. 1897, § 3581; Code 1915, § 5128; C.S. 1929, § 130-912; 1941 Comp., § 55-2412; 1953 Comp., § 73-25-12.

### **21-7-13. [Building and improvement bonds; purposes; authority of board of regents.]**

That for the purpose of erecting, altering, improving, furnishing or equipping any necessary buildings at the university of New Mexico at Albuquerque, or for acquiring any necessary land for the use of said university, or for retiring the whole or any part of any series of bonds previously issued under the provisions hereof, or for any of such purposes, the board of regents of the university of New Mexico is hereby authorized to borrow money in conformity with the terms of this act [21-7-13, 21-7-14, 21-7-16 to 21-7-25 NMSA 1978].

**History:** Laws 1927, ch. 47, § 1; 1929, ch. 30, § 1; C.S. 1929, § 130-913; 1941 Comp., § 55-2413; 1953 Comp., § 73-25-13.

## **ANNOTATIONS**

**Cross-references.** - For purchase of university bonds by state treasurer, see 21-7-24 NMSA 1978.

**Power to borrow money.** - Regents of the state university may borrow money for certain building purposes and pledge sufficient of their income from permanent funds to repay such sums borrowed and issue bonds therefor, provided that the limitation of the amount of bonds that can be issued, as contained in 21-7-24 NMSA 1978 does not work as a bar. 1933-34 Op. Att'y Gen. 77.

**Use of income.** - The legislature has power to authorize the state university to make such use of its income as is deemed best. *Seward v. Bowers*, 37 N.M. 385, 24 P.2d 253 (1933); *State v. Regents of Univ. of N.M.*, 32 N.M. 428, 258 P. 571 (1927).



**Nature of bond obligations.** - Bonds issued by the university of New Mexico under 21-7-13 to 21-7-25 NMSA 1978 are not obligations of the state, and no provision for taxation to provide interest and sinking fund need be made, and the approval by the voters is not necessary. They are the obligations of the university. *State v. Regents of Univ. of N.M.*, 32 N.M. 428, 258 P. 571 (1927).

**State treasurer may purchase bonds of state university** herein authorized. 1931-32 Op. Att'y Gen. 156.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 35.

14A C.J.S. Colleges and Universities § 17.

### **21-7-14. [Resolution for issuance of building and improvement bonds.]**

Whenever the said board, by the affirmative vote of a majority of its members, duly entered in the minutes of said board, shall by resolution determine that it is necessary to erect, alter, improve, furnish or equip any building or buildings at said university, or acquire any land for the use thereof, or to retire the whole or any part of any series of bonds previously issued in conformity with the provisions of this act [21-7-13, 21-7-14, 21-7-16 to 21-7-25 NMSA 1978], or for either of said purposes, said board is hereby empowered and authorized to issue and sell, subject to the terms of this act, building and improvement bonds of the university of New Mexico.

**History:** Laws 1927, ch. 47, § 2; 1929, ch. 30, § 2; C.S. 1929, § 130-914; 1941 Comp., § 55-2414; 1953 Comp., § 73-25-14.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations § 120.

14A C.J.S. Colleges and Universities §§ 4, 10.

### **21-7-15. Form and conditions of bonds.**

Bonds issued pursuant to Sections 21-7-13 through 21-7-25 NMSA 1978 shall be in such form and denominations as the board of regents of the university of New Mexico shall determine, due and payable not later than twenty years from date of issue. The bonds shall be payable in consecutive order commencing not later than two years from date of issue.

**History:** 1978 Comp., § 21-7-15, enacted by Laws 1983, ch. 265, § 39.

## ANNOTATIONS

**Repeals and reenactments.** - Laws 1983, ch. 265, § 39, repeals former 21-7-15 NMSA 1978, relating to form of bonds issued by the board of regents of the university of New Mexico, and enacts the above section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 195, 196, 202, 205, 399 to 453.

Power and discretion of officer or board authorized to issue bonds of governmental units as regards terms or conditions to be included therein, 119 A.L.R. 190.

11 C.J.S. Bonds § 100; 47 C.J.S. Interest and Usury; Consumer Credit § 18.

### **21-7-16. [Sale of building and improvement bonds; notice, publication and contents; conduct; delivery of bonds; purchase by state treasurer; acceptance by public officials.]**

The board shall offer said bonds for sale, after publication of notice of the time and place of sale, in some newspaper of general circulation in Albuquerque, New Mexico, and also in some financial newspaper published in the city of New York, once each week for four successive weeks prior to the date fixed for said sale. Such notice shall specify the amount, denomination, maturity dates and the description of the bonds to be offered for sale, and the place, day and hour at which sealed bids therefor will be received and opened, and that only unconditional bids will be considered, and that each bid must be accompanied by a certified check drawn on a solvent bank or trust company, payable to the order of the secretary and treasurer of said board, for not less than five per centum of the par value of the bonds offered for sale, as a guaranty that the bonds will be taken by the bidder if his bid is accepted and the bidder does not take and pay for the bonds in accordance therewith. At the place and time specified in such notice, the board or the executive committee thereof shall publicly open the bids and award the bonds to the responsible bidder or bidders offering the highest price therefor, but no bid shall be accepted for less than the par value of said bonds, plus the accrued interest from the last preceding interest date to the date of delivery of said bonds. Before delivery of the bonds to the purchaser, the secretary and treasurer of the board shall detach and cancel all matured interest coupons. Said board or the executive committee thereof, shall have and reserve the right to reject any and all bids at such sale, and readvertise the same. The state treasurer may, with the approval of the state board of finance and the other officials whose approval may be required by law for the investment of public funds, purchase such bonds at par and accrued interest to date of delivery for such investment, without the necessity of them being advertised or publicly offered for sale by the board, or after rejection of bids for all or any part of any issue. Such bonds shall be accepted at their par value by all public officials in this state as security for the repayment of all deposits of public monies of this state, or of any county, municipality or public institution thereof, and as security for the faithful performance of any obligation or duty to guarantee the performance of which such officials are now

authorized by law to accept a deposit of the bonds of this state or of the United States of America.

**History:** Laws 1927, ch. 47, § 4; 1929, ch. 30, § 3; C.S. 1929, § 130-916; 1941 Comp., § 55-2416; 1953 Comp., § 73-25-16.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 120, 228, 229, 240, 452, 453, 488.

Sale of municipal or other public bonds at less than par or face value, 91 A.L.R. 7, 162 A.L.R. 396.

11 C.J.S. Bonds §§ 71, 83.

#### **21-7-17. [Disposition of proceeds of building and improvement bond sales.]**

The proceeds from the sale of said bonds shall be paid to the secretary and treasurer of said board, and shall be by him placed in a separate fund to be known as "permanent improvement fund" to be used and paid out only for the specified purposes in this act [21-7-13, 21-7-14, 21-7-16 to 21-7-25 NMSA 1978] enumerated upon order of the board, on checks signed by the president or vice president of said board and by the secretary and treasurer thereof, except such portion thereof as may have been received on account of accrued interest on said bonds to date of delivery, which amount shall be placed in the "interest and retirement fund" for the liquidation of said bonds as hereinafter provided. The cost of preparing, advertising and selling said bonds, including any necessary expense for legal opinions thereon, shall be paid out of the proceeds of the sale of said bonds.

**History:** Laws 1927, ch. 47, § 5; C.S. 1929, § 130-917; 1941 Comp., § 55-2417; 1953 Comp., § 73-25-17.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 33.

14A C.J.S. Colleges and Universities § 14.

#### **21-7-18. [Interest and retirement fund for building and improvement bonds; establishment; replenishment.]**

The board of regents shall[, ] at the time of issuing said bonds, establish for the payment of the principal and interest thereof a fund to be known as "interest and retirement fund" into which fund said board shall immediately place a sum not less than the amount necessary to pay the interest and maturing principal of said bonds for the ensuing twelve months, and annually thereafter shall continue to place in said fund a sufficient amount to pay principal and interest maturing in the succeeding twelve months.

**History:** Laws 1927, ch. 47, § 6; C.S. 1929, § 130-918; 1941 Comp., § 55-2418; 1953 Comp., § 73-25-18.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations § 266.

#### **21-7-19. [Income pledged for redemption of building and improvement bonds.]**

For the faithful and prompt payment of all interest and principal of said bonds as and when the same shall mature according to the tenor thereof, the issue thereof shall constitute an irrevocable pledge by said board of so much of each year's income from the permanent fund of the university of New Mexico in the hands of the treasurer of this state, as shall be necessary to provide the "interest and retirement fund" herein mentioned, for the ensuing year, and to at all times fully and faithfully keep the same in not less than the amount necessary to pay the interest and principal maturing as aforesaid; and in addition thereto the issue of said bonds shall constitute an irrevocable pledge by said board of so much of each year's income from the income and current fund derived from the lease of such of its lands as remain unsold, as may be necessary to fully protect the "interest and retirement fund" for the ensuing year, and keep the same at all times in proper amount as herein provided.

**History:** Laws 1927, ch. 47, § 7; C.S. 1929, § 130-919; 1941 Comp., § 55-2419; 1953 Comp., § 73-25-19.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations § 199.

#### **21-7-20. [Income from investment of permanent fund derived from trust land sales pledged to repay building and improvement bonds.]**

That from and after the passage and approval of this act [21-7-13, 21-7-14, 21-7-16 to 21-7-25 NMSA 1978], all permanent funds thereafter derived from the sale or

disposition of the lands held in trust for said university, shall be invested in bonds of the United States or of the state of New Mexico, the income from which shall likewise form a part of the pledged income for the payment of the principal and interest of said bonds issued by said board.

**History:** Laws 1927, ch. 47, § 8; C.S. 1929, § 130-920; 1941 Comp., § 55-2420; 1953 Comp., § 73-25-20.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 35.

14A C.J.S. Colleges and Universities § 14.

### **21-7-21. [Payment of principal and interest on building and improvement bonds.]**

It shall be the duty of the secretary and treasurer of said board of regents to forward to the bank at which said bonds are payable, prior to the date on which any coupons or any principal amount of any of said bonds shall mature, out of the "interest and retirement fund" a sufficient sum of money to meet said coupons and maturing bonds as the same become due, plus any service charge which said bank shall be entitled to receive for its services.

**History:** Laws 1927, ch. 47, § 9; C.S. 1929, § 130-921; 1941 Comp., § 55-2421; 1953 Comp., § 73-25-21.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 197, 198.

11 C.J.S. Bonds § 93.

### **21-7-22. [Restrictions on use of building and improvement bond proceeds.]**

None of the funds derived from the sale of said bonds, except so much thereof as shall be necessary to defray the cost of the issuance thereof and the accrued interest from the date thereof to the time of delivery, shall ever be used or expended by said board for any other purposes than those for which authority is herein given to issue the same, as set forth in Section 1 [21-7-13 NMSA 1978] hereof.

**History:** Laws 1927, ch. 47, § 10; C.S. 1929, § 130-922; 1941 Comp., § 55-2422; 1953 Comp., § 73-25-22.

### **21-7-23. [Payments by state treasurer relating to building and improvement bonds.]**

It is hereby made the duty of the treasurer of this state, upon receiving written notice from the secretary and treasurer of said board that it has issued bonds as provided for herein, to forthwith forward and pay over to the secretary and treasurer of said board out of the income from the permanent funds of said university, a sum sufficient to make and establish the income [interest] and retirement fund, as herein provided, and annually thereafter to pay over a sufficient amount for said purpose, to the end that said interest and retirement fund shall at all times be kept in the proper amount. In the event there should not be sufficient undistributed income from permanent funds of said university, then said state treasurer shall use so much of the income and current fund of said university in his hands as shall be necessary to establish and at all times maintain said interest and retirement fund.

**History:** Laws 1927, ch. 47, § 11; C.S. 1929, § 130-923; 1941 Comp., § 55-2423; 1953 Comp., § 73-25-23.

#### **ANNOTATIONS**

**Bracketed material.** - The bracketed word "interest" was inserted by the compiler to correspond with 21-7-17 to 21-7-19 and 21-7-21 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 35.

14A C.J.S. Colleges and Universities § 14.

### **21-7-24. [Issuance of building and improvement bonds in series; restrictions.]**

In the event the board of regents aforesaid should find it advisable to issue bonds under this act [21-7-13, 21-7-14, 21-7-16 to 21-7-25 NMSA 1978] in more than one series, or at different times, for any of the purposes aforesaid, then each series of said bonds shall be designated by the letter "A," "B" or in some other designation to the end that each series shall be kept separate, and all of the requirements of this act shall apply to and be faithfully followed, done and carried out as to each of said series; provided, however, that said board of regents shall not have power to issue bonds hereunder, the aggregate annual requirements for which to meet interest and principal, shall exceed the amount of the income from the permanent funds of said university received by the

state treasurer for the fiscal year next preceding the date of the issuance of said bonds or any series thereof.

**History:** Laws 1927, ch. 47, § 12; 1929, ch. 30, § 4; C.S. 1929, § 130-924; 1941 Comp., § 55-2424; 1953 Comp., § 73-25-24.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 35.

14A C.J.S. Colleges and Universities § 14.

#### **21-7-25. [Tax exemption of building and improvement bonds.]**

Bonds issued under the provisions of this act [21-7-13, 21-7-14, 21-7-16 to 21-7-25 NMSA 1978], being for the sole purposes specified in Section 1 [21-7-13 NMSA 1978] hereof, shall forever be and remain free and exempt from taxation by this state or any subdivision thereof.

**History:** Laws 1927, ch. 47, § 13; C.S. 1929, § 130-925; 1941 Comp., § 55-2425; 1953 Comp., § 73-25-25.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 71 Am. Jur. 2d State and Local Taxation §§ 495, 526.

Constitutional enumeration of subjects of tax exemption as affecting power of legislature to free government securities or property from taxation, 9 A.L.R. 436.

84 C.J.S. Taxation § 260.

#### **21-7-26. Temporary provision; medical residency programs; state cooperation.**

A. The legislature finds that the expansion of hospital physician residency programs may extend and expand limited health delivery resources into rural and other medically underserved areas of the state.

B. The department of health and the university of New Mexico school of medicine shall assist hospitals in the state to develop and expand physician residencies in family practice, internal medicine, obstetrics, gynecology and pediatrics in rural or other medically underserved areas. The department and the school of medicine shall provide information and technical assistance to enhance hospital physician residency programs in rural or other medically underserved areas.

**History:** Laws 1994, ch. 57, § 17.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1994, ch. 57, § 20 makes the act effective immediately. Approved March 4, 1994.

### **21-7-27. Temporary provision; university of New Mexico; physician assistant training program.**

The board of regents of the university of New Mexico shall establish a primary care physician assistant training program designed to meet the needs of the state.

**History:** Laws 1994, ch. 57, § 18.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1994, ch. 57, § 20 makes the act effective immediately. Approved March 4, 1994.

## **ARTICLE 8 NEW MEXICO STATE UNIVERSITY**

### **21-8-1. [Objects; admission; rules and regulations.]**

The New Mexico college of agriculture and mechanic arts [New Mexico state university] shall be an institution of learning open to the children of all the residents of this state, and such other persons as the board of regents may determine, under such terms, rules and regulations as may be prescribed by said board of regents; shall be nonsectarian in character and devoted to practical instruction in agriculture, mechanic arts, natural sciences connected therewith, as well as a thorough course of instruction in all branches of learning bearing upon agriculture, and other industrial pursuits.

**History:** Laws 1889, ch. 138, § 19; C.L. 1897, § 3552; Code 1915, § 5129; C.S. 1929, § 130-1001; 1941 Comp., § 55-2501; 1953 Comp., § 73-26-1.

#### **ANNOTATIONS**

**Cross-references.** - For designation as state educational institution, see N.M. Const., art. XII, § 11.

As to acceptance of land grants, see N.M. Const., art. XII, § 12.

For management by board of regents, see N.M. Const., art. XII, § 13.



**Bracketed material.** - The bracketed reference to New Mexico state university in this section was inserted by the compiler, as Laws 1889, ch. 138, § 2, creates and establishes the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changes the name of the agricultural college and agricultural (experiment) station of New Mexico to the New Mexico college of agriculture and mechanic arts. Article XII, Section 11, of the constitution of New Mexico, as repealed and reenacted November 8, 1960, further changes the name to the New Mexico state university. See also 21-8-2 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

**Powers of board of regents.** - The board of regents has the power to enact laws, rules and regulations for the government of the college, and may make reasonable rules and regulations for the government and discipline of the students under this section. 1939-40 Op. Att'y Gen. 134.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture § 24; 15A Am. Jur. 2d Colleges and Universities § 17; 16 Am. Jur. 2d Constitutional Law §§ 465, 466, 481.

Sectarianism in schools, 5 A.L.R. 866, 141 A.L.R. 1144, 45 A.L.R.2d 742.

Validity and application of provisions governing determination of residency for purpose of fixing fee differential for out-of-state students in public college, 56 A.L.R.3d 641.

14A C.J.S. Colleges and Universities §§ 4, 7; 16A C.J.S. Constitutional Law §§ 518 to 521, 523.

## **21-8-2. [Construction of other names for college used in statutes.]**

Wherever in the statutes of the state of New Mexico, the term "agricultural college of New Mexico," or "agricultural and mechanical college," or "college of agriculture and mechanic arts," or "agricultural college," or "state college," or "New Mexico agricultural college," or any other similar designation, where the context shows the meaning to be "New Mexico college of agriculture and mechanic arts," the same shall be construed and held to mean "New Mexico college of agriculture and mechanic arts [New Mexico state university]."

**History:** Laws 1939, ch. 28, § 2; 1941 Comp., § 55-2502; 1953 Comp., § 73-26-2.

### **ANNOTATIONS**

**Bracketed material.** - For change of name of New Mexico college of agriculture and mechanic arts, now New Mexico state university, see note under catchline "bracketed material" in notes to 21-8-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 14A C.J.S. Colleges and Universities § 9.

### **21-8-3. [Curriculum; management vested in board of regents; number and qualifications; corporate style and powers; quorum.]**

The course of instruction of the college [New Mexico state university] hereby created shall embrace the English language, literature, mathematics, philosophy, civil engineering, chemistry and animal and vegetable anatomy and physiology, the veterinary art, entomology, geology, and political, rural and household economy, horticulture, moral philosophy, history, mechanics and such other sciences and courses of instruction as shall be prescribed by the regents of this institution of learning. The management of said college [university] and experiment station, the care and preservation of all property, of which such institution shall become possessed, the erection and construction of all buildings necessary for the use of said college [university] and station, and the disbursement and expenditure of all moneys provided for by this act, shall be vested in a board of five regents. Said five regents shall possess the same qualifications, as required for the regents of the university of New Mexico. Said regents and their successors in office shall constitute a body corporate, with the name and style of the the [sic] regents of the New Mexico college of agriculture and mechanic arts [New Mexico state university], with the right as such of suing and being sued, of contracting and being contracted with, of making and using a common seal, and altering the same at pleasure, of causing all things to be done necessary to carry out the provisions of law. A majority of the board shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time.

**History:** Laws 1889, ch. 138, § 20; C.L. 1897, § 3553; Code 1915, § 5130; C.S. 1929, § 130-1002; Laws 1939, ch. 28, § 1; 1941 Comp., § 55-2503; 1953 Comp., § 73-26-3.

#### **ANNOTATIONS**

**Cross-references.** - For board of regents, number, appointment, qualifications and duties, see N.M. Const., art. XII, § 13.

**Meaning of "this act".** - "This act" refers to Laws 1889, ch. 138. For the compilation of operative sections, consult the tables of corresponding code sections.

**Term of treasurer of board.** - The treasurer of the board would still continue as such until the election and qualifications of his successor. *Bowman Bank & Trust Co. v. First Nat'l Bank*, 18 N.M. 589, 139 P. 148 (1914).

**Scope of powers.** - The legislature has expressly recognized the authority of institutions of higher learning to receive benefits and donations from the United States and from private individuals and corporations; to buy, sell, lease or mortgage real estate; and to do all things, which in the opinions of the respective boards of regents, will be for the best interests of the institutions in the accomplishment of their purposes or objects and, therefore, the legislature lacks authority to appropriate these funds or to control the use thereof through the power of appropriation. *State ex rel. Sego v. Kirkpatrick*, 86 N.M. 359, 524 P.2d 975 (1974).

**Liability for employee negligence.** - A state institution, as is the board of regents, is not subject to an action in damages for the negligence of its employees. *Livingston v. Regents of N.M. College of Agrl. & Mechanic Arts*, 64 N.M. 306, 328 P.2d 78 (1958).

**Where rule of governmental immunity violated.** - A suit based upon tort against a state agency such as the regents of the state college, demanding judgment only to the extent that such agency is protected by liability insurance, violates the rule of governmental immunity from suit. *Livingston v. Regents of N.M. College of Agrl. & Mechanic Arts*, 64 N.M. 306, 328 P.2d 78 (1958).

**Exemption from zoning ordinances.** - Zoning ordinances and regulations of the city of Las Cruces are ineffective on property belonging to the university of New Mexico, even if the university is annexed to the city, and they cannot prohibit or interfere with the uses of university property as desired by the board of regents. 1969 Op. Att'y Gen. No. 69-143.

**University officials may preclude the sale of ice cream** by private individuals from a mobile ice cream truck on university streets, providing the reasons for the regulation directly concern the health, safety, education and welfare of the students and are not so unreasonable and arbitrary as to offend "due process" of law under the fourteenth amendment. 1961-62 Op. Att'y Gen. No. 62-38.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 3, 32 to 35.

Tort liability of college, university, fraternity, or sorority for injury or death of member or prospective member by hazing or initiation activity, 68 A.L.R.4th 228.

14A C.J.S. Colleges and Universities §§ 2, 10, 11, 17.

#### **21-8-4. [Officers.]**

The officers of the college of agriculture and mechanic arts [New Mexico state university] shall be the same, be elected in the same manner, at the same time, perform like duties, and possess the same qualifications, as is provided for the officers of the university of New Mexico.

**History:** Laws 1889, ch. 138, §§ 21, 65; 1891, ch. 42, § 1; C.L. 1897, §§ 3554, 3642; Code 1915, § 5131; C.S. 1929, § 130-1003; Laws 1941, ch. 82, § 1; 1941 Comp., § 55-2504; 1953 Comp., § 73-26-4.

### **ANNOTATIONS**

**Cross-references.** - For officers of state university, see 21-7-5 and 21-7-6 NMSA 1978.

For approval by president of New Mexico state university for expenditures from county farm and range improvement fund, see 6-11-6 NMSA 1978.

**Bracketed material.** - For change of name of New Mexico college of agriculture and mechanic arts, now New Mexico state university, see same catchline in notes to 21-8-1 NMSA 1978.

**Bond of secretary-treasurer required.** - Secretary-treasurer of the board of regents of the New Mexico college of agriculture and mechanic arts (now New Mexico state university) is required to execute a bond to the state of New Mexico in not less than the penal sum of \$20,000 before entering upon the discharge of his duties. *State v. Llewellyn*, 23 N.M. 43, 167 P. 414, cert. denied, 245 U.S. 666, 38 S. Ct. 63, 62 L. Ed. 538 (1917).

**Regulation of student conduct.** - The power to control, manage and govern the New Mexico state university is vested in the regents, the proper exercise of which necessarily includes the exercise of broad discretion. An inherent part of the power is that of requiring students to adhere to generally accepted standards of conduct. *Futrell v. Ahrens*, 88 N.M. 284, 540 P.2d 214 (1975).

**Of visitation in university bedrooms.** - A regulation of the board of regents of the New Mexico state university which limits visitation by persons of the opposite sex in residence halls or dormitory bedrooms maintained by the regents on the university campus, does not interfere appreciably, if at all, with the intercommunication important to the students of the university. The regulation is reasonable, serves legitimate educational purposes and promotes the welfare of the students at the university. *Futrell v. Ahrens*, 88 N.M. 284, 540 P.2d 214 (1975).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 5, 11, 16.

14A C.J.S. Colleges and Universities §§ 15 to 17.

## **21-8-5. [Powers and duties of board of regents.]**

The board of regents shall direct the disposition of any moneys belonging to or appropriated to the agricultural college [New Mexico state university] and experiment station and shall make all rules and regulations necessary for the government and management of the same, adopt plans and specifications for necessary buildings and superintend the construction of said buildings, and fix the salaries of professors, teachers and other employes, and the tuition fees to be charged in said college [university].

**History:** Laws 1889, ch. 138, § 23; C.L. 1897, § 3556; Code 1915, § 5132; C.S. 1929, § 130-1004; 1941 Comp., § 55-2505; 1953 Comp., § 73-26-5.

## ANNOTATIONS

**Cross-references.** - For penalty for interest in contracts for supplies, see 21-1-35 NMSA 1978.

For administration of agricultural laws, see 21-8-8 NMSA 1978.

**Bracketed material.** - For change of name of agricultural college and experiment station, now New Mexico state university, see same catchline in notes to 21-8-1 NMSA 1978.

**Appropriations.** - Subsections Y and Z of Laws 1994, ch. 147, § 3, effective March 9, 1994, appropriate \$500,000 and \$300,000 from the general fund to the board of regents of New Mexico state university for expenditure in the eighty-second and eighty-third fiscal years to make capital improvements to the golf course and other facilities necessary maintain and expand the professional golf management program, and for the agricultural science center at Artesia in Eddy county. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Subsections XXXXXX, YYYYYY, KKKKKKK, and MMMMMMM of Laws 1994, ch. 147, § 6, effective March 9, 1994, appropriate various amounts from the general fund to the board of regents of New Mexico state university for expenditure in the eighty-second through eighty-fifth fiscal years for various purposes. Unexpended or unencumbered balances remaining shall revert to the general fund.

Laws 1994, ch. 147, § 7LL, effective March 9, 1994, appropriates various amounts from the general fund to the board of regents of New Mexico state university for expenditure in the eighty-second and eighty-third fiscal years for various purposes. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund, except for the appropriation for the waste management education research consortium, which shall not revert.

**Funds may be transferred.** - Treasurer of board of agricultural college (now New Mexico state university) has the power to transfer a certificate of deposit from one depository to another. *State v. Llewellyn*, 23 N.M. 43, 167 P. 414, cert. denied, 245 U.S. 666, 38 S. Ct. 63, 62 L. Ed. 538 (1917); *Bowman Bank & Trust Co. v. First Nat'l Bank*, 18 N.M. 589, 139 P. 148 (1914).

**To any bank.** - Treasurer of board can deposit funds of agricultural college (now New Mexico state university) in any bank he sees fit. *Bowman Bank & Trust Co. v. First Nat'l Bank*, 18 N.M. 589, 139 P. 148 (1914).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 35.

14A C.J.S. Colleges and Universities § 17.

### **21-8-6. [Rules; calling meetings of board of regents.]**

The board of regents shall have power and it shall be their duty to enact laws for the government of said college [New Mexico state university] and experiment station and the meetings of said board may be called in such manner as the regents may prescribe.

**History:** Laws 1889, ch. 138, § 26; C.L. 1897, § 3559; Code 1915, § 5137; C.S. 1929, § 130-1011; 1941 Comp., § 55-2506; 1953 Comp., § 73-26-6.

#### **ANNOTATIONS**

**Bracketed material.** - For change of name of agricultural college and experiment station, now New Mexico state university, see same catchline in notes to 21-8-1 NMSA 1978.

**Regulation of student conduct.** - The power to control, manage and govern the New Mexico state university is vested in the regents, the proper exercise of which necessarily includes the exercise of broad discretion. An inherent part of the power is that of requiring students to adhere to generally accepted standards of conduct, and the prohibition embodied in the regulation in question forbidding visitation by persons of the opposite sex in residence hall or dormitory bedrooms is consistent with generally accepted standards of conduct. *Futrell v. Ahrens*, 88 N.M. 284, 540 P.2d 214 (1975).

**Of visitation in university bedrooms.** - A regulation of the board of regents of the New Mexico state university which limits visitation by persons of the opposite sex in residence hall or dormitory bedrooms maintained by the regents on the university campus, does not interfere appreciably, if at all, with the intercommunication important to the students of the university. The regulation is reasonable, serves legitimate educational purposes and promotes the welfare of the students at the university. *Futrell v. Ahrens*, 88 N.M. 284, 540 P.2d 214 (1975).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 25.

Mandamus to compel enrollment or reinstatement of student, 39 A.L.R. 1019.

Failure of student to attain or maintain prescribed scholastic rating as ground for dropping him, 86 A.L.R. 484.

Validity of regulation as to clothes of pupils, 14 A.L.R.3d 1201.

14A C.J.S. Colleges and Universities § 18.

## **21-8-7. [Course of instruction; books; diplomas and degrees; removal of officers.]**

The immediate government of the several departments shall be intrusted to their respective faculties, but the regents shall have the power to regulate the course of instruction and prescribe, under the advice of the faculty, the books and authorities to be used in the several departments, and also to confer such degrees and grant such diplomas as are usually conferred and granted by other agricultural colleges. The regents shall have power to remove any officer connected with the agricultural college [New Mexico state university] or experiment station when, in their judgment, the best interests of the college [university] require it.

**History:** Laws 1889, ch. 138, § 27; C.L. 1897, § 3560; Code 1915, § 5138; C.S. 1929, § 130-1012; 1941 Comp., § 55-2507; 1953 Comp., § 73-26-7.

### **ANNOTATIONS**

**Cross-references.** - For tuition and matriculation fees, see 21-1-2 NMSA 1978.

For removal of president or faculty member for cause after trial, see 21-1-7 NMSA 1978.

**Bracketed material.** - For change of name of agricultural college and experiment station, now New Mexico state university, see same catchline in notes to 21-8-1 NMSA 1978.

**Power to revoke degrees.** - The plain language of this section gives the Regents exclusive power to confer degrees. Implicit in that power must be the authority to revoke degrees. *Hand v. Matchett*, 957 F.2d 791 (10th Cir. 1992).

To the extent a power to revoke degrees is recognized, it is vested exclusively in the Regents. None of the statutes governing the university expressly allow the Regents to delegate this or any other power. *Hand v. Matchett*, 957 F.2d 791 (10th Cir. 1992).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 1, 5, 11 to 13, 31, 41.

Dismissal or rejection of public school teacher because of disloyalty, 27 A.L.R.2d 487.

Elements and measure of damages in action by school teacher for wrongful discharge, 22 A.L.R.3d 1047.

Student's right to compel school officials to issue degree, diploma, or the like, 11 A.L.R.4th 1182.

14A C.J.S. Colleges and Universities §§ 17, 19, 25, 29.

## **21-8-8. [Agricultural and horticultural laws; administration and enforcement vested in board of regents; inspectors and agents.]**

That the board of regents of the college of agriculture and mechanic arts [New Mexico state university] is hereby given supervision of the administration and enforcement of all laws of this state, relating to agriculture, agricultural projects, horticulture, feeds and feed stuffs, insect pests, plant diseases and such subjects pertaining to agriculture and horticulture as the legislature shall hereafter provide, and shall have power to delegate inspectors and agents to assist in the enforcement of such laws.

**History:** Laws 1919, ch. 77, § 1; C.S. 1929, § 130-1005; 1941 Comp., § 55-2508; 1953 Comp., § 73-26-8.

### **ANNOTATIONS**

**Cross-references.** - For establishment of state chemical laboratory at university, see 21-9-1 NMSA 1978.

For department of agriculture under control of regents, see 76-1-2 NMSA 1978.

For agricultural extension service, see 76-2-1 to 76-2-12 NMSA 1978.

For enforcement of Plant Protection Act, see 76-5-11 to 76-5-28 NMSA 1978 et seq.

For duties under Bee Act, see 76-9-1 to 76-9-13 NMSA 1978.

For Seeds, see 76-10-1 to 76-10-10 NMSA 1978.

For New Mexico Seed Law, see 76-10-11 to 76-10-22 NMSA 1978.

For enforcement of New Mexico Fertilizer Act, see Article 11 of Chapter 76 NMSA 1978.

For regulation of cotton ginning, see 76-14-1 to 76-14-15 NMSA 1978.

For grading standards for fruit, see 76-15-1 to 76-15-9 NMSA 1978.

For enforcement of Produce Marketing Act, see 76-15-10 to 76-15-22 NMSA 1978.

For regulations concerning pecans, see 76-16-1 to 76-16-9 NMSA 1978.

For enforcement of act regulating commercial feeding stuffs, see 76-19-1 to 76-19-14 NMSA 1978.

For predatory wild animals and rodent pests, see 77-15-1 to 77-15-5 NMSA 1978.



**Bracketed material.** - For change of name of New Mexico college of agriculture and mechanic arts, now New Mexico state university, see same catchline in notes to 21-8-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture §§ 42 to 57.

Disease or infection, validity of statutes, ordinances, or regulations for protection of vegetation against, 70 A.L.R.2d 852.

3 C.J.S. Agriculture §§ 5 to 7, 19.

### **21-8-9. [Agricultural experiment station; direction; federal benefits.]**

The agricultural experiment station in connection with said college [New Mexico state university] shall be under the direction of the said board of regents of said college [university] for the purpose of conducting experiments in agriculture according to the terms of Section 1 of an act of congress approved March 2, 1887, and entitled, an act to establish agricultural experiment stations in connection with the colleges established in the several states under the provisions of an act approved July 2, 1862, and of the acts supplementary thereto. The said college [university] and experiment station shall be entitled to receive all the benefits and donations made and given to similar institutions of learning in other states and territories of the United States by the legislation of the congress of the United States and particularly to the benefit and donations given by the provisions of an act of congress of the United States entitled, an act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and mechanic arts, approved July 2, 1862, and of all acts supplementary thereto, including the act entitled, an act to establish agricultural experiment stations in connection with colleges established in the several states under the provisions of an act approved July 2, 1862, and of the acts supplementary thereto, which said last mentioned act was approved March 2, 1887.

**History:** Laws 1889, ch. 138, § 24; C.L. 1897, § 3557; Code 1915, § 5133; C.S. 1929, § 130-1006; 1941 Comp., § 55-2509; 1953 Comp., § 73-26-9.

### **ANNOTATIONS**

**Bracketed material.** - For change of name of New Mexico college of agriculture and mechanic arts, now New Mexico state university, see same catchline in notes to 21-8-1 NMSA 1978.

**Compiler's note.** - The act of congress approved March 2, 1887, as amended by the act of August 11, 1955, referred to in this section, is compiled in the United States Code as 7 U.S.C. §§ 361a to 361i. Section 1 is compiled as 7 U.S.C. § 361a.

The act of congress approved July 2, 1862, referred to in this section, is compiled in the United States Code as 7 U.S.C. §§ 301 to 305, 307, 308.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture §§ 20, 44, 45, 53, 55, 57; 15A Colleges and Universities §§ 2, 5, 37.

14A C.J.S. Colleges and Universities §§ 7, 8, 14, 17.

### **21-8-10. [Contracts for acceptance and administration of funds.]**

The board of regents of the New Mexico state university, as the department of agriculture, is authorized to enter into a contract or contracts, agreement or agreements with the United States, the state of New Mexico or agencies of either of them, corporations, foundations and private persons to receive, accept and administer funds or other assets upon such terms and conditions and for such purposes, as the board of regents shall find appropriate.

**History:** 1953 Comp., § 73-26-9.1, enacted by Laws 1961, ch. 59, § 1.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 5.

14A C.J.S. Colleges and Universities § 17.

### **21-8-11. [Acceptance of congressional grant of 1887 for experiment station.]**

The assent of the legislature of the state of New Mexico, is hereby given in pursuance of the requirements of Section [nine] of said act of congress, approved March 2, 1887, to the granting of money therein made to the establishment of experiment stations in accordance with Section one of said last mentioned act, and assent is hereby given to carry out, within the state of New Mexico, all and singular the provisions of said act.

**History:** Laws 1889, ch. 138, § 25; C.L. 1897, § 3558; Code 1915, § 5136; C.S. 1929, § 130-1009; 1941 Comp., § 55-2510; 1953 Comp., § 73-26-10.

#### **ANNOTATIONS**

**Compiler's note.** - Section 9 of the act of March 2, 1887, required the assent of legislators prior to amendment in 1955. The act of August 11, 1955, amended the act of March 2, 1887 in its entirety and superseded Section 9. See 7 U.S.C. §§ 361a to 361i.

Section 1 of the act of March 2, 1887, as amended by the act of August 11, 1955, is compiled as 7 U.S.C. § 361a.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture § 43.

14A C.J.S. Colleges and Universities § 7.

### **21-8-12. [Acceptance of Adams Act grant for experiment station.]**

That the assent of the legislature of the state of New Mexico is hereby given, in pursuance of the requirements of Section 2 of an act of congress entitled, "An act to provide for an increased annual appropriation for agricultural experiment stations and regulating the expenditures thereof, approved March 16, 1906," commonly known as the Adams Act, to the purpose of the grants of money authorized by such act to the carrying out, within the state of New Mexico, of all and singular the provisions of said act.

**History:** Laws 1907, ch. 13, § 1; Code 1915, § 5135; C.S. 1929, § 130-1008; 1941 Comp., § 55-2511; 1953 Comp., § 73-26-11.

#### **ANNOTATIONS**

**Compiler's note.** - The act of August 11, 1955, c. 790, 69 Stat. 674, compiled as 7 U.S.C. §§ 361a to 361i, repeals Section 2 of the act of March 16, 1906.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture § 43.

14A C.J.S. Colleges and Universities § 7.

### **21-8-13. [Acceptance of Purnell Act grant for experiment station.]**

That the assent of the legislature of the state of New Mexico is hereby given in pursuance of the requirements of Section 2 of the act of congress entitled, "An act to authorize the more complete endowment of agricultural experiment stations and for other purposes," approved February 24, 1925, and commonly known as the "Purnell Act," to the purpose of the grants of monies authorized by such act to the carrying out, within the state of New Mexico, of all and singular the provisions of said act.

**History:** Laws 1927, ch. 83, § 1; C.S. 1929, § 130-1013; 1941 Comp., § 55-2512; 1953 Comp., § 73-26-12.

#### **ANNOTATIONS**

**Compiler's note.** - The act of August 11, 1955, c. 790, 69 Stat. 674, compiled as 7 U.S.C. §§ 361a to 361i, repeals Section 2 of the act of February 24, 1925.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture § 43.

14A C.J.S. Colleges and Universities § 7.

## **21-8-14. [Acceptance of congressional grant of 1890 for New Mexico state university.]**

The assent of the legislature of New Mexico is hereby given in pursuance of the requirement of Section two of an act of congress entitled, an act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an act of congress approved July 2, 1862, approved August 30th, 1890, to the granting of moneys for the benefit of the agricultural college of New Mexico [New Mexico state university], and the said legislature accepts and consents to all of the terms and conditions of said act of congress, and assent is further given to carry out within the state of New Mexico, all and singular, the provisions of said act of congress.

**History:** Laws 1891, ch. 78, § 1; C.L. 1897, § 3567a; Code 1915, § 5134; C.S. 1929, § 130-1007; 1941 Comp., § 55-2513; 1953 Comp., § 73-26-13.

### **ANNOTATIONS**

**Bracketed material.** - For change of name of the agricultural college of New Mexico, now New Mexico state university, see same catchline in notes to 21-8-1 NMSA 1978.

**Compiler's note.** - Section two of the act of August 30, 1890, is compiled as 7 U.S.C. § 324.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture § 43.

14A C.J.S. Colleges and Universities § 7.

## **21-8-15. Authorized to borrow money.**

That for the purpose of erecting, altering, improving, furnishing or equipping any necessary buildings at the New Mexico college of agriculture and mechanic arts [New Mexico state university] at state college, or for acquiring any necessary land for the use of said college [university], or both, or for the retiring [of] the whole or any part of any series of bonds previously issued under the provisions hereof, or for any of such purposes, the board of regents of the New Mexico college of agriculture and mechanic arts [New Mexico state university] is hereby authorized to borrow money in conformity with the terms of this act [21-8-15, 21-8-16, 21-8-18 to 21-8-26 NMSA 1978].

**History:** Laws 1929, ch. 40, § 1; C.S. 1929, § 130-1014; Laws 1937, ch. 225, § 1; 1941 Comp., § 55-2514; 1953 Comp., § 73-26-14.

### **ANNOTATIONS**

**Bracketed material.** - For change of name of the New Mexico college of agriculture and mechanic arts, now New Mexico state university, see same catchline in notes to 21-8-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 35.

14A C.J.S. Colleges and Universities § 17.

## **21-8-16. Board may issue building and improvement bonds.**

Whenever the said board, by the affirmative vote of a majority of its members, duly entered in the minutes of said board, shall by resolution determine that it is necessary to erect, alter, improve, furnish or equip any building or buildings at said college [university], or acquire any land for the use thereof, or both, or to retire the whole or any part of any series of bonds previously issued in conformity with the provisions of this act [21-8-15, 21-8-16, 21-8-18 to 21-8-26 NMSA 1978], or to refund the same, or for either of said purposes, the board of regents of the New Mexico college of agriculture and mechanic arts [New Mexico state university] is hereby empowered and authorized to issue and sell, subject to the terms of this act, building and improvement bonds of the New Mexico college of agriculture and mechanic arts [university].

**History:** Laws 1929, ch. 40, § 2; C.S. 1929, § 130-1015; Laws 1937, ch. 225, § 2; 1941 Comp., § 55-2515; 1953 Comp., § 73-26-15.

### **ANNOTATIONS**

**Bracketed material.** - For change of name of the New Mexico college of agriculture and mechanic arts, now New Mexico state university, see same catchline in notes to 21-8-1 NMSA 1978.

**Meaning of "this act".** - The words "this act" would mean, by strict interpretation, the sections of the 1937 amendatory act by which they were inserted, compiled as 21-8-15, 21-8-16, 21-8-25 NMSA 1978. However, reference was apparently intended to the whole of the original 1929 act as amended.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations § 120.

14A C.J.S. Colleges and Universities §§ 4, 10.

## **21-8-17. Form and conditions of bonds.**

Bonds issued pursuant to Sections 21-8-15 through 21-8-26 NMSA 1978 shall be in such form and denominations as the board of regents of New Mexico state university shall determine, due and payable not later than twenty years from date of issue. The

bonds shall be payable in consecutive order commencing not later than two years from date of issue.

**History:** 1978 Comp., § 21-8-17, enacted by Laws 1983, ch. 265, § 40.

### **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1983, ch. 265, § 40, repeals former 21-8-17 NMSA 1978, relating to form of bonds issued by the board of regents of the New Mexico college of agriculture and mechanic arts, and enacts the above section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 195, 196, 202, 205, 399 to 453.

Power and discretion of officer or board authorized to issue bonds of governmental units as regards terms or conditions to be included therein, 119 A.L.R. 190.

11 C.J.S. Bonds § 100; 47 C.J.S. Interest and Usury; Consumer Credit § 18.

### **21-8-18. [Sale of building and improvement bonds; notice, publication and contents; bids; purchase by state treasurer; acceptance by public officials.]**

The board shall offer said bonds for sale, after publication of notice of the time and place of sale, in some newspaper of general circulation in Albuquerque, New Mexico, once each week for four successive weeks prior to the date fixed for said sale. Such notice shall specify the amount, denomination, maturity dates and the description of the bonds to be offered for sale, and the place, day and hour at which sealed bids therefor will be received and opened, and that only unconditional bids will be considered, and that each bid must be accompanied by a certified check drawn on a solvent bank or trust company, payable to the order of the secretary and treasurer of said board, for not less than five per centum of the par value of the bonds offered for sale, as a guaranty that the bonds will be taken by the bidder if his bid is accepted and the bidder does not take and pay for the bonds in accordance therewith. At the place and time specified in such notice, the board or the executive committee thereof shall publicly open the bids and award the bonds to the responsible bidder or bidders offering the highest price therefor, but no bid shall be accepted for less than the par value of said bonds, plus the accrued interest from the last preceding interest date to the date of delivery of said bonds. Before delivery of the bonds to the purchaser, the secretary and treasurer of the board shall detach and cancel all matured interest coupons. Said board or the executive committee thereof, shall have and reserve the right to reject any and all bids at such sale, and readvertise the same. The state treasurer may, with the approval of the state board of finance and the other officials whose approval may be required by law for the investment of public funds, purchase such bonds at par and accrued interest to date of delivery for such investment, without the necessity of them being advertised or publicly offered for sale by the board, or after rejection of bids for all or any part of any issue.

Such bonds shall be accepted at their par value by all public officials in this state as security for the repayment of all deposits of public moneys of this state, or of any county, municipality or public institution thereof, and as security for the faithful performance of any obligation or duty to guarantee the performance of which such officials are now authorized by law to accept a deposit of the bonds of this state or of the United States of America.

**History:** Laws 1929, ch. 40, § 4; C.S. 1929, § 130-1017; Laws 1941, ch. 156, § 1; 1941 Comp., § 55-2517; 1953 Comp., § 73-26-17.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 120, 228, 229, 240, 452, 453, 488.

Sale of municipal or other public bonds at less than par or face value, 91 A.L.R. 7, 162 A.L.R. 396.

11 C.J.S. Bonds §§ 71, 83.

### **21-8-19. [Disposition of building and improvement bond proceeds; permanent improvement fund; interest and retirement fund; costs of sale.]**

The proceeds from the sale of said bonds shall be paid to the secretary and treasurer of said board, and shall be by him placed in a separate fund to be known as "permanent improvement fund" to be used and paid out only for the specified purposes in this act [21-8-15, 21-8-16, 21-8-18 to 21-8-26 NMSA 1978] enumerated upon order of the board, on checks signed by the president or vice president of said board and by the secretary and treasurer thereof, except such portion thereof as may have been received on account of accrued interest on said bonds to date of delivery, which amount shall be placed in the "interest and retirement fund" for the liquidation of said bonds as hereinafter provided. The cost of preparing, advertising and selling said bonds, including any necessary expense for legal opinions thereon, shall be paid out of the proceeds of the sale of said bonds.

**History:** Laws 1929, ch. 40, § 5; C.S. 1929, § 130-1018; 1941 Comp., § 55-2518; 1953 Comp., § 73-26-18.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 33.

14A C.J.S. Colleges and Universities § 14.

## **21-8-20. [Establishment and replenishment of interest and retirement fund for building and improvement bonds.]**

The board of regents shall[,] at the time of issuing said bonds, establish for the payment of the principal and interest thereof a fund to be known as "interest and retirement fund" into which fund said board shall immediately place a sum not less than the amount necessary to pay the interest and maturing principal of said bonds for the ensuing twelve months, and annually thereafter shall continue to place in said fund a sufficient amount to pay principal and interest maturing in the succeeding twelve months.

**History:** Laws 1929, ch. 40, § 6; C.S. 1929, § 130-1019; 1941 Comp., § 55-2519; 1953 Comp., § 73-26-19.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations § 266.

## **21-8-21. [Income pledged to pay building and improvement bonds.]**

For the faithful and prompt payment of all interest and principal of said bonds as and when the same shall mature according to the tenor thereof, the issue thereof shall constitute an irrevocable pledge by said board of so much of each year's income from the permanent fund of the New Mexico college of agriculture and mechanic arts [New Mexico state university] in the hands of the treasurer of this state, as shall be necessary to provide the "interest and retirement fund" herein mentioned, for the ensuing year, and to at all times fully and faithfully keep the same in not less than the amount necessary to pay the interest and principal maturing as aforesaid; and in addition thereto the issue of said bonds shall constitute an irrevocable pledge by said board of so much of each year's income from the income and current fund derived from the lease of such of its lands as remain unsold, as may be necessary to fully protect the "interest and retirement fund" for the ensuing year, and keep the same at all times in proper amount as herein provided.

**History:** Laws 1929, ch. 40, § 7; C.S. 1929, § 130-1020; 1941 Comp., § 55-2520; 1953 Comp., § 73-26-20.

### **ANNOTATIONS**

**Bracketed material.** - For change of name of the New Mexico college of agriculture and mechanic arts, see same catchline in notes to 21-8-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations § 199.



## **21-8-22. [Payment of interest and principal of building and improvement bonds.]**

It shall be the duty of the secretary and treasurer of said board of regents to forward to the bank at which said bonds are [are] payable, prior to the date on which any coupons or any principal amount of any of said bonds shall mature, out of the "interest and retirement fund" a sufficient sum of money to meet said coupons and maturing bonds as the same become due, plus any service charge which said bank shall be entitled to receive for its services.

**History:** Laws 1929, ch. 40, § 9; C.S. 1929, § 130-1022; 1941 Comp., § 55-2521; 1953 Comp., § 73-26-21.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 197, 198.

11 C.J.S. Bonds § 93.

## **21-8-23. [Use of proceeds of building and improvement bonds restricted.]**

None of the funds derived from the sale of said bonds, except so much thereof as shall be necessary to defray the cost of the issuance thereof and the accrued interest from the date thereof to the time of delivery, shall ever be used or expended by said board for any other purposes than those for which authority is herein given to issue the same, as set forth in Section 1 [21-8-15 NMSA 1978] hereof.

**History:** Laws 1929, ch. 40, § 10; C.S. 1929, § 130-1023; 1941 Comp., § 55-2522; 1953 Comp., § 73-26-22.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 35.

14A C.J.S. Colleges and Universities § 14.

## **21-8-24. [State treasurer's payments relating to building and improvement bonds.]**

It is hereby made the duty of the treasurer of this state, upon receiving written notice from the secretary and treasurer of said board that it has issued bonds as provided for herein, to forthwith forward and pay over to the secretary and treasurer of said board

out of the income from the permanent funds of said college [New Mexico state university], a sum sufficient to make and establish the income [interest] and retirement fund, as herein provided, and annually thereafter to pay over a sufficient amount for said purpose, to the end that said interest and retirement fund shall at all times be kept in the proper amount. In the event there should not be sufficient undistributed income from permanent funds of said college [university], then said state treasurer shall use so much of the income and current fund of said college [university] in his hands as shall be necessary to establish and at all times maintain said interest and retirement fund.

**History:** Laws 1929, ch. 40, § 11; C.S. 1929, § 130-1024; 1941 Comp., § 55-2523; 1953 Comp., § 73-26-23.

### ANNOTATIONS

**Bracketed material.** - The bracketed word "interest" in the first sentence was inserted by the compiler to correspond to 21-8-20 to 21-8-22 NMSA 1978 and the subsequent reference in this section. The bracketed material was not enacted by the legislature and is not part of the law.

For change of name of the New Mexico college of agriculture and mechanic arts, now New Mexico state university, see same catchline in notes to 21-8-1 NMSA 1978.

### **21-8-25. [Issuance of building and improvement bonds in series; restrictions.]**

In the event the board of regents aforesaid should find it advisable to issue bonds under this act [21-8-15, 21-8-16, 21-8-18 to 21-8-26 NMSA 1978] in more than one series, or at different times, for any of the purposes aforesaid, then each series of said bonds shall be designated by the letter "A," "B" or in some other proper designation to the end that each series shall be kept separate, and all of the requirements of this act shall apply to and be faithfully followed, done and carried out as to each of said series, provided, however, that said board of regents shall not have power to issue bonds hereunder, the aggregate interest and principal requirements for which, for any year, together with the aggregate interest and principal requirements for all outstanding bonds of such board of such institution for such year, shall exceed the amount of the income from the permanent funds and from the aforesaid income and current fund of such institution received by the state treasurer for the fiscal year next preceding the fiscal year in which any bonds of such board of such institution are authorized to be issued by resolution of the board adopted pursuant to this act.

**History:** Laws 1929, ch. 40, § 12; C.S. 1929, § 130-1025; Laws 1937, ch. 225, § 3; 1941 Comp., § 55-2524; 1953 Comp., § 73-26-24.

### ANNOTATIONS

**Meaning of "this act".** - The words "this act," at the end of the section, would mean by strict interpretation the sections of Laws 1937, ch. 225, by which they were inserted, compiled as 21-8-15, 21-8-16, 21-8-25 NMSA 1978. However, reference was apparently intended to apply to the whole of the original 1929 act as amended.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 35.

14A C.J.S. Colleges and Universities § 14.

### **21-8-26. [Bonds exempt from taxation.]**

Bonds issued under the provisions of this act [21-8-15, 21-8-16, 21-8-18 to 21-8-26 NMSA 1978], being for the sole purposes specified in Section 1 [21-8-15 NMSA 1978] hereof, shall forever be and remain free and exempt from taxation by this state or any subdivision thereof. Such bonds may be deposited as security for public monies by depositaries thereof within the state of New Mexico.

**History:** Laws 1929, ch. 40, § 13; C.S. 1929, § 130-1026; 1941 Comp., § 55-2525; 1953 Comp., § 73-26-25.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 71 Am. Jur. 2d State and Local Taxation §§ 495, 526.

Constitutional enumeration of subjects of tax exemption as affecting power of legislature to free government securities or property from taxation, 9 A.L.R. 436.

84 C.J.S. Taxation § 260.

### **21-8-27. [Board constituted custodian for grave of Eugene Manlove Rhodes.]**

That the board of regents of the New Mexico college of agriculture and mechanic arts [New Mexico state university] shall be and hereby is designated and declared to be custodian of the grave of Eugene Manlove Rhodes, and shall be and hereby is given all lawful authority to enter upon the lot and assume responsibility therefor, and to expend such sum or sums of money from the general funds of the college [university] as shall be necessary or required from time to time to cause the grave, the fence surrounding it, and the monument erected thereon, in his memory, by the artists and writers of New Mexico, to be maintained in good order and condition, all to the end that the last resting place of one of New Mexico's most valiant souls shall not suffer decay from wind, rain and the passage of time after the family and friends of 'Gene Rhodes have gone to be with him in the great beyond.

**History:** 1941 Comp., § 55-2526, enacted by Laws 1951, ch. 89, § 1; 1953 Comp., § 73-26-26.

#### **ANNOTATIONS**

**Bracketed material.** - For change of name of the New Mexico college of agriculture and mechanic arts, now New Mexico state university, see same catchline in notes to 21-8-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 14 Am. Jur. 2d Cemeteries § 34.

14A C.J.S. Cemeteries § 34.

#### **21-8-28. Building materials research and testing institute established.**

The board of regents of New Mexico state university shall establish a building materials research and testing institute to be affiliated with, and operated at, that institution in connection with the college of engineering.

**History:** 1953 Comp., § 73-26-27, enacted by Laws 1967, ch. 130, § 1.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 14A C.J.S. Colleges and Universities §§ 4, 35, 37, 38.

#### **21-8-29. Function of testing institute.**

The function of the building materials research and testing institute is:

A. to make technical investigations and determinations concerning the physical and chemical properties of all materials used in the construction of, or in connection with the construction of, buildings and dwellings;

B. to supply technical and engineering data which will tend to increase the economy, efficiency and safety of the manufacture and use of construction materials in this state; and

C. to establish and recommend standards for the physical and chemical properties of the materials and for the manufacture and use of these construction materials.

**History:** 1953 Comp., § 73-26-28, enacted by Laws 1967, ch. 130, § 2.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 13 Am. Jur. 2d Buildings §§ 12, 13.

39A C.J.S. Health and Environment § 28.

### **21-8-30. Equipment.**

The various laboratories of the college of engineering and their equipment shall be available for the use of the building materials research and testing institute, provided that their use for instruction and research in the regular work of the university shall take precedence over their use by the building materials research and testing institute. The director of the building materials research and testing institute may procure, for temporary or permanent use, additional equipment to carry on the functions of the institute.

**History:** 1953 Comp., § 73-26-29, enacted by Laws 1967, ch. 130, § 3.

### **21-8-31. Director.**

The board of regents shall appoint a director of the building materials research and testing institute on the recommendation of the president of the university. Subject to the rules and regulations of the board of regents, the director shall be responsible for the administration and operation of the institute.

**History:** 1953 Comp., § 73-26-30, enacted by Laws 1967, ch. 130, § 4.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 11, 15.

14A C.J.S. Colleges and Universities § 4.

### **21-8-32. Institute not conducted for gain.**

The building materials research and testing institute shall not be conducted for the private or personal gain of anyone connected with it, or for the sole benefit of any individual, firm or corporation.

**History:** 1953 Comp., § 73-26-31, enacted by Laws 1967, ch. 130, § 5.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 9, 43.

Power of corporation organized for religious, educational, or charitable purpose, to engage in enterprise for profit, 100 A.L.R. 579.

14A C.J.S. Colleges and Universities § 8.

### **21-8-33. Use of services.**

A. Any department, agency or institution of state government or its political subdivision may seek assistance from the building materials research and testing institute and such requests shall take precedence over all nongovernmental requests.

B. Any individual, firm or corporation may seek the assistance of the building materials research and testing institute.

**History:** 1953 Comp., § 73-26-32, enacted by Laws 1967, ch. 130, § 6.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 8.

### **21-8-34. Fees for services.**

The board of regents shall establish and charge fees to be paid by any person, firm, corporation or governmental department, agency or institution using the services of the building materials research and testing institute which shall be sufficient to defray the cost of providing the service to such person, firm, corporation or governmental department, agency or institution.

**History:** 1953 Comp., § 73-26-33, enacted by Laws 1967, ch. 130, § 7.

### **21-8-35. Center for broadcasting and international communications established.**

The center for broadcasting and international communications is established at New Mexico state university.

**History:** 1953 Comp., § 73-26-34, enacted by Laws 1971, ch. 302, § 1.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 14A C.J.S. Colleges and Universities § 4.

### **21-8-36. Activities of center.**

The center for broadcasting and international communications:

A. may establish educational television programs to serve individual viewers, educational institutions and public educational programs in the southern region of the state as well as the adjoining area of Mexico;

B. may develop, produce and distribute bilingual television materials;

C. shall cooperate with all other existing educational television facilities in the state to accomplish the most efficient use of any public funds made available for educational television services; and

D. may enter into contracts and be the recipient of federal or other funds for the purpose of carrying out the activities enumerated in this section.

**History:** 1953 Comp., § 73-26-35, enacted by Laws 1971, ch. 302, § 2.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 74 Am. Jur. 2d Telecommunications §§ 24, 150, 192.

### **21-8-37. Findings.**

The legislature finds and declares that the establishment of an international business facilitation center at New Mexico state university will:

A. enable New Mexico businesses to become significant players in the development of Mexican and international industries;

B. provide a research base to link the specific products and services of New Mexico businesses with the needs of Mexican and international businesses;

C. provide an educational base, utilizing the resources of all public post-secondary institutions, to develop skills necessary to compete in international markets; and

D. be instrumental in providing a significant increase in the flow of trade between Mexican and international industries and New Mexican businesses located in communities throughout the state.

**History:** Laws 1992, ch. 99, § 1.

### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 99, § 3 makes the act effective on July 1, 1992.

## **21-8-38. International business facilitation center established; duties.**

The "international business facilitation center" is established at the college of business administration and economics, New Mexico state university. The purpose of the center shall be to:

- A. collect and analyze information about production-sharing opportunities with Mexican and international industries and provide that information to New Mexico businesses;
- B. assist New Mexico businesses with research and informational services concerning development of and participation in international trade flows;
- C. promote linkages between New Mexican businesses and Mexican and international industries in the American free trade zone; and
- D. utilize the resources of all public post-secondary institutions in New Mexico to develop skills necessary to compete in international markets.

**History:** Laws 1992, ch. 99, § 2.

### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 99, § 3 makes the act effective on July 1, 1992.

## **ARTICLE 9 STATE CHEMIST AND LABORATORY**

### **21-9-1. [Establishment of state laboratory and office of state chemist.]**

That there is hereby established a state chemical laboratory for the analysis and examination of such foods, drugs, feeds, fertilizers and other material as the interests of the state may demand. The said state chemical laboratory shall be established at the New Mexico college of agriculture and mechanic arts [New Mexico state university], and shall be in [the] charge of a professor of chemistry at the said college, who shall be known as the state chemist of New Mexico. All chemical work which the public interests of the state may demand shall be done by or be under the supervision of the said state chemist. All charges for the work done by the said state chemist shall be just and equitable, and all money collected for such work shall go into a fund for the maintenance of the said state chemical laboratory.

**History:** Laws 1919, ch. 169, § 1; C.S. 1929, § 131-101; 1941 Comp., § 3-1001; 1953 Comp., § 4-13-1.



## ANNOTATIONS

**Bracketed material.** - For change of name of the New Mexico college of agriculture and mechanic arts, now New Mexico state university, see same catchline in notes to 21-8-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drugs, Narcotics and Poisons §§ 7 to 27; 35 Am. Jur. 2d Food § 13; 42 Am. Jur. 2d Inspection Laws §§ 6, 11.

Constitutionality, construction, and application of statutes relating to testing or sampling of agricultural fertilizers, 105 A.L.R. 348, 147 A.L.R. 765.

Validity, construction, and application of statutes or ordinances relating to inspection of food sold at retail, 127 A.L.R. 322.

3 C.J.S. Agriculture § 15; 15 C.J.S. Commerce § 9; 28 Supp. C.J.S. Supp. Drugs and Narcotics §§ 7 to 9.

### **21-9-2. Methods of analysis.**

The methods of analysis employed by the state chemist of New Mexico shall be those prescribed by the association of official agricultural chemists, and those of the United States pharmacopoeia.

**History:** Laws 1919, ch. 169, § 2; C.S. 1929, § 131-102; 1941 Comp., § 3-1002; 1953 Comp., § 4-13-2.

### **21-9-3. Methods of collecting samples.**

All samples of material for analysis and examination shall be collected under the directions from the state chemical laboratory and must be sealed and shipped in accordance with instructions set forth in such directions for taking samples.

**History:** Laws 1919, ch. 169, § 3; C.S. 1929, § 131-103; 1941 Comp., § 3-1003; 1953 Comp., § 4-13-3.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture §§ 53, 57, 71.

### **21-9-4. Official seal of the state chemist.**

The official seal of the state chemist of New Mexico shall bear the words "The Official Seal of the State Chemist of New Mexico" in a circle around the state seal of New Mexico.

**History:** Laws 1919, ch. 169, § 4; C.S. 1929, § 131-104; 1941 Comp., § 3-1004; 1953 Comp., § 4-13-4.

## **ARTICLE 10**

### **DEVELOPMENT OF INDIAN RESOURCES**

#### **21-10-1. Purpose.**

The purpose of this act [21-10-1 to 21-10-3 NMSA 1978] is to provide funds to New Mexico state university in order that agricultural and engineering education and work experience opportunities may be provided to Indian students to help prepare them for agricultural sciences, engineering sciences and management positions in irrigation projects and energy resources development to the end that the economic growth and public welfare of New Mexico will be promoted.

**History:** 1953 Comp., § 73-26-37, enacted by Laws 1977, ch. 280, § 1.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 41 Am. Jur. 2d Indians § 18.

42 C.J.S. Indians § 38 et seq.

#### **21-10-2. Indian resources development program created.**

There is created the "Indian resources development program" to assist the education and training, through practical on-the-job experience opportunities, of Indian students in the agricultural, engineering and associated management sciences for the purpose of insuring the successful development and management of the agricultural and energy resources on Indian lands.

**History:** 1953 Comp., § 73-26-38, enacted by Laws 1977, ch. 280, § 2.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 41 Am. Jur. 2d Indians § 18.

#### **21-10-3. Contracts with other institutions.**

New Mexico state university shall contract with other institutions of higher education, located within this state, as needed for required services pursuant to the provisions and purposes of this act [21-10-1 to 21-10-3 NMSA 1978]. Qualified Indian students who are residents of New Mexico and who are majoring in agricultural, engineering and associated management sciences at any institution of higher education located within

this state shall be eligible for the services provided by the funds appropriated for such development program in this act.

**History:** 1953 Comp., § 73-26-39, enacted by Laws 1977, ch. 280, § 3.

#### **21-10-4. Short title.**

This act [21-10-4 to 21-10-9 NMSA 1978] may be cited as the "Indian Resources Development Act".

**History:** Laws 1979, ch. 371, § 1.

### **ANNOTATIONS**

**Cross-references.** - For Mineral Resources Development Act, see 69-10-1 NMSA 1978 et seq.

#### **21-10-5. Purpose.**

The purpose of the Indian Resources Development Act [21-10-4 to 21-10-9 NMSA 1978] is to create statewide Indian resources development institutes, located at New Mexico state university and the university of New Mexico, in order that the state can participate with the federal government and Indian tribes for the purpose of assisting Indian tribes in developing agricultural, mineral, energy, forestry, wildlife, recreation and business resources and associated technical and managerial resources and other areas deemed necessary to promote their economic self-sufficiency to the end that the economic growth and public welfare of New Mexico will be promoted.

**History:** Laws 1979, ch. 371, § 2.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 41 Am. Jur. 2d Indians §§ 23 to 27.

#### **21-10-6. Indian resources development institutes created.**

There are created the "Indian resources development institutes" to provide research, educational and service programs that will directly and indirectly contribute to the more effective utilization of the natural and human resources and related business activities on Indian lands. The institutes may provide programs to enhance the development and efficient utilization [utilization] of natural and human resources and associated businesses on Indian lands, including dryland and irrigated agriculture, rangelands, oil, gas, coal, uranium, other mineral resources, ground and surface water resources, forestry, wildlife and outdoor-based recreational resources. The institutes may also provide programs for education and training and other necessary areas that will directly

contribute toward providing Indian people the technical and managerial knowledge and experience necessary for efficient utilization of their natural resources.

**History:** Laws 1979, ch. 371, § 3.

### **21-10-7. Contracts with other institutions.**

New Mexico state university and the university of New Mexico may contract with other institutions of higher education located within the state and federal research laboratories, as needed, for required services pursuant to the provisions and purposes of the Indian Resources Development Act [21-10-4 to 21-10-9 NMSA 1978].

**History:** Laws 1979, ch. 371, § 4.

### **21-10-8. Organizational structure and operating policies.**

The organizational structure, operating policies and program directors of the institutes shall be established by the presidents of New Mexico state university and the university of New Mexico, who shall jointly designate and coordinate program responsibility areas for each institute.

**History:** Laws 1979, ch. 371, § 5.

### **21-10-9. Cooperative federal-state funding.**

The institutes may enter into cooperative federal-state funding arrangements for the purposes of funding the institutes and their programs. The board of educational finance, or its successor agency, shall annually make recommendations to the legislature for the furtherance of the purposes of the Indian Resources Development Act [21-10-4 to 21-10-9 NMSA 1978]. Appropriations made for the purposes of the Indian Resources Development Act shall be expended only for the benefit of New Mexico residents.

**History:** Laws 1979, ch. 371, § 6.

### **21-10-10. Purpose.**

The purpose of this act [21-10-10 to 21-10-12 NMSA 1978] is to provide funds to New Mexico state university to create an Indian scientific educational assistance and work experience program in order that agriculture, engineering and business education and related work experience opportunities may be provided to Indian students to help prepare them for agricultural sciences, engineering sciences and management positions in irrigation projects, energy resources development, forestry projects, outdoor recreation activities and small business developments to the end that the economic growth and public welfare of New Mexico will be promoted.

**History:** Laws 1981, ch. 313, § 1.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 41 Am. Jur. 2d Indians § 18.

### **21-10-11. Advisory committee.**

The president of New Mexico state university shall appoint a committee to work with the program director in establishing operating policies and program priorities. The committee shall consist of three members: one individual nominated by the Jicarilla and Mescalero Apache tribal presidents; one nominated by the chairman of the all Indian pueblo council; and one nominated by the chairman of the Navajo tribal council. The committee members shall serve a minimum term of two years with reappointment thereafter subject to the pleasure of the above-described Indian tribes.

**History:** Laws 1981, ch. 313, § 2.

### **21-10-12. Contracts with other institutions.**

New Mexico state university shall contract with other institutions of higher education located within this state as needed for required services pursuant to the provisions and purposes of this act [21-10-10 to 21-10-12 NMSA 1978]. Qualified Indian students who are residents of New Mexico and who are majoring in agricultural, engineering and associated management sciences at any institution of higher education located within this state shall be eligible for the services provided by the funds appropriated for such development program in this act.

**History:** Laws 1981, ch. 313, § 3.

## **ARTICLE 11 NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY**

### **21-11-1. Object; curriculum.**

The object of the New Mexico school of mines [New Mexico institute of mining and technology] is to furnish facilities for the education of such persons as may desire to receive instruction in chemistry, metallurgy, mineralogy, geology, mining, milling, engineering, mathematics, mechanics, drawing, the fundamental laws of the United States, and the rights and duties of citizenship, and such other courses of study, not including agriculture, as may be prescribed by the board of regents; further, to engage in research projects approved by the board of regents, and incidental to such research

to negotiate and enter into research contracts with appropriate governmental agencies, private foundations, individuals or associations.

**History:** Laws 1889, ch. 138, § 28; C.L. 1897, § 3593; Code 1915, § 5139; C.S. 1929, § 130-1101; 1941 Comp., § 55-2601; Laws 1947, ch. 78, § 1; 1953 Comp., § 73-27-1.

## ANNOTATIONS

**Cross-references.** - For acceptance of land grants, see N.M. Const., art. XII, § 12.

For management of the institute, see N.M. Const., art. XII, § 13.

For the bureaus of mines and mineral resources, see 69-1-1 to 69-2-7 NMSA 1978.

**Bracketed material.** - The bracketed reference to the New Mexico institute of mining and technology in this section was inserted by the compiler, as N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changes the name of the New Mexico school of mines to the New Mexico institute of mining and technology. See also 21-11-2 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

**Temporary provisions.** - Laws 1989, ch. 193, § 18, effective July 1, 1989, provides that on July 1, 1989, all appropriations and money including cash balances that were allocated to the energy, minerals and natural resources department for the state mine inspector are transferred to the New Mexico institute of mining and technology.

**Eleventh amendment barred federal jurisdiction over suit against regents.** - A student at the New Mexico school of mines (now New Mexico institute of mining and technology) was barred from bringing an action in the United States district court, seeking damages for personal injuries alleged to have resulted from the negligence of the school's board of regents in the operation of the school, because the action was in effect against the state of New Mexico and U.S. Const., amend. XI, barred federal jurisdiction. *Korgich v. Regents of N.M. Sch. of Mines*, 582 F.2d 549 (10th Cir. 1978).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 7.

14A C.J.S. Colleges and Universities § 4.

### **21-11-2. [Use of name "New Mexico institute of mining and technology" for common convenience.]**

Except for financial transactions the use of the name "New Mexico institute of mining and technology" is hereby permitted in lieu of the name "New Mexico school of mines" for common convenience.

**History:** 1941 Comp., § 55-2601a, enacted by Laws 1951, ch. 46, § 1; 1953 Comp., § 73-27-2.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 14A C.J.S. Colleges and Universities § 9.

#### **21-11-3. [New diplomas for qualified graduates.]**

That the board of trustees of the New Mexico institute of mining and technology shall within six (6) months, after this act [21-11-2, 21-11-3 NMSA 1978] is in full force and effect, issue to all qualified graduates of said school of mines a diploma bearing such words or identifications of said institution as may be hereafter issued by said New Mexico institute of mining and technology.

**History:** 1941 Comp., § 55-2601b, enacted by Laws 1951, ch. 46, § 2; 1953 Comp., § 73-27-3.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 1, 5, 31.

14A C.J.S. Colleges and Universities § 41.

#### **21-11-4. [Operations vested in board of regents; corporate powers; quorum.]**

The management and control of said school of mines [New Mexico institute of mining and technology], the care and preservation of all property of which it shall become possessed, the erection and construction of all buildings necessary for its use, and the disbursement and expenditure of all moneys, shall be vested in a board of five regents. Said regents and their successors in office shall constitute a body corporate, under the name and style of, the regents of the New Mexico school of mines [New Mexico institute of mining and technology], with the right, as such, of suing and being sued, of contracting and being contracted with, of making and using a common seal and altering the same at pleasure, and of causing all things to be done necessary to carry out the provisions of this article. A majority of the board shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time.

**History:** Laws 1889, ch. 138, § 29; C.L. 1897, § 3594; Code 1915, § 5140; C.S. 1929, § 130-1102; 1941 Comp., § 55-2602; 1953 Comp., § 73-27-4.

#### **ANNOTATIONS**

**Cross-references.** - For commission on higher education, see 21-1-26 NMSA 1978.

For number, appointment, qualifications and terms of members of the board of regents, see N.M. Const., art. XII, § 13.

**Bracketed material.** - See same catchline in notes to 21-11-1 NMSA 1978.

**Appropriations.** - Laws 1994, ch. 147, § 7MM, effective March 9, 1994, appropriates \$400,000 from the general fund to the board of regents of the New Mexico institute of mining and technology for expenditure in the eighty-second and eighty-third fiscal years to provide for the establishment and operation of a petroleum regional resource center. Any unexpended or unencumbered balance remaining shall not revert to the general fund.

**Meaning of "this article".** - The words "this article," substituted by the 1915 Code compilers for "this act," refer to Article 7 of Chapter 101 of the 1915 Code, compiled as 21-11-1, 21-11-4 to 21-11-14 NMSA 1978.

**Institute is state educational institution.** - The New Mexico school of mines (now the New Mexico institute of mining and technology) was confirmed by N.M. Const., art. XII, § 11, as a state educational institution with its location at Socorro, New Mexico. Under this section, the management and control of the above institution is vested in a board of regents whose duty is to keep all books and records in its official office. *Taylor v. Via*, 59 N.M. 320, 284 P.2d 211 (1955).

**Control over funds from nonstate sources.** - The legislature has expressly recognized the authority of institutions of higher learning to receive benefits and donations from the United States, private individuals and corporations, to buy, sell, lease or mortgage real estate and to do all things which in the opinions of the respective boards of regents, will be for the best interests of the institutions in the accomplishment of their purposes or objects. The legislature lacks authority to appropriate funds received from nonstate sources or to control the use thereof through the power of appropriation. *State ex rel. Seago v. Kirkpatrick*, 86 N.M. 359, 524 P.2d 975 (1974).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 3, 5, 10, 11.

Tort liability of college, university, fraternity, or sorority for injury or death of member or prospective member by hazing or initiation activity, 68 A.L.R.4th 228.

14A C.J.S. Colleges and Universities §§ 2, 14, 49.

### **21-11-5. [Officers of board of regents; bond of secretary-treasurer.]**

The school [New Mexico institute of mining and technology] officers shall be the same regents, be elected in the same manner and at the same time, and possess the same qualifications as the officers of the university of New Mexico, and the secretary and



treasurer so elected shall give bond in the sum of ten thousand dollars [\$10,000] in the manner provided in Section 21-7-5 NMSA 1978.

**History:** Laws 1889, ch. 138, § 30; C.L. 1897, § 3595; Code 1915, § 5141; C.S. 1929, § 130-1103; 1941 Comp., § 55-2603; 1953 Comp., § 73-27-5.

#### **ANNOTATIONS**

**Cross-references.** - For election duties of officers of state university, see 21-7-5, 21-7-6 NMSA 1978.

**Bracketed material.** - See same catchline in notes to 21-11-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 11, 15; 63A Am. Jur. 2d Public Officers and Employees §§ 487, 488.

14A C.J.S. Colleges and Universities § 15.

#### **21-11-6. [Powers and duties of president of board of regents; president pro tem.]**

The president of said board shall be the chief executive officer, shall preside at all meetings thereof, except that when he is absent the board may appoint a president pro tem, sign all instruments required to be executed by said board; he shall also direct the affairs generally of the said school of mines [New Mexico institute of mining and technology], shall nominate and, by and with the advice of said board of regents, appoint all professors, instructors, tutors and other employes necessary to the proper conduct of said school of mines [institute], and in like manner shall determine the amount of their respective salaries.

**History:** Laws 1889, ch. 138, § 31; C.L. 1897, § 3596; Code 1915, § 5142; C.S. 1929, § 130-1104; 1941 Comp., § 55-2604; 1953 Comp., § 73-27-6.

#### **ANNOTATIONS**

**Bracketed material.** - See same catchline in notes to 21-11-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 5.

14A C.J.S. Colleges and Universities §§ 14, 15, 19, 25.

#### **21-11-7. [Duties of secretary-treasurer of board of regents.]**

The secretary and treasurer shall be the financial and recording officer of said board, shall keep a true and correct account of all moneys received and expended by him,

shall attest all instruments required to be signed by the president of said board, and shall keep a true and correct record of all the proceedings of said board and, generally, do all other things required of him by said board.

**History:** Laws 1889, ch. 138, § 32; C.L. 1897, § 3597; Code 1915, § 5143; C.S. 1929, § 130-1105; 1941 Comp., § 55-2605; 1953 Comp., § 73-27-7.

## **21-11-8. Powers and duties of board of regents.**

The board of regents shall have power and it shall be their [its] duty to enact bylaws, rules and regulations for the government of such school of mines [New Mexico institute of mining and technology], not inconsistent with the laws of the state; and they [it] shall also prescribe the textbooks to be used, the course of study, the fields of research to be engaged in, the branches to be taught, the number of departments into which said school [institute] shall be divided and to change the same from time to time; to fix the scholastic year, provide apparatus, mineral and geological cabinets, to establish and operate branches of said school [institute] in such place or places in the state of New Mexico as may be designated by said board, and do all and everything necessary in and about the premises with a view to promoting the best interests of said institution; provided that the primary functions for which said school [institute] was established shall be performed at Socorro only.

**History:** Laws 1889, ch. 138, § 33; C.L. 1897, § 3598; Code 1915, § 5144; C.S. 1929, § 130-1106; 1941 Comp., § 55-2606; Laws 1947, ch. 78, § 2; 1953 Comp., § 73-27-8.

### **ANNOTATIONS**

**Cross-references.** - For tuition and matriculation fees, see 21-1-2 NMSA 1978.

For penalty for interest in educational sales, see 21-1-35 NMSA 1978.

**Bracketed material.** - See same catchline in notes to 21-11-1 NMSA 1978.

**Appropriations.** - Laws 1994, ch. 147, § 6GGGGGGG, effective March 9, 1994, appropriates \$8,250,000 from the general fund to the regents of the New Mexico institute of mining and technology for expenditure in the eighty-second through eighty-fifth fiscal years for the partial demolition and replacement of the workman center and constructing and equipping an energetic materials research and testing center. Any unexpended or unencumbered balance remaining at the end of the eighty-fifth fiscal year shall revert to the general fund.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 5, 23.

Mandamus to compel enrollment or reinstatement of pupil, 39 A.L.R. 1019.

Failure of student to attain or maintain prescribed scholastic rating as ground for dropping him, 86 A.L.R. 484.

Clothes of pupils, validity of regulations as to, 14 A.L.R.3d 1201.

14A C.J.S. Colleges and Universities §§ 4, 17, 29, 35, 37, 38.

### **21-11-9. [Departmental faculties.]**

The immediate government of their several departments shall be entrusted to their several faculties.

**History:** Laws 1889, ch. 138, § 34; C.L. 1897, § 3599; Code 1915, § 5145; C.S. 1929, § 130-1107; 1941 Comp., § 55-2607; 1953 Comp., § 73-27-9.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 14A C.J.S. Colleges and Universities § 4.

### **21-11-10. [Conferring degrees; granting diplomas.]**

The board of regents shall have power to confer such degrees and grant such diplomas as are usually conferred and granted by other similar schools.

**History:** Laws 1889, ch. 138, § 35; C.L. 1897, § 3600; Code 1915, § 5146; C.S. 1929, § 130-1108; 1941 Comp., § 55-2608; 1953 Comp., § 73-27-10.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 1, 5, 31.

Student's right to compel school officials to issue degree, diploma, or the like, 11 A.L.R.4th 1182.

14A C.J.S. Colleges and Universities § 41.

### **21-11-11. [Removal of officers, faculty members and employees.]**

The regents shall have power to remove any officer, tutor or instructor, or employee connected with said school [New Mexico institute of mining and technology], when in their judgment the best interests of said school [institute] require it.

**History:** Laws 1889, ch. 138, § 36; C.L. 1897, § 3601; Code 1915, § 5147; C.S. 1929, § 130-1109; 1941 Comp., § 55-2609; 1953 Comp., § 73-27-11.

## ANNOTATIONS

**Cross-references.** - For removal of president or faculty member for cause after trial, see 21-1-7 NMSA 1978.

**Bracketed material.** - See same catchline in notes to 21-11-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 5, 11 to 13.

Dismissal or rejection of public schoolteacher because of disloyalty, 27 A.L.R.2d 487.

Tort liability, 33 A.L.R.3d 703.

14A C.J.S. Colleges and Universities §§ 19, 25.

### **21-11-12. [Charges for assays and other services; disposition of amounts collected.]**

The board of regents shall require such compensation for all assays, analyses, mill tests or other services performed by said institution as they [it] may deem reasonable, and the same shall be collected and paid into the treasury of the school of mines [New Mexico institute of mining and technology] for said institution, and an accurate account thereof shall be kept in a book to be provided for that purpose.

**History:** Laws 1889, ch. 138, § 38; C.L. 1897, § 3603; Code 1915, § 5149; C.S. 1929, § 130-1111; 1941 Comp., § 55-2610; 1953 Comp., § 73-27-12.

## ANNOTATIONS

**Bracketed material.** - See same catchline in notes to 21-11-1 NMSA 1978.

### **21-11-13. [Designated the state's school of mines.]**

The New Mexico school of mines [New Mexico institute of mining and technology] shall be the state school of mines.

**History:** Laws 1889, ch. 138, § 39; C.L. 1897, § 3604; Code 1915, § 5150; C.S. 1929, § 130-1112; 1941 Comp., § 55-2611; 1953 Comp., § 73-27-13.

## ANNOTATIONS

**Bracketed material.** - See same catchline in notes to 21-11-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 14A C.J.S. Colleges and Universities § 9.

## **21-11-14. [Preparatory department to be maintained.]**

The New Mexico school of mines [New Mexico institute of mining and technology] shall, in addition to the course now provided for, maintain a preparatory department.

**History:** Laws 1895, ch. 2, § 6; C.L. 1897, § 3605; Code 1915, § 5151; C.S. 1929, § 130-1113; 1941 Comp., § 55-2612; 1953 Comp., § 73-27-14.

### **ANNOTATIONS**

**Bracketed material.** - See same catchline in notes to 21-11-1 NMSA 1978.

## **21-11-15. [Authority to borrow money; purposes.]**

For the purpose of erecting, altering, improving, furnishing or equipping any necessary buildings at the New Mexico school of mines [New Mexico institute of mining and technology], or for acquiring any necessary land for the use of said school [institute], or both, or for the purpose of acquiring lands and buildings for use as a branch of said school [institute], or for the purpose of retiring the whole or any part of any series of bonds previously issued, the board of regents of the New Mexico school of mines [institute] is hereby authorized to borrow money in conformity with the terms of this act [21-11-15, 21-11-16, 21-8-18 to 21-11-27 NMSA 1978].

**History:** 1941 Comp., § 55-2613, enacted by Laws 1947, ch. 119, § 1; 1953 Comp., § 73-27-15.

### **ANNOTATIONS**

**Bracketed material.** - See same catchline in notes to 21-11-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 35.

14A C.J.S. Colleges and Universities § 17.

## **21-11-16. [Authority to issue and retire building and improvement bonds.]**

Whenever the said board, by affirmative vote of a majority of its members, duly entered in the minutes of said board, shall, by resolution, determine that it is necessary to erect, alter, improve, furnish or equip any building or buildings at said school [New Mexico institute of mining and technology], or acquire any land for the use thereof, or to acquire land and buildings for use as a branch of said school [institute], or to retire the whole or any part of any series of bonds previously issued by said school [institute] or to refund the same, or for any of said purposes, the board of regents of the New Mexico school of

mines [institute] is hereby empowered and authorized to issue and sell, subject to the terms of this act [21-11-15, 21-11-16, 21-11-18 to 21-11-27 NMSA 1978], building and improvement bonds of the New Mexico school of mines [institute].

**History:** 1941 Comp., § 55-2614, enacted by Laws 1947, ch. 119, § 2; 1953 Comp., § 73-27-16.

## ANNOTATIONS

**Bracketed material.** - See same catchline in notes to 21-11-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations § 120.

14A C.J.S. Colleges and Universities §§ 4, 10.

### **21-11-17. Form and conditions of bonds.**

Bonds of the New Mexico institute of mining and technology issued pursuant to Chapter 21, Article 11 NMSA 1978 shall be in such form and denominations as the board of regents of the institute shall determine, due and payable not later than twenty-five years from date of issue. The bonds shall be payable in consecutive order commencing not later than two years from date of issue.

**History:** 1978 Comp., § 21-11-17, enacted by Laws 1983, ch. 265, § 41.

## ANNOTATIONS

**Repeals and reenactments.** - Laws 1983, ch. 265, § 41, repeals former 21-11-17 NMSA 1978, relating to the form of bonds issued by the regents of the New Mexico school of mines, and enacts the above section.

**Bracketed material.** - See same catchline in notes to 21-11-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 195, 196, 202, 205, 399 to 453.

Power and discretion of officer or board authorized to issue bonds of governmental units as regards terms or conditions to be included therein, 119 A.L.R. 190.

11 C.J.S. Bonds § 100; 47 C.J.S. Interest and Usury; Consumer Credit § 15.

### **21-11-18. [Sale of bonds; publication of notice; bids.]**

The regents shall offer said bonds for sale after publication of notice of the time and place of sale, in some newspaper of general circulation in Albuquerque, New Mexico,

once each week for four (4) consecutive weeks prior to the date fixed for said sale. Such notice shall specify the amount, denomination, maturity dates and the description of the bonds to be offered for sale, and the place, day and hour at which sealed bids therefor will be received and opened, and that only unconditional bids will be considered, and that each bid must be accompanied by a certified check on a solvent bank, payable to the order of the secretary of the board of regents, for not less than five (5) per centum of the par value of the bonds offered for sale, as a guaranty that the bonds will be taken by the bidder if his bid is accepted. At the place and time specified in such notice, the board of regents shall publicly open the bids and award the bonds to the responsible bidder or bidders offering the highest price therefor, but no bid shall be accepted for less than the par value of said bonds, plus the accrued interest from the last preceding interest date to the date of delivery of said bonds. Before delivery of the bonds to the purchaser, the secretary and treasurer of the board shall detach and cancel all matured interest coupons. The said board shall have and reserve the right to reject any and all bids at such sale and to readvertise the same. The state treasurer may, with the approval of the state [state] board of finance and the other officials whose approval may be required by law for the investment of public funds, purchase such bonds at par and accrued interest to date of delivery for such investment, without the necessity of advertising or publicly offering said bonds for sale; and said treasurer is hereby authorized to invest moneys of the permanent school fund in said bonds. Such bonds shall be accepted at their par value by all public officials in this state as security for the repayment of all deposits of public moneys of this state, or of any county, municipality or public institution thereof, and as security for the faithful performance of any obligation or duty to guarantee the performance of which such officials are now authorized by law to accept a deposit of the bonds of this state or of the United States of America.

**History:** 1941 Comp., § 55-2616, enacted by Laws 1947, ch. 119, § 4; 1953 Comp., § 73-27-18.

## ANNOTATIONS

**Cross-references.** - For legal newspapers, see 14-11-2 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 120, 228, 229, 240, 452, 453, 488.

Sale of municipal or other public bonds at less than par or face value, 91 A.L.R. 7, 162 A.L.R. 396.

11 C.J.S. Bonds §§ 71, 83.

**21-11-19. [Permanent improvement and interest and retirement funds.]**

The proceeds from the sale of said bonds shall be paid to the secretary and treasurer of said regents, and shall be placed in a separate fund to be known as "permanent improvement fund" to be used and paid out only for the specified purposes enumerated in this act [21-11-15, 21-11-16, 21-11-18 to 21-11-27 NMSA 1978] and upon order of the board of regents, on checks signed by the president or vice president and by the secretary or treasurer of said board. Provided, however, that moneys received on account of accrued interest on said bonds to date of delivery shall be placed in the "interest and retirement fund" for the liquidation of said bonds as hereinafter provided. The cost of preparing, advertising and selling said bonds, including any necessary legal expenses thereon, shall be paid out of the proceeds of the sale of said bonds.

**History:** 1941 Comp., § 55-2617, enacted by Laws 1947, ch. 119, § 5; 1953 Comp., § 73-27-19.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 33.

14A C.J.S. Colleges and Universities § 14.

#### **21-11-20. [Interest and retirement fund established.]**

At the time of issuing said bonds the regents shall establish for the payment of the principal and interest thereof a fund to be known as "interest and retirement fund" into which fund said regents shall immediately place a sum not less than the amount necessary to pay the interest and maturing principal of said bonds for the ensuing twelve (12) months, and annually thereafter shall continue to place in said fund a sufficient amount to pay principal and interest maturing in the succeeding twelve (12) months.

**History:** 1941 Comp., § 55-2618, enacted by Laws 1947, ch. 119, § 6; 1953 Comp., § 73-27-20.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations § 266.

#### **21-11-21. [Pledge of income to retirement of bonds and payment of interest.]**

For the faithful and prompt payment of all interest and principal of said bonds as and when the same shall mature according to the tenor thereof, the issue thereof shall constitute an irrevocable pledge by said regents of so much of each year's income from the permanent fund of the New Mexico school of mines [New Mexico institute of mining



and technology] in the hands of the treasurer of this state, as shall be necessary to provide the "interest and retirement fund" herein mentioned, for the ensuing year, and to at all times fully and faithfully keep the same in not less than the amount necessary to pay the interest and principal maturing as aforesaid; and in addition thereto the issue of said bonds shall constitute an irrevocable pledge by said regents of so much of each year's income from the income and current fund derived from the lease of such of its lands as remain unsold, as may be necessary to fully protect the "interest and retirement fund" for the ensuing year, and to keep the same at all times in proper amount as herein provided. Whenever bonds are issued under the authority of this act [21-11-15, 21-11-16, 21-11-18 to 21-11-27 NMSA 1978] for the purpose of acquiring lands and buildings for use as a branch of said New Mexico school of mines [institute] and said branch is operated under contracts which produce revenue as rentals, use charges, or otherwise, the regents shall, in addition to the income from the permanent fund and the income and current fund derived from the lease of such of its lands as remain unsold, have power to pledge irrevocably as security for the principal and interest on said bonds the entire rentals, use charges or other revenues derived from the contracts under which said branch is operated.

**History:** 1941 Comp., § 55-2619, enacted by Laws 1947, ch. 119, § 7; 1953 Comp., § 73-27-21.

#### ANNOTATIONS

**Bracketed material.** - See same catchline in notes to 21-11-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations § 199.

#### **21-11-22. [Forwarding of funds for payment of bonds and interest coupons.]**

The secretary and treasurer of said regents shall forward to the bank at which said bonds are payable, prior to the date on which any coupons or principal of any of said bonds shall mature, out of the "interest and retirement fund" a sufficient sum of money to meet said coupons and maturing bonds as the same become due, plus any service charge which said bank shall be entitled to receive for its services.

**History:** 1941 Comp., § 55-2620, enacted by Laws 1947, ch. 119, § 8; 1953 Comp., § 73-27-22.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 197, 198.

11 C.J.S. Bonds § 93.

### **21-11-23. [Use of funds restricted to designated purposes.]**

None of the funds derived from the sale of said bonds, except so much thereof as shall be necessary to defray the cost of the issuance thereof, shall ever be used or expended by said board for any purposes other than those for which authority is herein given.

**History:** 1941 Comp., § 55-2621, enacted by Laws 1947, ch. 119, § 9; 1953 Comp., § 73-27-23.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 35.

14A C.J.S. Colleges and Universities § 14.

### **21-11-24. [State treasurer to transfer income from permanent funds; income and current fund.]**

The state treasurer of the state of New Mexico shall forward and pay over to the secretary and treasurer of said board of regents out of the income from the permanent funds of said school [New Mexico institute of mining and technology], a sum sufficient to make and establish the interest and retirement fund, as herein provided, and to annually pay over a sufficient amount for said purpose, to the end that said interest and retirement fund shall at all times be kept in the proper amount. The state treasurer shall use so much of the income and current fund of said school [institute] in his hands as shall be necessary to establish and at all times maintain said "interest and retirement fund" in the event there shall not be sufficient undistributed income from the permanent funds of said school [institute].

**History:** 1941 Comp., § 55-2622, enacted by Laws 1947, ch. 119, § 10; 1953 Comp., § 73-27-24.

#### **ANNOTATIONS**

**Bracketed material.** - See same catchline in notes to 21-11-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 35.

14A C.J.S. Colleges and Universities § 14.

### **21-11-25. [Bonds designated serially.]**

Each series of bonds issued under the authority of this act [21-11-15, 21-11-16, 21-11-18 to 21-11-27 NMSA 1978] shall be designated by the letters "A," "B" and so forth, to the end that each series shall be kept separate, and all of the requirements of this act shall apply to and shall be faithfully followed, done and carried out as to each of said series.

**History:** 1941 Comp., § 55-2623, enacted by Laws 1947, ch. 119, § 11; 1953 Comp., § 73-27-25.

### **21-11-26. [Bonds exempt from taxation.]**

Bonds issued under the provisions of this act [21-11-15, 21-11-16, 21-11-18 to 21-11-27 NMSA 1978] shall forever be and remain free and exempt from taxation by this state or any subdivision thereof.

**History:** 1941 Comp., § 55-2624, enacted by Laws 1947, ch. 119, § 12; 1953 Comp., § 73-27-26.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 71 Am. Jur. 2d State and Local Taxation §§ 495, 526.

Constitutional enumeration of subjects of tax exemption as affecting power of legislature to free government securities or property from taxation, 9 A.L.R. 436.

84 C.J.S. Taxation § 260.

### **21-11-27. [Classrooms to be erected only at Socorro.]**

None of the monies borrowed under the authority of this act [21-11-15, 21-11-16, 21-11-18 to 21-11-27 NMSA 1978] shall be used for the erection of classroom facilities at any place in the state of New Mexico other than at the city of Socorro.

**History:** 1941 Comp., § 55-2625, enacted by Laws 1947, ch. 119, § 13; 1953 Comp., § 73-27-27.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 5, 7.

14A C.J.S. Colleges and Universities § 14.

### **21-11-28. [New Mexico tech sinking fund.]**

There is created the "New Mexico tech sinking fund." The fund shall be administered by the secretary of finance and administration, subject to the provisions of this section. The fund shall be used to solve liquidity problems at the New Mexico institute of mining and technology caused by the lateness of payment for certain research activities performed for the department of defense and other entities. When the institute applies to the secretary for a loan from the fund, identifying the particular account receivable giving rise to the liquidity problem, the secretary shall transmit to the institute, subject to availability of funds, the amount applied for. The loan shall bear no interest and shall be repaid within thirty days of payment to the institute on the receivable. The money in the New Mexico tech sinking fund shall not revert at the end of any fiscal year.

**History:** Laws 1982, ch. 4, § 5.

## **ARTICLE 12**

### **NEW MEXICO MILITARY INSTITUTE**

#### **21-12-1. [Board of regents; appointment; term; political affiliations; compensation.]**

The New Mexico military institute, at Roswell, shall be under the supervision and control of a board of five regents, to serve without compensation, to be appointed by the governor, by and with the advice and consent of the senate for a term of four years, and not more than three of them shall belong to the same political party at the time of their appointment.

**History:** Laws 1893, ch. 41, § 2; C.L. 1897, § 3661; Code 1915, § 4988; C.S. 1929, § 120-2001; 1941 Comp., § 66-1301; 1953 Comp., § 73-28-1.

#### **ANNOTATIONS**

**Cross-references.** - For entitlement to benefits under acts of congress, see 21-1-20 NMSA 1978.

For confirmation as state educational institutions, see N.M. Const., art. XII, § 11.

As to management by board of regents, see N.M. Const., art. XII, § 13.

**Appropriations.** - Laws 1994, ch. 147, § 700, effective March 9, 1994, appropriates \$32,000 from the general fund to the board of regents of the New Mexico military institute for expenditure in the eighty-second and eighty-third fiscal years for instructional computer software and student assessment. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

**Compiler's note.** - This section appears to have been superseded by N.M. Const., art. XII, § 13, which provides for six-year terms of members of the New Mexico military institute board of regents.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 11, 15; 63A Am. Jur. 2d Public Officers and Employees §§ 53, 54.

Constitutionality of statute requiring, or limiting, selection or appointment of public officers or agents from members of a political party or parties, 140 A.L.R. 471, 170 A.L.R. 198.

Tort liability of college, university, fraternity, or sorority for injury or death of member or prospective member by hazing or initiation activity, 68 A.L.R.4th 228.

14A C.J.S. Colleges and Universities § 16.

### **21-12-2. [Election of officers; duties; bond of secretary-treasurer.]**

The said board of regents shall organize and elect from their number, a president, a vice president, and a secretary and treasurer, who shall do and perform all of the duties that shall be incumbent upon them as such officers. The secretary and treasurer shall, before entering upon the discharge of his duties as such, execute a good and sufficient bond to the state of New Mexico with some solvent surety company authorized to do business in the state of New Mexico as the surety, in a penal sum to be fixed by the said board of regents of not less than \$20,000, conditioned for the faithful performance of his duties as such secretary and treasurer and that he will faithfully account for and pay over to the person or persons entitled to receive the same from him all monies which shall come into his hands as such officer, which said bond shall be approved by the said board of regents and kept on file as directed by the said board.

**History:** Laws 1893, ch. 41, § 3; C.L. 1897, § 3662; Code 1915, § 4989; C.S. 1929, § 120-2002; Laws 1933, ch. 136, § 1; 1941 Comp., § 66-1302; 1953 Comp., § 73-28-2.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 11, 15; 63A Am. Jur. 2d Public Officers and Employees §§ 487, 488.

14A C.J.S. Colleges and Universities § 15.

### **21-12-3. [Board of regents; duty; educational standard.]**

It shall be the duty of the board of regents to maintain and control, at Roswell, a military institute for the education and training of the youth of this country, of as high a standard as like institutions in other states and territories.

**History:** Laws 1893, ch. 41, § 4; C.L. 1897, § 3663; Code 1915, § 4990; C.S. 1929, § 120-2003; 1941 Comp., § 66-1303; 1953 Comp., § 73-28-3.

#### **ANNOTATIONS**

**Cross-references.** - For commission on higher education, see 21-1-26 NMSA 1978.

#### **21-12-4. [Rules and regulations; teachers' contracts; buildings; improvements.]**

The said board shall have full power and authority to make such rules and regulations concerning the government and course of said institute as they [it] may deem proper; to make contracts with teachers; to erect buildings and make such other improvements as the institute may require.

**History:** Laws 1893, ch. 41, § 5; C.L. 1897, § 3664; Code 1915, § 4991; C.S. 1929, § 120-2004; 1941 Comp., § 66-1304; 1953 Comp., § 73-28-4.

#### **ANNOTATIONS**

**Cross-references.** - For board of regents to fix admission requirements, see 21-1-1 NMSA 1978.

For removal of president or member of faculty, see 21-1-7 NMSA 1978.

For retirement of faculty and employees, see 21-1-8 NMSA 1978.

For penalty for interest in contracts for supplies, see 21-1-35 NMSA 1978.

**Purchasing real estate.** - Although there is no specific authority for the New Mexico military institute to purchase real estate, yet it may be implied from the general power of control over the institution; such purchase, if it could be made, might be paid for with any surplus of the maintenance fund, over necessities. Title should be in the name of the state. 1917-18 Op. Att'y Gen. 141.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 5, 11, 23.

14A C.J.S. Colleges and Universities §§ 11, 17, 19, 25.

#### **21-12-5. Sale of lands.**

With the exception of the forty-acre tract upon which the main portion of the buildings of the New Mexico military institute are now situated and excepting lands granted by acts of congress, the board of regents of the New Mexico military institute shall have authority and the power to sell, convey, lease or otherwise dispose of, for the benefit of

the New Mexico military institute, any and all lands and property belonging to the New Mexico military institute or conveyed to the board of regents of the New Mexico military institute for the benefit of the New Mexico military institute, or conveyed to the state of New Mexico for the use and benefit of the New Mexico military institute.

**History:** Laws 1893, ch. 41, § 6; C.L. 1897, § 3665; Code 1915, § 4992; C.S. 1929, § 120-2005; Laws 1941, ch. 51, § 1; 1941 Comp., § 66-1305; 1953 Comp., § 73-28-5.

## ANNOTATIONS

**Constitutionality of conveyance.** - Arms-length conveyance of property from the New Mexico Military Institute to the New Mexico Military Institute Foundation was proper, and did not violate N.M. Const., art. XI, § 14, prohibiting state aid to private enterprise, where the \$250,000 contract price bore a sufficient relationship to the actual value of the property. 1988 Op. Att'y Gen. No. 88-79.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 35.

14A C.J.S. Colleges and Universities § 14.

### **21-12-6. [Deeds and contracts signed by president.]**

That all deeds for the sale of lands and all contracts made by the said board shall be signed by the president.

**History:** Laws 1893, ch. 41, § 7; C.L. 1897, § 3666; Code 1915, § 4993; C.S. 1929, § 120-2006; 1941 Comp., § 66-1306; 1953 Comp., § 73-28-6.

### **21-12-7. [Increase in tuition fee authorized.]**

The regents of the New Mexico military institute may charge a larger tuition fee than provided in Section 5164 if it is deemed necessary to do so to maintain said institute.

**History:** Laws 1895, ch. 2, § 6; C.L. 1897, § 3671; Code 1915, § 4994; C.S. 1929, § 120-2007; 1941 Comp., § 66-1307; 1953 Comp., § 73-28-7.

## ANNOTATIONS

**Meaning of "Section 5164".** - The reference to "Section 5164" means § 5164, Code 1915, which has been repealed by Laws 1970, ch. 9, § 1, which enacted a new section in lieu thereof that is compiled as 21-1-2 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 19 to 22.

14A C.J.S. Colleges and Universities § 31.

### **21-12-8. Officers to be governor's aides; rank; uniforms.**

For the better government and enforcement of discipline in the New Mexico military institute, the superintendent, commandant of cadets, instructors and others designated by the board of regents as officers in the New Mexico military institute, shall be commissioned as aides-de-camp on the staff of the governor of the state of New Mexico, with such military rank as the board of regents shall prescribe or designate, in addition to the number of aides-de-camp otherwise provided by law; the superintendent, commandant of cadets, instructors and others designated by the board of regents of the New Mexico military institute as officers in the New Mexico military institute shall have such rank as may be prescribed by the board of regents and shall hold office and rank, as such during the time they are employed in such capacity in said New Mexico military institute, and they will be allowed to wear the uniform of their rank while on duty as officers in the New Mexico military institute and upon all public occasions when the national guard is under arms or the staff of the governor and commander-in-chief shall be ordered out.

**History:** Laws 1901, ch. 63, § 1; Code 1915, § 4995; C.S. 1929, § 120-2008; 1941 Comp., § 66-1308; Laws 1947, ch. 6, § 1; 1953 Comp., § 73-28-8.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 25.

6 C.J.S. Armed Services § 291.

### **21-12-9. Organization of cadets; cadet commissions; authority of superintendent.**

The superintendent of the New Mexico military institute shall have power to organize the cadets of the New Mexico military institute into military units and to appoint cadet officers and noncommissioned officers who shall hold their offices at the pleasure of the superintendent. Commissions shall be issued by the superintendent to cadet officers, and shall be known as cadet commissions. The superintendent shall have power to designate and prescribe the number and rank and duties of cadet officers and noncommissioned officers.

**History:** Laws 1901, ch. 63, § 2; Code 1915, § 4996; C.S. 1929, § 120-2009; 1941 Comp., § 66-1309; Laws 1947, ch. 6, § 2; 1953 Comp., § 73-28-9.

### **21-12-10. [Ordnance and quartermaster's stores; care and custody; annual report.]**



It shall be the duty of the superintendent to provide a safe and convenient place for the keeping and preservation of all ordnance and quartermaster's stores received from the state for the use of the institution, and on and before the thirty-first day of December in each year, he shall make a report to the adjutant general of the state of all such stores on hand, and in such report he shall show their condition, whether serviceable or unserviceable, and [,] if any of such stores should be lost or destroyed, the manner of their loss or destruction.

**History:** Laws 1901, ch. 63, § 3; Code 1915, § 4997; C.S. 1929, § 120-2010; 1941 Comp., § 66-1310; 1953 Comp., § 73-28-10.

### **21-12-11. Legislator scholarship program created; purpose.**

There is created the "legislator scholarship program" at the New Mexico military institute. The purpose of the program is to increase the number of New Mexico residents attending the New Mexico military institute and to increase the opportunity for promising young people, that might not otherwise have the opportunity, to participate in a military education and environment.

**History:** Laws 1989, ch. 45, § 1.

## **ANNOTATIONS**

**Compiler's note.** - Identical versions of this section were enacted by Laws 1989, ch. 44, § 1 and Laws 1989, ch. 45, § 1, both effective June 16, 1989. The section is set out as enacted by Laws 1989, ch. 45, § 1. See 12-1-8 NMSA 1978.

### **21-12-12. Program administration; criteria.**

A. The legislator scholarship program shall be administered by the board of regents of the New Mexico military institute. The board of regents shall establish one hundred twelve scholarships available to New Mexico residents, one scholarship available in each state legislative district.

B. Annually, each state legislator may nominate four prospective scholarship recipients to the board of regents of the New Mexico military institute.

C. Scholarships shall be awarded to qualifying New Mexico residents for a term not to exceed four years.

D. The board of regents shall establish criteria for the awarding of scholarships. Criteria shall include scholastic ability, faculty recommendations, standardized test scores, letters of recommendation, school honors and extracurricular activities.

**History:** Laws 1989, ch. 45, § 2.

## ANNOTATIONS

**Compiler's note.** - Identical versions of this section were enacted by Laws 1989, ch. 44, § 2 and Laws 1989, ch. 45, § 2, both effective June 16, 1989. The section is set out as enacted by Laws 1989, ch. 45, § 2. See 12-1-8 NMSA 1978.

### **21-12-13. Fund created.**

The "legislative scholarship fund" is created. No money appropriated to the fund or accruing to it through gifts, grants or bequests shall be transferred to another fund. The fund shall not revert at the end of any fiscal year. Any interest earned from investment of the fund shall be credited to the legislative scholarship fund for the purpose of implementing the legislative scholarship program. Money in the fund is appropriated to the New Mexico military institute.

**History:** 1978 Comp., § 21-12-13, enacted by Laws 1990, ch. 109, § 1.

### **21-12-14. Investment of fund.**

A. The board of regents of New Mexico military institute may invest and reinvest the legislative scholarship fund, subject to the approval of the state investment council after explanation and presentation of the investment plan.

B. The legislative scholarship fund may be invested in:

(1) bonds, notes or other obligations of the United States or those guaranteed by the United States or for which the credit of the United States is pledged for the payment of the principal and interest or dividends thereof;

(2) bonds, notes, debentures, equipment trust certificates, conditional sales agreements or other evidences of indebtedness of any corporation organized and operating within the United States rated not less than A by a national rating service; and

(3) common and preferred stocks and convertible issues of any corporation organized and operating within the United States; provided that it has a minimum net worth of twenty-five million dollars (\$25,000,000) and securities listed on one or more national stock exchanges; and provided further that the fund shall not own more than five percent of the voting stock of any company. Common stocks should represent a diversified portfolio with an above average current yield and the prospect for dividend increases and capital appreciation.

**History:** 1978 Comp., § 21-12-14, enacted by Laws 1990, ch. 109, § 2.

## **ARTICLE 13 COMMUNITY COLLEGES**

## **21-13-1. Short title.**

Chapter 21, Article 13 NMSA 1978 shall be known as the "Community College Act".

**History:** 1953 Comp., § 73-33-1, enacted by Laws 1963, ch. 17, § 1; 1985, ch. 238, § 1.

## **21-13-2. Definitions.**

As used in the Community College Act [this article]:

A. "community college" means a public educational institution which 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 study for persons who may or may not have completed the twelfth grade of public high school;

B. "community college district" means a district in which a community college is located or proposed to be created, which district shall be composed of the territory of one or more school districts of the state. For the purposes of relating community college districts to existing law, community college districts and the community colleges thereof shall not:

(1) be considered a part of the uniform system of free public schools pursuant to Article 12, Section 1 and Article 21, Section 4 of the constitution of New Mexico;

(2) benefit from the permanent school fund and from the current school fund under Article 12, Sections 2 and 4 of the constitution of New Mexico;

(3) be subject, except as it relates to technical and vocational education, to the control, management and direction of the state board of education under Article 12, Section 6 of the constitution of New Mexico; and

(4) be considered school districts insofar as the restrictions of Article 9, Section 11 of the constitution of New Mexico are concerned; and

C. "qualified elector" means a person otherwise eligible to vote within the community college district.

**History:** 1953 Comp., § 73-33-2, enacted by Laws 1963, ch. 17, § 2; 1964 (1st S.S.), ch. 16, § 1; 1980, ch. 53, § 1; 1985, ch. 238, § 2.

## **ANNOTATIONS**

**Cross-references.** - As to the public school fund, see 22-8-14 NMSA 1978.

As to the current school fund, see 22-8-32 NMSA 1978.

**Applicability of constitution.** - Junior college legislation is outside the constitutional provisions relating to schools and junior colleges are solely creations of the legislature. Daniels v. Watson, 75 N.M. 661, 410 P.2d 193 (1966).

**Legislative intent.** - The legislature did not intend junior college districts to come within the general school system. Daniels v. Watson, 75 N.M. 661, 410 P.2d 193 (1966).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 1.

14A C.J.S. Colleges and Universities § 5.

### **21-13-3. Purpose.**

The purpose of the Community College Act [this article] is to provide for the creation of local community colleges and to extend the privilege of a basic vocational, technological or higher education to all persons who are qualified to pursue the courses of study offered.

**History:** 1953 Comp., § 73-33-3, enacted by Laws 1963, ch. 17, § 3; 1985, ch. 238, § 3.

### **21-13-4. Community college districts; formation.**

A. Petitions for the organization of a community college district shall designate the name of the proposed community college and with particularity the proposed territorial area to be included within the district. The proposed district shall comprise and be concurrent with the territorial areas of one or more existing public school districts in one or more counties, other than that area comprising another community college district; provided, however, that the territorial area encompassed by any proposed community college district shall in all cases be contiguous.

B. The petition calling for the organization of a community college district shall be signed by qualified electors, residents of the area of each school district involved, in a number equal to or in excess of ten percent of the votes cast for governor in the last preceding general election in each school district within the area of the community college district. For the purpose of determining the vote cast in the district for governor in the last preceding general election, any portion of a voting division within any affected school district shall be construed to be wholly within the proposed community college district.

**History:** 1953 Comp., § 73-33-4, enacted by Laws 1964 (1st S.S.), ch. 16, § 2; 1985, ch. 238, § 4.

## **ANNOTATIONS**

**Constitutionality of authorization to form junior colleges.** - The authorization to form a junior college district by a petition method is not unconstitutional. It is not an unlawful delegation of power in violation of N.M. Const., art. IV, § 1, nor a violation of the separation of powers under N.M. Const., art. III, § 1, but merely a statutory method for implementing the legislative determination of a purpose to be fulfilled. Daniels v. Watson, 75 N.M. 661, 410 P.2d 193 (1966).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 15, 21.

78 C.J.S. Schools and School Districts § 41.

### **21-13-5. Board of educational finance [commission on higher education] to conduct feasibility survey.**

The petition calling for the formation and organization of the proposed community college district shall be filed with the board of educational finance [commission on higher education], which shall immediately cause a survey to be made of the proposed community college district to determine the need for the proposed community college and the prospects for its adequate support. The board of educational finance [commission on higher education] shall approve the petition and call an election for the establishment of the proposed community college district if, on the basis of the survey, it finds:

- A. the district boundaries are suitable geographically according to criteria which it shall establish;
- B. the existence of adequate school population and other factors indicate the proposed community college will serve an enrollment of at least two hundred fifty full-time student equivalent;
- C. the financial position of the proposed community college district is adequate to provide the necessary supporting funds for current operations and the necessary capital outlay for physical plant and equipment; and
- D. a comprehensive plan has been formulated showing:
  - (1) the projected enrollment for the next ten years;
  - (2) a general plan for buildings for the immediate proposed construction and for future expansion for the next ten years;
  - (3) a plan for the practical and efficient use of the buildings by the local public school unit and suitable arrangements for financial compensation for all public school districts within the community college district in the event the community college is dissolved;

(4) a transportation plan that sets forth a proposed method of transportation from all parts of the district; and

(5) a proposed budget for the first two years of operation.

**History:** 1953 Comp., § 73-33-4.1, enacted by Laws 1964 (1st S.S.), ch. 16, § 3; 1968, ch. 70, § 1; 1980, ch. 53, § 2; 1985, ch. 238, § 5.

## **ANNOTATIONS**

**Cross-references.** - As to the commission on higher education, see 21-1-26 and 21-1-28 NMSA 1978.

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 1, 3.

14A C.J.S. Colleges and Universities § 5.

### **21-13-6. Notice and conduct of community college district referendum election.**

A. Upon formal written approval by the board of educational finance [commission on higher education] of the petition for the establishment of a community college district, the board of educational finance [commission on higher education] shall set a date for a referendum election upon the issue of whether the proposed community college district shall be organized. Only qualified electors of the proposed district shall be eligible to vote at the election.

B. The election upon the issue of whether the proposed community college district will be organized shall be conducted and canvassed by all of the existing local school boards within the proposed community college district, acting jointly and in the same manner as elections for municipal school board members are carried out, unless otherwise specifically provided in the Community College Act [this article].

C. Election officials shall count the votes cast, and, as soon as all the ballots have been counted, they shall make out a certificate containing their signatures certifying the total number of votes cast, the number cast for the organization of the community college district and the number cast against that proposal within the area of each school district in the proposed community college district.

D. The certification of the total number of votes for or against the proposed community college district together with all ballots shall be sent, under seal, immediately by the local election officials to the executive secretary of the board of educational finance [executive director of the commission on higher education]. As soon as all the returns

are received, the executive secretary shall proceed to open them and determine the result of the election.

E. In the event a majority of the qualified electors voting on the issue in the area of each school district within the boundaries of the proposed community college district do not approve the creation of the community college district, the proposal shall fail, and no election upon the creation of a district encompassing the area of a school district in which the voters did not approve creation of the community college district shall be held within two years of such date.

F. A community college district shall be declared created by the board of educational finance when a majority of the qualified electors voting on the issue in the area of each school district within the boundaries of the community college district are certified by the board of educational finance to have voted in favor of establishing the community college district and the number of votes cast in favor of the creation of the community college district in the area of each school district within the community college district is at least as many as fifteen percent of the number of votes cast for governor in the last general election in the voting divisions wholly or partially within the area of each school district within the community college district.

**History:** 1953 Comp., § 73-33-5, enacted by Laws 1964 (1st S.S.), ch. 16, § 4; 1965, ch. 277, § 1; 1980, ch. 53, § 3; 1985, ch. 238, § 6.

## **ANNOTATIONS**

**Cross-references.** - As to the commission on higher education, see 21-1-26 and 21-1-28 NMSA 1978.

As to the executive director of the commission on higher education, see 21-1-30 NMSA 1978.

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**Executive director of the commission on higher education.** - Laws 1986, ch. 24, § 10 provides that all references to the executive secretary of the board of educational finance shall be construed to be references to the executive director of the commission on higher education.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 21, 39.

78 C.J.S. Schools and School Districts §§ 41, 250, 257.

### **21-13-7. Form of ballot for referendum election.**

The form of the ballots for the creation of a community college district shall be printed and appear in substantially the

following manner:

\_\_\_\_\_

BALLOT

On the question of the formation of ..... community college district.

(Place "X" in one of the boxes below)

For the creation of the community college district  
..... [ ]

Against the creation of the community college district  
..... [ ]

**History:** 1953 Comp., § 73-33-6, enacted by Laws 1964 (1st S.S.), ch. 16, § 5; 1985, ch. 238, § 7.

**ANNOTATIONS**

**Repeals and reenactments.** - Laws 1964 (1st S.S.), ch. 16, § 5, repealed former 73-33-6, 1953 Comp., relating to election to create junior college districts, and enacted a new 73-33-6, 1953 Comp.

**21-13-8. Community college board.**

A. If it appears from the records in the office of the executive secretary of the board of educational finance [executive director of the commission on higher education] that the required majority of votes were cast in favor of the organization of the community college district, the secretary [director] shall declare the organization of the "..... community college district". The executive secretary of the board of educational finance [executive director of the commission on higher education] shall notify, by registered mail, all boards of education within the community college district of the results of the election and shall call a meeting of the members of the boards of education, which shall be held at a time and site, within the community college district, selected by the executive secretary [executive director] not later than sixty days after the election. The executive secretary [executive director] or his appointed delegate shall act as chairman pro tempore of the meeting, and a majority of the members of the boards of education so notified shall constitute a quorum.

B. A majority of all board of education members present shall elect five persons as members of the "..... community college board". The persons elected shall be assigned position numbers one through five. Board members shall be over twenty-one years of age, qualified electors and residents of the community college district. The members of the board shall continue to serve until the next regular community college election, to be held on the first Tuesday of March of each odd-numbered year, at which



time five board members shall be elected by the registered voters of the community college district. The candidates shall file for and be elected to a particular position number. The candidate receiving the highest number of votes for a particular position shall be elected. At the first community college board meeting after the election, the five members shall draw lots for the following terms: one for a term of two years, two for a term of four years and two for a term of six years. Thereafter, board members shall be elected for a term of six years from April 1 succeeding their election. All vacancies caused in any other manner than by the expiration of the term of office shall be filled by appointment by the remaining members.

C. Immediately after the election of the five members by the assembled board of education members, the ". . . . . community college board" shall select from its members a chairman and secretary who shall serve in these offices until the next regular community college board election. After each ". . . . . community college board" election, the members shall proceed to reorganize.

**History:** 1953 Comp., § 73-33-7, enacted by Laws 1963, ch. 17, § 7; 1964 (1st S.S.), ch. 16, § 6; 1965, ch. 277, § 2; 1980, ch. 53, § 4; 1985, ch. 238, § 8.

## ANNOTATIONS

**Cross-references.** - As to the executive director of the commission on higher education, see 21-1-30 NMSA 1978.

**Bracketed material.** - See 21-1-30 NMSA 1978 and notes thereto.

**Validity of "registered" voters provision.** - The provision of the act which requires election of board members by "registered" voters is not so indefinite as to be invalid because there is no specific provision in the act for the registration of voters. The term "registered voter" refers to one duly registered under the general election laws. *Daniels v. Watson*, 75 N.M. 661, 410 P.2d 193 (1966).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 11, 15.

14A C.J.S. Colleges and Universities §§ 4, 16.

### **21-13-8.1. Community college board; optional form.**

The community college board of any community college organized pursuant to the Community College Act [this article] may, by adoption of a resolution to that effect, establish a governing board composed of five or seven members elected from single-member districts for staggered terms. The single-member districts shall be compact and contiguous and composed of populations as equal as practicable. Members shall be required to reside in the districts from which elected. Any member removing his residence from the district from which he was elected shall be deemed to have resigned

his position and the vacancy created by such resignation shall be filled in the manner provided by law for the filling of vacancies on the board of a community college district.

**History:** 1978 Comp., § 21-13-8.1, enacted by Laws 1987, ch. 174, § 1.

### **21-13-9. Community college board meetings.**

Regular meetings of the community college board shall be held not less than quarterly each calendar year. Special meetings may be held upon call of the chairman or a majority of the board. The secretary of the board shall notify members of the time and place of each meeting, and all notices shall be mailed to each board member at least ten days prior to the date of the meeting. Upon agreement of all the members of the board, however, the period of notice of the meeting may be shortened or waived.

**History:** 1953 Comp., § 73-33-8, enacted by Laws 1963, ch. 17, § 8; 1985, ch. 238, § 9; 1993, ch. 75, § 1.

#### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, substituted "not less than quarterly each calendar year" for "on the first Saturday of March, June, September and December of each year" at the end of the first sentence.

### **21-13-10. Board duties.**

A. It shall be the duty of the community college board to determine financial and educational policies of the community college. The community college board shall provide for the management of the community college and execution of these policies by selecting a competent president for the community college, and, upon the president's recommendation, the board shall employ other administrative personnel, instructional staff or other personnel as may be needed for the operation, maintenance and administration of the community college.

B. The community college board shall have the power to fix tuition and fee rates for resident and nonresident students of the district, to accept gifts, to accept federal aid, to purchase, hold, sell and rent property and equipment and to promote the general welfare of the institution for the best interest of educational service to the people of the community college district.

**History:** 1953 Comp., § 73-33-9, enacted by Laws 1963, ch. 17, § 9; 1980, ch. 53, § 5; 1985, ch. 238, § 10.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 5, 19, 20, 35.

Tort liability of college, university, fraternity, or sorority for injury or death of member or prospective member by hazing or initiation activity, 68 A.L.R.4th 228.

14A C.J.S. Colleges and Universities §§ 14, 15, 17, 19, 25, 31.

### **21-13-11. Standards and accrediting of community colleges.**

A. The board of educational finance [commission on higher education] shall, in conjunction with the community college board, prescribe the course of study for the community colleges established pursuant to the Community College Act [Chapter 21, Article 13 NMSA 1978] and shall define official standards of excellence in all matters relating to the administration, course of study and quality of instruction, except that the prescribed standards may not be less in quality or quantity than those prescribed for other state institutions of higher learning by the regional accrediting agency which accredits other colleges and universities of the state.

B. The community college board may elect to affiliate with the board of regents of a higher educational institution. Upon a mutual agreement by the board of regents and community college board, the board of regents shall exercise all powers given the board of educational finance [commission on higher education] under this section, and the president of the higher educational institution shall exercise the powers of the executive secretary of the board of educational finance [executive director of the commission on higher education] under this section for the term of the agreement. No agreement shall be for less than five years, and agreements shall be noncancelable except by mutual consent.

C. The executive secretary of the board of educational finance [executive director of the commission on higher education] shall annually inspect, or investigate through the requirement of reports prescribed by him, each community college created pursuant to the Community College Act. The inspection or investigation by report shall be conducted upon the facilities and program of each community college to determine the extent of compliance with the rules and regulations promulgated by the board of educational finance. A report of each inspection or final investigation by report shall be made to the board of educational finance [commission on higher education].

D. In the event of any serious deviation from established practices and procedures or any defects that impair the quality of the instructional program in any community college created pursuant to the provisions of the Community College Act, the board of educational finance [commission on higher education] shall first call these to the attention of the president of the community college and the community college board.

E. In the case of repeated failure to meet the specified standards, the board of educational finance [commission on higher education] may take action discontinuing the approval of any community college so delinquent. Upon a showing that the unsatisfactory conditions have been remedied, the board of educational finance

[commission on higher education] may reinstate its approval of a disapproved community college.

**History:** 1953 Comp., § 73-33-10, enacted by Laws 1963, ch. 17, § 10; 1980, ch. 53, § 6; 1985, ch. 238, § 11.

### ANNOTATIONS

**Cross-references.** - As to the commission on higher education, see 21-1-26 and 21-1-28 NMSA 1978.

As to the executive director of the commission on higher education, see 21-1-30 NMSA 1978.

**Bracketed material.** - See 21-1-26 and 21-1-30 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 7, 8, 23, 42.

Student's right to compel school officials to issue degree, diploma, or the like, 11 A.L.R.4th 1182.

14A C.J.S. Colleges and Universities §§ 4, 5.

### 21-13-12. Titles awarded.

The community college board of any community college may award the appropriate degree upon the completion of a curriculum organized for that purpose and approved by the board of educational finance [commission on higher education]. The associate title may be awarded only to students as recommended by the faculty and chief academic administrative officer of the community college as having completed satisfactorily the prescribed course of study.

**History:** 1953 Comp., § 73-33-11, enacted by Laws 1963, ch. 17, § 11; 1980, ch. 53, § 7; 1985, ch. 238, § 12.

### ANNOTATIONS

**Cross-references.** - As to the commission on higher education, see 21-1-26 and 21-1-28 NMSA 1978.

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 1, 5, 31.

Student's right to compel school officials to issue degree, diploma, or the like, 11 A.L.R.4th 1182.

14A C.J.S. Colleges and Universities § 41.

### **21-13-13. Per diem; mileage.**

Members of the community college board shall, for attendance at meetings of the board, receive traveling expenses to and from meetings at the rate set by law for state employees, for each mile traveled by the shortest usually traveled route from their homes to the place of the meeting.

**History:** 1953 Comp., § 73-33-12, enacted by Laws 1963, ch. 17, § 12; 1985, ch. 238, § 13.

## **ANNOTATIONS**

**Cross-references.** - As to the Per Diem and Mileage Act, see 10-8-1 NMSA 1978 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63A Am. Jur. 2d Public Officers and Employees § 462.

Allowance of mileage or traveling expenses to officer as affected by use of his own vehicle for transportation, 112 A.L.R. 172.

78 C.J.S. Schools and School Districts § 98.

### **21-13-14. Community college district bonds; interest; form; payment.**

A. Any community college board may borrow money for the purpose of erecting and furnishing, constructing, purchasing, remodeling and equipping buildings and utility facilities or for purchasing grounds, exclusive of stadiums. To carry out the purposes of the Community College Act [this article], the community college board may issue negotiable coupon general obligation bonds of the community college district, if approved by the board of educational finance [commission on higher education] and then approved at an election by a majority of the qualified electors voting on the issue; provided, however, no bonds shall be issued which create a total bonded indebtedness in the district in excess of three percent of the assessed valuation of the taxable property within the community college district as shown in the preceding general assessment, which debt limitation is to be in excess of other existing debt limitations. Bonds shall be sold at a price which does not result in a net effective interest rate exceeding the maximum net effective interest rate permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]. The bonds shall be sold and may be in such denominations as the community college board determines, and the bonds and the

attached coupons shall be payable to the bearer but may also be made registrable as to principal or as to principal and interest.

B. The bonds shall be due and payable serially either annually or semiannually commencing not later than three years from their date. The bonds shall be issued for a term of not less than five or more than twenty years. The form and terms of the bonds, including provisions for their payment and redemption, shall be as determined by the community college board. If the community college board so determines, the bonds may be redeemable prior to maturity upon payment of a premium not exceeding three percent of the principal of the bonds. The bonds shall be executed in the name of and on behalf of the district, signed by the chairman of the community college board, with the seal of the community college district affixed to the bonds, and attested by the secretary of the community college board. The bonds may be executed and sealed in accordance with the provisions of the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978]. Interest coupons shall bear the original or facsimile signature of the chairman of the community college board.

C. To provide for the payment of the interest and principal of the bonds issued and sold pursuant to the provisions of the Community College Act, upon approval of the bonds at an election by a majority of the qualified electors in the community college district who voted on the issue, the board of county commissioners shall annually make and levy, during each year in which any bonds are outstanding, an ad valorem tax on all taxable property in the district in an amount sufficient to produce a sum equal to one year's interest on all bonds then outstanding, together with an amount sufficient to pay the principal on all bonds as they mature. This levy shall not exceed five mills; provided, however, that this five-mill limitation may be exceeded in any year in which the valuation of the property within the community college district declines to a level lower than the valuation of the property in the year in which the bonds were issued. The taxes authorized by this subsection shall be levied, assessed and collected at the times and in the manner that ad valorem taxes for school districts are assessed, levied and collected, and it shall be the duty of all tax officials and authorities to cause taxes authorized by this subsection to be levied, assessed and collected.

D. The proceeds obtained from the issuance of the bonds shall not be diverted or expended for any purposes other than those provided in the Community College Act; provided that no building shall be built without prior approval of detailed plans by the board of educational finance; and further provided that the expenses incurred in the preparation and sale of the bonds may be paid out of the proceeds from the sale of the bonds.

E. Prior to the issuance and sale of bonds, the attorney general shall approve all bond transcripts and certify his approval or rejection thereof in the same manner as is required by law for the approval of school bonds. Unless otherwise specifically provided, the provisions of the Community College Act for the issuance of bonds shall be deemed exclusive of the provisions of all other laws.

**History:** 1953 Comp., § 73-33-13, enacted by Laws 1964 (1st S.S.), ch. 16, § 7; 1966, ch. 3, § 1; 1980, ch. 53, § 8; 1983, ch. 265, § 42; 1983, ch. 291, § 1; 1985, ch. 238, § 14.

## ANNOTATIONS

**Cross-references.** - As to the commission on higher education, see 21-1-26 and 21-1-28 NMSA 1978.

**Repeals and reenactments.** - Laws 1964 (1st S.S.), ch. 16, § 7, repealed 73-33-13, 1953 Comp., relating to the junior college board, and enacted a new 73-33-13, 1953 Comp.

**Bracketed material.** - As to the bracketed material regarding the commission on higher education, see 21-1-26 NMSA 1978 and notes thereto.

**Constitutionality of approval by attorney general.** - The provision of the statute authorizing the attorney general to approve or disapprove the bonds is not legislation by reference and not in violation of N.M. Const., art. IV, § 18. *Daniels v. Watson*, 75 N.M. 661, 410 P.2d 193 (1966).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 33, 35; 64 Am. Jur. 2d Public Securities and Obligations §§ 120, 195 to 199, 202, 205, 266, 399 to 403.

Power and discretion of officer or board authorized to issue bonds of governmental units as regards terms or conditions to be included therein, 119 A.L.R. 190.

11 C.J.S. Bonds §§ 71, 83, 93, 100; 14A C.J.S. Colleges and Universities §§ 4, 10, 14, 17.

### **21-13-15. Payment of bonds; bond provisions.**

A. The principal of and interest on general obligation bonds authorized in the Community College Act [this article] to be issued, and any prior redemption premiums, shall be payable from the proceeds of general property taxes levied without limitation as to rate or amount, except for the limitation contained in Subsection C of Section 21-13-14 NMSA 1978 and except to the extent other revenues are made available for that purpose. All bonds shall be the general obligations of the community college district, and the full faith and credit of the community college district shall be pledged for the payments of the bonds.

B. It may be provided in any proceedings authorizing any bonds under the Community College Act that the bond shall recite that it is issued under authority of the Community College Act. The recital shall conclusively impart full compliance with all of the

provisions of the Community College Act, and all bonds issued containing the recital shall be incontestable for any cause whatsoever after their delivery for value.

C. All bonds issued by a community college district shall be fully negotiable and constitute negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code [Chapter 55 NMSA 1978] as that law is now or may hereafter be in force in this state. If lost or completely destroyed, any bond may be reissued in the form and tenor of the lost or destroyed bond upon the owner furnishing to the satisfaction of the community college board:

- (1) proof of ownership;
- (2) proof of loss or destruction;
- (3) a surety bond in twice the face amount of the bond and coupons; and
- (4) payment of the cost of preparing and issuing the new bond and coupons.

D. Notwithstanding any other provision of law, the community college board may in any proceedings authorizing bonds under the Community College Act provide for the initial issuance of one or more bonds, in this section called "bond," aggregating the amount of the entire issue, may make such provision for installment payments of the principal amount of any bond as it may consider desirable and may provide for the making of any bond payable to bearer or otherwise, registrable as to principal or as to both principal and interest and, where interest accruing on the bond is not represented by interest coupons, for the endorsing of payments of interest on the bond. The community college board may further make provisions in any such resolution for the manner and circumstances in and under which any bond may, at the request of the holder of the bond, be converted into bonds of smaller denominations, which bonds of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal or principal and interest.

**History:** 1953 Comp., § 73-33-13.1, enacted by Laws 1964 (1st S.S.), ch. 16, § 8; 1966, ch. 3, § 2; 1980, ch. 53, § 9; 1985, ch. 238, § 15.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 15, 127, 136, 255, 256, 298, 299, 452.

Negotiability of municipal bonds as affected by reference to fund from which they are to be paid, 42 A.L.R. 1027.

Funding or refunding obligations as subject to conditions respecting limitation of indebtedness or approval by voters, 97 A.L.R. 442.



Right to call governmental bonds in advance of their maturity, 109 A.L.R. 988.

Power of municipality or other governmental body to issue refunding bonds to retire obligation in respect of which the creation and maintenance of a sinking fund by taxation is required by constitutional or statutory provision, 157 A.L.R. 794.

Governmental unit's power to issue bonds as implying power to refund them, 1 A.L.R.2d 134.

11 C.J.S. Bonds §§ 9, 93, 100; 54 C.J.S. Lost Instruments § 5; 81A States § 186.

### **21-13-16. Validation of community college bonds.**

All bonds approved in an election or issued or sold under the Community College Act [this article], or purportedly approved, issued or sold under the Community College Act, and all acts and proceedings had or taken, or purportedly had or taken, under the Community College Act or under color of the Community College Act for the authorization, execution, sale and issuance of bonds are hereby validated, ratified, approved and confirmed, except as provided in that act, notwithstanding any lack of power, authority or otherwise, other than constitutional, in the bonds, acts and proceedings and in the authorization, execution, sale and issuance. The bonds are and shall be binding, legal, valid and enforceable obligations of the community college district issuing them in accordance with their terms and their authorizing proceedings, including but not limited to the terms, provisions, conditions and covenants of any resolution appertaining thereto, the redemption of bonds before maturity, the levy and collection of taxes, tolls and charges, special assessments and general and other taxes, the pledge and use of the proceeds of the bonds and the establishment of liens thereon and funds therefor.

**History:** 1953 Comp., § 73-33-13.2, enacted by Laws 1966, ch. 3, § 3; 1985, ch. 238, § 16.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 34 to 93, 382.

Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 A.L.R. 1310.

Estoppel of municipal corporation or other political subdivision by recitals in its bonds to dispute their validity as affected by the character of the owner of bonds as an original holder or a transferee, 86 A.L.R. 1129.

79 C.J.S. Schools and School Districts § 372.

## **21-13-17. Special tax levy for community college operation.**

A. In each community college district, the community college board may call an election within the district for the purpose of authorizing that board to levy taxes on all taxable property within the district to be used for current operations and maintenance of the community college district. The taxes, if authorized as provided in the Community College Act [Chapter 21, Article 13 NMSA 1978], shall be in addition to the taxes authorized by Section 21-13-15 NMSA 1978. This election shall be for the purpose of allowing the electors, as the term "electors" is used in Article 8, Section 2 of the constitution of New Mexico, to vote on whether to allow the levy and on a specific limitation not to exceed five dollars (\$5.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code. If approved by a majority of the electors voting on the issue, the board of county commissioners, at the direction of the community college board, shall levy the taxes in an amount certified by the commission on higher education as necessary to meet the annual budget approved by the commission on higher education, but in no event shall the taxes levied exceed the rate limitation approved by the electors nor shall it exceed any lower maximum rate required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 applied to the rate limitation approved by the electors.

B. Levies, assessments and collections and distributions authorized for community college district financing shall be made at the same time and in the same manner as levies, assessments and collections and distributions for ad valorem taxes for school districts are made.

C. The community college board may call an election within the district for the purpose of authorizing the board to raise the levy to a rate not to exceed the maximum authorized in Subsection A of this section, lower the levy or abolish the continuing levy, upon the adoption of a resolution by a majority of the members of the board.

D. Alternatively an election to raise or lower the rate limitation or to abolish the continuing levy shall be called by the community college board upon receipt by it of a valid petition. To be valid, the petition shall be signed by electors of the community college district in a number equal to ten percent of the number of votes cast in the district for the office of governor at the last general election and shall state the question to be voted upon.

E. If the question to be voted on at an election called pursuant to Subsection D of this section fails, it shall not again be submitted to the voters within two years from the date of the election.

F. Any part of the rate authorized by the electors that is not imposed for reasons other than the rate limitation required by Section 7-37-7.1 NMSA 1978 may be authorized to be imposed by the community college board without calling an election.

**History:** 1953 Comp., § 73-33-14, enacted by Laws 1964 (1st S.S.), ch. 16, § 9; 1965, ch. 277, § 3; 1969, ch. 178, § 1; 1980, ch. 53, § 10; 1985, ch. 238, § 17; 1986, ch. 32, § 9; 1993, ch. 131, § 3.

## ANNOTATIONS

**Cross-references.** - As to the commission on higher education, see 21-1-26 and 21-1-28 NMSA 1978.

**Repeals and reenactments.** - Laws 1964 (1st S.S.), ch. 16, § 9, repealed former 73-33-14, 1953 Comp., relating to special assessment for junior colleges, and enacted a new 73-33-14, 1953 Comp.

**The 1993 amendment,** effective March 31, 1993, substituted "commission on higher education" for "board of educational finance" twice in the last sentence of Subsection A; and, in Subsection B, inserted "and distributions" twice in the first sentence and deleted the former last two sentences which read "Upon collection of the levy by the county treasurer, the proceeds shall be deposited in the bank approved by the community college board. The community college board is authorized through its financial agent and upon its order to draw upon these funds for the purposes specified at each election."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 131 to 179.

Constitutional or statutory requirement of prior approval by electors of issuance of bonds or incurring of indebtedness, by municipality, county, or state, as applicable to bonds or other instruments not creating indebtedness, 146 A.L.R. 604.

Effect of delay after authorization by voters on power of governmental unit to issue bonds, 135 A.L.R. 768.

64 C.J.S. Municipal Corporations § 1927.

### **21-13-18. Procedure for election.**

A. In all elections held under the Community College Act [Chapter 21, Article 13 NMSA 1978], the community college board shall issue a resolution calling for an election. The resolution shall be filed with each county clerk in the community college district. The community college in the district in which the community college is situated shall publish the resolution in a newspaper of general circulation in the community college district at least once a week for three consecutive weeks, the last insertion to be not less than thirty days prior to the proposed election.

B. All elections held under the Community College Act shall be conducted and canvassed in the same manner as municipal school elections, unless otherwise specifically provided in the Community College Act.

C. Any person or corporation may institute, in the district court of any county in which the community college district affected lies, an action or suit to contest the validity of any proceedings held under the Community College Act, but no such suit or action shall be maintained unless it is instituted within ten days after the issuance by the proper official of a certificate or notification of the results of the election.

**History:** 1953 Comp., § 73-33-14.1, enacted by Laws 1964 (1st S.S.), ch. 16, § 10; 1980, ch. 53, § 11; 1985, ch. 238, § 18; 1987, ch. 4, § 1; 1993, ch. 75, § 2.

### **ANNOTATIONS**

**Cross-references.** - As to the School Election Law, see 1-22-1 to 1-22-19 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, substituted "shall issue a resolution calling for an election" for "calling the election shall give notice of the election" at the end of the first sentence of Subsection A; inserted the current second sentence in Subsection A; added "The community college in the district in which the community college is situated shall publish the resolution" at the beginning of the third sentence of Subsection A; deleted former Subsection C, pertaining to election procedures where there is only one candidate for each position; and redesignated former Subsection D as Subsection C.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 147 to 150, 159 to 172.

Inclusion or exclusion of first and last days in computing the time for performance of an act or event which must take place a certain number of days before a known future date, 98 A.L.R.2d 1331.

64 C.J.S. Municipal Corporations § 1927.

### **21-13-18.1. Regular community college election; resolution; publication.**

A. The community college board shall issue a resolution in English and Spanish calling for a regular community college election within the community college district on the date prescribed by the Community College Act [Chapter 21, Article 13 NMSA 1978]. The resolution shall be filed with each county clerk in the community college district on the third Friday in December of each even-numbered year.

B. The resolution shall specify:

- (1) the date the election will be held;
- (2) the positions on the board to be filled;
- (3) the date on which declarations of candidacy are to be filed;
- (4) the date on which declarations of intent to be a write-in candidate are to be filed;
- (5) any questions to be submitted to the voters;
- (6) the precincts in each county in which the election is to be held and the location of each polling place;
- (7) the hours each polling place will be open; and
- (8) the date and time of the closing of the registration books by the county clerks as required by law.

C. In the event that only one candidate files a declaration of candidacy for each position to be filled at an election and no declared write-in candidates have filed for any position in which there is any other candidate, and there are no questions or bond issues on the ballot, only one polling place for the election shall be designated and it shall be in the office of the county clerk of the county in which the community college is located.

D. In any election held under the Community College Act, the county clerk shall perform the duties of the precinct board and no other precinct board shall be appointed.

**History:** 1978 Comp., § 21-13-18.1, enacted by Laws 1993, ch. 75, § 3.

## **ANNOTATIONS**

**Effective dates.** - Laws 1993, ch. 75 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23 is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

### **21-13-18.2. Declaration of candidacy; write-in candidates; filing date; penalty.**

A. A declaration of candidacy for membership on the community college board shall be filed with the proper filing officer during the period commencing at 9:00 a.m. on the forty-eighth day before an election and ending at 5:00 p.m. on the same day.

B. Write-in candidates for the office of board member shall be permitted in community college district elections.

C. A person may be a write-in candidate only if he has the qualifications to be a candidate for membership on the board as provided in the Community College Act [Chapter 21, Article 13 NMSA 1978].

D. A person desiring to be a write-in candidate for the office of board member shall file with the proper filing officer a declaration of intent to be a write-in candidate. The declaration shall be filed before 5:00 p.m. on the thirty-fifth day preceding the date of the election.

E. Any person knowingly making a false statement in his declaration of candidacy is guilty of a fourth degree felony.

F. As used in this section, "proper filing officer" means the county clerk of the county in which the community college is situated.

**History:** 1978 Comp., § 21-13-18.2, enacted by Laws 1993, ch. 75, § 4.

### ANNOTATIONS

**Effective dates.** - Laws 1993, ch. 75 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23 is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

### **21-13-19. Enrollment defined; payments.**

A. As used in the Community College Act [this article], "full-time-equivalent student" means:

(1) a student enrolled for one or several terms which in the aggregate consist of thirty-two weeks and who is taking twenty-three or more contact hours per week for the term or terms for which he is enrolled; or

(2) a computed student symbolized by each whole unit of a figure arrived at by dividing the aggregate number of contact hours taken by all students taking less than twenty-three contact hours a week during a term or terms which total thirty-two weeks by the number twenty-three.

B. For the purpose of computing the number of full-time-equivalent students for the technical and vocational payment, the following formulae shall be used:

(1) for full-time-equivalent students based on full-time students, the formula is:

full-time-equivalent = number of full- x number of

weeks of terms  
student enrolled                      time students                      for which

32

; and

(2) for full-time-equivalent students based on part-time students, the formula is:  
full-time-equivalent of term student = total weekly contact hours x number of weeks for which enrolled

7

36.

C. For the purpose of calculating the community college payment, full-time-equivalent student for those students enrolled in noncollege credit technical and vocational courses shall be defined as and shall be computed on the same bases set out in Subsections A and B of this section for full-time-equivalent students under the technical and vocational payment. For those students in community colleges taking college-level courses, full-time-equivalent students shall be defined and computed by the commission on higher education in the same manner in which it defines and computes full-time-equivalent students for all other college-level programs within its jurisdiction.

D. No student shall be included in any calculations made under the provisions of this section if the student is enrolled in a course the cost of which is totally reimbursed from federal, state or private sources. The public school district shall transfer to the community college the tuition and fees for any student who, during the term, is counted in the membership of the public school district and will receive high school credit for coursework at the community college.

E. An amount not less than six hundred fifty dollars (\$650) for each full-time-equivalent student shall be distributed by the commission on higher education to each community college. For the first year of operation, the board of regents shall estimate the full-time-equivalent student population; thereafter, the previous year's full-time-equivalent student population shall be used.

F. The commission on higher education shall not recommend an appropriation greater than three hundred twenty-five dollars (\$325) for each full-time-equivalent student for any community college that levies a tax at a rate less than two dollars (\$2.00), unless a lower amount is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon a rate approved by the electors pursuant to Section 21-13-17 NMSA 1978 of at least two dollars (\$2.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 and 38 NMSA 1978], or any community college that reduces a previously authorized tax levy, except as required by the operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978.

G. The commission on higher education shall require from the community college such reports as the board may deem necessary for the purpose of determining the number of full-time-equivalent students at the community college eligible to receive support under this section.

H. The commission on higher education may recommend tuition and fee rates, and in fixing tuition and fee rates the community college board shall separately establish:

- (1) rates for New Mexico students residing in the community college district;
- (2) rates for New Mexico students not residing in the community college district; and
- (3) rates for out-of-state students.

**History:** 1953 Comp., § 73-33-14.2, enacted by Laws 1968, ch. 70, § 2; 1974, ch. 20, § 1; 1980, ch. 53, § 12; 1985, ch. 238, § 19; 1986, ch. 32, § 10; 1988, ch. 98, § 1; 1990, ch. 25, § 1.

## **ANNOTATIONS**

**Cross-references.** - As to commission on higher education, see 21-1-26 and 21-1-28 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 19, 20, 21.

14A C.J.S. Colleges and Universities §§ 4, 31.

### **21-13-20. Sharing of facilities.**

Community college districts may contract for the use or sharing of facilities with any school. Any agreement entered into between the community college board and a school board shall provide that each district using the facilities shall bear an appropriate and equitable share of the expenses for the maintenance and operation of the facilities used.

**History:** 1953 Comp., § 73-33-15, enacted by Laws 1963, ch. 17, § 15; 1985, ch. 238, § 20.

### **21-13-21. Addition of school districts to existing community college districts.**

A. The qualified electors within the territorial limits of any school district, group of school districts within a county or school districts in an adjoining county, not included in the community college district as originally formed, may petition the board of educational finance [commission on higher education] to be added to the community college district.



The board of educational finance [commission on higher education] shall examine the petition and, if it finds that the petition is signed by the requisite number of qualified electors as provided in Sections 21-13-4 and 21-13-5 NMSA 1978, the board of educational finance [commission on higher education] shall cause a survey to be made of the petitioning district or districts to determine the desirability of the proposed extension of the area of the community college district.

B. In conducting the survey, the board of educational finance [commission on higher education] shall ascertain the attitude of the community college board and collect other information as prescribed in Section 21-13-4 NMSA 1978. If, on the basis of the survey, the board of educational finance [commission on higher education] finds that the proposed addition of the petitioning area will promote an improved education service in the area, it shall approve the petition. Thereafter, the board of educational finance [commission on higher education] shall proceed to call an election within the petitioning area and in the established community college district on the question of the inclusion of the area in the community college district. In the election, the procedure prescribed in Sections 21-13-6, 21-13-7 and 21-13-18 NMSA 1978 shall be followed.

C. If it appears on canvass of the results of the election in the office of the executive secretary of the board of educational finance [executive director of the commission on higher education] that a majority of the votes cast in each of the petitioning areas and within the established community college district were in favor of the addition of the petitioning area or areas, the executive secretary [executive director] shall notify the boards of education within each school district and the community college board of the results of the election and shall declare the extension of the boundaries of the community college district to include the petitioning area or areas in which the proposed addition referendum carried by a majority vote. The addition shall take effect on the next succeeding July 1.

D. The territory within each school district added to any existing community college district shall automatically be subject to any special levy on taxable property approved for the community college district for the maintenance of facilities and services and for support of bond issues.

**History:** 1953 Comp., § 73-33-16, enacted by Laws 1963, ch. 17, § 16; 1964 (1st S.S.), ch. 16, § 11; 1980, ch. 53, § 13; 1985, ch. 238, § 21.

## **ANNOTATIONS**

**Cross-references.** - As to the commission on higher education, see 21-1-26 and 21-1-28 NMSA 1978.

As to the executive director of the commission on higher education, see 21-1-30 NMSA 1978.

**Bracketed material.** - As to the bracketed material regarding the commission on higher education and the executive director of the commission on higher education, see 21-1-26 and 21-1-30 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 15, 22 to 36.

Unionization, centralization or consolidation of school districts as affecting indebtedness and property of the individual districts, 121 A.L.R. 826.

78 C.J.S. Schools and School Districts §§ 27 to 52.

### **21-13-22. Transportation system.**

When in the judgment of the community college board of an established community college the educational services of the community college can be extended to a number of students who should be served by the community college by the establishment of a transportation system, the community college board may do so through the use of maintenance funds from the annual tax levy. The community college transportation system shall be limited to nonstop bus routes between outlying population centers within the community college district and the community college. Provided that, other laws to the contrary notwithstanding, local school boards within the community college district shall allow community college students to ride on public school buses over established routes upon payment by the community college for the cost of such services, and provided further that the local school boards within the community college district shall make every effort to schedule their bus routes and times in such manner that they accommodate the community college students. Students who use community college or public school bus facilities may be charged such fees as the community college board deems reasonable. In lieu of providing any college-owned or operated transportation, the community college board may make agreements with local school boards for the transportation of community college students to and from the community college campus. The community college board shall make payments to the local school fund for any transportation.

**History:** 1953 Comp., § 73-33-17, enacted by Laws 1963, ch. 17, § 17; 1964 (1st S.S.), ch. 16, § 12; 1980, ch. 53, § 14; 1985, ch. 238, § 22.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 234 to 241.

Transportation of school pupils at expense of public, 63 A.L.R. 413, 118 A.L.R. 806, 146 A.L.R. 625.

79 C.J.S. Schools and School Districts §§ 475 to 482.

### **21-13-23. Dissolution of community college districts.**

Community college districts may be dissolved in the following manner:

A. submission of a plan for the dissolution of the community college district to the executive secretary of the board of educational finance [executive director of the commission on higher education] by a petition signed by ten percent of the qualified electors residing within the district. Upon receipt of a proper plan and petition, the executive secretary [executive director] shall call a special election for the purpose of referring to the qualified electors residing in the district the question of dissolution. Plans for the dissolution of a community college district shall provide for the payment of all district debts and liabilities and for the equitable distribution of all remaining assets to the school districts within the community college district;

B. if the executive secretary of the board of educational finance [executive director of the commission on higher education] finds that a majority of the qualified electors voting on the issue at the special election has authorized the dissolution, the community college board shall proceed with the approved plan. Upon completion of the plan, the community college board shall submit a full report to the executive secretary [executive director] and a copy of the report to each local school district board within the community college district; and

C. upon receipt of the final report of the community college board, the executive secretary of the board of educational finance [executive director of the commission on higher education] shall examine the report to determine whether any outstanding obligations still exist and whether the terms of the approved plan have been accomplished. If, upon determination by the executive secretary [executive director], no obligations are yet outstanding and the provisions of the plan have been fulfilled, he shall formally declare the community college district dissolved.

**History:** 1953 Comp., § 73-33-18, enacted by Laws 1963, ch. 17, § 18; 1964 (1st S.S.), ch. 16, § 13; 1980, ch. 53, § 15; 1985, ch. 238, § 23.

## **ANNOTATIONS**

**Cross-references.** - As to the executive director of the commission on higher education, see 21-1-30 NMSA 1978.

**Bracketed material.** - As to the bracketed material regarding the executive director of the commission on higher education, see 21-1-30 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 15, 22 to 36.

78 C.J.S. Schools and School Districts §§ 27 to 52.

**21-13-24. Refunding bonds of community college districts.**

The community college board of any community college district may, with the approval of the board of educational finance [commission on higher education], issue bonds, to be denominated refunding bonds, for the purpose of refunding any of the general obligation bonded indebtedness of the community college district. Whenever the community college board of any community college district deems it expedient to issue refunding bonds, it shall adopt a resolution setting out the facts making the issuance of the refunding bonds necessary or advisable, the determination of such necessity or advisability by the community college board and the amount of refunding bonds which the community college board deems necessary and advisable to issue. The resolution shall fix the form of the bonds; the rate or rates of interest of the bonds, provided that the net effective interest rate of the bonds shall not exceed the maximum net effective interest rate permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978], as hereafter amended and supplemented; the date of the refunding bonds; the denominations of the refunding bonds; the maturity dates, the last of which shall not be more than twenty years from the date of the refunding bonds; and the place or places of payment within or without the state of both principal and interest. Refunding bonds when issued, except for bonds issued in book entry or similar form without the delivery of physical securities, shall be negotiable in form, shall bear the signature or the facsimile signature of the chairman of the community college board, with the seal of the community college district affixed thereto, and shall be attested by the secretary of the community college board. All refunding bonds may be exchanged dollar for dollar for the bonds to be refunded or they may be sold as directed by the community college board, and the proceeds of the sale shall be applied only to the purpose for which the bonds were issued and the payment of any expenses incidental thereto.

**History:** 1953 Comp., § 73-33-19, enacted by Laws 1964 (1st S.S.), ch. 16, § 14; 1980, ch. 53, § 16; 1983, ch. 265, § 43; 1985, ch. 238, § 24.

## ANNOTATIONS

**Cross-references.** - As to the commission on higher education, see 21-1-26 and 21-1-28 NMSA 1978.

**Bracketed material.** - As to the bracketed references to the commission on higher education, see 21-1-26 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 261 to 269, 445.

Right to call governmental bonds in advance of their maturity, 109 A.L.R. 988.

Governmental unit's power to issue bonds as implying power to refund them, 1 A.L.R.2d 134.

11 C.J.S. Bonds §§ 122, 131, 132.

**21-13-24.1. Establishing procedures for independence; funding; tuition; appropriation; local support level; outstanding indebtedness.**

Any institution established in accordance with Article 14, 16 or 17 of Chapter 21 NMSA 1978 which desires to become an independent institution under Laws 1980, Chapter 53 and to receive more than three hundred twenty-five dollars (\$325) per full-time-equivalent student is subject to the following:

A. approval of the institutional request for independent status by the board of educational finance;

B. tuition rates shall be recommended by the board of educational finance and shall be set by the legislature;

C. the board of educational finance [commission on higher education] shall recommend an appropriation for the institution based upon expenditure levels determined by board of educational finance [commission on higher education] formulas in relation to its authorized program and its available funds from nongeneral fund sources, and the recommended appropriation shall be an amount not less than three hundred twenty-five dollars (\$325) for each full-time-equivalent student;

D. the minimum level of local support for operational purposes shall be a tax rate of two dollars (\$2.00), or any lower amount required by the operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon an amount of at least two dollars (\$2.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978];

E. with the approval of the board of educational finance [commission on higher education], the community college may operate occupational education programs for secondary school students in cooperation with public school districts located within the community college district; provided that all budgeting and expenditures related to secondary occupational education programs must be separately identified, and no state money appropriated for support of the post-secondary education program may be used to operate secondary occupational education programs; and

F. the community college board shall provide for the assumption of any outstanding indebtedness of the institution desiring to become independent by the voters of the community college district.

**History:** 1978 Comp., § 21-13-24.1, enacted by Laws 1980, ch. 53, § 17; 1985, ch. 238, § 25; 1986, ch. 32, § 11.

**ANNOTATIONS**

**Cross-references.** - As to the commission on higher education, see 21-1-26 and 21-1-28 NMSA 1978.

**Bracketed material.** - As to the bracketed material regarding the commission on higher education, see 21-1-26 NMSA 1978 and notes thereto.

**Laws 1980, Chapter 53.** - Laws 1980, Chapter 53, referred to in the introductory paragraph, means the Junior College Act which formerly appeared as 21-13-1 NMSA 1978 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Colleges and Universities §§ 3, 33.

14A C.J.S. Colleges and Universities §§ 4, 5, 7.

### **21-13-25. Liberal construction.**

The Community College Act [this article], being necessary to secure the public health, safety, convenience and welfare, shall be liberally construed to effect its purposes.

**History:** 1953 Comp., § 73-33-20, enacted by Laws 1964 (1st S.S.), ch. 16, § 15; 1985, ch. 238, § 26.

### **21-13-26. Community college district revenue bonds; refunding bonds.**

A. The community college board of any community college district may issue revenue bonds for the purpose of constructing, purchasing, improving, remodeling, furnishing and equipping any necessary buildings, structures and facilities of the community college district. The revenue bonds shall be payable from and secured by a lien on and pledge of all or any part of any of the revenues, income or receipts of the community college district and its board, including without limitation any rentals, rates, charges, tuition and fees or other revenues other than ad valorem tax proceeds available to the community college district and its board.

B. The revenue bonds shall be authorized by resolution of the community college board of the community college district approved by majority vote of the board. The commission on higher education and the state board of finance shall approve the sale of the bonds.

C. The revenue bonds may be issued in one or more series and shall mature not more than thirty years from their date. The net effective interest rate of the bonds shall not exceed the net effective interest rate as permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978] in accordance with the terms and options of redemption authorized in the bond resolution adopted by the community college board.

D. The community college board:

(1) may pledge all or any part of its revenues, income or receipts from rentals, rates, charges, tuition and fees or other resources and revenues other than ad valorem tax proceeds for the payment of the bonds, including the payment of principal, interest and any other amounts required or permitted in connection with the bonds in accordance with the bond resolution;

(2) shall fix and collect those pledged rentals, rates, charges, tuition and fees in amounts that shall be at least sufficient, together with other pledged resources, to provide for all payments of principal, interest and any other amounts required in connection with the bonds; to provide for the payment of expenses in connection with the bonds; and, to the extent required by the resolution authorizing the issuance of the bonds, to provide for the payment of operation, maintenance and other expenses in connection with the aforesaid property, buildings, structures, activities, services, operations or other facilities; and

(3) may establish and enforce parietal rules for students and others and enter into agreements regarding occupancy, use and availability of facilities and the amounts and collection of pledged revenues, income, receipts, rentals, rates, tuition and fees or other resources, to assure that all required payments and deposits shall be made pursuant to the bond resolution.

E. Fees for the use by or availability to the students of all or any property, buildings, structures, activities, services, operations or other facilities of the community college district may be pledged to the payment of the bonds and shall be fixed and collected from all or any designated part of the students enrolled in the community colleges of the community college district and any branches of those colleges, in the amounts and in the manner determined and provided by the community college board in the resolution authorizing the issuance of the bonds. Such fees:

(1) may be collected in the full amounts required or permitted under this section, without regard to actual use, availability or existence of any facility, commencing at any time designated by the community college board;

(2) may be fixed and collected for the use or availability of any specifically described property, buildings, structures, activities, services, operations or other facilities or may be fixed and collected as general fees for the general use or availability of the community colleges of the community college district or any branch of such colleges; and

(3) whether fixed and collected as specific or general fees, may be pledged to the payment of any issue or series of bonds issued by the community college board, in the full amounts required or permitted under this section, in addition to and regardless of the existence of any other specific or general fees at the community colleges of the community college district or any branches of such colleges; provided that the community college board may restrict its power to pledge such additional specific or general fees in any manner that may be provided in any resolution authorizing the

issuance of bonds, and provided further that no such additional specific fees shall be pledged if prohibited by any resolution that authorized the issuance of the bonds that are outstanding at the time of such pledge.

F. A community college board of a community college district may by bond resolution provide for the issuance of refunding bonds to refund any outstanding bonds issued under the Community College Act [this article], together with redemption premiums, if any, and interest accrued or to accrue on such bonds. Provisions governing the issuance and sale of bonds under the Community College Act govern the issuance and sale of refunding bonds insofar as applicable. Refunding bonds may be exchanged for the outstanding bonds or may be sold and the proceeds used to retire the outstanding bonds. Pending the application of the proceeds of any such refunding bonds with any other available funds to the payment of principal, interest and any redemption premiums on the bonds being refunded, and if so provided or permitted in the bond resolution of the community college board authorizing the issuance of such refunding bonds to the payment of any interest on such refunding bonds and any expenses incurred in connection with such refunding, such proceeds may be placed in escrow and invested in securities that are unconditionally guaranteed by the United States and that shall mature or that shall be subject to redemption by the holders of the bonds, at the option of the bondholders, not later than the respective dates when the proceeds together with the interest accruing on the bonds will be required for the purposes intended.

**History:** 1978 Comp., § 21-13-26, enacted by Laws 1992, ch. 97, § 1.

## **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 97 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

## **ARTICLE 14 BRANCH COMMUNITY COLLEGES**

### **21-14-1. Branch community college educational program and enrollment defined.**

A. "Branch community college educational program" for the purposes of Chapter 21, Article 14 NMSA 1978 includes either the first two years of college education or organized vocational and technical curricula of not more than two years' duration designed to fit individuals for employment in recognized occupations, or both.

B. The calculation of full-time-equivalent student population for the purposes of Chapter 21, Article 14 NMSA 1978 shall include students enrolled in college-level courses and students enrolled in vocational and technical courses taught by a branch community college which is recognized by the vocational education division as an area vocational school or in courses which are approved by the state board of education. Full-time



equivalent for students enrolled in vocational and technical courses not of college level shall be calculated according to the method prescribed in Section 21-16-9 NMSA 1978. Students enrolled in a course the cost of which is totally reimbursed from federal, state or private sources shall not be included in the calculation of full-time equivalent student population. The public school district shall transfer to the branch community college the tuition and fees for any student who, during the term, is counted in the membership of the public school district and will receive high school credit for coursework at the branch community college.

**History:** 1953 Comp., § 73-30-17, enacted by Laws 1957, ch. 143, § 1; 1963, ch. 162, § 1; 1967, ch. 104, § 1; 1969, ch. 94, § 1; 1971, ch. 48, § 1; 1985, ch. 238, § 27; 1990, ch. 25, § 2.

## ANNOTATIONS

**Branch closing not repeal of statutes.** - The statutes governing branch community colleges remain intact, even though the branches may cease operation due to low funding. 1980 Op. Att'y Gen. No. 80-3.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 1.

14A C.J.S. Colleges and Universities §§ 2, 4.

### **21-14-2. Establishment authorized; board; determination of need; agreements.**

A. A branch community college may be established in a school district upon the showing of need by the local board of education. A branch community college may be established to include more than one school district, in which instance the boards of education shall act as a single board and, if the branch community college is established, shall continue to act as a single board unless a successor board is established as provided in Section 21-14-2.1 NMSA 1978. As used in Chapter 21, Article 14 NMSA 1978, "board" means either the local board of education, or the combined local boards of education acting as a single board, of the school district or the board of the branch community college elected pursuant to Section 21-14-2.1 NMSA 1978.

B. The duties of the board are to:

(1) initiate and conduct the survey provided for in Subsection C of this section;

(2) select the parent institution;

(3) request approval of the branch community college from the board of educational finance [commission on higher education];

(4) enter into written agreements with the board of regents of the parent institution selected, subject thereafter to biennial review by all parties concerned and to the review and commentary of the board of educational finance [commission on higher education];

(5) act in an advisory capacity to the board of regents of the parent institution in all matters relating to the conduct of the branch community college;

(6) approve an annual budget for the branch community college for recommendation to the board of regents of the parent institution;

(7) certify to the board of county commissioners the tax levy; and

(8) conduct the election for tax levies for the branch community college.

C. Upon evidence of a demand for a branch community college, the board shall cause a survey to be made. The board of educational finance [commission on higher education] shall develop criteria for the establishment of a branch community college, and no branch community college shall be established without the written authorization of the board of educational finance.

D. If need is established, the board, in accordance with the board of educational finance criteria for initiating a branch community college program, shall consult with the board of regents of the higher education institution selected to be the parent institution, and, if the board and the board of regents agree to conduct a branch community college in the area, they shall transmit a proposal to establish a branch community college to the board of educational finance. The board of educational finance [commission on higher education] shall evaluate the need and shall notify the board and the board of regents of approval or disapproval of the proposal.

E. If the proposal is approved, the board and the board of regents of the parent institution shall enter into a written agreement which shall include provisions for:

(1) the higher education institution to have full authority and responsibility in relation to all academic matters;

(2) the higher education institution to honor all credits earned by students as though they were earned on the parent campus;

(3) the course of study and program offered;

(4) the cooperative use of physical facilities and teaching staff;

(5) consideration of applications of local qualified people before employing teachers of the local school system; and

(6) the detailed agreement of financing and financial control of the branch community college.

F. The agreement shall be binding upon both the board and the board of regents of the parent institution; however, it may be terminated by mutual consent or it may be terminated by either board upon six months' notice. However, if the branch community college has outstanding bonds, either tax or revenue, neither the board nor the board of regents may terminate this agreement until the outstanding bonds are retired, except as provided by Section 21-13-24.1 NMSA 1978. This provision shall apply to all agreements in existence between the branch community college and the board of regents of the parent institution.

G. All taxes levied to pay for principal and interest on bonds of the branch community college shall be in addition to the taxes levied for operating, maintaining and providing facilities for the branch community college pursuant to Section 21-14-6 NMSA 1978 and shall not be limited by the tax limitation found in that section.

H. For the purpose of relating branch community colleges to existing laws, branch community college districts or branch community colleges shall not:

(1) be considered a part of the uniform system of free public schools pursuant to Article 12, Section 1 and Article 21, Section 4 of the constitution of New Mexico;

(2) benefit from the permanent school fund and from the current school fund under Article 12, Sections 2 and 4 of the constitution of New Mexico;

(3) be subject, except as it relates to technical and vocational education, to the control, management and direction of the state board of education under Article 12, Section 6 of the constitution of New Mexico; and

(4) be considered school districts insofar as the restrictions of Article 9, Section 11 of the constitution of New Mexico are concerned.

I. All elections held pursuant to the branch community college laws shall be as follows:

(1) the board calling the election shall give notice of the election in a newspaper of general circulation in the branch community college district at least once a week for three consecutive weeks, the last insertion to be not less than thirty days prior to the proposed election;

(2) the election shall be conducted and canvassed in the same manner as municipal school district elections unless otherwise provided in the branch community college laws; and

(3) any person or corporation may institute in the district court of any county in which the branch community college district affected lies an action or suit to contest the validity of

any proceedings held under the branch community college laws, but no such suit or action shall be maintained unless it is instituted within ten days after the issuance by the proper officials of a certificate or notification of the results of the election and the canvassing of the election returns by the board.

J. The tax rolls of the school districts comprising the branch community college district shall be adopted as the tax rolls of the branch community college district.

**History:** 1953 Comp., § 73-30-18, enacted by Laws 1963, ch. 162, § 2; 1971, ch. 182, § 1; 1983, ch. 85, § 1; 1985, ch. 238, § 28.

## ANNOTATIONS

**Cross-references.** - As to the commission on higher education, see 21-1-26 and 21-1-28 NMSA 1978.

As to the public school fund, see 22-8-14 NMSA 1978.

As to the current school fund, see 22-8-32 NMSA 1978.

**Repeals and reenactments.** - Laws 1963, ch. 162, § 2, repealed former 73-30-18, 1953 Comp., relating to establishing community colleges, and enacted a new 73-30-18, 1953 Comp.

**Bracketed material.** - As to the bracketed material regarding the commission on higher education, see 21-1-26 NMSA 1978 and notes thereto.

**Composition of board.** - Branch community college laws give certain powers to the board of education (local board). When more than one school district makes up a branch community college district, that board is expressly intended to be a composite of the local school board. 1975 Op. Att'y Gen. No. 75-50.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 5, 10, 11; 68 Am. Jur. 2d Schools §§ 31, 37 to 55.

14A C.J.S. Colleges and Universities §§ 15 to 17; 78 C.J.S. Schools and School Districts §§ 29, 108, 120; 79 C.J.S. Schools and School Districts § 400.

### **21-14-2.1. Branch community college board; local option.**

A. A majority of the local board of education or the combined boards of education acting as a single board may cease to operate as the branch community college board and provide for an elected branch community college board. In that event, the majority of the local board of education or the combined boards of education acting as a single board shall elect five persons as members of the branch community college board. The persons elected shall be assigned position numbers one through five. Board members

shall be over twenty-one years of age, qualified electors and residents of the branch community college district. The members of the board shall continue to serve until the next regular branch community college election, to be held on the first Tuesday of February of each odd-numbered year, at which time five board members shall be elected by the registered voters of the branch community college district. The candidates shall file for and be elected to a particular position number. The candidate receiving the highest number of votes for a particular position shall be elected. At the first board meeting after the election, the five members shall draw lots for the following terms: two for terms of two years and three for terms of four years. Thereafter, board members shall be elected for terms of four years from March 1 succeeding their election. All vacancies caused in any other manner than by the expiration of the term of office shall be filled by appointment by the remaining members.

B. Immediately after the election of the five members by the assembled board of education members, the board shall select from its members a chairman and secretary who shall serve in these offices until the next regular branch community college board election. After each branch community college board election, the members shall proceed to reorganize.

C. The duties of the board shall continue as set out in Chapter 21, Article 14 NMSA 1978.

**History:** 1978 Comp., § 21-14-2.1, enacted by Laws 1985, ch. 238, § 29.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 10, 11.

14A C.J.S. Colleges and Universities §§ 15 to 17.

#### **21-14-3. Approval of local school board required.**

Before any school district shall become part of a branch community college district composed of two or more school districts, the local board of education shall indicate its consent and need for such branch community college by the adoption of a resolution to that effect.

**History:** 1953 Comp., § 73-30-18.1, enacted by Laws 1972, ch. 36, § 3.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools § 49.

78 C.J.S. Schools and School Districts § 120.

#### **21-14-4. Availability of school facilities; use of other facilities.**

Upon establishment of a branch community college, public school facilities are to be made available to the college if needed, and in such manner as will not interfere with the regular program of instruction. No public school funds shall be expended in the program, and the branch community college shall pay a proper amount for utilities and custodian service. The board may arrange for the use of available facilities other than public school facilities if approved by the board of regents.

**History:** 1953 Comp., § 73-30-19, enacted by Laws 1957, ch. 143, § 3; 1963, ch. 162, § 3.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 78 C.J.S. Schools and School Districts § 243.

#### **21-14-5. Financing of branch community colleges.**

Financing of branch community colleges shall be by tuition and fees, which shall be set by the board of regents, and by gifts and grants, and by other funds as may be made available, except as otherwise provided in Sections 21-14-1 through 21-14-11 NMSA 1978.

**History:** 1953 Comp., § 73-30-20, enacted by Laws 1957, ch. 143, § 4; 1963, ch. 162, § 4.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 2, 19, 20, 37.

Validity, interpretation, and application of provisions of will making devise or bequest to or in trust for religious or educational body dependent upon adherence to particular body of principles or dogmas or ecclesiastical connection, 120 A.L.R. 971.

14A C.J.S. Colleges and Universities §§ 4, 5, 31.

#### **21-14-6. Tax levies authorized; contingent state funding.**

A. Subject to the provisions of Subsection C of this section, the board may levy and collect a tax annually against the net taxable value, as that term is defined in the Property Tax Code [Articles 35 through 38 of Chapter 7 NMSA 1978], of property in the school district or districts comprising the branch community college district for the purpose of operating, maintaining and providing facilities for the branch community college. The annual amount levied shall be one hundred dollars (\$100) for a full-time-

equivalent student in the academic program or four hundred dollars (\$400) for a full-time student in the vocational and technical program, provided that the amount levied shall not be less than one dollar (\$1.00), or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon an amount of one dollar (\$1.00) on each one thousand dollars (\$1,000) of net taxable value.

B. For the first year of operation, the board shall estimate the full-time-equivalent student population; thereafter, the previous year's full-time-equivalent student population shall be used for taxing purposes.

C. The question of levying the taxes for the support of the branch community college shall be submitted to the electors and voted upon as a separate question at a special election or at the next subsequent general election. The election upon the question shall be called, handled, conducted and canvassed in substantially the same manner as is provided by law.

D. If a tax pursuant to Subsection A of this section is not imposed in a given property tax year or if the authorization for its imposition terminates or expires, the election requirements of Subsection C of this section shall apply to any subsequent proposed imposition of a property tax for the branch community college purposes set forth in this section.

E. An election to abolish the approved levy shall be called by the branch board upon receipt by it of a valid petition. To be valid, the petition shall be signed by electors of the branch community college district in a number equal to ten percent of the number of votes cast in the district for the office of governor at the last general election and shall state the question to be voted upon.

F. State funding for any branch community college after June 30, 1988 shall be contingent upon the imposition of a tax levy pursuant to either Section 21-14-6 or 21-14-6.1 NMSA 1978.

**History:** 1953 Comp., § 73-30-21, enacted by Laws 1963, ch. 162, § 5; 1967, ch. 60, § 1; 1970, ch. 72, § 1; 1981, ch. 37, § 82; 1985, ch. 238, § 30; 1986, ch. 32, § 12; 1987, ch. 22, § 2.

## **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1963, ch. 162, § 5, repealed former 73-30-21, 1953 Comp., relating to dissolution of community college, and enacted a new 73-30-21, 1953 Comp.

**Who may vote.** - Those entitled to vote upon the question of the tax levy, for the support of the branch community college, are those otherwise qualified to vote, who

reside within the taxing district, without regard to any taxpaying or real estate ownership qualification. 1964 Op. Att'y Gen. No. 64-132.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 71 Am. Jur. 2d State and Local Taxation §§ 20, 192.

Failure to comply with constitutional or statutory requirement that municipality, or other political subdivision, at or before incurring indebtedness, shall provide a tax for its payment as affecting validity of indebtedness or obligations issued therefor, 90 A.L.R. 1240.

Limitation of power to tax as limitation of power to incur indebtedness or vice versa, 97 A.L.R. 1103.

Actual levy or permissible maximum levy of taxes as determining limit of indebtedness of municipality, county, or other political unit, under statute or constitutional provision limiting indebtedness with reference to income or revenue, 122 A.L.R. 330.

Constitutionality of statute validating bonds or other obligations of public body in excess of debt limitation, 132 A.L.R. 1388.

84 C.J.S. Taxation §§ 66, 352, 361.

### **21-14-6.1. Special tax levy election.**

A. Every branch community college board which has not received the approval of the electors of the branch community college district to levy the annual tax provided for in Section 21-14-6 NMSA 1978 in an amount of not less than one dollar (\$1.00) on each one thousand dollars (\$1,000) of net taxable value or any lower maximum amount required by the operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978, shall conduct an election pursuant to the provisions of this section for the purpose of submitting the question of levying a tax in the amount provided for in Section 21-14-6 NMSA 1978 to the electors of the branch community college district in substantially the same manner as is provided by law.

B. The results of the special election provided in Subsection A of this section shall be certified to the commission on higher education prior to August 1, 1987.

C. For purposes of this section "branch community college" means a post-secondary educational institution organized pursuant to Chapter 21, Article 14 NMSA 1978.

**History:** 1978 Comp., § 21-14-6.1, enacted by Laws 1987, ch. 22, § 1.

## **ANNOTATIONS**



**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 72 Am. Jur. 2d State and Local Taxation § 714.

84 C.J.S. Taxation § 361.

### **21-14-7. Additional levies.**

A. Subject to the provisions of Subsection B of this section, the board may levy and collect a tax annually against the property in the school district or districts comprising the branch community college district for the purpose of construction, purchase or lease of facilities, purchase or lease of equipment, reduction of tuition rates and implementation of special community service programs beyond the scope of the standard branch community college curriculum. The annual amount levied shall not be in excess of three dollars (\$3.00), or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon a tax levied under this section, on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978], of property in the school district or districts comprising the branch community college district.

B. The question of levying additional taxes not exceeding three dollars (\$3.00) on each one thousand dollars (\$1,000) of net taxable value for purposes set forth in Subsection A of this section shall be submitted to the electors and voted upon as a separate question. The election upon the question shall be called, handled, conducted and canvassed in substantially the same manner as is provided by law.

C. If the electors vote in favor of the special levy, it shall become effective and be made for each of the ensuing four years. The board may direct that the levy be decreased or not made for any year if, in its judgment, sufficient funds are available or will be obtained from other sources.

D. The tax levies authorized by this section shall be in addition to those levies authorized by Section 21-14-6 NMSA 1978.

**History:** 1953 Comp., § 73-30-21.1, enacted by Laws 1972, ch. 36, § 1; 1981, ch. 37, § 83; 1985, ch. 238, § 31; 1986, ch. 32, § 13.

### **ANNOTATIONS**

**Effect of college relocation on tax levy.** - Where voters in a school district vote a tax levy to support a community college within its district and the college moves outside the district and goes from academic to academic and vocational, a revote is needed for the change in programs, and the tax levy money cannot be used because the college is outside the school district. 1967 Op. Att'y Gen. No. 67-111.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 71 Am. Jur. 2d State and Local Taxation §§ 19 to 21; 72 Am. Jur. 2d State and Local Taxation §§ 739 to 752.

What is a property tax as distinguished from excise, license, and other taxes, 103 A.L.R. 18.

84 C.J.S. Taxation §§ 56, 66, 360.

### **21-14-7.1. Special area-vocational levy.**

A. Subject to the provisions of Subsection B of this section, any branch community college which is recognized by the vocational education division as an area vocational school may levy and collect a tax annually against the property in the school district or districts comprising the branch community college district to be used for current operations and maintenance of the branch community college district. The annual amount levied shall not be in excess of one dollar (\$1.00), or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon a rate imposed under this section, on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 through 38 NMSA 1978], of property in the school district or districts comprising the branch community college district.

B. The question of levying additional taxes not exceeding one dollar (\$1.00) on each one thousand dollars (\$1,000) of net taxable value for the purpose set forth in Subsection A of this section shall be submitted to the electors and voted on as a separate question. The election upon the question shall be called, handled, conducted and canvassed in substantially the same manner as is provided by law.

C. If the electors vote in favor of the special area-vocational levy, it shall become effective and be made for each of the ensuing years. The board may direct that the levy be decreased or not made for any year if, in its judgment, sufficient funds are available or will be obtained from other sources.

D. The tax levy authorized by this section shall be in addition to those levies authorized by Sections 21-14-6 and 21-14-7 NMSA 1978.

E. An election to abolish the approved levy authorized under this section shall be called by the board upon receipt by it of a valid petition. To be valid, the petition shall be signed by electors of the branch community college district in a number equal to ten percent of the number of votes cast in the district for the office of governor at the last general election and shall state the question to be voted upon.

**History:** 1978 Comp., § 21-14-7.1, enacted by Laws 1985, ch. 238, § 32; 1986, ch. 32, § 14.

### **ANNOTATIONS**

**Cross-references.** - As to the vocational education division, see 22-14-4 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 71 Am. Jur. 2d State and Local Taxation §§ 19 to 21; 72 Am. Jur. 2d State and Local Taxation §§ 739 to 752.

84 C.J.S. Taxation §§ 56, 66, 352, 361.

### **21-14-8. Election on levy.**

If the electors vote in favor of the levy provided for in Section 21-14-6 NMSA 1978, it shall become effective in the following taxable year and each year thereafter, except as provided in Subsection D of Section 21-14-6 NMSA 1978, unless the branch community college district is dissolved.

**History:** 1953 Comp., § 73-30-22, enacted by Laws 1963, ch. 162, § 6; 1985, ch. 238, § 33.

### **ANNOTATIONS**

**Who may vote.** - Those entitled to vote upon the question of the tax levy, for the support of the branch community college, are those otherwise qualified to vote, who reside within the taxing district, without regard to any taxpaying or real estate ownership qualification. 1964 Op. Att'y Gen. No. 64-132.

### **21-14-9. State support; appropriation.**

The board of educational finance [commission on higher education] shall recommend an appropriation for each branch community college and junior college based upon its financial requirements in relation to its authorized program and its available funds from nongeneral fund sources; provided, such recommended appropriation shall be an amount not less than three hundred twenty-five dollars (\$325) for each full-time-equivalent student.

**History:** 1953 Comp., § 73-30-23, enacted by Laws 1973, ch. 371, § 1.

### **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1973, ch. 371, § 1, repealed former 73-30-23, 1953 Comp., relating to state support of community colleges, and enacted a new 73-30-23, 1953 Comp.

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**Legislature not bound to appropriate.** - None of the actions taken by a local board of education, the board of educational finance, the voters in a local school district or the regents of the university of New Mexico can bind the legislature to an appropriation. 1980 Op. Att'y Gen. No. 80-3.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 33.

81A C.J.S. States § 204.

### **21-14-10. Applicability of other laws.**

Any law concerning public schools and any law concerning the higher education institution shall, when applicable, govern the operation and conduct of the branch community college.

**History:** 1953 Comp., § 73-30-24, enacted by Laws 1963, ch. 162, § 8.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 7, 8, 23, 42.

14A C.J.S. Colleges and Universities §§ 3, 6, 16.

### **21-14-11. Designation of branch community college.**

Any community college shall be designated as a branch of the respective higher education institution.

**History:** 1953 Comp., § 73-30-25, enacted by Laws 1963, ch. 162, § 9.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 1.

14A C.J.S. Colleges and Universities § 2.

### **21-14-12. Branch community college bonds; interest; form; payment.**

A. Any branch community college board may borrow money for the purposes of erecting and furnishing, constructing, purchasing, remodeling and equipping buildings and utility facilities or purchasing grounds, exclusive of dormitories and stadiums. To carry out the purposes of this section, the branch community college board may issue general obligation bonds of the district, if approved by the board of educational finance [commission on higher education] and then approved at an election by a majority of the qualified electors voting on the issue; provided, however, no bonds shall be issued which create a total bonded indebtedness in the district in excess of three percent of the

assessed valuation of the taxable property within the district as shown in the preceding general assessment, which debt limitation shall be in excess of other debt limitations. Bonds shall be sold at a price which does not result in a net effective interest rate exceeding the maximum net effective interest rate permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978], as hereafter amended and supplemented. The bonds shall be sold and may be in such denominations as the branch community college board determines, and the bonds and the attached coupons, if any, may be payable to the bearer or registered as to principal or as to principal and interest.

B. The bonds shall be due and payable serially, either annually or semiannually, commencing not later than three years from their date. The bonds shall be issued for a term of not less than five nor more than twenty years. The form and terms of the bonds, including provisions for their payment and redemption, shall be as determined by the branch community college board. If the branch community college board so determines, the bonds may be redeemable prior to maturity upon payment of a premium not exceeding three percent of the principal of the bonds. The bonds, except for bonds issued in book entry or similar form without the delivery of physical securities, shall be executed in the name of and on behalf of the district and signed by the chairman of the branch community college board, with the seal of the district affixed to the bonds, and attested by the secretary of the branch community college board. Bonds may be executed and sealed in accordance with the provisions of the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978]. Interest coupons, if any, shall bear the original or facsimile signature of the chairman of the branch community college board.

C. To provide for the payment of the interest and principal of the bonds issued and sold pursuant to the provisions of this section, upon approval of the bonds at an election by a majority of the qualified electors in the district who voted on the issue, the board of county commissioners shall annually make and levy during each year in which any bonds of the district are outstanding an ad valorem tax on all taxable property in the district in an amount sufficient to produce a sum equal to one year's interest on all bonds then outstanding, together with an amount sufficient to pay the principal of all bonds as they mature. This levy shall not exceed five mills; provided, however, that this five-mill limitation may be exceeded in any year in which the valuation of the property within the district declines to a level lower than the valuation of the property within the district in the year in which the bonds were issued. The taxes authorized shall be levied, assessed and collected at the times and in the manner that ad valorem taxes for school districts are assessed, levied and collected, and it shall be the duty of all tax officials and authorities to cause the taxes to be levied, assessed and collected.

D. The proceeds obtained from the issuance of the bonds shall not be diverted or expended for any purposes other than those provided in this section; provided that no building shall be built without prior approval of detailed plans by the board of educational finance [commission on higher education], which shall have authority to approve, disapprove or decrease the amount of bonds which may be sold; and provided

further that the expenses incurred in the preparation and sale of the bonds may be paid out of the proceeds from their sale.

E. Prior to the issuance of bonds, the attorney general shall approve the bond issue and issue his written approval or rejection of the bonds in the same manner as is required by Section 22-18-9 NMSA 1978. Unless otherwise specifically provided, the provisions of this section for the issuance of bonds shall be deemed exclusive of the provisions of all other laws.

**History:** 1953 Comp., § 73-30-26, enacted by Laws 1965, ch. 162, § 1; 1970, ch. 72, § 2; 1971, ch. 219, § 1; 1983, ch. 265, § 44.

## ANNOTATIONS

**Cross-references.** - As to the commission on higher education, see 21-1-26 and 21-1-28 NMSA 1978.

**Bracketed material.** - As to the bracketed material regarding the commission on higher education, see 21-1-26 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 33, 35; 64 Am. Jur. 2d Public Securities and Obligations §§ 120, 195 to 199, 202, 205, 266, 399 to 403.

Power and discretion of officer or board authorized to issue bonds of governmental units as regards terms or conditions to be included therein, 119 A.L.R. 190.

11 C.J.S. Bonds §§ 71, 83, 93, 100; 14A C.J.S. Colleges and Universities §§ 4, 10, 14, 17.

### **21-14-13. Payment of bonds; bond provisions.**

A. The principal of and interest on general obligation bonds authorized to be issued pursuant to Sections 21-14-12 through 21-14-14 NMSA 1978 and any prior redemption premiums shall be payable from the proceeds of general property taxes levied without limitation as to rate or amount, except to the extent other revenues are made available for payment of the bonds. All bonds shall be the general obligations of the district, and the full faith and credit of the district shall be pledged for the payment of the bonds.

B. It may be provided in any proceedings authorizing any bonds pursuant to Sections 21-14-12 through 21-14-14 NMSA 1978 that a bond shall recite that it is issued under authority of those sections. The recital shall conclusively impart full compliance with all of the provisions of those sections, and all bonds issued containing this recital shall be incontestable for any cause whatsoever after their delivery for value.

C. All bonds issued by a district shall be fully negotiable and constitute negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code [Chapter 55 NMSA 1978] as that law is now or may hereafter be in force in this state. If lost or completely destroyed, any bond may be reissued in the form and tenor of the lost or destroyed bond upon the owner furnishing to the satisfaction of the branch community college board:

- (1) proof of ownership;
- (2) proof of loss or destruction;
- (3) a surety bond in twice the face amount of the bond and coupons, if any; and
- (4) payment of the cost of preparing and issuing the new bond and coupons, if any.

D. Notwithstanding any other provision of law, the branch community college board may, in any proceedings authorizing bonds pursuant to Sections 21-14-12 through 21-14-14 NMSA 1978, provide for the initial issuance of one or more bonds representing the amount of the entire issue, may make provision for installment payments of the principal amount of any bond as it may consider desirable and may provide for the making of any bond payable to bearer or otherwise, registrable as to principal or both principal and interest, and where interest accruing on the bond is not represented by interest coupons, for the endorsing of payments of interest on the bond. The branch community college board may further make provisions in any resolution for the manner and circumstances in and under which any bond may, at the request of the holder, be converted into bonds of smaller denominations, which bonds of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal or principal and interest.

**History:** 1953 Comp., 73-30-27, enacted by Laws 1965, ch. 162, § 2; 1983, ch. 265, § 45.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 15, 127, 136, 255, 256, 298, 299, 452.

Negotiability of municipal bonds as affected by reference to fund from which they are to be paid, 42 A.L.R. 1027.

Funding or refunding obligations as subject to conditions respecting limitation of indebtedness or approval by voters, 97 A.L.R. 442.

Right to call governmental bonds in advance of their maturity, 109 A.L.R. 988.

Power of municipality or other governmental body to issue refunding bonds to retire obligation in respect of which the creation and maintenance of a sinking fund by taxation is required by constitutional or statutory provision, 157 A.L.R. 794.

Governmental unit's power to issue bonds as implying power to refund them, 1 A.L.R.2d 134.

11 C.J.S. Bonds §§ 9, 93, 100; 54 C.J.S. Lost Instruments §§ 9, 10; 81A States § 186.

### **21-14-14. Title to property acquired from proceeds of bond issue.**

All property acquired from the proceeds of a bond issue shall be taken in the name of the board of education or the board of regents of the parent institution. In the event an independent public college entity evolves from the branch community college, the property so held by the board of education or the board of regents of the parent institution shall be transferred and conveyed to the governing body of the new independent public college entity. No transfer or conveyance shall take place without the express approval of the board of educational finance.

**History:** 1953 Comp., § 73-30-28, enacted by Laws 1965, ch. 162, § 3; 1970, ch. 72, § 3.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 35.

14A C.J.S. Colleges and Universities §§ 14, 17.

### **21-14-15. Refunding bonds of branch community college districts.**

If the approval of the commission on higher education is obtained prior to issuance, the branch community college board of a branch community college district may issue refunding bonds, for the purpose of refunding any of the general obligation bonded indebtedness of the branch community college district. The board shall adopt a resolution stating the facts making the issuance of the refunding bonds necessary or advisable, the determination of the necessity or advisability by the board and the amount of refunding bonds that the board concludes as necessary and advisable to issue. The resolution shall establish: the form of the bonds; the rate or rates of interest of the bonds, but the net effective interest rate of the bonds shall not exceed the maximum net effective interest rate permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]; the date of the refunding bonds; the denominations of the refunding bonds; the maturity dates, the last of which shall not be more than twenty years from the date of the refunding bonds; and the place or places of payment of both principal and interest either within or outside of the state. Refunding bonds when issued, except for bonds issued in book entry or similar form without the delivery of physical securities,



shall be negotiable in form, bear the signature or the facsimile signature of the chairman of the branch community college board, bear the seal of the branch community college district and be attested by the secretary of the branch community college board. All refunding bonds may be exchanged dollar for dollar for the bonds to be refunded or they may be sold as directed by the branch community college board. The proceeds of the sale shall be applied only to the purpose for which the bonds were issued and the payment of any expenses incidental thereto.

**History:** Laws 1989, ch. 24, § 1.

## **ARTICLE 14A**

### **OFF-CAMPUS INSTRUCTION**

#### **21-14A-1. Short title.**

This act [21-14A-1 to 21-14A-10 NMSA 1978] may be cited as the "Off-Campus Instruction Act".

**History:** Laws 1982, ch. 42, § 1.

#### **ANNOTATIONS**

**Former Article 14A.** - Pursuant to Laws 1978 (S.S.), ch. 3, § 29, because a majority of voters of the technical and vocational institute district disapproved a levy for support of an expanded program, Laws 1978 (S.S.), ch. 3, which appeared as 21-14A-1 to 21-14A-25 NMSA 1978, concerning independent community colleges, is repealed and the technical and vocational institute will continue under authority of the Technical and Vocational Institute Act without authority to expand into college-level programs.

#### **21-14A-2. Definitions.**

As used in the Off-Campus Instruction Act [21-14A-1 to 21-14A-10 NMSA 1978]:

A. "off-campus instruction program" means either the first two years of college education or organized vocational and technical curricula of not more than two years' duration designed to fit individuals for employment in recognized occupations, or both; and

B. "full-time equivalent student" includes students enrolled in college-level courses and students enrolled in vocational and technical courses taught by an off-campus instruction program. Full-time equivalent for students enrolled in vocational and technical courses not of college level shall be calculated according to the method prescribed in Section 21-16-9 NMSA 1978. Students enrolled in a course the cost of which is totally reimbursed from federal, state or private sources shall not be included in the calculation of full-time equivalent student population. The public school district shall

transfer to the parent institution the tuition and fees for any student who, during the term, is counted in the membership of the public school district and will receive high school credit for coursework at the off-campus site.

**History:** Laws 1982, ch. 42, § 2; 1990, ch. 25, § 3.

### **21-14A-3. Establishment authorized; board; determination of need; agreements.**

A. An off-campus instruction program may be established in a school district upon the showing of need by the local board of education. An off-campus instruction program may be established to include more than one school district, in which instance the two or more local boards of education shall act as a single board and, if the off-campus instruction program is established, shall continue to act as a single board.

B. As used in the Off-Campus Instruction Act [21-14A-1 to 21-14A-10 NMSA 1978], "off-campus board" means the local board of education, or the combined local boards of education acting as a single board, of the school district.

C. The duties of the off-campus board are to:

- (1) initiate and conduct the survey provided for in Subsection D of this section;
- (2) select one or more parent institutions which shall be one of the state educational institutions as specified in Article 12, Section 11 of the constitution of New Mexico or one of the state educational institutions established pursuant to Chapter 21 NMSA 1978;
- (3) request approval of the off-campus instruction program by the commission on higher education;
- (4) enter into written agreements with the board of regents of the selected parent institution, which agreements shall be subject to biennial review of all parties concerned and to the review and commentary of the commission on higher education;
- (5) act in advisory capacity to the board of regents of the parent institution in all matters relating to the conduct of the off-campus instruction program;
- (6) approve an annual budget for the off-campus instruction program for recommendation to the board of regents of the parent institution;
- (7) certify to the board of county commissioners the tax levy; and
- (8) conduct the election for tax levies for the off-campus instruction program.

D. Upon evidence of a demand for an off-campus instruction program, the off-campus board shall cause a survey to be made. The commission on higher education shall develop criteria for the establishment of an off-campus instruction program, and no such program shall be established without the written authorization of the commission.

E. If need is established, the off-campus board, in accordance with the commission on higher education criteria for initiating an off-campus instruction program, shall consult with the board of regents of the state educational institution selected to be a parent institution, and, if the off-campus board and the board of regents agree to conduct an off-campus instruction program in the area, they shall transmit a proposal to establish an off-campus instruction program to the commission. The commission shall evaluate the need and shall notify the off-campus board and the board of regents of approval or disapproval of the proposal.

F. If the proposal is approved, the off-campus board and the board of regents of the parent institution shall enter into a written agreement which shall include provisions for:

(1) the state educational institution to have full authority and responsibility in relation to all academic matters;

(2) the state educational institution to honor all credits earned by students as though they were earned on the parent campus;

(3) the course of study and program approved by the board of educational finance and offered to the students;

(4) the cooperative use of physical facilities and teaching staff; and

(5) the detailed agreement of financing and financial control of the off-campus instruction program.

G. The agreement shall be binding upon both the off-campus board and the board of regents of the parent institution; however, it may be terminated by mutual consent or it may be terminated by either board upon six months' notice.

H. For the purpose of relating off-campus instruction programs to existing laws, off-campus instruction program districts or off-campus instruction programs:

(1) shall not be considered a part of the uniform system of free public schools pursuant to Article 12, Section 1 and Article 21, Section 4 of the constitution of New Mexico;

(2) shall not benefit from the permanent school fund and from the current school fund under Article 12, Sections 2 and 4 of the constitution of New Mexico;

(3) shall not be subject, except as it relates to technical and vocational education, to the control, management and direction of the state board of education under Article 12, Section 6 of the constitution of New Mexico;

(4) shall not be considered school districts insofar as the restrictions of Article 9, Section 11 of the constitution of New Mexico are concerned; and

(5) shall not include the major attendance center of northern New Mexico community college at Espanola.

I. All elections held pursuant to the Off-Campus Instruction Act shall be as follows:

(1) the off-campus board calling the election shall give notice of the election in a newspaper of general circulation in the off-campus instruction program district at least once a week for three consecutive weeks, the last insertion to be not less than thirty days prior to the proposed election;

(2) the election shall be conducted and canvassed in the same manner as municipal school district elections unless otherwise provided in the Off-Campus Instruction Act; and

(3) any person or corporation may institute in the district court of any county in which the off-campus instruction program district affected lies an action or suit to contest the validity of any proceedings held under the Off-Campus Instruction Act, but no such suit or action shall be maintained unless it is instituted within ten days after the issuance by the proper officials of a certificate or notification of the results of the election and the canvassing of the election returns by the board.

J. The tax rolls of the school districts comprising the off-campus instruction program district shall be adopted as the tax rolls of the off-campus instruction program district.

**History:** Laws 1982, ch. 42, § 3; 1993, ch. 17, § 1.

### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, substituted "commission on higher education" and "commission" for "board of educational finance" throughout this section; inserted "of the parent institution" in Paragraph (5) of Subsection C and in Subsections F and G; in Subsection C, added "provided for in Subsection D of this section" at the end of Paragraph (1), added the language beginning "or one of the state" at the end of Paragraph (2), and inserted "board of" in Paragraph (7); deleted "by either board" following "terminated" in Subsection G; and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d C.J.S. Schools §§ 22, 23, 283.

78 C.J.S. Schools and School Districts §§ 53, 54; 79 C.J.S. Schools and School Districts § 485.

#### **21-14A-4. Approval of local school board required.**

Before any school district shall become part of an off-campus instruction program district composed of two or more school districts, the local board of education shall indicate its consent and need for such off-campus instruction program by the adoption of a resolution to that effect.

**History:** Laws 1982, ch. 42, § 4.

#### **21-14A-5. Availability of school facilities; use of other facilities.**

Upon establishment of an off-campus instruction program, public school facilities are to be made available to the off-campus program if needed, and in such manner as will not interfere with the regular program of instruction. No public school funds shall be expended in the program, and the off-campus instruction program shall pay a proper amount for utilities and custodian service. The off-campus board may arrange for the use of available facilities other than public school facilities if approved by the board of regents.

**History:** Laws 1982, ch. 42, § 5.

#### **21-14A-5.1. Title to property acquired.**

All property acquired using the proceeds of a bond issue and all property acquired by gift, devolution or bequest shall be taken in the name of the local school board in the district in which the property is situate. All property held by the local school board pursuant to this section shall be used solely for the purpose of carrying out the provisions of the Off-Campus Instruction Act [21-14A-1 to 21-14A-10 NMSA 1978] until such time as the off-campus instruction program ceases to exist. At such time, the property so held by the local school board may be utilized for other purposes within the scope of authority of the local school board.

**History:** Laws 1993, ch. 344, § 1.

### **ANNOTATIONS**

**Effective dates.** - Laws 1993, ch. 344 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

#### **21-14A-6. Financing of off-campus instruction programs.**

Financing of off-campus instruction programs shall be by tuition and fees, which shall be set by the board of regents, and by gifts and grants, and by other funds as may be made available, except as otherwise provided in the Off-Campus Instruction Act [21-14A-1 to 21-14A-10 NMSA 1978].

**History:** Laws 1982, ch. 42, § 6.

### **21-14A-7. Tax levies authorized.**

A. The off-campus board may levy and collect a tax annually against the property in the school district or districts comprising the off-campus instruction district for the purpose of operating and maintaining instructional programs for the off-campus instruction district. The rate of tax levied shall not exceed three dollars (\$3.00) or if the off-campus board owns the off-campus instructional facility then the tax levied shall be neither less than two dollars (\$2.00) nor greater than three dollars (\$3.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Article 35 through 38 NMSA 1978]. The rate limitation provisions of Section 7-37-7.1 NMSA 1978 shall not apply to the rates imposed under this section. If the electors vote in favor of the off-campus program levy, the levy shall become effective in the same manner prescribed by law for all levies upon property within that county.

B. The question of levying additional taxes over and above the limitation for the support of the off-campus instruction program shall be submitted to the electors and voted upon as a separate question at a special election or at the next subsequent general election. The election upon the question shall be called, conducted and canvassed in the same manner as elections for local school board members, unless otherwise specifically provided in the off-campus instruction program.

C. The tax levies authorized by this section shall be collected at the same time and in the same manner as property taxes authorized by the Property Tax Code are collected.

D. An election to abolish an approved levy shall be called by the off-campus board upon receipt by it of a valid petition. To be valid, the petition shall be signed by electors of the off-campus district in a number equal to ten percent of the number of votes cast in the district for the office of governor at the last general election and shall state the question to be voted upon.

**History:** Laws 1982, ch. 42, § 7; 1985, ch. 238, § 34; 1986, ch. 32, § 15; 1990, ch. 54, § 1.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 71 Am. Jur. 2d State and Local Taxation §§ 19 to 21; 72 Am. Jur. 2d State and Local Taxation §§ 739 to 752.

84 C.J.S. Taxation §§ 56, 66, 352, 361.

### **21-14A-8. State support; appropriation.**

The board of educational finance [commission on higher education] shall recommend an appropriation for each off-campus instruction program based upon its financial requirements in relation to its authorized program and its available funds from non-general fund sources.

**History:** Laws 1982, ch. 42, § 8.

#### **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

### **21-14A-9. State support; continuation; restriction.**

A. All post-secondary institutions offering off-campus academic or vocational programs of no more than two years' duration, not organized under Chapter 21, Article 13, 14, 16 or 17 NMSA 1978 but which were receiving state support July 1, 1980, may continue to receive state support for those programs through the seventy-first fiscal year.

B. No off-campus program shall be eligible for state support unless it is established according to the provisions of the Off-Campus Instruction Act [21-14A-1 to 21-14A-10 NMSA 1978] or meets the conditions of Subsection A of this section.

**History:** Laws 1982, ch. 42, § 9.

### **21-14A-10. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1990, ch. 54, § 2 repeals 21-14A-10 NMSA 1978, as enacted by Laws 1982, ch. 42, § 10, relating to prohibition of property ownership by boards, effective March 2, 1990. For provisions of former section, see 1988 Replacement Pamphlet.

## **ARTICLE 15 COMMUNITY COLLEGE AND VOCATIONAL- TECHNICAL CENTER AT WALKER AIR FORCE BASE**

### **21-15-1. Purpose of act.**

The state now offers higher-education opportunities to academically qualified students in its seven state-supported universities, but it has not yet been able to offer adequate advanced vocational and technical [technical] training to those students who desire this type of education. New Mexico also has a great need for general and limited hospital

facilities for better care of geriatric, mentally retarded and tubercular patients compatible with high standards of health and welfare. The state now has the opportunity to remedy this situation by the acquisition of the site and buildings formerly known as Walker air force base at Roswell and by providing at this site a lower division community college and vocational-technical center as well as improved and expanded facilities for the care and treatment of geriatric, mentally retarded and tubercular patients. It is the purpose of this act [21-15-1 to 21-15-3 NMSA 1978] to initiate these programs.

**History:** 1953 Comp., § 73-30-29, enacted by Laws 1967, ch. 66, § 1.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 40 Am. Jur. 2d Hospitals §§ 3, 4; 68 Am. Jur. 2d Schools § 93.

Validity and effect of statute or ordinance relating to location of hospital, sanitarium or the like, 17 A.L.R. 523.

Workmen's compensation: vocational retraining or re-education, 154 A.L.R. 818.

41 C.J.S. Hospitals §§ 3 to 6; 79 C.J.S. Schools and School Districts § 329.

### **21-15-2. Authorization for acquisition.**

The governor may acquire, in the name of the state of New Mexico, facilities at the site known as Walker air force base for the operation by, and benefit of, eastern New Mexico university, Los Lunas hospital and training school, the state special hospitals board and other agencies and institutions of the state as may be provided by law from time to time.

**History:** 1953 Comp., § 73-30-30, enacted by Laws 1967, ch. 66, § 2.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 72 Am. Jur. 2d States § 66.

81A C.J.S. States § 143.

### **21-15-3. Approval of operations.**

No building or facility shall be operated by eastern New Mexico university at Walker air force base without the specific prior approval of the board of educational finance and the state board of finance.

**History:** 1953 Comp., § 73-30-31, enacted by Laws 1967, ch. 66, § 4.



## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 42.

14A C.J.S. Colleges and Universities § 3.

## ARTICLE 16 TECHNICAL AND VOCATIONAL INSTITUTE DISTRICTS

### 21-16-1. Short title.

Chapter 21, Article 16 NMSA 1978 may be cited as the "Technical and Vocational Institute Act".

**History:** 1953 Comp., § 73-34-1, enacted by Laws 1963, ch. 108, § 1; 1994, ch. 83, § 1.

## ANNOTATIONS

**The 1994 amendment**, effective May 18, 1994, substituted "Chapter 21, Article 16 NMSA 1978" for "This act".

### 21-16-2. Definitions.

As used in this act [this article]:

A. "technical and vocational institute" means a public educational institution which shall provide not to exceed two years of vocational and technical curricula and, in addition, some appropriate courses in the arts and sciences;

B. "board" means the governing board of the technical and vocational institute district;

C. "full-time student-equivalent" means a student taking at least twelve credit hours per term;

D. "part-time student-equivalent" means a student taking less than twelve credit hours per term; and

E. "school district" means what is commonly referred to in this state as an administrative unit.

**History:** 1953 Comp., § 73-34-2, enacted by Laws 1963, ch. 108, § 2.

## ANNOTATIONS

**Bracketed material.** - The phrase " this act" in the introductory language refers to Laws 1963, ch. 108, which enacted the Technical and Vocational Institute Act. The bracketed material was inserted by the compiler; it was not enacted by the legislative and is not a part of the law.

### **21-16-3. Formation.**

A. A technical and vocational institute district may be formed upon the petition of qualified electors who shall have paid a property tax therein during the preceding year, in any school district or group of school districts within one or more counties, to the number of ten percent of the vote cast for governor in each such school district in each county in the last preceding general election.

B. The petition shall be filed with the state board of education which shall immediately cause a survey to be made of the proposed technical and vocational institute district to determine the need for the proposed institute and the prospects for its adequate support. The state board shall approve the petition for the establishment of the proposed district if on the basis of the survey the state board finds:

(1) the proposed district boundaries are suitable geographically;

(2) the existence of adequate school population and other factors indicate the proposed institute will develop to the point where it will serve an enrollment of at least two hundred full-time student-equivalents; and

(3) the financial position of the proposed district is adequate to provide the necessary supporting funds for current operations, including maintenance and direct charges, and the necessary capital outlay for physical plant and equipment.

**History:** 1953 Comp., § 73-34-3, enacted by Laws 1963, ch. 108, § 3.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 1, 3.

14A C.J.S. Colleges and Universities § 5.

### **21-16-4. Election.**

Upon approval of the state board of education, each board of the school district or districts shall present the proposal for the creation of a technical and vocational institute district on a separate ballot at the time of the next school board election or at any separate election called for that purpose. If a majority of those qualified ad valorem tax-paying electors who are not delinquent in the payment of their ad valorem tax voting in the election in each school district concerned vote in favor of establishing a technical

and vocational institute district, then the board of the school district or districts concerned shall declare the organization of the ". . . . . technical and vocational institute district."

**History:** 1953 Comp., § 73-34-4, enacted by Laws 1963, ch. 108, § 4.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 21, 39.

78 C.J.S. Schools and School Districts §§ 41, 250, 257.

#### **21-16-5. Board.**

A. The initial board of the technical and vocational institute district shall be composed of:

- (1) the board of the initiating school district, if only one school district is involved; or
- (2) if more than one school district is involved in the initiation of the technical and vocational institute district, one member delegated from each participating school board. If there are an even number of participating school districts, the boards of all participating school districts shall jointly appoint an additional member to the governing board of the technical and vocational institute district, who shall serve as a member at large.

B. At the second school board election held pursuant to Section 1-22-3 NMSA 1978 following the creation of the technical and vocational institute district, an election shall be held to elect seven members to the institute board to replace the members holding office under the provisions of Subsection A of this section.

(1) Except where specific provision is otherwise provided by law, all election proceedings for institute district elections shall be conducted pursuant to the provisions of the School Election Law [1-22-1 to 1-22-19 NMSA 1978] with the president of the institute serving in the place of the superintendent of schools in every case.

(2) The board shall consist of seven separate positions, and each position shall be designated by number. Qualified electors seeking election to the board shall file and run for only one of the numbered positions.

(3) At the second school board election to be held following the creation of the technical and vocational institute district, members of the board elected to positions 1, 3, 5 and 7 shall be elected for two-year terms and members elected to positions 2, 4 and 6 shall be elected for four-year terms. Thereafter, each board member shall be elected for a term of four years. The elections shall be held in the same manner and at the same time as regular school district elections on the first Tuesday in February of each odd-numbered year.

C. A vacancy occurring on the board shall be filled in the same manner as provided for school board vacancies in Section 22-5-9 NMSA 1978.

**History:** 1953 Comp., § 73-34-5, enacted by Laws 1963, ch. 108, § 5; 1979, ch. 361, § 1; 1994, ch. 83, § 2.

## ANNOTATIONS

**The 1994 amendment,** effective May 18, 1994, deleted former Subsection D relating to the recall of members of the institute board and rewrote the remainder of the section to such an extent that a detailed comparison would be impracticable.

**Compiler's note.** - Sections 22-6-1 and 22-6-6 to 22-6-34 NMSA 1978, referred to in Subsections B and B(1), were repealed by Laws 1985, ch. 168, § 22. For present comparable provisions, see 1-22-3 to 1-22-19 NMSA 1978.

**Manner of conducting board elections.** - Vocational and technical institute board elections must be held pursuant to the repealed sections (22-6-1 to 22-6-34 NMSA 1978) unless 21-16-5 NMSA 1978 citing the repealed section has been repealed expressly or by necessary implication. 1988 Op. Att'y Gen. No. 88-14.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools § 38.

78 C.J.S. Schools and School Districts § 105.

### **21-16-5.1. Technical and vocational institute board members; elected from districts.**

A. Any technical and vocational institute board may provide for single-member election districts should such a decision appear to be in the best interest of the technical and vocational institute. If such a decision is made, then members of the institute board shall reside in and be elected from single-member districts as provided in this section. Promptly after the decision is made, the board shall divide the technical and vocational institute district into seven election districts numbered 1 through 7, which shall constitute the single-member districts, and which will go into effect at the first regular board election thereafter. At that election board members shall be elected for all seven positions on the board, with the board members elected to positions 1, 3, 5 and 7 to be elected for initial terms of two years and the board members elected to positions 2, 4 and 6 to be elected for initial terms of four years. After the initial election each board member shall be elected for a term of four years.

B. Once following each federal decennial census, the board shall redistrict the technical and vocational institute district into seven election districts numbered 1 through 7 to ensure that the districts remain as equal in population as is practicable. Such new districts shall go into effect at the first regular board election thereafter. Candidates for the new single-member districts that are scheduled to be voted on at such election shall

reside in and be elected from the appropriate new single-member district. Incumbent board members whose districts before redistricting were not scheduled to be voted on at such election need not reside in the new single-member district corresponding to their position number and may serve out their term. At the second regular board election held after the redistricting, all candidates for the new single-member districts that are scheduled to be voted on at such election shall reside in and be elected from the appropriate single-member district.

C. All election districts covered by this section shall be contiguous, compact and as equal in population as is practicable.

D. If any vacancy occurs in an election district where a nonresident board member had been serving, the vacancy shall be filled with a resident of such district.

**History:** Laws 1994, ch. 83, § 3.

### **ANNOTATIONS**

**Effective dates.** - Laws 1994, ch. 132 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 18, 1994, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **21-16-6. Board; powers and duties.**

The board shall:

A. determine the financial and educational policies of the technical and vocational institute and provide for the execution of these policies by selecting a competent president for the institute and, upon the president's recommendation, shall employ other administrative personnel, instructional staff or other personnel as may be needed for the operation, maintenance and administration of the institute;

B. fix fee rates and tuition rates for students;

C. have authority to issue certificates of proficiency;

D. have authority to issue associate of arts, associate of science and associate of applied science degrees; provided that associate degree programs shall be approved by the board of educational finance [commission on higher education];

E. have authority to accept gifts, receive federal aid or other aid and purchase, hold, sell and rent property and equipment in the name of the technical and vocational institute district; and

F. promote the general welfare of the technical and vocational institute for the best interest of educational service to the people of the technical and vocational institute district.

**History:** 1953 Comp., § 73-34-6, enacted by Laws 1963, ch. 108, § 6; 1986, ch. 18, § 1.

## **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 50 to 52, 70, 87, 92, 138 to 143, 215, 217, 223.

Extent of power of school district to provide for the comfort and convenience of teachers and pupils, 7 A.L.R. 791, 52 A.L.R. 249.

Power of school authorities to employ physicians, nurses, oculists, and dentists, 12 A.L.R. 922.

Gifts for public school as a valid charitable gift, 48 A.L.R. 1126.

Constitutionality, construction, and effect of statutes in relation to admission of nonresident pupils to school privileges, 72 A.L.R. 499, 113 A.L.R. 177.

Tort liability of public schools and institutions of higher learning for accidents associated with chemistry experiments, shopwork and manual or vocational training, 35 A.L.R.3d 758.

Residence for purpose of admission to public school, 56 A.L.R.3d 641.

Student's right to compel school officials to issue degree, diploma, or the like, 11 A.L.R.4th 1182.

Liability of private vocational or trade school for fraud or misrepresentations inducing student to enroll or pay fees, 85 A.L.R.4th 1079.

78 C.J.S. Schools and School Districts §§ 86 to 91, 119 to 127, 146, 241, 248; 79 C.J.S. Schools and School Districts §§ 334, 508.

### **21-16-7. Standards.**

The state board of education shall, in conjunction with the board, prescribe the course of study for the technical and vocational institute and shall define official standards of excellence in all matters relating to the administration, course of study and quality of instruction.

**History:** 1953 Comp., § 73-34-7, enacted by Laws 1963, ch. 108, § 7.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 283, 284.

Failure of student to attain or maintain prescribed scholastic rating as ground for dropping him from roll of public educational institution, 86 A.L.R. 484.

78 C.J.S. Schools and School Districts § 90.

### **21-16-8. Purpose of act.**

Whereas the state recognizes the value of public school vocational education, and the state supports vocational and technical curricula of not more than two years' duration designed to fit individuals for employment by an appropriation not less than three hundred twenty-five dollars (\$325) for each full-time-equivalent student, provided such students are enrolled in a branch community college recognized by the state board of vocational education as an area vocational school; it is the purpose of this act [21-16-8 to 21-16-10 NMSA 1978] to extend state support to public school vocational and technical education programs of not more than two years' duration designed to fit individuals for employment, provided such individuals are students enrolled in a technical and vocational institute organized pursuant to the Technical and Vocational Institute Act [this article].

**History:** 1953 Comp., § 73-34-7.1, enacted by Laws 1968, ch. 59, § 1; 1974, ch. 51, § 1.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 91 to 98.

Extent of legislative power with respect to attendance and curriculum, 39 A.L.R. 477, 53 A.L.R. 832.

79 C.J.S. Schools and School Districts §§ 339 to 343.

### **21-16-9. Enrollment defined.**

A. A "full-time-equivalent student", for the purposes of Chapter 21, Article 16 NMSA 1978, means:

(1) either one full-time student (a student enrolled for one or several terms which in the aggregate consist of thirty-two weeks and who is taking twenty-three or more contact hours per week for the term or terms for which he is enrolled); or

(2) a computed student symbolized by each whole unit of a figure arrived at by dividing the aggregate number of contact hours taken by all students taking less than twenty-three contact hours a week during a term or terms which total thirty-two weeks, by the number twenty-three.

B. For the purpose of computing the number of full-time-equivalent students for the technical and vocational payment, the following formulae shall be used:

(1) for full-time-equivalent students based on full-time students, the formula is:

**REFER TO THE BOOK FOR THE PROPER FORM**

C. No student shall be included in any calculations made under the provisions of this section if the student is enrolled in a course the cost of which is totally reimbursed from federal, state or private sources. The public school district shall transfer to the technical and vocational institute the tuition and fees for any student who, during the term, is counted in the membership of the public school district and will receive high school credit for coursework at the technical and vocational institute.

**History:** 1953 Comp., § 73-34-7.2, enacted by Laws 1968, ch. 59, § 2; 1990, ch. 25, § 4.

### **21-16-10. Appropriation; distribution.**

A. The commission on higher education shall recommend an appropriation for each technical and vocational institute based upon its financial requirements in relation to its authorized program and its available funds from nongeneral fund sources; provided, the recommended appropriation shall be an amount not less than three hundred twenty-five dollars (\$325) for each full-time-equivalent student.

B. The commission shall by regulation provide for the method for calculating the number of full-time-equivalent students in technical and vocational institutes. No student shall be included in any calculation of the number of full-time-equivalent students if he is enrolled in a course the cost of which is totally reimbursed from federal, state or private sources or if he is counted in the average daily membership of a public school district for the same period.

**History:** 1953 Comp., § 73-34-7.3, enacted by Laws 1968, ch. 59, § 3; 1974, ch. 51, § 2; 1977, ch. 246, § 50; 1988, ch. 64, § 4; 1988, ch. 65, § 1.

### **ANNOTATIONS**

**Appropriations.** - Laws 1994, ch. 147, § 3DD, effective March 9, 1994, appropriates \$1,000,000 from the general fund to the governing board of the Albuquerque technical-vocational institute for expenditure in the eighty-second through eighty-fourth fiscal years to extend utilities to the undeveloped southwest mesa property. Any unexpended



or unencumbered balance remaining at the end of the eighty-fourth fiscal year shall revert to the general fund.

Laws 1994, ch. 147, § 6SSSSSS, effective March 9, 1994, appropriates \$130,000 from the general fund to the board of the Albuquerque technical-vocational institute for expenditure in the eighty-second and eighty-third fiscal years for instruction and general purposes to expand programs to meet growing enrollment. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 91 to 98.

Extent of legislative power with respect to attendance and curriculum, 39 A.L.R. 477, 53 A.L.R. 832.

79 C.J.S. Schools and School Districts §§ 339 to 343.

### **21-16-11. Bonds; interest; form.**

To carry out the purposes of the Technical and Vocational Institute Act [this article], the board may issue general obligation bonds of the technical and vocational institute district; provided, however, no bonds shall be issued which create a total bonded indebtedness in the district in excess of two percent of the taxable property within the district as shown in the preceding general assessment, which debt limitation shall be in excess of the debt limitation of school districts. Bonds shall be sold at a price which does not result in a net effective interest rate exceeding the maximum net effective interest rate permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978], as hereafter amended and supplemented. The bonds shall be sold and may be in such denominations as the board determines, and the bonds and the attached coupons, if any, may be payable to the bearer or registered as to principal or as to principal and interest. The bonds shall be due and payable serially, either annually or semiannually, commencing not later than three years and extending not more than twenty years from the date of issue. The form and terms of the bonds, including provisions for their payment and redemption, shall be determined by the board. If the board so determines, the bonds may be redeemable prior to maturity upon payment of a premium not exceeding three percent of the principal of the bonds. The bonds, except for bonds issued in book entry or similar form without the delivery of physical securities, shall be executed in the name of and on behalf of the technical and vocational institute district and signed by the president of the board, with the seal of the district affixed to the bonds, and attested by the secretary of the board. Interest coupons, if any, shall bear the original or facsimile signature of the president of the board.

**History:** 1953 Comp., § 73-34-8, enacted by Laws 1963, ch. 108, § 8; 1983, ch. 265, § 46.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 33, 35; 64 Am. Jur. 2d Public Securities and Obligations §§ 120, 195 to 199, 202, 205, 266, 399 to 403.

Power and discretion of officer or board authorized to issue bonds of governmental units as regards terms or conditions to be included therein, 119 A.L.R. 190.

11 C.J.S. Bonds §§ 71, 83, 93, 100; 14A C.J.S. Colleges and Universities §§ 4, 10, 14, 17.

### **21-16-11.1. Adoption of resolution by board; providing for refunding bonds.**

A. The board of a technical and vocational institute district may, with the approval of the commission on higher education and the state board of finance, issue refunding bonds for the purpose of refunding any of the general obligation bonded indebtedness of the district. The board shall adopt a resolution stating the facts that make the issuance of the refunding bonds necessary or advisable, including the determination of the necessity or advisability by the board and the amount of refunding bonds that the board concludes is necessary and advisable to issue. The resolution shall further establish:

- (1) the form of the bonds;
- (2) the interest rate of the bonds, but the net effective interest rate of the bonds shall not exceed the maximum net effective interest rate permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978];
- (3) the date of the refunding bonds;
- (4) the denominations of the refunding bonds;
- (5) the maturity dates, the last of which shall not be more than twenty years from the date of the refunding bonds; and
- (6) the place of payment of both principal and interest.

B. Refunding bonds when issued, except for bonds issued in book entry or similar form without the delivery of physical securities, shall be negotiable in form. They shall bear:

- (1) the signature or the facsimile signature of the president and the secretary of the board;
- (2) the seal of the board; and
- (3) the seal of the technical and vocational institute district.

C. All refunding bonds may be exchanged dollar for dollar for the bonds to be refunded or sold as directed by the board. The proceeds of the sale shall be applied only to the purpose for which the bonds were issued and for the payment of any incidental expenses incurred.

**History:** Laws 1993, ch. 114, § 1.

## ANNOTATIONS

**Effective dates.** - Laws 1993, ch. 114 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1993.

**Compiler's note.** - Laws 1993, ch. 28, § 1, also enacted a 21-16-11.1 NMSA 1978, effective July 1, 1993. Both versions appear to be identical, although Chapter 28 of Laws 1993 was approved March 15, 1993, and Chapter 114 of Laws 1993 was approved March 31, 1993. The section is set out above as enacted by Laws 1993, ch. 114, § 1. See 12-1-8 NMSA 1978.

### **21-16-12. Special assessment.**

A. In each district in which a technical and vocational institute has been established, the board may call an election for the purpose of approving or disapproving taxes, not to exceed a rate of five dollars (\$5.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978], which may be levied annually on all taxable property within the institute district, to be used for current operations and retirement of bonds. All institute district elections shall be conducted in accordance with procedures provided by law for the conduct of school district elections, with the president of the institute serving in the place of the superintendent of schools and the governing body of the institute district serving in place of the local board of education.

B. Upon approval of the authorization for the additional taxes by a majority of those qualified electors voting in the election and based upon an annual budget approved by the commission on higher education, the board of county commissioners shall annually levy the tax at the rate approved, or at any lower rate required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon a rate approved pursuant to this section, upon the taxable property of the technical and vocational institute district. No election is required to lower the levy if the lower rate is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978.

C. Levies imposed for technical and vocational institute financing shall be made at the same time and in the same manner as levies for other ad valorem taxes. Upon collection of the levy by the county treasurer, the proceeds shall be deposited in a bank approved by the board. The board is authorized through its financial agent and upon its order to draw upon these funds for the purposes specified at each election.

D. An election to raise, lower or abolish the approved levy shall be called by the board upon receipt by it of a valid petition, except that the levy shall not be lowered to a rate lower than the rate necessary to pay any outstanding general obligation bond indebtedness on the date of receipt of the petition. To be valid, the petition shall be signed by electors of the technical and vocational institute district in a number equal to ten percent of the number of votes cast in the district for the office of governor at the last general election and shall state the question to be voted upon.

**History:** 1953 Comp., § 73-34-9, enacted by Laws 1963, ch. 108, § 9; 1977, ch. 246, § 51; 1985, ch. 238, § 35; 1986, ch. 32, § 16; 1988, ch. 64, § 5; 1988, ch. 65, § 2; 1989, ch. 307, § 1.

## ANNOTATIONS

**Cross-references.** - As to the board of the technical and vocational institute, see 21-16-5 NMSA 1978.

**Effect of constitutional amendment.** - The effect of the amendment to N.M. Const., art. VIII, § 2, is to amend this section and 21-16-17 NMSA 1978 by adding the additional qualification that those voting in district elections be those qualified electors who paid property tax therein during the preceding year. 1968 Op. Att'y Gen. No. 68-105.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 10, 80, 81; 71 Am. Jur. 2d State and Local Taxation § 20.

Validity of legislative delegation of taxing power to school districts in absence of express constitutional provision authorizing such delegation, 113 A.L.R. 1416.

84 C.J.S. Taxation §§ 411, 467.

### **21-16-13. Sharing of facilities.**

Technical and vocational institute districts may arrange for the use or sharing of facilities with any school district or with the board of regents of a higher educational institution. Any agreement entered into for the sharing of facilities shall provide that the technical and vocational institute district shall bear an appropriate and equitable share of the expenses for the maintenance and operation of the facilities used.

**History:** 1953 Comp., § 73-34-10, enacted by Laws 1963, ch. 108, § 10.

### **21-16-14. Addition of school districts to existing technical and vocational institute districts.**

A. Any school district, group of school districts within a county, or school districts in an adjoining county, not included in the institute district as originally formed, may petition the state board of education to be added to the technical and vocational institute district.

The state board shall examine the petition and if it finds that the petition is signed by the requisite number of qualified voters, as provided in Section 3 [21-16-3 NMSA 1978] of the Technical and Vocational Institute Act, the state board shall cause a survey to be made of the petitioning district or districts to determine the desirability of the proposed extension of the area of the technical and vocational institute district.

B. In conducting the survey the state board shall ascertain the attitude of the technical and vocational institute board and collect other information as prescribed in Section 3. If, on the basis of the survey, the state board finds that the proposed addition of the school district will promote an improved education service in the area, it shall approve the petition. Thereafter, the state board shall proceed to call an election within the petitioning school district and in the established technical and vocational institute district on the question of the inclusion of the area in the institute district.

C. If it appears, on canvass of the results of the election, that a majority of the votes cast in each of the petitioning districts, and within the established institute district, were in favor of the addition of the petitioning school district or districts, the state board of education shall notify the boards of education within each school district and the technical and vocational institute board of the results of the election and shall declare the extension of the boundaries of the institute district to include the petitioning district or districts in which the proposed addition referendum carried by a majority vote.

D. Each school district added to any existing technical and vocational institute district shall automatically be subject to any special levy on taxable property approved for the institute district for the maintenance of facilities and services and for support of bond issues.

**History:** 1953 Comp., § 73-34-11, enacted by Laws 1963, ch. 108, § 11.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 15, 22 to 36.

Unionization, centralization or consolidation of school districts as affecting indebtedness and property of the individual districts, 121 A.L.R. 826.

78 C.J.S. Schools and School Districts §§ 27 to 52.

### **21-16-15. Dissolution of districts.**

Technical and vocational institute districts may be dissolved in the following manner:

A. submission of a plan for the dissolution of the technical and vocational institute district to the state board of education by a petition signed by ten percent of the qualified electors residing in the district. Upon approval of the plan, the state board of education shall call a special election for the purpose of referring to the voters residing in the

district the question of dissolution. Plans for the dissolution of a technical and vocational institute district must provide for the payment of all district debts and liabilities and for the equitable distribution of all remaining assets to the school districts within the technical and vocational institute district;

B. if a majority of the qualified electors voting at the special election authorize the dissolution, the technical and vocational institute district board shall proceed with the approved plan. Upon completion of the plan, the board shall submit a full report to the state board of education;

C. upon receipt of the final report of the board, the state board of education shall examine the report to determine whether or not any outstanding obligations still exist and whether the terms of the approved plan have been accomplished. If upon determination by the state board no obligations are yet outstanding and the provisions of the plan have been fulfilled, they shall formally declare the technical and vocational institute district dissolved.

**History:** 1953 Comp., § 73-34-12, enacted by Laws 1963, ch. 108, § 12.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 15, 22 to 36.

78 C.J.S. Schools and School Districts §§ 27 to 52.

#### **21-16-16. Alternate procedures permitted.**

In addition to the election procedures provided in Laws 1963, Chapter 108 [this article] for an election for the creation of a technical and vocational institute district and for an election for the approval or disapproval of a tax levy of not to exceed five mills for current operations and retirement of bonds of a technical and vocational institute, the election procedures set out in this act may be used for such purposes.

**History:** 1953 Comp., § 73-34-13, enacted by Laws 1964 (1st S.S.), ch. 12, § 1.

#### **ANNOTATIONS**

**Bracketed material.** - Laws 1963, ch. 108, referred to in this section, enacted the Technical and Vocational Institute Act. The phrase "this act" near the end of the section is a reference to Laws 1963, ch. 108. The bracketed material was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

**Mill levy elections.** - Pursuant to 21-16-16 NMSA 1978, which sets up two alternative election procedures, the board may hold a mill levy election pursuant either to the repealed Sections 22-6-1 through 22-6-34 NMSA 1978 or the new provisions at 1-22-3 through 1-22-6 NMSA 1978. 1988 Op. Att'y Gen. No. 88-14.

## **21-16-17. Identification of electorate.**

A. In any election held under this act [21-16-16 to 21-16-24 NMSA 1978] relating to the creation of a technical and vocational institute district, the persons qualified to vote shall be those qualified electors residing within an affected school district who shall have paid a property tax therein during the preceding year.

B. In any election held under this act relating to the approval or disapproval of a tax levy for the current operations and retirement of bonds of a technical and vocational institute, the persons qualified to vote shall be qualified electors residing within an affected school district.

**History:** 1953 Comp., § 73-34-14, enacted by Laws 1964 (1st S.S.), ch. 12, § 2.

### **ANNOTATIONS**

**Effect of constitutional amendment.** - The effect of the amendment to N.M. Const., art. VIII, § 2, is to amend this section and 21-16-12 NMSA 1978 by adding the additional qualification that those voting in district elections be those qualified electors who paid property taxes therein during the preceding year. 1968 Op. Att'y Gen. No. 68-105.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Elections §§ 53, 55, 58 to 94; 26 Am. Jur. 2d Elections §§ 237, 278; 68 Am. Jur. 2d Schools § 10.

Residence or domicile of student or teacher for purpose of voting, 98 A.L.R.2d 488, 44 A.L.R.3d 797.

29 C.J.S. Elections §§ 14 to 35.

## **21-16-18. Definition [of "board"].**

"Board" as used in this act [21-16-16 to 21-16-24 NMSA 1978] means the technical and vocational institute district board or the local board or boards of education as the context and question requires [require].

**History:** 1953 Comp., § 73-34-15, enacted by Laws 1964 (1st S.S.), ch. 12, § 3.

## **21-16-19. [Submission of questions; creation of institute; tax levy; expenses of election.]**

The question on the creation of a technical and vocational institute shall be submitted by the board of education involved, and the question relating to the tax levy shall be submitted by the governing board of the technical and vocational institute district to the specified electors at any general election or at any special election called for that purpose by such board or boards. Subject to approval of the appropriate budget

authority, such board may budget and expend funds of the district for the purposes of defraying the expenses of any such elections.

**History:** 1953 Comp., § 73-34-16, enacted by Laws 1964 (1st S.S.), ch. 12, § 4.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 26 Am. Jur. 2d Elections §§ 183 to 201, 230, 232.

Costs or reimbursement for expenses incident to election contest or recount, 106 A.L.R. 928.

29 C.J.S. Elections § 70.

### **21-16-20. [Submission at general election; notice; question certified to county clerk; ballots and voting machines; certification of results.]**

If the question is submitted at a general election, the board shall publish notice thereof in the manner required for general elections except that such notice need not include the names of any election officials or the places where such election is to be held in each precinct and voting division and no posting shall be required. The board shall, not less than thirty days before the election, furnish, to the county clerk of each county in which each affected school district is situate, a certificate specifying the question to be submitted and the preincts [precincts] and voting divisions included in the school district or districts, or in the technical and vocational institute district. The county clerk of each such county shall include such question on the ballots and voting machines in the proper voting divisions. The election officials in such voting divisions shall execute separate certificates certifying the results of the voting on such question and, upon receipt thereof, each county clerk shall deliver the same to the president of the board or his designated representative.

**History:** 1953 Comp., § 73-34-17, enacted by Laws 1964 (1st S.S.), ch. 12, § 5.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 26 Am. Jur. 2d Elections §§ 193 to 199, 221, 222, 232, 253, 304 to 308.

Constitutionality of statutes providing for use of voting machines, 66 A.L.R. 855.

Failure to comply with statutory provisions relating to the form or manner in which election returns from voting districts or precincts are to be made, 106 A.L.R. 398.



Statutory provision as to manner and time of notice of special election as mandatory or directory, 119 A.L.R. 661.

What is a "public place" within requirement as to posting of election notices, 90 A.L.R.2d 1210.

29 C.J.S. Elections §§ 71 to 73, 79, 156, 158, 240.

### **21-16-21. [Submission at special election; conduct of election; hours of voting.]**

If the board determines to submit such question at a special election, such special election shall be called, held and conducted in the same manner as elections for members of the board of education, except that, if such special election is held at the same time as a bond election in the school district, the hours of voting shall be the same as may be provided by law for such bond election.

**History:** 1953 Comp., § 73-34-18, enacted by Laws 1964 (1st S.S.), ch. 12, § 6.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 26 Am. Jur. 2d Elections § 227.

Violation of law as regards time for keeping polls open as affecting election results, 66 A.L.R. 1159.

Validity of public election as affected by fact that it was held at time other than that fixed by law, 121 A.L.R. 987.

29 C.J.S. Elections §§ 1(3), 198.

### **21-16-22. [Canvass of vote.]**

Upon delivery of the certificates by the county clerk, in case the question is submitted at a general election, or upon receipt of the returns in case it is submitted at a special election called for that purpose, the vote shall be canvassed in the manner provided by law for canvassing elections of members of municipal boards of education.

**History:** 1953 Comp., § 73-34-19, enacted by Laws 1964 (1st S.S.), ch. 12, § 7.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Elections §§ 40, 45; 26 Am. Jur. 2d Elections §§ 296 to 308.

Injunction against canvassing of votes and declaring result of election, 1 A.L.R.2d 588.

29 C.J.S. Elections §§ 221 to 240.

### **21-16-23. Tax levy; certification of election results; distribution of proceeds.**

In any election for the approval or disapproval of a tax levy, if the levy is voted upon favorably by a majority of the electors of the school district voting on the question, the president of the technical and vocational institute district board shall certify that fact to the board of county commissioners of each county in which the school district is situated and to the director of public school finance, and the levy shall become effective and be assessed annually. Proceeds of the levy shall be distributed by the county treasurer to or for the credit of the technical and vocational institute district in the bank approved by the board. The board shall direct that the levy be decreased for any year in which a decrease is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon that levy. The board may direct that the levy be decreased or not made for any year if, in its judgment, sufficient funds for current operations and retirement of bonds are available or will be obtained from other sources.

**History:** 1953 Comp., § 73-34-20, enacted by Laws 1964 (1st S.S.), ch. 12, § 8; 1977, ch. 246, § 52; 1985, ch. 238, § 36; 1986, ch. 32, § 17.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Elections §§ 140, 141, 143; 71 Am. Jur. 2d State and Local Taxation § 169.

29 C.J.S. Elections § 240; 84 C.J.S. Taxation §§ 34, 52.

### **21-16-24. [Maximum tax levy.]**

The levy provided in this act [21-16-16 to 21-16-24 NMSA 1978] shall be exempt from the provisions of Section 72-4-11 New Mexico Statutes Annotated, 1953 Compilation, and in addition to the levies authorized, 1953 Compilation [sic].

**History:** 1953 Comp., § 73-34-21, enacted by Laws 1964 (1st S.S.), ch. 12, § 9.

#### **ANNOTATIONS**

**Compiler's note.** - Section 72-4-11, 1953 Comp., referred to in this section, was repealed by Laws 1974, ch. 92, § 34.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools § 83.

84 C.J.S. Taxation § 56.

# ARTICLE 17

## AREA VOCATIONAL SCHOOLS

### 21-17-1. Declaration of purpose.

It is the intention of the legislature and the purpose of this act [21-17-1 to 21-17-6, 21-17-8 to 21-17-16 NMSA 1978] to provide means whereby the state of New Mexico in cooperation with school districts can provide facilities for training and preparation of students for productive employment as technicians and skilled workers, and to more nearly equalize educational opportunity. Further, it is the intention of the legislature that such facilities be developed only in those locations where the number of students will be sufficient to permit the offering of a broad program of vocational and technical education with reasonable economy.

**History:** 1953 Comp., § 73-37-1, enacted by Laws 1967, ch. 177, § 1.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools § 93.

Vocational retraining or re-education, 154 A.L.R. 818.

79 C.J.S. Schools and School Districts § 329.

### 21-17-2. Definitions.

For the purpose of Chapter 21, Article 17 NMSA 1978:

- A. "board" means the governing board of the area vocational school;
- B. "school district" is one as defined in Subsection J [K] of Section 22-1-2 NMSA 1978;
- C. "state board" means the state board of education;
- D. "area vocational school" is as defined by the state plan for vocational education pursuant to the Vocational Education Act of 1963, as amended, 20 U.S.C. Sections 2301 et seq; and
- E. "commission" means the commission [commission] on higher education.

**History:** 1953 Comp., § 73-37-2, enacted by Laws 1967, ch. 177, § 2; 1985, ch. 238, § 37; 1988, ch. 64, § 6; 1988, ch. 65, § 3.

### ANNOTATIONS

**Bracketed material.** - The bracketed reference to Subsection K of 22-1-2 NMSA 1978 in Subsection B of this section was inserted by the compiler to correct an erroneous reference, in light of the 1991 amendment of 22-1-2 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

### **21-17-3. Submission of plan for establishment of area vocational schools.**

A. The local school board of a school district may develop and present a plan to the state board for the establishment and operation of an area vocational school.

B. The plan may include cooperative arrangements with junior colleges, branch community colleges, state educational institutions and other school districts.

C. The plan shall be prepared and presented to the state board on forms developed and provided by the state board, and shall include information required by the state plan for vocational education.

**History:** 1953 Comp., § 73-37-3, enacted by Laws 1967, ch. 177, § 3.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 1, 3.

14A C.J.S. Colleges and Universities § 5.

### **21-17-4. Designation as an area vocational school by the state board.**

A. Upon receipt and examination of the plan and supporting evidence, the state board shall conduct hearings, investigate records and procure such other information relating to vocational training as it deems necessary and appropriate.

B. If the state board finds that the plan provides an adequate, broad vocational and technical educational program, serves sufficient students for an economical operation, provides for adequate financing and sensibly relates to a statewide pattern for development of vocational and technical education, the state board may approve the plan.

C. Upon approval by the state board the board of each school district concerned shall present the proposal for the creation of an area vocational school district on a separate ballot at the time of the next school board election or at any separate election called for that purpose. If a majority of those qualified ad valorem taxpaying electors who are not delinquent in the payment of their ad valorem tax, voting in the election in each school

district concerned, vote in favor of establishing an area vocational school district, the board of each school district concerned shall declare the organization of the area vocational school district.

D. After approval by the state board of the plan, the school shall be officially designated by the state board as an area vocational school, shall be operated in accordance with provisions in the state plan for vocational education and shall meet all other requirements of an accredited school.

E. At the next school board election held pursuant to Section 22-6-1 NMSA 1978 [repealed], an election may be held to elect five members to the area vocational school board to replace the local school board as the governing board of the area vocational school.

(1) Except where specific provision is otherwise provided by law, all election proceedings for area vocational school elections shall be conducted pursuant to the provisions of Sections 22-6-1 through 22-6-34 NMSA 1978, with the president of the area vocational school serving in the place of the superintendent of schools in every case.

(2) The board shall consist of five separate positions, and each position shall be designated by number. Qualified electors seeking election to the board shall file and run for only one of the numbered positions.

(3) At the next regular school board election, members of the board elected to positions 1, 3 and 5 shall be elected for terms ending February 28, 1989, and members elected to positions 2 and 4 shall be elected for terms ending February 28, 1991. Thereafter, each board member shall be elected for a term of four years. The elections shall be held in the same manner and at the same time as regular school district elections on the first Tuesday in February of each odd-numbered year, beginning with the election to be held in February of 1987.

F. A vacancy occurring on the board shall be filled in the same manner as provided for school board vacancies in Section 22-5-9 NMSA 1978.

G. A member of the board may be recalled pursuant to the provisions of Sections 22-7-1 through 22-7-16 NMSA 1978, except that a recall election may be held only at the same time as a regular school district election.

**History:** 1953 Comp., § 73-37-4, enacted by Laws 1967, ch. 177, § 4; 1985, ch. 238, § 38.

## ANNOTATIONS

**Compiler's note.** - Section 22-6-1 NMSA 1978, referred to in Subsection E, was repealed by Laws 1985, ch. 168, § 22, effective June 14, 1985. For present comparable provisions, see 1-22-4 NMSA 1978.

Sections 22-6-1 to 22-6-4 and 22-6-6 to 22-6-34, referred to in Subsection E(1), were repealed by Laws 1985, ch. 168, § 22, effective June 14, 1985. For present comparable provisions, see 1-22-4 to 1-22-19 NMSA 1978.

**Submission of tax levy at same election permitted.** - There is no statutory or constitutional provision which would preclude the submission of the question of a tax levy in a special election at the same time as the special election on the question of approval of the vocational school itself. 1970 Op. Att'y Gen. No. 70-15.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 21, 39.

78 C.J.S. Schools and School Districts §§ 41, 250, 257.

### **21-17-4.1. Associate degrees; authorization.**

Area vocational schools are authorized to grant associate of applied science and associate of arts and science degrees, provided that the associate degree curriculum is approved by the commission on higher education.

**History:** Laws 1978 Comp., § 21-17-4.1, enacted by Laws 1988, ch. 34, § 1; 1993, ch. 9, § 1; 1993, ch. 18, § 1.

## **ANNOTATIONS**

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 9, § 1 and Laws 1993, ch. 18, § 1, both approved March 12, 1993 and both effective June 18, 1993, which deleted "of applied science" following "Associate" in the catchline, inserted "and associate of arts and science", substituted "curriculum is" for "programs are" and deleted the former second and third sentences relating to procedure for approval of associate degree programs. The section is set out above as amended by Laws 1993, ch. 18, § 1. See 12-1-8 NMSA 1978.

### **21-17-5. Qualifications of students.**

A. The board shall include qualified students, as defined in Section 22-8-2 NMSA 1978, with the average daily membership report to the state department of public education, and those students shall be weighted according to Section 22-8-17 NMSA 1978.

B. The board may accept nonresident qualified students for vocational and technical education on a tuition basis with approval from the state board. The nonresident qualified student may be enrolled with the resident school district and be included with the average daily membership report to the state department of public education. The

nonresident qualified student may enroll with the area vocational school district and be included with the district's average daily membership report to the state department of public education, provided that the student is not enrolled or reported for average daily membership purposes with both districts for the same reporting period.

C. The board may accept resident and nonresident nonqualified students for vocational and technical education on a tuition basis with approval from the state board. Nonqualified students shall not be included with the district's average daily membership report to the state department of public education for the purpose of receiving state basic support.

**History:** 1953 Comp., § 73-37-5, enacted by Laws 1967, ch. 177, § 5; 1985, ch. 238, § 39.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 6, 215, 223.

Constitutionality, construction, and effect of statutes in relation to admission of nonresident pupils to school privileges, 72 A.L.R. 499, 113 A.L.R. 177.

Residence for purpose of admission to public school, 56 A.L.R.3d 641.

79 C.J.S. School and School Districts §§ 449, 457, 461.

### **21-17-6. Financing.**

A. Federal funds made available to the state for vocational training programs which are administered by the state board may be used in support of area vocational schools within the provisions of federal legislation. Area vocational schools may submit application for federal funds to the state board in compliance with the state plan for vocational education.

B. Tuition and fees shall be established by the board and approved by the state board for nonresident qualified students not included in the average daily membership and for resident and nonresident nonqualified students enrolled in the area vocational school.

**History:** 1953 Comp., § 73-37-6, enacted by Laws 1967, ch. 177, § 6; 1973, ch. 325, § 1; 1985, ch. 238, § 40.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 92, 93, 223.

Constitutionality, construction, and effect of statutes in relation to admission of nonresident pupils to school privileges, 72 A.L.R. 499, 113 A.L.R. 177.

Residence for purpose of admission to public school, 56 A.L.R.3d 641.

79 C.J.S. Schools and School Districts §§ 334, 455 to 462.

### **21-17-7. Area vocational school fund; distribution.**

A. The commission shall recommend an appropriation for an area vocational school based upon expenditure levels determined by the commission in relation to the school's authorized program and its available funds from nongeneral fund sources.

B. The commission shall by regulation provide the method for calculating the number of full-time-equivalent students in area vocational schools. No student shall be included in any calculation of the number of full-time-equivalent students if the student is enrolled in a course the cost of which is totally reimbursed from federal, state or private sources. The public school district shall transfer to the area vocational school the tuition and fees for any student who, during the term, is counted in the membership of the public school district and will receive high school credit for coursework at the area vocational school.

**History:** 1953 Comp., § 73-37-6.1, enacted by Laws 1973, ch. 325, § 2; 1977, ch. 246, § 53; 1988, ch. 64, § 7; 1988, ch. 65, § 4; 1990, ch. 25, § 5.

### **ANNOTATIONS**

**Tax levy and school question at same election.** - There is no statutory or constitutional provision which would preclude the submission of the question of a tax levy in a special election at the same time as the special election on the question of approval of the vocational school itself. 1970 Op. Att'y Gen. No. 70-15.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 91 to 98.

78 C.J.S. Schools and School Districts § 17.

### **21-17-8. Tax levy.**

The board of any designated area vocational school district may submit at an election for approval or disapproval the question of a tax levy of three dollars (\$3.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 through 38 NMSA 1978], for the purpose of providing revenue to be used exclusively for the establishment and operation of the area vocational school.

**History:** 1953 Comp., § 73-37-7, enacted by Laws 1967, ch. 177, § 7; 1985, ch. 238, § 41; 1986, ch. 32, § 18.

### **ANNOTATIONS**



**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 26 Am. Jur. 2d Elections §§ 183 to 201, 230, 232.

Costs or reimbursement for expenses incident to election contest or recount, 106 A.L.R. 928.

29 C.J.S. Elections § 70.

### **21-17-9. Identification of electorate.**

In any election held under this act [21-17-1 to 21-17-6, 21-17-8 to 21-17-16 NMSA 1978] relating to the approval or disapproval of a tax levy for establishment and operation of an area vocational school, the persons qualified to vote shall be qualified electors residing within the school district.

**History:** 1953 Comp., § 73-37-8, enacted by Laws 1967, ch. 177, § 8.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Elections §§ 53, 55, 58 to 94; 26 Am. Jur. 2d Elections §§ 237, 278; 68 Am. Jur. 2d Schools § 10.

Residence or domicile of student or teacher for purpose of voting, 98 A.L.R.2d 488, 44 A.L.R.3d 797.

Residence of students for voting purposes, 44 A.L.R.3d 797.

29 C.J.S. Elections §§ 14 to 35.

### **21-17-10. Publication.**

If the question pursuant to Section 21-17-8 NMSA 1978 is submitted at a general election, the board shall publish notice of the election in the manner required for general elections, except that the notice need not include the names of any election officials or the place where the election is to be held in each precinct and voting division and no posting shall be required. The board shall, not less than thirty days before the election, furnish to the county clerk of each county in which an affected school district is situated a certificate specifying the question to be submitted and the precincts and voting divisions included in the area vocational school district. The county clerk of each county shall include the question on the ballots and voting machines in the proper voting divisions. The election officials in those voting divisions shall execute separate certificates certifying the results of the voting on the question, and, upon receipt thereof, each county clerk shall deliver the certificates to the president of the board or his designated representative.

**History:** 1953 Comp., § 73-37-9, enacted by Laws 1967, ch. 177, § 9; 1985, ch. 238, § 42.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 26 Am. Jur. 2d Elections §§ 193 to 199, 221, 222, 232, 253, 304 to 308.

Constitutionality of statutes providing for use of voting machines, 66 A.L.R. 855.

Failure to comply with statutory provisions relating to the form or manner in which election returns from voting districts or precincts are to be made, 106 A.L.R. 398.

Statutory provision as to manner and time of notice of special election as mandatory or directory, 119 A.L.R. 661.

What is a "public place" within requirement as to posting of election notices, 90 A.L.R.2d 1210.

29 C.J.S. Elections §§ 71 to 73, 79, 156, 158, 240.

### **21-17-11. Special election procedures.**

If the board submits a question pursuant to Section 21-17-8 NMSA 1978 at a special election, the special election shall be called, held and conducted in the same manner as elections for members of the local school board, except that if the special election is held at the same time as a bond election in the school district, the hours of voting shall be the same as may be provided by law for the bond election.

**History:** 1953 Comp., § 73-37-10, enacted by Laws 1967, ch. 177, § 10; 1985, ch. 238, § 43.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 26 Am. Jur. 2d Elections § 227.

Violation of law as regards time for keeping polls open as affecting election results, 66 A.L.R. 1159.

Validity of public election as affected by fact that it was held at time other than that fixed by law, 121 A.L.R. 987.

29 C.J.S. Elections §§ 1(3), 198.

### **21-17-12. Canvassing [of vote].**

Upon delivery of the certificates by the county clerk, in case the question is submitted at a general election, or upon receipt of the returns in case it is submitted at a special election called for that purpose, the vote shall be canvassed in the manner provided by law for canvassing elections of members of local school boards.

**History:** 1953 Comp., § 73-37-11, enacted by Laws 1967, ch. 177, § 11.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Elections §§ 40, 45; 26 Am. Jur. 2d Elections §§ 296 to 308.

Injunction against canvassing of votes and declaring result of election, 1 A.L.R.2d 588.

29 C.J.S. Elections §§ 221 to 240.

### **21-17-13. Certification of levy.**

In any election for the approval or disapproval of a tax levy, if the levy is voted upon favorably by a majority of the electors of the district voting on the question, the president of the board shall certify that fact to the board of county commissioners of each county in which the district is situated and to the commission on higher education. The levy shall become effective and be imposed annually, upon certification by the executive director of the commission, at the rate approved by the electors unless a lower rate is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon the rate approved. Proceeds of the levy shall be held by or distributed by the county treasurer to or for the credit of the area vocational school district in the bank approved by the board, provided the board is designated as a board of finance as prescribed in Section 22-8-38 NMSA 1978. Levies, assessments and collections authorized for the area vocational school shall be made at the same time and in the same manner as levies, assessments and collections for ad valorem taxes for school districts are made. An election to abolish the approved levy shall be called by the board upon receipt by it of a valid petition. To be valid, the petition shall be signed by electors of the area vocational school district in a number equal to ten percent of the number of votes cast in the district for the office of governor at the last general election and shall state the question to be voted upon.

**History:** 1953 Comp., § 73-37-12, enacted by Laws 1967, ch. 177, § 12; 1977, ch. 246, § 54; 1985, ch. 238, § 44; 1986, ch. 32, § 19; 1988, ch. 64, § 8; 1988, ch. 65, § 5.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Elections §§ 140, 141, 143; 71 Am. Jur. 2d State and Local Taxation § 169.

29 C.J.S. Elections § 240; 84 C.J.S. Taxation §§ 34, 52.

## **21-17-14. Levy in addition to others.**

The levy provided in this act [21-17-1 to 21-17-6, 21-17-8 to 21-17-16 NMSA 1978] shall be exempt from the provisions of Section 72-4-11 New Mexico Statutes Annotated, 1953 Compilation, and in addition to the levies authorized in Section 77-6-38 New Mexico Statutes Annotated, 1953 Compilation. The levy provided in this act shall not be in addition to special tax levy for junior [community] college operation Section 21-13-17 NMSA 1978, or tax levy for technical vocational institute Section 21-16-12 NMSA 1978.

**History:** 1953 Comp., § 73-37-13, enacted by Laws 1967, ch. 177, § 13.

### **ANNOTATIONS**

**Bracketed material.** - The bracketed material in the second sentence was inserted by the compiler, to reflect the changes to Section 21-13-17 NMSA 1978, by Laws 1985, ch. 238, § 17. The bracketed material was not enacted by the legislature and is not part of the law.

**Compiler's note.** - Section 72-4-11, NMSA 1953 referred to in this section, was repealed by Laws 1974, ch. 92, § 34, and 77-6-38 NMSA 1953 was repealed by Laws 1973, ch. 258, § 156, as amended by Laws 1974, ch. 92, § 34.

## **21-17-15. Budgeting, accountability and reporting.**

The board shall follow procedures as prescribed by the commission and any other provisions of law.

**History:** 1953 Comp., § 73-37-14, enacted by Laws 1967, ch. 177, § 14; 1985, ch. 238, § 45; 1988, ch. 64, § 9; 1988, ch. 65, § 6.

## **21-17-16. Application of act.**

The provisions of this act [21-17-1 to 21-17-6, 21-17-8 to 21-17-16 NMSA 1978] shall not affect and shall be independent of the provisions of Sections 21-16-1 to 21-16-15 NMSA 1978.

**History:** 1953 Comp., § 73-37-15, enacted by Laws 1967, ch. 177, § 15.

## **21-17-17. Post-secondary adult vocational education programs.**

The vocational education division of the state department of education shall institute vocational education programs to provide occupational training for persons above the compulsory school age or to high school dropouts in order to make them eligible for employment. Adult vocational education programs of a preparatory or supplemental nature shall be instituted by the state board of education commencing in the fall of 1972.

The state board shall prescribe by regulation the courses of instruction and training, which shall be conducted at each of eight designated area vocational schools and in two designated skill centers.

**History:** 1953 Comp., § 73-37-16, enacted by Laws 1972, ch. 29, § 2.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools § 64.

## **ARTICLE 18 VOCATIONAL CAPITAL IMPROVEMENTS**

**(Repealed by Laws 1978, ch. 150, § 1.)**

**21-18-1 to 21-18-3. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1978, ch. 150, § 1, repeals 73-43-1 to 73-43-3, 1953 Comp. (21-18-1 to 21-18-3 NMSA 1978), relating to the Vocational Capital Improvements Act.

## **ARTICLE 19 DEVELOPMENT TRAINING**

**21-19-1 to 21-19-6. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1983, ch. 299, § 7, repeals 21-19-1 to 21-19-6 NMSA 1978, relating to development training. For present provisions, see 21-19-7 to 21-19-11 NMSA 1978.

Laws 1983, ch. 299, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.

**21-19-7. Development training.**

A. The economic development department shall establish a development training program that provides quick-response classroom and in-plant training to furnish qualified manpower resources for new or expanding industries and non-retail service sector businesses in New Mexico that have business or production procedures that require skills unique to those industries. Training shall be custom-designed for the particular company and shall be based on the special requirements of each company.

The program shall be operated on a statewide basis and shall be designed to assist any area in becoming more competitive economically.

B. There is created the "industrial training board" which shall be composed of:

(1) the director of the economic development division of the economic development department;

(2) the director of the vocational education division of the state department of public education;

(3) the director of the job training division of the labor department;

(4) the executive director of the commission on higher education;

(5) one member from organized labor appointed by the governor; and

(6) one public member from the business community appointed by the governor.

C. The industrial training board shall establish policies and promulgate rules and regulations for the administration of appropriated funds and shall provide review and oversight to assure that funds expended from the development training fund will generate business activity and give measurable growth to the economic base of New Mexico within the legal limits preserving the ecological state of New Mexico and its people.

D. Subject to the approval of the industrial training board, the vocational education division of the state department of public education shall:

(1) administer all funds allocated or appropriated for industrial development training purposes;

(2) provide designated training services;

(3) regulate, control and abandon any training program established under the provisions of this section;

(4) assist companies requesting training in the development of a training proposal to meet the companies' manpower needs;

(5) contract for the implementation of all training programs;

(6) provide for training by educational institutions or by the company through in-plant training, at the company's request; and

(7) evaluate training efforts on a basis of performance standards set forth by the industrial training board.

E. The state shall contract with a company or an educational institution to provide training or instructional services in accordance with the approved training proposal and within the following limitations:

(1) no payment shall be made for training in excess of one thousand forty hours of training per trainee for the total duration of training;

(2) training applicants shall have resided within the state for a minimum of one year immediately prior to the commencement of the training program and be citizens of the United States;

(3) payment for institutional classroom training shall be made under any accepted training contract for a qualified training program;

(4) no payment shall be made under any accepted training contract for rental of facilities unless facilities are not available on site or at the educational institution;

(5) all applicants shall be eligible under the federal Fair Labor Standards Act and shall not have terminated a public school program within the past three months except by graduation;

(6) trainees shall be guaranteed full-time employment with the contracted company upon successful completion of the training;

(7) persons employed to provide the instructional services shall be exempt from the minimum requirements established in the state plan for other state vocational programs; and

(8) no payment shall be made for training programs or production of Indian jewelry or imitation Indian jewelry unless a majority of those involved in the training program or production are of Indian descent.

**History:** Laws 1983, ch. 299, § 1; 1989, ch. 354, § 2; 1991, ch. 21, § 34; 1993, ch. 135, § 1.

## ANNOTATIONS

**The 1991 amendment**, effective March 27, 1991, deleted "and tourism" following "development" in the first sentence in Subsection A and in Paragraph (1) of Subsection B; deleted "or its successor with the approval of the economic development and tourism board or its successor" following "department" in the first sentence in Subsection A; substituted "labor" for "department" in Paragraph (3) of Subsection B; and inserted "federal" preceding "Fair Labor" in Paragraph (5) of Subsection E.

**The 1993 amendment**, effective March 31, 1993, rewrote Subsection A; in Subsection B, deleted "establish guidelines, rules and regulations for the administration of appropriated funds. The industrial training board shall" following "which shall" in the introductory language, deleted "or its successor" at the end of Paragraph (1), substituted "job" for "employment and" in Paragraph (3), substituted "executive director" for "chairman" in Paragraph (4), added Paragraphs (5) and (6), and made minor stylistic changes; in Subsection C, inserted "establish policies and promulgate rules and regulations for the administration of appropriated funds and shall"; in Subsection D, in the introductory language, deleted "and the commission on higher education, for the money appropriated or allocated to each of them respectively" following "public education" and deleted "separately" following "shall", and substituted "industrial training board" for "company" in Paragraph (7); in Subsection E, in Paragraph (3), deleted "no" at the beginning of the paragraph, substituted "institutional classroom" for "pre-employment", deleted "services" following "training", deleted "except for instruction" following "training contract", and substituted "a qualified" for "the", and substituted "shall" for "must" in Paragraphs (2), (5), and (6).

**Appropriations.** - Laws 1993, ch. 135, § 2, effective March 31, 1993, appropriates \$3,700,000 from the general fund to the development training fund for expenditure for a development training program in the following amounts for the following fiscal years: (1) \$1,200,000 for expenditure in the eighty-first fiscal year; and (2) \$2,500,000 for expenditure in the eighty-second fiscal year. Any unexpended balance remaining in the fund at the end of the eighty-second fiscal year shall not revert. The act also appropriates \$75,000 from the general fund to the economic development department for expenditure in the eighty-second fiscal year to establish one and one-half full-time equivalent positions for administration of the development training program mandated by § 21-19-7 NMSA 1978 and provides that any unexpended balance remaining at the end of the fiscal year shall revert to the general fund.

Laws 1994, ch. 116, § 1, effective May 18, 1994, appropriates \$1,000,000 from the general fund to the development training fund for expenditure in the eighty-third fiscal year for in-plant development training programs conducted pursuant to 21-19-7 NMSA 1978. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall not revert to the general fund.

Laws 1994, ch. 147, § 3I, effective March 9, 1994, appropriates \$5,000,000 from the general fund to the development training fund for expenditure in the eighty-second and eighty-third fiscal years for in-plant training programs. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

**Fair Labor Standards Act.** - The federal Fair Labor Standards Act, referred to in Subsection E(5), appears as 29 U.S.C. § 201 et seq.



**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 7, 8; 63A Am. Jur. 2d Public Funds §§ 46, 64, 68; 64 Am. Jur. 2d Public Works and Contracts § 94; 68 Am. Jur. 2d Schools § 283.

14A C.J.S. Colleges and Universities §§ 4, 7, 29; 79 C.J.S. Schools and School Districts § 485; 81A C.J.S. States §§ 133, 203, 207, 208, 223 to 229.

## **21-19-8, 21-19-9. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1991, ch. 21, § 46 repeals 21-19-8 and 21-19-9 NMSA 1978, as amended by Laws 1987, ch. 161, §§ 6 and 7, relating to technical innovation centers and technical excellence centers, effective March 27, 1991. For provisions of former sections, see 1988 Replacement Pamphlet.

## **21-19-10. Community development assistance.**

The economic development department shall provide assistance to political subdivisions of the state so that they can construct or implement projects necessary to provide services that will encourage the location of industry in the political subdivisions. The department shall, for this purpose, make low-interest loans to political subdivisions of the state with the approval of the economic development and tourism commission and after coordination with the local government division of the department of finance and administration pursuant to the New Mexico Community Assistance Act.

**History:** Laws 1983, ch. 299, § 4; 1984, ch. 5, § 11; 1991, ch. 21, § 35.

### **ANNOTATIONS**

**The 1991 amendment,** effective March 27, 1991, deleted "and tourism" preceding "department" in the first sentence and substituted "commission" for "board" in the second sentence.

**New Mexico Community Assistance Act.** - See 11-6-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 56 Am. Jur. 2d Municipal Corporations §§ 588, 589.

64 C.J.S. Municipal Corporations § 1842.

## **21-19-11. Funds created.**

A. There is created in the state treasury the "development training fund". Money appropriated to the fund or accruing to it through gifts, grants, repayments or bequests

shall not be transferred to any other fund or be encumbered or disbursed in any manner except as provided in Section 21-19-7 NMSA 1978. Money in the fund shall not revert at the end of any fiscal year. Money in the fund shall be expended only as provided in Section 21-19-7 NMSA 1978.

B. There is created in the state treasury the "development fund". Money appropriated to the fund or accruing to it through gifts, grants, repayments or bequests shall not be transferred to any other fund or be encumbered or disbursed in any manner except as provided in this subsection. Money in the fund shall not revert at the end of any fiscal year. Money in the fund shall be administered by the economic development department or its successor for the purpose of making low-interest loans to political subdivisions of the state so that they can construct or implement projects necessary to provide services that will encourage the location of industry in the political subdivisions. The economic development department shall coordinate these loans with the local government division of the department of finance and administration pursuant to the New Mexico Community Assistance Act. Money in the fund shall be expended as provided in Section 21-19-10 NMSA 1978.

**History:** Laws 1983, ch. 299, § 5; 1984, ch. 5, § 12; 1987, ch. 161, § 8; 1989, ch. 324, § 12; 1991, ch. 21, § 36.

### ANNOTATIONS

**The 1991 amendment,** effective March 27, 1991, deleted former Subsections B and C, pertaining to creation, administration and purpose of "technological innovation center fund" and the "technical excellence center fund"; redesignated former Subsection D as present Subsection B; and deleted "and tourism" following "development" in two places in Subsection B.

**Appropriations.** - Laws 1993, ch. 135, § 2, effective March 31, 1993, appropriates \$3,700,000 from the general fund to the development training fund for expenditure for a development training program in the following amounts for the following fiscal years: (1) \$1,200,000 for expenditure in the eighty-first fiscal year; and (2) \$2,500,000 for expenditure in the eighty-second fiscal year. Any unexpended balance remaining in the fund at the end of the eighty-second fiscal year shall not revert. The act also appropriates \$75,000 from the general fund to the economic development department for expenditure in the eighty-second fiscal year to establish one and one-half full-time equivalent positions for administration of the development training program mandated by § 21-19-7 NMSA 1978 and provides that any unexpended balance remaining at the end of the fiscal year shall revert to the general fund.

Laws 1994, ch. 116, § 1, effective May 18, 1994, appropriates \$1,000,000 from the general fund to the development training fund for expenditure in the eighty-third fiscal year for in-plant development training programs conducted pursuant to 21-19-7 NMSA 1978. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall not revert to the general fund.

Laws 1994, ch. 147, § 3I, effective March 9, 1994, appropriates \$5,000,000 from the general fund to the development training fund for expenditure in the eighty-second and eighty-third fiscal years for in-plant training programs. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

**New Mexico Community Assistance Act.** - See 11-6-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 7, 8; 56 Am. Jur. 2d Municipal Corporations §§ 588, 589; 63A Am. Jur. 2d Public Funds §§ 46, 64, 68; 64 Am. Jur. 2d Public Works and Contracts § 94; 68 Am. Jur. 2d Schools § 283.

14A C.J.S. Colleges and Universities §§ 4, 7, 29; 64 C.J.S. Municipal Corporations § 1842; 79 C.J.S. Schools and School Districts § 485; 81A C.J.S. States §§ 203, 207, 208, 223 to 229.

## **ARTICLE 19A**

### **APPRENTICESHIP ASSISTANCE**

#### **21-19A-1. Short title.**

This act [21-19A-1 to 21-19A-13 NMSA 1978] may be cited as the "Apprenticeship Assistance Act".

**History:** Laws 1992, ch. 93, § 1.

#### **ANNOTATIONS**

**Cross-references.** - As to New Mexico Youth Conservation Corps Act, see 9-5B-1 NMSA 1978 et seq.

As to public works apprenticeship and training, see 13-4D-1 NMSA 1978 et seq.

As to apprenticeship council, see 50-7-3 NMSA 1978.

**Effective dates.** - Laws 1992, ch. 93, § 14 makes the act effective on July 1, 1992.

#### **21-19A-2. Purpose.**

The purpose of the Apprenticeship Assistance Act [21-19A-1 to 21-19A-13 NMSA 1978] is to assist apprenticeship programs that will develop skilled craftsmen in occupations recognized by the bureau and the council to accommodate the social and economic

needs of the adult citizens of New Mexico and to enhance the economic development of the state.

**History:** Laws 1992, ch. 93, § 2.

## **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 93, § 14 makes the act effective on July 1, 1992.

### **21-19A-3. Definitions.**

As used in the Apprenticeship Assistance Act [21-19A-1 to 21-19A-13 NMSA 1978]:

A. "advisory committee" means the apprenticeship and training advisory committee to the division;

B. "apprentice" means a person at least sixteen years old who is approved by the council and is covered by a written agreement with an employer, or with an association of employers or employees acting as agent for an employer, which apprentice agreement provides for reasonably continuous employment not less than two thousand hours required for any given trade for that person for his participation in an approved schedule of work experience through employment, and for at least one hundred forty-four hours per year of related supplemental instruction;

C. "apprenticeship committee" means the sponsoring committee of each apprenticeable craft that is responsible for that particular apprenticeship program;

D. "apprenticeship related instruction" means skills taught off the job that are required by the particular apprenticeable craft and that the apprentice needs to complete his apprenticeship as required by the council and the bureau;

E. "bureau" means the bureau of apprenticeship and training of the United States department of labor;

F. "council" means the state apprenticeship council;

G. "division" means the vocational education division of the state department of public education;

H. "related instruction" means organized, off-the-job instruction in theoretical or technical subjects required for the completion of an apprenticeship for a particular apprenticeable trade; and

I. "supplementary" means new or upgrading skill training for those already employed as journeymen craftsmen.

**History:** Laws 1992, ch. 93, § 3.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 93, § 14 makes the act effective on July 1, 1992.

#### **21-19A-4. Apprenticeship committee; duties.**

The apprenticeship committee for each apprenticeship training program shall:

A. establish standards and goals for related instruction for apprentices in the program and supplementary instruction for journeymen;

B. establish rules governing on-the-job training and other instruction for apprentices in the program;

C. plan and organize instructional materials designed to provide technical and theoretical knowledge and basic skills required by apprentices in the program;

D. select qualified instructors for the program;

E. monitor and evaluate the performance and progress of each apprentice in the program and the program as a whole;

F. interview applicants and select those who meet the criteria developed by the apprenticeship committee;

G. provide for the keeping and reporting of student, program and fiscal data as required by the United States department of education; and

H. perform any other duties that promote the goals of individual apprentices and of the program as a whole.

**History:** Laws 1992, ch. 93, § 4.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 93, § 14 makes the act effective on July 1, 1992.

#### **21-19A-5. Criteria for apprenticeship programs.**

A. An apprenticeship program shall be registered by the council or the bureau.

B. An apprenticeship program shall be under the direction of an apprenticeship committee and structured according to CFR 29.29. Committee members are appointed by one or more employers of apprentices, one or more employee representatives of an

apprenticeable trade or a combination of the above. If an apprenticeship committee is composed of representatives of one or more employers and one or more employee representatives, the number of committee members designated by the employers shall be equal to the number of committee members designated by the employee representatives.

C. Each apprentice participating in a program shall have signed a written apprenticeship agreement with the apprenticeship committee stating the standards and conditions of his employment and training, which standards shall conform substantially with the standards of apprenticeship as registered by the council or bureau.

**History:** Laws 1992, ch. 93, § 5.

### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 93, § 14 makes the act effective on July 1, 1992.

#### **21-19A-6. Rules and regulations.**

The division shall make such rules and regulations as are necessary to carry out the provisions of the Apprenticeship Assistance Act [21-19A-1 to 21-19A-13 NMSA 1978].

**History:** Laws 1992, ch. 93, § 6.

### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 93, § 14 makes the act effective on July 1, 1992.

#### **21-19A-7. Apprenticeship and training advisory committee.**

A. The division shall appoint an apprenticeship and training advisory committee composed of ten voting members who shall be New Mexico residents. The members shall be as follows:

- (1) two persons representing employers of members of apprenticeable trades;
- (2) two persons representing organized labor for members of apprenticeable trades;
- (3) two persons employed as full-time training directors or program administrators of apprenticeship committees;
- (4) two persons employed by New Mexico educational entities who teach or immediately supervise preparatory instruction, supplementary instruction or related instruction courses;
- (5) the director of the council, who shall serve as chairman; and

(6) the supervisor of trades and industry with the division.

B. Members of the advisory committee shall serve terms of four years, except that the division shall designate one member from each of the groups referred to in Paragraphs (1) through (4) of Subsection A of this section to serve an initial term of two years. Thereafter, all members shall serve four-year terms.

C. Vacancies shall be filled for the unexpired portion of a term vacated.

D. Nonvoting members of the advisory committee shall include the following:

(1) one person designated by and representing the advisory council for vocational education;

(2) one person designated by and representing the New Mexico college and university system of vocational education;

(3) one person designated by and representing the bureau; and

(4) one person representing the general public who is familiar with the goals and needs of technical-vocational education in New Mexico, and who is not otherwise eligible for service on the advisory committee.

E. The member of the advisory committee representing the general public shall be appointed by the division for a term of four years. All other nonvoting members of the advisory committee shall serve at the pleasure of the agency or institution each respective member represents.

F. The advisory committee shall meet on an annual basis or at the call of the chairman.

G. The members of the advisory committee shall be subject to such laws and practices as are applicable to the service and compensation of employees of the state. Members of the advisory committee not otherwise compensated by public funds shall be reimbursed for their official duties in accordance with the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] for attendance at not in excess of twelve meetings per year.

**History:** Laws 1992, ch. 93, § 7.

### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 93, § 14 makes the act effective on July 1, 1992.

### **21-19A-8. Duties of advisory committee.**

The advisory committee shall provide input into the development of a statewide plan for a comprehensive program of apprenticeship training, which shall include but not be limited to the following:

A. formulas and administrative procedures to be used in requesting appropriations of state funds for apprenticeship training;

B. forms, formulas and administrative procedures to be used in distributing available funds to apprenticeship training programs, with the formulas based on data contained in the update to the apprenticeship related instruction cost study required by Section 10 [21-19A-10 NMSA 1978] of the Apprenticeship Assistance Act, and the formulas shall be uniform in application to all program sponsors; and

C. the content and method of the public notice required by the Apprenticeship Assistance Act.

**History:** Laws 1992, ch. 93, § 8.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 93, § 14 makes the act effective on July 1, 1992.

#### **21-19A-9. Notice of available funds.**

In order to ensure that all citizens of New Mexico have an equal opportunity to benefit from apprenticeship training programs, the division shall provide for statewide publication, in a manner recommended by the advisory committee and intended to give actual notice to all potential program sponsors, of the amount of funds that will be available to support apprenticeship training programs during the current and following fiscal years, the qualifications required of program sponsors and apprenticeship committees and the procedures to be followed in applying for state funds. The notice may also include other information recommended by the advisory committee and approved by the division; provided that the division shall publish any information concerning available funds given to a particular program sponsor in a manner recommended by the advisory committee and intended to give actual notice to all potential program sponsors statewide.

**History:** Laws 1992, ch. 93, § 9.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 93, § 14 makes the act effective on July 1, 1992.

#### **21-19A-10. Distribution of funds.**



A. Upon recommendation of the advisory committee, the division shall adopt formulas and administrative procedures to be used in requesting appropriations of state funds as a budgetary line item for the apprenticeship system of adult vocational education.

B. The advisory committee shall prepare an update to the apprenticeship related instruction cost study adopted by the division prior to each session of the legislature.

C. Upon recommendation of the advisory committee, the division shall adopt forms, formulas and administrative procedures for the distribution of available funds to apprenticeship training programs. Distribution formulas shall be uniform in application to all local program sponsors.

D. Upon recommendation of the advisory committee, the division shall reserve until March 1 of each year a percentage of the funds appropriated under the line item described in this section to be used solely for apprenticeship related instruction programs. This percentage shall be established by the formulas required by this section. Reserved funds that are not obligated on March 1 may be used for preparatory and supplementary instruction programs as well as related instruction programs.

E. No funds shall be distributed to an apprenticeship committee until the apprenticeship committee has filed all reports required by the Apprenticeship Assistance Act [21-19A-1 to 21-19A-13 NMSA 1978] and by the division. Funds shall not be distributed to programs not in compliance with their approved standards. Programs determined to be in noncompliance with their standards will be required to refund all funds to the division for the current fiscal year.

**History:** Laws 1992, ch. 93, § 10.

## **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 93, § 14 makes the act effective on July 1, 1992.

### **21-19A-11. Audit procedures.**

A. All projects funded shall maintain a clear audit trail of all money appropriated for the apprenticeship system of adult vocational education. For each course that is funded, the audit trail in the division shall include the following records:

(1) the name of the sponsoring apprenticeship committee;

(2) the name of the instructor;

(3) the number of students enrolled;

(4) the place and schedule of class meetings;

(5) fiscal accountability as per division requests; and

(6) certification by the apprenticeship council or the bureau for preparatory and related instruction courses that the students enrolled are registered apprentices.

B. Funds appropriated for the apprenticeship system of adult vocational education shall not be commingled with funds appropriated for other purposes.

C. All records, receipts, working papers and other components of the audit trail shall be public records.

**History:** Laws 1992, ch. 93, § 11.

### ANNOTATIONS

**Effective dates.** - Laws 1992, ch. 93, § 14 makes the act effective on July 1, 1992.

#### **21-19A-12. Budget; disbursement and appropriation.**

A. For the first two years after the effective date of the Apprenticeship Assistance Act [21-19A-1 to 21-19A-13 NMSA 1978], the division shall disburse funds for each apprenticeship committee, taking into account the number of total monthly contact hours and based on one dollar fifty cents (\$1.50) per participant contact hour of related instruction, not to exceed two hundred twenty hours per participant per year. Thereafter, funds shall be distributed in accordance with Section 10 of the Apprenticeship Assistance Act.

B. The division shall require from the apprenticeship committees such reports as it deems necessary for the purpose of determining the number of total monthly contact hours.

C. Funds appropriated under the Apprenticeship Assistance Act shall be disbursed by the division, and the division shall have sole control over the disbursement of those funds; provided, however, the division shall not fund any apprenticeship committee not certified by the council or the bureau.

**History:** Laws 1992, ch. 93, § 12.

### ANNOTATIONS

**Effective dates.** - Laws 1992, ch. 93, § 14 makes the act effective on July 1, 1992.

**Appropriations.** - Laws 1993, ch. 135, § 3, effective March 31, 1993, appropriates \$300,000 from the general fund to the vocational education division of the state department of public education for expenditure in the eighty-second fiscal year for the purpose of carrying out the provisions of the Apprenticeship Assistance Act. No more

than \$20,000 of this appropriation shall be used for administrative costs and any unexpended or unencumbered balance remaining at the end of the eight-second fiscal year shall not revert to the general fund.

### **21-19A-13. Status of recommendations.**

A. Recommendations of the advisory committee submitted to the division shall be acted on, and either accepted or rejected.

B. A recommendation that is rejected shall be returned immediately to the advisory committee, accompanied by written notice of the reasons for rejecting the recommendation. Upon such notice, the division and the advisory committee shall meet within fifteen days to resolve the issue, but if no resolution of the recommendation is made, then the superintendent of public instruction shall decide the matter. His decision shall be final.

**History:** Laws 1992, ch. 93, § 13.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 93, § 14 makes the act effective on July 1, 1992.

## **ARTICLE 20 TRAVEL SERVICE TRAINING**

### **21-20-1. Short title.**

This act [21-20-1 to 21-20-4 NMSA 1978] may be cited as the "Travel Service Training Act".

**History:** 1953 Comp., § 73-45-1, enacted by Laws 1973, ch. 339, § 1.

### **21-20-2. Purpose of act.**

It is the purpose of the Travel Service Training Act [21-20-1 to 21-20-4 NMSA 1978] to assist in providing education, both academic and vocational, for persons employed or seeking employment in the tourist service industries in New Mexico, in order to ensure that the visiting public will receive the most efficient and courteous service possible.

**History:** 1953 Comp., § 73-45-2, enacted by Laws 1973, ch. 339, § 2.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 81A C.J.S. States § 207.

### **21-20-3. Cooperation.**

Under the coordination of the commerce and industry department the educational institutions of the state, at all levels, shall cooperate in order to provide courses and programs designed to fulfill the purposes of the Travel Service Training Act [21-20-1 to 21-20-4 NMSA 1978].

**History:** 1953 Comp., § 73-45-3, enacted by Laws 1973, ch. 339, § 3; 1977, ch. 245, § 231.

#### **ANNOTATIONS**

**Commerce and industry department.** - The provisions relating to the commerce and industry department (former 9-2-1 to 9-2-13 NMSA 1978) were repealed by Laws 1983, ch. 297, § 33. For present provisions, see 9-15-1 NMSA 1978 et seq. and 9-16-1 NMSA 1978 et seq., relating to new departments which have assumed many of the functions of the commerce and industry department.

### **21-20-4. Duties.**

The commerce and industry department shall:

A. provide additional training at the local level for persons currently employed in restaurants, hotels, motels, motor vehicle service facilities and other retail establishments oriented toward tourism;

B. upgrade, through university-level programs, management capabilities of persons currently operating establishments oriented toward tourism; and

C. continue an existing training program for persons working in establishments oriented toward tourism.

**History:** 1953 Comp., § 73-45-4, enacted by Laws 1973, ch. 339, § 4; 1977, ch. 245, § 232.

#### **ANNOTATIONS**

**Commerce and industry department.** - See note under the same catchline following 21-20-3 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 81A C.J.S. States § 207.

## **ARTICLE 21**

### **STUDENT LOANS**

## **21-21-1. Short title.**

This act [21-21-1 to 21-21-13 NMSA 1978] may be cited as the "Student Loan Act".

**History:** 1953 Comp., § 73-38-1, enacted by Laws 1970, ch. 82, § 1.

### **ANNOTATIONS**

**Cross-references.** - For Medical Student Loan for Service Act, see 21-22-1 NMSA 1978 et seq.

## **21-21-2. Definitions.**

As used in the Student Loan Act [21-21-1 to 21-21-13 NMSA 1978]:

A. "participating institution" means any post-high school educational institution within the state, public or private, including junior colleges and vocational schools, which qualifies as an eligible institution for the federal guaranteed-loan program under the Higher Education Act of 1965, as amended, and participating in student loan programs under the Student Loan Act, or any educational institution not within the state attended by a qualified student for the purpose of participating in the student exchange programs administered by the western interstate commission for higher education as provided for by the Western Regional Education Compact [11-10-1 to 11-10-3 NMSA 1978];

B. "qualified student" means a resident of New Mexico who has been accepted for enrollment or who is enrolled in a participating institution and who is otherwise eligible for a student loan guaranteed by the United States. A standard of academic performance higher than the minimum required for continuing enrollment in the participating institution shall not be required, and the student must be meeting the minimum academic requirements of the participating institution at the time any loan is made; and

C. "fiscal agent" means the chief financial officer of one of the state higher educational institutions designated by the board of educational finance [commission on higher education].

**History:** 1953 Comp., § 73-38-2, enacted by Laws 1970, ch. 82, § 2; 1973, ch. 174, § 1.

### **ANNOTATIONS**

**Bracketed material.** - As to the bracketed material regarding the commission on higher education, see 21-1-26 NMSA 1978 and notes thereto.

**Compiler's note.** - The Higher Education Act of 1965, as amended, is compiled as 20 U.S.C. § 1001 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 17; 63A Am. Jur. 2d Public Officers and Employees § 351.

14A C.J.S. Colleges and Universities § 29; 81A States § 134.

### **21-21-3. Student loan fund; loan authority.**

There is created in the state treasury the "student loan fund". The state treasurer may use the student loan fund to:

A. purchase, from the fiscal agent, loans guaranteed by the United States made to qualified students at participating institutions; and

B. purchase from lending agencies located in New Mexico student loan notes guaranteed by the United States made to qualified students who at the time of the loan were attending participating institutions and who are currently attending participating institutions and who are also borrowers from the student loan fund. The fiscal agent and the state board of educational finance [commission on higher education] shall approve the purchase of student loan notes. The purchased student loan notes shall be delivered to the state treasurer as collateral for the student loan fund.

**History:** 1953 Comp., § 73-38-3, enacted by Laws 1970, ch. 82, § 3; 1972, ch. 49, § 1.

## **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63A Am. Jur. 2d Public Funds § 3.

81A C.J.S. States § 135.

### **21-21-4. Conditions of loan.**

The amount of any loan to a qualified student shall be determined according to regulations promulgated by the state board of educational finance [commission on higher education]. No payment shall be made to any qualified student until he has executed a note, guaranteed by the United States and payable to the student loan sinking fund, for the full amount of the loan and applicable interest. For the purpose of the Student Loan Act [21-21-1 to 21-21-13 NMSA 1978], a qualified student has the capacity to contract and is bound by any contract executed by him; the defense that he was a minor at the time he executed a note is not available to him in any action arising on his note. Payments to qualified students executing notes may be made annually, semiannually, quarterly, monthly or for each semester as determined by the participating institution, depending upon the demonstrated capacity of the student to manage his financial affairs. The rate of interest charged the student shall be the maximum authorized by federal regulations. Disbursements may be made to a

participating institution pursuant to a contract between the fiscal agent and the participating institution executed under the Student Loan Act.

**History:** 1953 Comp., § 73-38-4, enacted by Laws 1970, ch. 82, § 4.

## **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Constitutionality of statute authorizing state to loan money or engage in business of a private nature, 14 A.L.R. 1151, 115 A.L.R. 1456.

Validity, construction, and application of statutes, regulations, or policies allowing denial of student loans, student loan guarantees, or educational services to debtors who have had student loans scheduled in bankruptcy, 107 A.L.R. Fed. 192.

Applicability to obligations of nonstudent co-obligors of exception to discharge in bankruptcy for educational loans under 11 USCS § 523(a)(8), 120 A.L.R. Fed. 609.

81A C.J.S. States §§ 155, 208, 225.

### **21-21-5. Duties of the fiscal agent.**

A. The fiscal agent shall accumulate individual loan applications from the several participating institutions and shall submit these applications to the appropriate federal office for approval and guarantee. The fiscal agent may fix deadlines for the receipts of applications relative to each academic term. Upon receipt of an accumulation of guaranteed notes, the fiscal agent shall report their sum total to the state board of educational finance [commission on higher education] which shall then verify the need for funding and certify the need to the state board of finance as provided in the Student Loan Act [21-21-1 to 21-21-13 NMSA 1978]. Upon request, the fiscal agent shall deposit the guaranteed notes with the state treasurer as collateral for the student loan fund.

B. Upon receipt of funds from the state treasurer, the fiscal agent shall disburse, to each of the participating institutions, funds sufficient only to enable payments to those participating students whose loans have been approved and guaranteed or to the lending agency from which student loan notes were purchased. Any funds not so disbursed shall be returned to the fiscal agent by the participating institution.

C. The fiscal agent shall collect interest payments and interest subsidies paid on behalf of the qualified student by the United States and shall also collect all interest and principal payments made by the student under the terms of his obligation to the student loan fund. When any person who has received a loan fails to make payments due in accordance with an executed note, the fiscal agent may declare the full amount of remaining principal and interest due and payable immediately. In the event of default of

payment, the fiscal agent shall undertake collection, and in the event of failure to collect after such reasonable efforts as are prescribed by federal regulations, shall file a claim for payment under the terms of the federal guarantee. All payments received by the fiscal agent shall be remitted to the state treasurer for the credit of the student loan fund.

D. Accounts of the fiscal agent shall be audited annually by the state auditor.

**History:** 1953 Comp., § 73-38-5, enacted by Laws 1970, ch. 82, § 5; 1972, ch. 49, § 2.

## **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63A Am. Jur. 2d Public Officers and Employees § 14.

81A C.J.S. States §§ 134, 135.

### **21-21-6. Reimbursement of the fiscal agent.**

The fiscal agent shall be reimbursed by the board of educational finance [commission on higher education] for the expense connected with his duties under the terms of an agreement negotiated annually by the board of educational finance with the approval of the board of finance. Reimbursement shall include a reasonable overhead in addition to direct costs. An annual appropriation to the board of educational finance for the cost of administering the student loan program shall be made from the general fund. Any part of this appropriation not needed for the reimbursement of the fiscal agent shall revert to the general fund at the end of each fiscal year.

**History:** 1953 Comp., § 73-38-6, enacted by Laws 1970, ch. 82, § 6.

## **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63A Am. Jur. 2d Public Officers and Employees §§ 460 to 464.

67 C.J.S. Officers and Public Employees § 225.

### **21-21-7. Certification of the board of educational finance [commission on higher education].**

Upon report by the fiscal agent of the accumulated total of guaranteed loans requiring funding under the Student Loan Act [21-21-1 to 21-21-13 NMSA 1978], the board of



educational finance [commission on higher education] shall certify to the state treasurer the demonstrated need for disbursement from the student loan fund. The state treasurer shall then disburse the needed funds to the fiscal agent. If the need for disbursement exceeds the balance in the student loan fund, the board of finance shall determine the requirements of the fund for income from the sale of revenue bonds.

**History:** 1953 Comp., § 73-38-7, enacted by Laws 1970, ch. 82, § 7.

## **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63 Am. Jur. 2d Public Funds § 63.

81A C.J.S. States § 225.

### **21-21-8. Issuance of revenue bonds.**

Upon receipt of a certification from the board of educational finance [commission on higher education] that a need exists under the Student Loan Act [21-21-1 to 21-21-13 NMSA 1978], the state board of finance shall, by resolution, provide for the issuance of negotiable revenue bonds called the "New Mexico college student loan bonds" or the issuance of notes called the "New Mexico college student loan notes," or both. All bonds shall be on a parity and may be issued in one or several installments. The bonds of each issue shall be dated and bear interest, payable annually or semiannually, as prescribed by the state board of finance. The bonds shall mature serially or otherwise not later than forty years from their date and may be redeemable before maturity, at the option of the state treasurer, at prices and under terms and conditions fixed by the state board of finance in its resolution providing for issuance of the bonds. The resolution shall also determine the form of the bonds, including the form of any interest coupon to be attached thereto, and shall fix the denominations of the bonds and the place of the payment of the principal and interest thereon. The bonds shall be executed on behalf of the state as special obligations of the state payable only from the funds specified in the Student Loan Act, and shall not be payable from funds received or to be received from taxation. The bonds shall be signed by the governor and the state treasurer in accordance with the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978] and shall bear the facsimile seal of the state. Interest coupons shall bear the facsimile signature of the state treasurer. If any officer whose manual or facsimile signature appears on any bond or coupon ceases to be an officer before delivery of the bonds, the signature is valid as if he had remained in office until the delivery had been made. The resolution may provide for registration of the bonds as to ownership and for successive conversion and reconversion from registered to bearer bonds and vice versa. Before any bonds are delivered to the purchasers, the record pertaining thereto shall be examined by the attorney general, and the record and bonds shall be approved by him. After approval, the bonds shall be registered in the office of the state treasurer. After the approval and registration and delivery to the purchasers, the bonds are

incontestable and constitute special obligations of the state, and are negotiable instruments under the laws of the state. The bonds may be sold at public or private sale by the state board of finance at prices and in accordance with procedures and terms it determines to be advantageous and reasonably obtainable. The state board of finance may provide for replacement of any bond which may be mutilated or destroyed.

**History:** 1953 Comp., § 73-38-8, enacted by Laws 1970, ch. 82, § 8.

### **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 33, 35; 64 Am. Jur. 2d Public Securities and Obligations §§ 120, 195 to 199, 202, 205, 266, 399 to 403.

Power and discretion of officer or board authorized to issue bonds of governmental units as regards terms or conditions to be included therein, 119 A.L.R. 190.

11 C.J.S. Bonds §§ 71, 83, 93, 100; 14A C.J.S. Colleges and Universities §§ 4, 10, 14, 17.

### **21-21-9. Refunding bonds.**

Upon recommendation of the state treasurer, the state board of finance may, be [by] resolution, provide for the issuance of refunding bonds to refund any outstanding bonds issued under the Student Loan Act [21-21-1 to 21-21-13 NMSA 1978], together with accrued interest thereon. Provisions governing the issuance and sale of bonds under the Student Loan Act govern the issuance and sale of refunding bonds insofar as applicable. Refunding bonds may be exchanged for the outstanding bonds or may be sold and the proceeds used to retire the outstanding bonds.

**History:** 1953 Comp., § 73-38-9, enacted by Laws 1970, ch. 82, § 9.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 261 to 269, 445.

Right to call governmental bonds in advance of their maturity, 109 A.L.R. 988.

Governmental unit's power to issue bonds as implying power to refund them, 1 A.L.R.2d 134.

11 C.J.S. Bonds §§ 122, 131, 132.

## **21-21-10. Legal investments; tax exemptions.**

All bonds issued under the Student Loan Act [21-21-1 to 21-21-13 NMSA 1978] are legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, fiduciaries, trustees and guardians, and for the sinking funds of political subdivisions, departments, institutions and agencies of the state. When accompanied by all unmatured coupons appurtenant thereto, the bonds are sufficient security for all deposits of state funds and of all funds of any board in control at the par value of the bonds. The bonds and the income therefrom, including profits made on the sale thereof, are free from taxation within this state.

**History:** 1953 Comp., § 73-38-10, enacted by Laws 1970, ch. 82, § 10.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 71 Am. Jur. 2d State and Local Taxation §§ 495, 526.

Constitutional enumeration of subjects of tax exemption as affecting power of legislature to free government securities or property from taxation, 9 A.L.R. 436.

84 C.J.S. Taxation § 260.

## **21-21-11. Proceeds from bond sale.**

All proceeds from the sale of bonds under the Student Loan Act [21-21-1 to 21-21-13 NMSA 1978], except amounts set aside as reserves and the expenses of selling the bonds, which may also be paid from the proceeds, shall be deposited with the state treasurer for credit to the student loan fund.

**History:** 1953 Comp., § 73-38-11, enacted by Laws 1970, ch. 82, § 11.

## **21-21-12. Repayment of bonds.**

All money received by the state treasurer as repayment of student loans granted under the Student Loan Act [21-21-1 to 21-21-13 NMSA 1978] and interest on the loans shall be credited to the "student loan sinking fund" in the state treasury, except that an amount determined as described in Section 6 [21-21-6 NMSA 1978] of the Student Loan Act shall be credited to the general fund to reimburse the state for operating expenses of the fiscal agent under the Student Loan Act. The resolution authorizing the issuance of the bonds may provide for deposit from bond proceeds of not to exceed twenty-four months' interest, and may provide for use of bond proceeds as a reserve for the payment of principal and interest on the bonds. The state treasurer shall pay or cause to be paid from the student loan sinking fund the principal and interest on the bonds as they mature and come due.

**History:** 1953 Comp., § 73-38-12, enacted by Laws 1970, ch. 82, § 12.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 197, 198.

11 C.J.S. Bonds § 93.

### **21-21-13. Investment of funds.**

A. Money in the student loan sinking fund and money in the student loan fund in excess of the amount necessary for student loans may be invested by the state treasurer in:

(1) direct obligations of, or obligations whose principal and interest are guaranteed by, the United States;

(2) direct obligations of, or participation certificates guaranteed by, the federal intermediate credit bank, federal land banks, federal national mortgage association, federal home loan banks or banks for cooperatives;

(3) certificates of deposit of any bank or trust company whose deposits are fully secured by a pledge of securities of any kind specified in this subsection; and

(4) bonds of the state or its political subdivisions.

B. Money in the student loan sinking fund may be invested only in obligations which are scheduled to mature prior to the date the money must be available for its intended purpose.

C. All investments under this section may be sold at the prevailing market price. Income from these investments shall be credited to the student loan sinking fund.

**History:** 1953 Comp., § 73-38-13, enacted by Laws 1970, ch. 82, § 13.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations § 119.

81A C.J.S. States § 225.

### **21-21-14. Short title.**

Sections 1 through 11 [21-21-14 to 21-21-24 NMSA 1978] of this act may be cited as the "Student Loan Guarantee Act".

**History:** 1978 Comp., § 21-21-14, enacted by Laws 1978, ch. 110, § 1.

### **21-21-15. Purpose.**

The purpose of the Student Loan Guarantee Act [21-21-14 to 21-21-24 NMSA 1978] is to establish a student loan guarantee program for post-high school students in accordance with such conditions as the board of educational finance may from time to time prescribe and consistent with Title IV, Part B, of the federal Higher Education Act of 1965, as amended; Title 45, Part 177, of the Code of Federal Regulations; and agreements with the United States commissioner of education pertaining thereto.

**History:** 1978 Comp., § 21-21-15, enacted by Laws 1978, ch. 110, § 2.

## **ANNOTATIONS**

**Higher Education Act.** - Title IV, Part B, of the federal Higher Education Act of 1965, appears as 20 U.S.C. § 1071 et seq.

### **21-21-16. Definitions.**

As used in the Student Loan Guarantee Act [21-21-14 to 21-21-24 NMSA 1978]:

A. "board" ["commission"] means the board of educational finance [commission on higher education];

B. "eligible student" means a resident of New Mexico who has been accepted for enrollment or who is enrolled in a participating institution and who is otherwise eligible for a student loan guaranteed under the Student Loan Guarantee Act. A standard of academic performance higher than the minimum required for continuing enrollment in the participating institution shall not be required, and [but] the student must be meeting the minimum academic requirements of the participating institution at the time any loan is made;

C. "fiscal agent" means the chief financial officer of one of the state higher educational institutions designated by the board;

D. "loans" means loans made by the fiscal agent to residents of this state under Title IV, Part B, of the federal Higher Education Act of 1965, as amended;

E. "participating institution" means any post-high school educational institution within or without the state, public or private including junior colleges and vocational schools, which qualifies as an eligible institution for the federal guaranteed-loan program under the federal Higher Education Act of 1965, as amended, and which is approved by the board for the purposes of the Student Loan Guarantee Act; and

F. "resident" means a person who has established legal residency in New Mexico as defined by the board.

**History:** 1978 Comp., § 21-21-16, enacted by Laws 1978, ch. 110, § 3.

## **ANNOTATIONS**

**Bracketed material.** - As to the bracketed material regarding the commission on higher education, see 21-1-26 NMSA 1978 and notes thereto.

**Higher Education Act.** - The federal Higher Education Act of 1965, as amended, referred to in Subsections D and E, appears primarily as 20 U.S.C. § 1001 et seq. See also same catchline in notes to 21-21-15 NMSA 1978.

### **21-21-17. Loan guarantees; powers and duties of board.**

The board [commission] shall be the guarantor under the Student Loan Guarantee Act [21-21-14 to 21-21-24 NMSA 1978] and shall have the following powers in furtherance of the guarantee [guaranteed] loan program:

A. to guarantee the loan of money, upon such terms and conditions as the board may prescribe, to residents of this state who are attending or have been accepted for enrollment at an institution of higher education in this state or elsewhere, for the purpose of meeting expenses of higher education; provided, that such guarantees shall not be payable from funds received or to be received from state taxation. Loans may be guaranteed in amounts not to exceed the yearly or aggregate totals authorized by the federal Higher Education Act of 1965, as amended;

B. to sue and be sued in the name of the board;

C. to adopt rules and regulations governing the guarantee of loans and any other matters relating to the activities of the board in connection with the Student Loan Guarantee Act;

D. to perform such other acts as may be necessary or appropriate in connection with the guarantee of loans;

E. to require that any loan guaranteed under the Student Loan Guarantee Act shall be repaid in such manner and at such time as the board prescribes;

F. to enter into such participation contracts, contracts for administrative services and guarantee agreements with the fiscal agent, with any other governmental agency of this state and any agency of the United States, including agreements for federal reinsurance of losses resulting from the bankruptcy, death, default or total and permanent disability of student borrowers, as are necessary or incidental to the performance of its duties and to carry out its functions under the Student Loan Guarantee Act;

G. to receive and accept from any agency of the United States or from any individual, association or corporation, gifts, grants or donations of money for the purposes of the guaranteed-loan program;

H. to participate in any federal governmental program for guaranteed loans or subsidies to students and to receive, hold and disburse funds made available by any agency of the United States for the purpose or purposes for which they are made available;

I. to pay the federal government a portion of those funds obtained by the board from collection and recoupment of losses on defaulted loans in such amounts and in such manner as provided by any federal reinsurance agreement; and

J. to contract with private business concerns in any attempt to make recovery on defaulted loans.

**History:** 1978 Comp., § 21-21-17, enacted by Laws 1978, ch. 110, § 4.

### **ANNOTATIONS**

**Bracketed material.** - As to the bracketed material regarding the commission on higher education, see 21-1-26 NMSA 1978 and notes thereto.

**Higher Education Act.** - The federal Higher Education Act of 1965, as amended, referred to in Subsection A, appears as 20 U.S.C. § 1001 et seq.

### **21-21-18. Fund created; method of payment.**

A. The state treasurer shall create a suspense account in the state treasury to be known as the "student loan guarantee fund" for the purpose of insuring student loans held by the fiscal agent. The student loan guarantee fund shall be held in trust and invested by the state treasurer in accordance with law.

B. There may be deposited in the student loan guarantee fund:

(1) receipts from the federal government under the federal Higher Education Act of 1965, as amended;

(2) receipts under the Student Loan Guarantee Act [21-21-14 to 21-21-24 NMSA 1978] from any other source, except interest earned from investment of the student loan guarantee fund which shall be credited to the general fund, when the receipts may be lawfully used for the purpose of insuring student loans held by the fiscal agent; and

(3) insurance fees charged by the commission on higher education.

C. Disbursements from the student loan guarantee fund shall be made upon vouchers signed by the executive director of the commission on higher education.

**History:** 1978 Comp., § 21-21-18, enacted by Laws 1978, ch. 110, § 5; 1989, ch. 324, § 13.

### **ANNOTATIONS**

**Higher Education Act.** - See same catchline in notes to 21-21-17 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63A Am. Jur. 2d Public Funds § 3.

81A C.J.S. States §§ 155, 203, 208.

### **21-21-19. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1981, ch. 319, § 24, repeals 21-21-19 NMSA 1978, relating to investment of severance tax permanent fund in student loans, effective July 1, 1981. For present provisions, see 21-21A-18 NMSA 1978.

### **21-21-20. Conditions of loan.**

The amount and conditions of any loan to an eligible student shall be determined according to regulations promulgated by the board [commission]. No payment shall be made to any qualified student until he has executed a note, guaranteed under the Student Loan Guarantee Act [21-21-14 to 21-21-24 NMSA 1978] and payable to the severance tax permanent fund, for the full amount of the loan and applicable interest. For the purpose of the Student Loan Guarantee Act, an eligible student has the capacity to contract and is bound by any contract executed by him; the defense that he was a minor at the time he executed a note is not available to him in any action arising on his note. Payments to eligible students executing notes may be made annually, semiannually, quarterly, monthly or for each semester as determined by the participating institution, depending upon the demonstrated capacity of the student to manage his financial affairs. The rate of interest charged the student shall be the maximum authorized by federal regulations. Disbursements may be made to a participating institution pursuant to a contract between the fiscal agent and the participating institution executed under the Student Loan Guarantee Act.

**History:** 1978 Comp., § 21-21-20, enacted by Laws 1978, ch. 110, § 7.

### **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

### **21-21-21. Duties of fiscal agent.**



A. The fiscal agent shall accumulate individual loan applications from participating institutions and shall submit these applications to the board [commission] for approval and guarantee. The fiscal agent may fix deadlines for the receipts of applications relative to each academic term. Upon receipt of an accumulation of guaranteed notes, the fiscal agent shall report their sum total to the board [commission] which shall then verify the need for funding and certify the need to the state treasurer as provided in the Student Loan Guarantee Act [21-21-14 to 21-21-24 NMSA 1978]. Upon request, the fiscal agent shall deposit the guaranteed notes with the state treasurer as collateral for the severance tax permanent fund.

B. Upon receipt of funds from the state treasurer, the fiscal agent shall disburse, to each of the participating institutions, funds sufficient only to enable payments to those participating students whose loans have been approved and guaranteed. Any funds not so disbursed shall be returned to the fiscal agent by the participating institution.

C. The fiscal agent shall collect interest payments and interest subsidies paid on behalf of the eligible student by the United States and shall also collect all interest and principal payments made by the student under the terms of his obligation to the severance tax permanent fund. When any person who has received a loan fails to make payments due in accordance with an executed note, the fiscal agent may declare the full amount of remaining principal and interest due and payable immediately. In the event of default of payment, the fiscal agent shall undertake collection and, in the event of failure to collect after such reasonable efforts as are prescribed by the board [commission] and by federal regulations, shall file a claim for payment under the terms of the guarantee. All payments received by the fiscal agent shall be remitted to the state treasurer for proper credit to the severance tax permanent fund or severance tax income fund.

D. Accounts of the fiscal agent shall be audited annually by the state auditor.

**History:** 1978 Comp., § 21-21-21, enacted by Laws 1978, ch. 110, § 8.

## **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

### **21-21-22. Reimbursement of the fiscal agent.**

The fiscal agent shall be reimbursed by the board [commission] for the expenses connected with his duties under the terms of an agreement negotiated annually by the board [commission] with the approval of the state board of finance. Reimbursement shall include a reasonable overhead in addition to direct costs. An annual appropriation to the board for the cost of administering the student loan guarantee program shall be made from the severance tax income fund. Any part of this appropriation not needed for the reimbursement of the fiscal agent shall revert to the severance tax income fund at the end of each fiscal year.

**History:** 1978 Comp., § 21-21-22, enacted by Laws 1978, ch. 110, § 9.

#### **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

#### **21-21-23. Certification of the board of educational finance.**

Upon report by the fiscal agent of the accumulated total of guaranteed loans requiring funding under the Student Loan Guarantee Act [21-21-14 to 21-21-24 NMSA 1978], the board shall certify to the state treasurer the demonstrated need for disbursement from the severance tax permanent fund. The state treasurer shall then disburse the needed funds to the fiscal agent.

**History:** 1978 Comp., § 21-21-23, enacted by Laws 1978, ch. 110, § 10.

#### **21-21-24. Reports.**

The board [commission] shall make annual reports to the governor and to the legislature, prior to each regular session, of its activities, together with the amount of claims that the fiscal agent has submitted to the board in connection with loan guarantees, and a list of the participating institutions, together with the loan default rates of the respective participating institutions.

**History:** 1978 Comp., § 21-21-24, enacted by Laws 1978, ch. 110, § 11.

#### **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

#### **21-21-25. Collection of student loans; contracts authorized.**

The board of educational finance [commission on higher education] may contract with one or more attorneys or law firms or with any other private business concern to assist the board [commission] in collecting any defaulted loan made pursuant to the Student Loan Act [21-21-1 to 21-21-13 NMSA 1978] or the Student Loan Guarantee Act [21-21-14 to 21-21-24 NMSA 1978]. No contract shall be entered into pursuant to this section unless proposals have been sought from two or more qualified firms.

**History:** 1978 Comp., § 21-21-25, enacted by Laws 1978, ch. 110, § 12.

#### **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

## **21-21-26. Relationship to Student Loan Act.**

No student loans shall be made under the provisions of the Student Loan Act [21-21-1 to 21-21-13 NMSA 1978] subsequent to the effective date of the Student Loan Guarantee Act. It is the intent of the legislature that the Student Loan Act be continued solely for the purpose of administering student loans made under the provisions of the Student Loan Act and for retirement of bonds issued under the Student Loan Act until all such loans are completely paid and all such outstanding bonds are retired.

**History:** 1978 Comp., § 21-21-26, enacted by Laws 1978, ch. 110, § 14.

### **ANNOTATIONS**

**"Effective date of the Student Loan Guarantee Act".** - The phrase "effective date of the Student Loan Guarantee Act" means July 1, 1978, the effective date of Laws 1978, Chapter 110.

## **ARTICLE 21A EDUCATIONAL ASSISTANCE**

### **21-21A-1. Short title.**

This act [21-21A-1 to 21-21A-23 NMSA 1978] may be cited as the "Educational Assistance Act".

**History:** Laws 1981, ch. 319, § 1.

### **21-21A-2. Purpose.**

The purpose of the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978] is to promote the public welfare and prosperity of the people of New Mexico by stimulating the availability of financial assistance for post-secondary education so as to give the people of New Mexico greater higher education opportunities.

**History:** Laws 1981, ch. 319, § 2.

### **ANNOTATIONS**

**Nonresidents enrolled in state institutions.** - This article does not prohibit the foundation from making insured student loans to otherwise eligible nonresidents enrolled in eligible New Mexico educational institution. 1988 Op. Att'y Gen. No. 88-60.

### **21-21A-3. Definitions.**

As used in the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978]:

- A. "bond" means any bond, note or other evidence of indebtedness;
- B. "corporation" means a corporation formed pursuant to the provisions of the Educational Assistance Act to guarantee educational loans;
- C. "educational loan" means a loan for educational purposes made to or for the benefit of qualified persons;
- D. "foundation" means a corporation formed pursuant to the provisions of the Educational Assistance Act to provide financial assistance for post-secondary education; and
- E. "institution of higher education" means the state institutions of higher education enumerated in Article 12, Section 11 of the constitution of New Mexico or state institution of higher education recognized by the commission of higher education.

**History:** Laws 1981, ch. 319, § 3; 1989, ch. 19, § 1.

#### **21-21A-4. Nonprofit guarantee corporation; authorization; members; terms; meetings; bylaws.**

- A. A majority of the four-year institutions of higher education may form, pursuant to the provisions of the Nonprofit Corporation Act [Article 8 of Chapter 53 NMSA 1978], a nonprofit corporation, separate and apart from the state, whose function shall be to improve the educational opportunities of qualified persons by insuring educational loans in accordance with the bylaws adopted by the corporation. If a nonprofit guarantee corporation is formed pursuant to this section, for the purposes of the federal Higher Education Act of 1965, as amended, it is hereby designated as the single nonprofit corporation authorized to provide a statewide educational loan program.
- B. The corporation shall be governed by and all of its functions, powers and duties shall be exercised by a board of directors. The board shall consist of five members as follows:
  - (1) one member shall be the chairman of the board of directors of the foundation;
  - (2) one member shall be the executive director of the commission on higher education;
  - (3) two members who shall be appointed originally by the governor shall be officers or directors of financial institutions located in New Mexico; and
  - (4) one member who shall be appointed originally by the governor shall be a representative of the general public.

C. Of the members appointed originally by the governor, not more than two members serving at any one time shall be members of the same political party. The original appointments by the governor shall be made so that the term of one member shall expire on June 30, 1982 and the terms of the other two members shall expire respectively on June 30 of 1984 and 1986. Thereafter, appointments shall be made by the board for terms of four years in such a manner that terms of not more than two members shall expire on June 30 of each even-numbered year. A vacancy shall be filled by appointment by the board for the unexpired term.

D. The board shall elect a chairman and such other officers as it deems necessary.

E. Board members shall receive no compensation for their services but may be reimbursed on a per diem and mileage basis for actual and necessary expenses reasonably incurred in the performance of their duties as board members in an amount not exceeding the amount authorized by law for nonsalaried public officers of governmental entities of the state.

F. Board meetings shall be open to the public. The board shall adopt bylaws governing board meetings consistent with the provisions of the Open Meetings Act [10-15-1 to 10-15-4 NMSA 1978].

G. The board shall adopt bylaws, in accordance with the provisions of the Nonprofit Corporation Act, governing the conduct of the corporation in the performance of its duties under the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978] and the federal Higher Education Act of 1965, as amended.

H. Officers, other than board members, and employees of the corporation may serve simultaneously as officers and employees of the foundation, but no additional compensation may be paid for such services.

**History:** Laws 1981, ch. 319, § 4; 1989, ch. 19, § 2.

## **ANNOTATIONS**

**Federal Higher Education Act of 1965.** - The federal Higher Education Act of 1965, referred to in Subsections A and G, appears primarily as 20 U.S.C. § 1001 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15 Am. Jur. 2d Charities §§ 45, 46, 180 to 182, 184.

14 C.J.S. Charities §§ 9, 60 to 64.

### **21-21A-5. Nonprofit foundation authorized; purpose.**

A majority of the four-year institutions of higher education may form, pursuant to the provisions of the Nonprofit Corporation Act [Article 8 of Chapter 53 NMSA 1978], a

nonprofit foundation, separate and apart from the state. The purpose of the foundation authorized pursuant to this section is to improve the educational opportunities of residents of New Mexico by providing financial assistance to qualified persons, including but not limited to a program of making, financing, purchasing, holding and selling insured educational loans, and by servicing educational loan, scholarship, grant, work study and other educational assistance programs.

**History:** Laws 1981, ch. 319, § 5; 1989, ch. 19, § 3.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15 Am. Jur 2d Charities §§ 45, 46, 180 to 182, 184.

14 C.J.S. Charities §§ 9, 60 to 64.

### **21-21A-6. Foundation; board of directors; members; terms; meetings; bylaws.**

A. The foundation shall be governed by and all of its functions, powers and duties shall be exercised by a board of directors. The board shall consist of ten members as follows:

(1) six members representing the institutions of higher education, consisting of one member from each of the boards of regents of the university of New Mexico, New Mexico state university, New Mexico highlands university, New Mexico institute of mining and technology, western New Mexico university and eastern New Mexico university, each member to be appointed by the board of regents from which the member is chosen;

(2) the regent members shall appoint three members as follows:

(a) one member shall be an administrator of a private college, university or vocational school located in New Mexico; and

(b) two members shall be officers or directors of financial institutions located in New Mexico; and

(3) one member shall be the state treasurer or his designee.

B. The regent members shall serve during their terms as regents unless sooner terminated by the appointing boards. A vacancy shall be filled by the board of regents making the original appointment. The three members appointed by the regent members shall be appointed for four-year terms. A vacancy shall be filled by appointment by the board for the unexpired term.

C. The board shall elect a chairman and such other officers as it deems necessary.

D. Members of the board shall receive no compensation for their service but shall be reimbursed on a per diem and mileage basis for their actual and necessary expenses reasonably incurred in the performance of their duties as board members, in an amount not exceeding the amount authorized by law for nonsalaried public officers of governmental entities of this state.

E. Board meetings shall be open to the public. The board shall adopt bylaws governing board meetings consistent with the provisions of the Open Meetings Act [10-15-1 to 10-15-4 NMSA 1978].

F. The foundation shall adopt bylaws, in accordance with the provisions of the Nonprofit Corporation Act [Article 8 of Chapter 53 NMSA 1978], governing the conduct of the foundation in the performance of its duties under the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978] and the federal Higher Education Act of 1965, as amended.

G. Officers and employees of the foundation may serve simultaneously as officers and employees of the corporation, but no additional compensation may be paid for such service. The chairman of the board of directors of the foundation shall serve on the board of directors of the corporation, but no other members of the board of directors of the foundation may serve on the corporation board of directors.

**History:** Laws 1981, ch. 319, § 6; 1989, ch. 19, § 4.

## **ANNOTATIONS**

**Federal Higher Education Act of 1965.** - See same catchline in notes following 21-21A-4 NMSA 1978.

### **21-21A-7. Foundation powers.**

The foundation may from time to time issue negotiable bonds in conformity with the applicable provisions of the Uniform Commercial Code [Chapter 55 NMSA 1978]. The foundation shall have all the powers necessary and convenient to carry out its purposes under the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978], including the following powers:

A. to make or participate in the making of insured student educational loans, to purchase or participate in the purchase of insured student educational loans and to contract in advance for any such purchase or to purchase and retain rights to make any such purchase and to pay any amounts payable in respect of such rights;

B. to sell or participate in the sale of insured student educational loans to the student loan marketing association or to other purchasers, in conformity with the Higher Education Act of 1965, as amended, any such sale to be public or private and on such terms as the foundation may authorize, and to contract in advance for any such sale or

to purchase and retain rights to make any such sale and to pay commitment fees or any other amounts payable in respect of such rights;

C. to collect and pay reasonable fees and charges in connection with the making, purchasing, selling and servicing or the causing to be made, purchased, sold or serviced of insured student educational loans held by the foundation;

D. to enter into an agreement with insurance carriers to insure against any loss in connection with its operations, including without limitation the repayment of any insured student educational loan, in such amounts and from such insurers as it deems necessary or desirable and pay the premiums for that insurance;

E. to consent, when it deems appropriate, to the modification of the rate of interest, the time of payment of any installment of principal or interest or any other terms of any insured student educational loan held by the foundation; provided that no such consent shall be made or given if the effect would be to lessen or invalidate any insurance coverage or reinsurance in respect of any such insured student educational loan;

F. to employ an executive director and such other officers and employees as it deems necessary and set their compensation and prescribe their duties, provided that no salary of any officer or employee of the foundation shall exceed ninety percent of the average of the salaries of the presidents of the state institutions of higher education enumerated in Article 12, Section 11 of the constitution of New Mexico;

G. to adopt and publish rules and regulations in accordance with the provisions of the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978] respecting the foundation's insured student educational loan program and such other rules and regulations as are necessary to effectuate the program's purposes and the functions and duties of the foundation;

H. to make, execute and effectuate any and all agreements or other documents with any federal or state agency or other person, corporation, association, partnership, organization or entity necessary to accomplish its purposes under the Educational Assistance Act;

I. to authorize a retirement program for salaried officers and employees of the foundation;

J. to authorize reimbursement of expenses of salaried officers and employees of the foundation not exceeding the amounts authorized by law for salaried state public officers and employees;

K. to purchase liability insurance for officers and directors and such other insurance as may be reasonable and necessary;



L. to accept appropriations, loans, grants, revenue sharing, devises, gifts, bequests, federal grants and any other aid from any source whatsoever and to agree to and comply with conditions incident thereto;

M. to sue and be sued in its own name and to plead and interplead;

N. to adopt an official seal and alter it at pleasure;

O. to adopt bylaws and policies for the regulation of its affairs and the conduct of its business;

P. to employ fiscal consultants, attorneys, counselors and such other consultants and employees as may be required in its judgment and to fix and pay their compensation;

Q. to invest any funds held in reserves, held in sinking fund accounts or not required for immediate disbursement as provided in Section 21-21A-17 NMSA 1978;

R. to fix, revise from time to time, charge and collect fees and other charges for services rendered by the foundation in connection with educational loan, scholarship, grant, work study and other educational assistance programs; and

S. to do any and all things necessary or convenient to carry out its purpose and powers under the Educational Assistance Act.

**History:** Laws 1981, ch. 319, § 7; 1989, ch. 19, § 5.

### **ANNOTATIONS**

**Federal Higher Education Act of 1965.** - See same catchline in notes following 21-21A-4 NMSA 1978.

**Loans to nonresidents.** - This article does not prohibit the foundation from making insured student loans to otherwise eligible nonresidents enrolled in eligible New Mexico educational institution. 1988 Op. Att'y Gen. No. 88-60.

### **21-21A-8. Issuance of revenue bonds.**

The foundation may from time to time issue negotiable revenue bonds. The proceeds of the sale of the bonds issued pursuant to the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978] may be used to fund reserves for the bonds, to pay interest on the bonds and to pay the necessary expenses of issuing the bonds, including but not limited to its bond counsel and fiscal advisory fees and other legal, consulting and printing fees and costs. All bonds may be issued in one or more series. The bonds of each issue shall be dated and bear interest, payable as prescribed by the foundation. The bonds shall mature serially or otherwise not later than fifteen years from their date and may be redeemable before maturity, at the option of the foundation, at prices and

under terms and conditions fixed by the foundation in its resolution or trust agreement providing for issuance of the bonds. The resolution or trust agreement shall also determine the form of the bonds, including the form of any interest coupons to be attached to the bonds, and shall fix the denominations of the bonds and the place of the payment of the principal and interest of the bonds. The bonds shall be executed on behalf of the foundation as special obligations of the foundation payable only from the funds specified in the Educational Assistance Act and shall not be a debt of the state, any eligible post-secondary institution or any municipality, and neither the state nor any eligible post-secondary institution or municipality shall be liable for the bonds. The resolution or trust agreement may provide for registration of the bonds as to ownership and for successive conversion and reconversion from registered to bearer bonds and vice versa. The bonds may be registered in the office of the foundation. After the registration and delivery to the purchasers, the bonds are incontestable and constitute special obligations of the foundation, and the bonds and coupons are negotiable instruments under the laws of the state. The bonds may be sold at public or private sale by the foundation at prices and in accordance with procedures and terms it determines to be advantageous and reasonably obtainable. The foundation may provide for replacement of any bond which is mutilated or destroyed. No bond proceeds may be expended for the making or purchase of any educational loan unless such loan is an insured educational loan.

**History:** Laws 1981, ch. 319, § 8; 1989, ch. 19, § 6.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 13, 120, 186 to 205, 228, 298, 299, 416, 420 to 424.

81A C.J.S. States §§ 252 to 262.

### **21-21A-9. Status of bonds.**

A. Bonds and other obligations issued under the provisions of the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978] shall not be deemed to constitute a debt, liability or obligation of or a pledge of the faith and credit of the state or any political subdivision thereof, but shall be payable solely from the revenues or assets of the foundation pledged for such payment. Each obligation issued on behalf of the foundation under that act shall contain on its face a statement to the effect that neither the state nor the foundation shall be obligated to pay the same or the interest thereon except from the revenues or assets pledged therefor and that neither the faith and credit nor the taxing power of the state or any political subdivision thereof is pledged to the payment of the principal of or the interest on such obligation.

B. Expenses incurred by the foundation and the guarantee corporation in carrying out the provisions of the Educational Assistance Act may be made payable from the revenues and funds provided pursuant to that act, and no liability shall be incurred by

the foundation or the guarantee corporation thereunder beyond the extent to which such money shall have been so provided.

**History:** Laws 1981, ch. 319, § 9.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 13, 416, 420 to 424.

81A States § 261.

### **21-21A-10. Refunding bonds.**

The board of directors of the foundation may by resolution provide for the issuance of refunding bonds to refund any outstanding bonds issued under the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978], together with redemption premiums, if any, and interest accrued or to accrue thereon. Provisions governing the issuance and sale of bonds under that act govern the issuance and sale of refunding bonds insofar as applicable. Refunding bonds may be exchanged for the outstanding bonds or may be sold and the proceeds used to retire the outstanding bonds. Pending the application of the proceeds of any such refunding bonds, with any other available funds, to the payment of the principal, interest and any redemption premiums on the bonds being refunded, and if so provided or permitted in the resolution of the foundation authorizing the issuance of such refunding bonds, to the payment of any interest on such refunding bonds and any expenses incurred in connection with such refunding, such proceeds may be placed in escrow and invested in securities which are unconditionally guaranteed by the United States and which shall mature or which shall be subject to redemption by the holders thereof, at the option of the holders, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended.

**History:** Laws 1981, ch. 319, § 10.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 261 to 269.

81A C.J.S. States § 259.

### **21-21A-11. Trust agreements authorized.**

In the discretion of the foundation any bonds issued under the provisions of the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978] may be secured by a trust agreement by and between the foundation and a corporate trustee, which may be

a bank or trust company having trust powers within or without the state. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign all or any part of the revenues or assets of the foundation, including without limitation student loan receipts; insured student loans; federal interest subsidies; special allowance payments; insured student loan commitments; temporary loans, contracts, agreements and other security or investment obligations; the fees or charges made or received by the foundation; the money received in payment of insured student loans and interest thereon, including the proceeds of insurance thereon; and any other money received or due to be received by the foundation. Such trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the holders of any such bonds as may be reasonable and proper and not in violation of law, including covenants [covenants] setting forth the duties of the foundation in relation to the purposes to which bond proceeds may be applied, the disposition or pledging of the revenues or assets of the foundation and the custody, safeguarding and application of all money. It shall be lawful for any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of bond revenues or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the foundation. Any such trust agreement or resolution may set forth the rights and remedies of the holders of any bonds and of the trustee and may restrict the individual right of action by any such holders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the foundation may deem reasonable and proper for the security of the holders of any bonds. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be paid from the revenues or assets pledged or assigned to the payment of the principal of and the interest on bonds or from any other funds available to the foundation.

**History:** Laws 1981, ch. 319, § 11.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations § 199.

### **21-21A-12. Pledge of assets or revenues of foundation.**

The pledge of any assets or revenues of the foundation to the payment of the principal of or the interest on any bonds shall be valid and binding from the time when the pledge is made, and any such assets or revenues shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the foundation, irrespective of whether such parties have notice thereof. Nothing herein shall be construed to prohibit the foundation from selling any assets subject to any such pledge except to the extent that any such sale may be restricted by the trust agreement or resolution providing for the issuance of such bonds.

**History:** Laws 1981, ch. 319, § 12.

### **21-21A-13. All money received deemed trust funds.**

Notwithstanding any other provisions of law, all money received by the foundation under the provision of the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978] shall be deemed to be trust funds to be held and applied solely as provided in that act. The resolution authorizing any obligations or the trust agreement securing the obligations may provide that any of the money may be temporarily invested pending the disbursement thereof, and shall provide that any officer with whom or any bank or trust company with which the money is deposited shall act as trustee of the money and shall hold and apply the money for the purposes of the Educational Assistance Act, subject to such regulations as that act and the resolution or trust agreement may provide. Any such money or any other money of the foundation may be invested as provided in that act.

**History:** Laws 1981, ch. 319, § 13.

### **21-21A-14. Rights of holders of bonds.**

Any holder of bonds issued under the provisions of the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978] or any coupons appertaining thereto, and the trustee under any trust agreement or resolution authorizing the issuance of such bonds, except as the rights given pursuant to that act may be restricted by such trust agreement or resolution, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the state or granted by that act or under such trust agreement or resolution or under any other contract executed by the foundation pursuant to that act, and may enforce and compel the performance of all duties required by that act or by such trust agreement or resolution to be performed by the foundation or by any officer thereof.

**History:** Laws 1981, ch. 319, § 14.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 276, 277, 298, 299.

81A C.J.S. States § 262.

### **21-21A-15. Legal investments; tax exemption.**

All bonds issued by the foundation under the Educational Assistance Act [this article] are legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, fiduciaries, trustees and guardians and for the sinking funds of political subdivisions, departments, institutions and agencies of the state. When accompanied by all unmatured coupons appurtenant to them, the bonds are sufficient security for all deposits of state funds and of all funds

of any board in control of public money at the par value of the bonds. The bonds and the income from the bonds are free from taxation within this state except inheritance and gift taxes. The foundation, in its discretion and by such means as it deems appropriate, may waive the exemption from federal income taxation of interest on the bonds. The bonds subject to federal income taxation issued by the foundation shall be payable as to principal and interest with such frequency as may be required by the foundation.

**History:** Laws 1981, ch. 319, § 15; 1988, ch. 124, § 1.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 71 Am. Jur. 2d State and Local Taxation §§ 346, 495, 496.

84 C.J.S. Taxation § 260; 85 C.J.S. Taxation § 1098.

### **21-21A-16. Annual report and audit.**

A. The foundation and the corporation shall, promptly following the close of each fiscal year, each submit an annual report of their activities for the preceding year to the governor, the state corporation commission, the state auditor and the legislative finance committee. Each report shall set forth a complete operating and financial statement of the foundation and the corporation during the year. The boards of directors of the foundation and the corporation shall annually contract with an independent certified public accountant, licensed by the state, to perform a joint examination and audit of the accounts and books of the foundation and the corporation, including their receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to their financial standing, and shall make a determination as to whether the foundation and corporation have complied with the provisions of the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978]. If the boards of directors cannot agree upon an auditor to perform the annual audit, the director of the financial institutions division of the commerce and industry department [regulation and licensing department] shall appoint the auditor. The person performing the audit shall furnish copies of the audit report to the governor, the state corporation commission, the state auditor and the legislative finance committee where they shall be placed on file and made available for inspection by the general public.

B. The director of the financial institutions division of the commerce and industry department [regulation and licensing department] shall examine the condition of the foundation and corporation at least once in each calendar year and shall make a determination as to whether the foundation and the corporation have complied with the provisions of the Educational Assistance Act. The results of the examination shall be set forth in a written report which shall be a public record.

C. Subject to the provisions of any contract with bondholders or noteholders, the foundation shall prescribe a system of accounts.

D. The costs of audits and examinations performed pursuant to this section shall be paid by the foundation.

**History:** Laws 1981, ch. 319, § 16.

## ANNOTATIONS

**Bracketed material.** - The bracketed material in the fourth sentence of Subsection A and near the beginning of Subsection B was inserted by the compiler. The provisions relating to the commerce and industry department (former 9-2-1 to 9-2-13 NMSA 1978) were repealed by Laws 1983, ch. 297, § 33. The financial institutions division referred to in subsections A and B, is now within the regulation and licensing department. See 9-16-4 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

### **21-21A-17. Investment of funds.**

A. Subject to any agreement with bondholders or noteholders, the corporation or foundation may invest money not required for immediate use, including proceeds from the sale of any bonds:

(1) in direct obligations of, or obligations whose principal and interest are guaranteed by, the United States;

(2) in direct obligations of, or participation certificates guaranteed by, the federal intermediate credit bank, federal land banks, federal national mortgage association, federal home loan banks, banks for cooperatives or the federal farm credit banks;

(3) in certificates of deposit of any bank, trust company or savings and loan association whose principal place of business is located in New Mexico and whose deposits are fully secured by a pledge of securities of any kind specified in this subsection;

(4) in contracts for the purchase and sale of obligations of the type specified in Paragraphs (1) and (2) of this subsection; and

(5) as otherwise provided in any trust indenture securing the issuance of the bonds.

B. All investments under this section may be sold at the prevailing market price. Income from these investments shall be credited to the appropriate fund and may be used for administrative purposes.

C. Any nonprofit corporation formed pursuant to the provisions of the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978] is prohibited from investing in real

property, other than real property for use primarily for occupancy by the foundation and the corporation. The foundation and the corporation may also acquire real property through foreclosure or other means to enforce a debt but shall dispose of the property within a reasonable time and shall not retain it as an investment. Notwithstanding any other provision of law, any real property owned by the foundation or the corporation shall remain subject to the property tax.

**History:** Laws 1981, ch. 319, § 17; 1988, ch. 124, § 2; 1989, ch. 20, § 1.

### **21-21A-18. Investment of severance tax permanent fund in bonds and educational loan notes.**

A. In addition to all other investments of the severance tax permanent fund authorized by law, the state treasurer may, with the prior approval of the state board of finance, annually invest a portion of the severance tax permanent fund in bonds and educational loan notes authorized by the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978], which bonds and notes shall be held by the state treasurer until maturity unless earlier repurchased or repaid by the foundation.

B. Payments of principal on bonds and educational loan notes purchased by the state treasurer from the severance tax permanent fund shall be credited by the state treasurer to the severance tax permanent fund. Payments of interest on such bonds and educational loan notes shall be credited to the severance tax income fund.

C. The foundation may from time to time purchase any or all of such bonds and educational loan notes from the state treasurer.

D. The board of educational finance may enter into an agreement with the foundation for the servicing of educational loans held by the state treasurer.

**History:** Laws 1981, ch. 319, § 18.

### **21-21A-19. Gifts by persons, corporations, institutions and associations.**

A. Any person or domestic corporation or association organized for the purpose of carrying on a business in New Mexico may, regardless of the provisions of any certificate of incorporation, charter or other articles of organization, make contributions or gifts, grants, bequests, devises or loans to the foundation.

B. Any institution of higher education or nonprofit corporation having funds available for student scholarships or student loans, regardless of the provisions of its charter, certificate of incorporation or other articles of organization including bylaws, may loan these restricted funds to the foundation under such terms and conditions as may be mutually agreed upon for the purpose of making insured educational loans.



**History:** Laws 1981, ch. 319, § 19; 1983, ch. 213, § 24.

### **21-21A-20. Conflicts of interest; penalty.**

A. If any director, officer or employee of the corporation or the foundation shall be interested either directly or indirectly or shall be an officer or employee of or have an ownership interest in any firm or corporation interested directly or indirectly in any contract with the corporation or foundation, except for any agency, instrumentality, department or political subdivision of the state, such interest shall be disclosed to and shall be set forth in the minutes of the corporation or foundation that is a party to the contract. The director, officer or employee having such interest shall not participate on behalf of the corporation or the foundation in the authorization of the contract.

B. No director, officer or employee of the corporation or the foundation or state officer shall accept any gratuities in connection with the issuance of bonds under the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978], nor shall any such individual be reimbursed for expenses incident to the issuing of bonds except such expenses as would be reimbursed to state officers and employees under the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

C. Nothing in this section shall be construed as prohibiting an officer, director or employee of a financial institution from participating as a member of the board of directors of the foundation or corporation in setting general policies of the foundation or corporation, nor shall any provision of this section be construed as prohibiting a financial institution of New Mexico from making loans guaranteed pursuant to the provisions of the Educational Assistance Act because an officer, director or employee of the financial institution serves as a member of the board of directors of the foundation or corporation.

D. Any person who violates the provisions of this section shall be guilty of a misdemeanor.

**History:** Laws 1981, ch. 319, § 20.

### **21-21A-21. Dissolution of corporation or foundation.**

Upon termination or dissolution, all rights and properties of the corporation or foundation shall pass to and be vested in the state, subject to the rights of any bondholders, lienholders and other creditors.

**History:** Laws 1981, ch. 319, § 21.

### **21-21A-22. Agreement with the state.**

The state does hereby pledge to and agree with the holders of any bonds or notes issued under the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978] that the state will not limit or alter the rights hereby vested in the foundation or the

corporation by that act to fulfill the terms of any agreement made with the holders thereof or in any way impair the rights and remedies of such holders until such bonds or notes together with the interest thereon, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceedings by or on behalf of such holders are fully met and discharged. The foundation is authorized to include this pledge and agreement of the state in any agreement with the holders of such bonds or notes.

**History:** Laws 1981, ch. 319, § 22.

### **21-21A-23. Administration of the student loan act and student loan guarantee act.**

A. The fiscal agent designated by the board of educational finance pursuant to the provisions of the Student Loan Act [21-21-1 to 21-21-13 NMSA 1978] and Student Loan Guarantee Act [21-21-14 to 21-21-24 NMSA 1978] may enter into an agreement with the foundation for the performance of his duties and responsibilities under those acts.

B. Any existing reserve funds used for the purpose of guaranteeing loans under the Student Loan Guarantee Act shall be transferred to the corporation to be used for the same purpose.

C. At such time as the 1978 series student loan refunding bonds have been fully retired, all funds and uncollected student loan notes remaining with the state treasurer shall be transferred to the foundation to be used for the benefit of the then existing educational loan program.

**History:** Laws 1981, ch. 319, § 23.

## **ARTICLE 21B WORK-STUDY**

### **21-21B-1. Short title.**

This act [21-21B-1 to 21-21B-9 NMSA 1978] may be cited as the "Work-Study Act".

**History:** Laws 1982, ch. 88, § 1.

### **21-21B-2. Definitions.**

As used in the Work-Study Act [21-21B-1 to 21-21B-9 NMSA 1978]:

A. "board" ["commission"] means the board of educational finance [commission on higher education]; and

B. "institution" means any state post-secondary educational institution and any private nonprofit post-secondary educational institution within New Mexico.

**History:** Laws 1982, ch. 88, § 2.

### **ANNOTATIONS**

**Cross-references.** - As to the creation and powers of the board of educational finance, see 21-1-26 NMSA 1978.

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

### **21-21B-3. Fund; creation.**

A "work-study fund" is created in the state treasury. The commission is instructed to create and maintain a state work-study program in accordance with the Work-Study Act. The commission is authorized to promulgate rules and regulations necessary to administer the Work-Study Act [21-21B-1 to 21-21B-9 NMSA 1978]. A financial aid officer may exercise professional judgment when special circumstances exist to adjust cost of attendance or expected family contribution or to modify other factors that make the program responsive to a student's special financial circumstances and for which documentation exists in the student's file within the parameters authorized for this program.

**History:** Laws 1982, ch. 88, § 3; 1991, ch. 262, § 1.

### **ANNOTATIONS**

**The 1991 amendment,** effective June 14, 1991, substituted "commission" for "board" in two places and added the final sentence.

### **21-21B-4. Fund; allocation.**

Funds appropriated to the work-study fund shall be allocated by the board [commission] to eligible institutions for their use in employing eligible students.

**History:** Laws 1982, ch. 88, § 4.

### **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 19, 32 to 34; 63A Am. Jur. 2d Public Funds §§ 56 to 58.

14A C.J.S. Colleges and Universities §§ 7, 31, 33; 81A States §§ 205, 211.

## **21-21B-5. Disbursement of funds.**

The board [commission] shall assure that expenditures from the work-study fund are apportioned equitably among eligible institutions.

**History:** Laws 1982, ch. 88, § 5.

### **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

## **21-21B-6. Program; description.**

Any student who is eligible under Section 7 [21-21B-7 NMSA 1978] of the Work-Study Act may apply for work-study employment, but the board [commission] must expend at least one-third of the money from the work-study fund in any one academic year for applicants chosen on the basis of monetary need criteria set by the board [commission]. The institution which the student attends shall arrange employment. Employment is limited to post-secondary nonprofit institutions, state political subdivisions, state agencies and nonprofit organizations which are approved by the board [commission]. The employer must pay at least twenty percent of the salary and benefits of the student.

**History:** Laws 1982, ch. 88, § 6.

### **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

## **21-21B-7. Students; eligibility.**

A student is eligible for employment in the state work-study program if he is enrolled at least a one-half-time student, is in compliance with the institution's satisfactory academic progress requirements, is a resident of New Mexico and has legally entered the United States. The commission on higher education shall establish criteria to apply in determining whether the enrollment and residency requirements are met by the applicant.

**History:** Laws 1982, ch. 88, § 7; 1991, ch. 262, § 2.

### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, rewrote the first sentence which read "A student is eligible for employment in the state work-study program if he is enrolled as a full-time student, maintains a grade point average of 2.0 on a 4.0 scale during an academic term and is a resident of New Mexico and a citizen of the United States" and substituted "commission on higher education" for "board" in the second sentence.

### **21-21B-8. Compensation.**

Students shall not be paid less than the rate set forth in Section 50-4-22 NMSA 1978. Students are not eligible for benefits under the Unemployment Compensation Law [Chapter 51 NMSA 1978] because of participation in the work-study program.

**History:** Laws 1982, ch. 88, § 8.

### **21-21B-9. Prohibitions.**

Students cannot work in the following jobs and remain eligible for the state work-study program:

- A. jobs that advance a religious purpose;
- B. jobs that have an objective that is primarily religious;
- C. jobs that involve excessive entanglements with a religious organization; and
- D. jobs that involve partisan political activity.

**History:** Laws 1982, ch. 88, § 9.

## **ARTICLE 21C STUDENT CHOICE GRANTS**

### **21-21C-1. Short title.**

This act [21-21C-1 to 21-21C-9 NMSA 1978] may be cited as the "Student Choice Act".

**History:** Laws 1983, ch. 240, § 1.

### **21-21C-2. Purpose.**

The legislature finds that independent institutions of higher education provide a valuable service for New Mexico residents by allowing educational choice. The legislature declares that the purpose of the Student Choice Act [21-21C-1 to 21-21C-9 NMSA 1978] is to broaden student choice and to make maximum possible utilization of existing postsecondary educational resources and facilities, both public and independent, and thus to benefit the residents of the state. The legislature further finds that the broadening of educational choice will reduce the financial demands on the taxpayers of New Mexico.

**History:** Laws 1983, ch. 240, § 2.

### **21-21C-3. Definitions.**

As used in the Student Choice Act [21-21C-1 to 21-21C-9 NMSA 1978]:

- A. "board" ["commission"] means the board of educational finance [commission on higher education];
- B. "institution" means any independent nonprofit nonsectarian four-year college or university whose New Mexico campus is accredited by the North Central Accrediting Association;
- C. "independent" as used with respect to an institution means any institution which is not a state institution; and
- D. "student choice grant" means a grant awarded to a student by the board [commission] pursuant to the provisions of the Student Choice Act.

**History:** Laws 1983, ch. 240, § 3.

#### **ANNOTATIONS**

**Cross-references.** - As to the commission on higher education, see 21-1-26 and 21-1-28 NMSA 1978.

**Bracketed material.** - As to the bracketed material regarding the commission on higher education, see 21-1-26 NMSA 1978 and notes thereto.

### **21-21C-4. Fund created.**

There is created in the state treasury the "student choice fund" which shall be administered by the board [commission] in accordance with the provisions of the Student Choice Act [21-21C-1 to 21-21C-9 NMSA 1978].

**History:** Laws 1983, ch. 240, § 4.

#### **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 19, 32 to 34; 63A Am. Jur. 2d Public Funds §§ 56 to 58.

14A C.J.S. Colleges and Universities §§ 7, 31, 33; 81A States §§ 205, 211.

### **21-21C-5. Grants; procedures.**

Student choice grants shall be awarded in the following manner, subject to rules and regulations promulgated under Section 21-21C-8 NMSA 1978:

A. the student desiring a student choice grant shall be entitled to a student choice grant upon a determination by the commission on higher education that:

(1) the student is enrolled or shall be enrolled, at the time the student choice grant is awarded and disbursed, at an institution for at least six semester credit hours in a program leading to a degree;

(2) the student is in satisfactory academic standing in the institution or is making his first application to the institution;

(3) the student is a New Mexico resident, as that term is defined for the purpose of determining whether resident or nonresident fees are to be paid to a state institution of higher education; and

(4) considering the other resources reasonably available to the student, the grant, in its proposed amount, is probably necessary for the student to begin or continue his education;

B. on or before the date the student choice grant is awarded, the student shall provide to the commission on higher education written authorization, approved by the institution in which the student is enrolled, granting to the commission authority to inspect any of the academic or financial records of the student which are held by that institution and which are necessary to the proper administration of the provisions of the Student Choice Act [21-21C-1 to 21-21C-9 NMSA 1978], and further agreeing that any refund of tuition due to a student who withdraws shall be paid directly to the commission;

C. upon receipt of a student application for a student choice grant and the enrollment report from the institution certifying that the student is or will be, on the date of the student choice grant, duly enrolled as set forth in Subsection A of this section, the commission on higher education shall certify the maximum amount of the student choice grant, which shall be an amount equal to the number of semester credit hours for which the student is enrolled in an institution, up to a maximum of eighteen semester credit hours, multiplied by the hourly rate. The hourly rate shall be calculated by taking the general fund appropriations for instruction and general purposes for the university of New Mexico, New Mexico state university, New Mexico highlands university, eastern New Mexico university and western New Mexico university for the fiscal year in which the student choice grant is to be made, subtracting from that sum the portion deemed by the commission to be attributable to other than undergraduate education and dividing by the aggregate number of undergraduate credit hours which were used in the calculation by the board of the general fund appropriations. If the hourly rate calculated under this subsection exceeds the tuition rate at any institution, then the hourly rate for purposes of calculating a student choice grant at that institution shall be the institution's hourly tuition rate;

D. a student choice grant to a part-time student shall be proportional to the student choice grant paid to a full-time student, based on the ratio of part-time credit hours to full-time credit hours;

E. if the money in the student choice fund is less than the amount needed to make the student choice grants in the amounts determined by the commission on higher education, each grant to each student shall be reduced proportionally so as to utilize the full amount in the student choice fund; and

F. if a student withdraws or drops below full-time student status and is entitled to a refund for any tuition as determined by each institution's refund policy, the student shall pay to the commission on higher education, as a refund of the student choice grant, the amount of any refund to which he is entitled from the institution, not to exceed the amount of the student choice grant awarded to that student.

**History:** Laws 1983, ch. 240, § 5; 1990, ch. 102, § 1.

### **21-21C-6. Eligibility.**

Eligibility of students under the provisions of the Student Choice Act [21-21C-1 to 21-21C-9 NMSA 1978] shall be as follows:

A. for the first year of implementation, eligibility shall be restricted to freshmen;

B. for the second year of implementation, eligibility shall be restricted to freshmen and sophomores;

C. for the third year of implementation, eligibility shall be restricted to freshmen, sophomores and juniors; and

D. for the fourth year of implementation and every year thereafter, freshmen, sophomores, juniors and seniors shall be eligible.

**History:** Laws 1983, ch. 240, § 6.

### **21-21C-7. No funds for sectarian purposes.**

No funds appropriated pursuant to the provisions of the Student Choice Act [21-21C-1 to 21-21C-9 NMSA 1978] shall be used for sectarian purposes.

**History:** Laws 1983, ch. 240, § 7.

### **21-21C-8. Promulgation and distribution of regulations.**

The commission may make reasonable regulations, consistent with the purposes and policies of the Student Choice Act [21-21C-1 to 21-21C-9 NMSA 1978], to carry out the



purposes of and to efficiently administer the Student Choice Act. Those rules and regulations shall be promulgated in accordance with the provisions of the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978]. A financial aid officer may exercise professional judgment when special circumstances exist to adjust cost of attendance or expected family contribution or to modify other factors that make the program responsive to a student's special financial circumstances and for which documentation exists in the student's file within the parameters authorized for this program.

**History:** Laws 1983, ch. 240, § 8; 1991, ch. 262, § 3.

### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, substituted "commission" for "board" in the first sentence and added the final sentence.

#### **21-21C-9. Penalty.**

Any person knowingly submitting false information to the board [commission] or its agents, which information the board [commission] has requested in order to administer the provisions of the Student Choice Act [21-21C-1 to 21-21C-9 NMSA 1978], is guilty of a misdemeanor and may be punished by a fine of not more than ten thousand dollars (\$10,000).

**History:** Laws 1983, ch. 240, § 9.

### **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

## **ARTICLE 21D REDUCED TUITION FOR SENIOR CITIZENS**

#### **21-21D-1. Short title.**

This act [21-21D-1 to 21-21D-5 NMSA 1978] may be cited as the "Senior Citizens Reduced Tuition Act".

**History:** Laws 1984, ch. 96, § 1.

#### **21-21D-2. Purpose of act.**

The purpose of the Senior Citizens Reduced Tuition Act [21-21D-1 to 21-21D-5 NMSA 1978] is to provide educational opportunities for senior citizens at reduced tuition rates at New Mexico post-secondary degree-granting educational institutions. Senior citizens

on fixed incomes often cannot afford the tuition to attend classes, but, by attending classes at reduced rates, older persons may be assisted in achieving lives of independence, dignity and purpose.

**History:** Laws 1984, ch. 96, § 2.

## **ANNOTATIONS**

**Cross-references.** - As to establishment of state educational institutions, see N.M. Const., art. XII, § 11.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 19, 32 to 34; 63A Am. Jur. 2d Public Funds §§ 56 to 58, 68.

14A C.J.S. Colleges and Universities §§ 7, 31, 33; 81A States §§ 205, 211.

### **21-21D-3. Definitions.**

As used in the Senior Citizens Reduced Tuition Act [21-21D-1 to 21-21D-5 NMSA 1978]:

A. "board" ["commission"] means the board of educational finance [commission on higher education];

B. "eligible institution" means any New Mexico post-secondary degree-granting educational institution;

C. "reduced tuition" means that tuition charged senior citizens at the rate of five dollars (\$5.00) per credit hour, up to six hours per semester; and

D. "senior citizen" means a person age sixty-five or older.

**History:** Laws 1984, ch. 96, § 3.

## **ANNOTATIONS**

**Cross-references.** - As to the commission on higher education, see 21-1-26 and 21-1-28 NMSA 1978.

As to establishment of state educational institutions, see N.M. Const., art. XII, § 11.

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

### **21-21D-4. Conditions of eligibility.**

Reduced tuition may be allowed for persons who meet the following criteria for eligibility:

A. they are residents of New Mexico as determined by the definition of residency for tuition purposes as established by the board [commission];

B. they are senior citizens;

C. they pay any course-specific fees charged for a course;

D. they enroll at an eligible institution for credit or noncredit courses; and

E. they have completed all course prerequisites.

**History:** Laws 1984, ch. 96, § 4.

### **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

#### **21-21D-5. Rules and regulations.**

The commission may adopt such rules, regulations and procedures as necessary or appropriate to implement the provisions of the Senior Citizens Reduced Tuition Act [21-21D-1 to 21-21D-5 NMSA 1978]; provided, however, that senior citizens enrolled at reduced tuition shall be allowed to enroll in classes only on a space-available basis and that no full-time equivalent credit shall be given to the eligible institutions for the attendance of senior citizens in classes under the provisions of the Senior Citizens Reduced Tuition Act. A financial aid officer may exercise professional judgment when special circumstances exist to adjust cost of attendance or expected family contribution or to modify other factors that make the program responsive to a student's special financial circumstances and for which documentation exists in the student's file within the parameters authorized for this program.

**History:** Laws 1984, ch. 96, § 5; 1991, ch. 262, § 4.

### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, substituted "commission" for "board" in the first sentence and added the second sentence.

## **ARTICLE 21E**

### **VIETNAM VETERANS' SCHOLARSHIP FUND**

#### **21-21E-1. Fund created; administration; purpose.**

A. There is created in the state treasury the "Vietnam veterans' scholarship fund". The fund shall consist of all money appropriated to the fund and any grants, gifts and

bequests made to the fund. Any money in the fund that was the result of grants, gifts or bequests shall not revert to the general fund at the end of any fiscal year.

B. The commission shall administer the fund and shall make disbursements from the fund to reimburse educational institutions under the exclusive control of the state for any tuition payments, required student fees and book allowances and to non-state colleges in New Mexico an amount equal to the highest tuition, required student fees and book allowances at a state institution for Vietnam veterans who are residents of New Mexico and are undergraduate post-secondary students, including students who have already received a baccalaureate degree or post-secondary students enrolled in a program of study leading to a master's degree attending educational institutions pursuant to Article 9, Section 14 of the constitution of New Mexico and are in compliance with the institution's satisfactory academic progress requirements. The commission may adopt rules, regulations and procedures as necessary or appropriate to implement the provisions of the act. A financial aid officer may exercise professional judgment when special circumstances exist to adjust cost of attendance or expected family contribution or to modify other factors that make the program responsive to a student's special financial circumstances and for which documentation exists in the student's file within the parameters authorized for this program.

**History:** Laws 1985, ch. 171, § 1; 1989, ch. 167, § 1; 1991, ch. 262, § 5.

## ANNOTATIONS

**Cross-references.** - As to the commission on higher education, see 21-1-26 and 21-1-28 NMSA 1978.

As to the general fund, see 6-4-2 NMSA 1978.

**The 1991 amendment,** effective June 14, 1991, rewrote the first sentence and added the final two sentences in Subsection B and made a minor stylistic change in Subsection A.

**Eligibility.** - An individual who was a minor temporarily living outside the state at the time of entry into the armed forces in California was not eligible for a Vietnam veterans' scholarship. 1987 Op. Att'y Gen. No. 87-76.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 19, 32 to 34; 63A Am. Jur. 2d Public Funds §§ 56 to 58, 67.

14A C.J.S. Colleges and Universities §§ 7, 31, 33; 81A States §§ 205, 211.

## 21-21E-2. Disbursements from fund.

A. A Vietnam veteran may apply to the New Mexico veterans' service commission for a scholarship. The commission shall determine the eligibility of an applicant and certify approved applicants to the board of educational finance.

B. The board of educational finance [commission on higher education] shall pay by voucher to the appropriate educational institution an amount not exceeding the amount of the scholarship for an approved Vietnam veteran.

C. Money in the fund shall be allocated in the order that applications are received and approved.

**History:** Laws 1985, ch. 171, § 2.

### **ANNOTATIONS**

**Cross-references.** - As to the commission on higher education, see 21-1-26 and 21-1-28 NMSA 1978.

As to the New Mexico veterans' service commission, see 28-13-2 NMSA 1978.

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

## **ARTICLE 21F FIRE FIGHTER AND PEACE OFFICER SURVIVORS SCHOLARSHIPS**

### **21-21F-1. Short title.**

This act [21-21F-1 to 21-21F-5 NMSA 1978] may be cited as the "Fire Fighter and Peace Officer Survivors Scholarship Act".

**History:** Laws 1986, ch. 50, § 1.

### **21-21F-2. Legislative intent.**

The legislature recognizes the importance of the duties performed by our fire fighters and peace officers and the debt we owe to the fire fighters and peace officers who have lost their lives in the line of duty. The intent of this act [21-21F-1 to 21-21F-5 NMSA 1978] is to make a small payment on that debt by providing their survivors with an opportunity for a college education.

**History:** Laws 1986, ch. 50, § 2.

### **21-21F-3. Definitions.**

As used in the Fire Fighter and Peace Officer Survivors Scholarship Act [21-21F-1 to 21-21F-5 NMSA 1978]:

A. "board" ["commission"] means the board of educational finance [commission on higher education];

B. "eligible institution" means any state institution of higher education in New Mexico;

C. "fire fighter" means any member of a fire department that is part of or administered by the state or any political subdivision of the state;

D. "peace officer" means any member of a police or sheriff's department that is part of or administered by the state or any political subdivision of the state and officers in the department of corrections; and

E. "survivor" means the spouse of the fire fighter or peace officer killed in the line of duty and any adopted or natural children twenty-one years of age or under at the time of his death.

**History:** Laws 1986, ch. 50, § 3.

#### **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

#### **21-21F-4. Eligibility.**

A survivor meeting entrance requirements shall be entitled to a scholarship to the eligible institution of his choice. The amount of the scholarship shall be equal to the amount of tuition charged by the institution attended. The scholarship shall continue for such time as the recipient remains a student in good standing at the institution, but in no event shall any survivor receive a scholarship for more than five years.

**History:** Laws 1986, ch. 50, § 4.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 19, 32 to 34; 63A Am. Jur. 2d Public Funds §§ 56 to 58, 72 to 75.

14A C.J.S. Colleges and Universities §§ 7, 31, 33; 81A C.J.S. States §§ 205, 211.

#### **21-21F-5. Rules and regulations.**

The commission may adopt rules and regulations necessary to implement the provisions of the Fire Fighter and Peace Officer Survivors Scholarship Act [21-21F-1 to

21-21F-5 NMSA 1978]. A financial aid officer may exercise professional judgment when special circumstances exist to adjust the cost of attendance or the expected family contribution or to modify other factors that make the program responsive to a student's special financial circumstances and for which documentation exists in the student's file within the parameters authorized for this program.

**History:** Laws 1986, ch. 50, § 5; 1991, ch. 262, § 6.

#### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, substituted "commission" for "board" in the first sentence and added the second sentence.

## **ARTICLE 21G GRADUATE FELLOWSHIP**

### **21-21G-1. Short title.**

Chapter 21, Article 21G NMSA 1978 may be cited as the "Graduate Scholarship Act".

**History:** Laws 1988, ch. 111, § 1; 1991, ch. 262, § 7.

#### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, rewrote this section which read "Sections 1 through 11 of this act may be cited as the 'Graduate Fellowship Act'."

### **21-21G-2. Purpose of act.**

It is the purpose of the Graduate Scholarship Act [this article] to increase graduate enrollment in the state's public universities of students from groups underrepresented in graduate education. By encouraging groups underrepresented in graduate education to pursue advanced degrees in accredited graduate programs, particularly in academic fields of high regional and national priority and fields where their underrepresentation is most severe, the state will benefit by increasing the number of professionals for industry, business, research and development, economic development and public service. The establishment of a graduate scholarship program for students from groups underrepresented in graduate education will efficiently and effectively fulfill the purpose of the Graduate Scholarship Act.

**History:** Laws 1988, ch. 111, § 2; 1991, ch. 262, § 8.

#### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, substituted "Graduate Scholarship Act" for "Graduate Fellowship Act" in two places and substituted "scholarship program" for "fellowship program" in the final sentence.

### **21-21G-3. Definitions.**

As used in the Graduate Scholarship Act [this article]:

- A. "academic year" means any consecutive period of two semesters, three quarters or other comparable units commencing with the fall term each year;
- B. "award recipient" means a student awarded a graduate scholarship;
- C. "commission" means the commission on higher education;
- D. "eligible institution" means any graduate degree granting state university accredited by the north central association of colleges and secondary schools;
- E. "graduate and professional field" means any program of study intended to result in a master's or doctoral degree, excluding the degree in medicine; and
- F. "groups underrepresented in graduate education" means women, minorities, the visually handicapped, the physically disabled and other groups who have traditionally been underrepresented in the specific area of graduate study or profession for which the scholarship is awarded.

**History:** Laws 1988, ch. 111, § 3; 1991, ch. 262, § 9.

#### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, substituted "Graduate Scholarship Act" for "Graduate Fellowship Act" in the introductory paragraph and substituted "scholarship" for "fellowship" in Subsections B and F.

### **21-21G-4. Creation of scholarship.**

There are created "state graduate scholarships" which the commission shall administer pursuant to the Graduate Scholarship Act [this article].

**History:** Laws 1988, ch. 111, § 4; 1991, ch. 262, § 10.

#### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, substituted "scholarship" for "fellowship" in the catchline and, in the text of the section, substituted "scholarships" for "fellowships" and "Graduate Scholarship Act" for "Graduate Fellowship Act".



### **21-21G-5. Conditions for first-year eligibility.**

Priority will be given to New Mexico students from those groups with the most severe underrepresentation and students with the greatest financial need. A scholarship may be awarded to an individual who:

- A. is a citizen of the United States or who has a permanent resident visa;
- B. has met the admission requirements and is accepted for enrollment as a full-time student in an underrepresented graduate or professional field of study, as determined by the institution;
- C. has complied with all the rules and regulations adopted by the commission for award of the scholarship and the provisions regarding the administration of state graduate scholarships adopted pursuant to the Graduate Scholarship Act [this article]; and
- D. agrees to serve in an unpaid internship or assistantship at the eligible institution, a government agency or private industry approved by his major department for ten hours per week during the academic year.

**History:** Laws 1988, ch. 111, § 5; 1991, ch. 262, § 11.

#### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, substituted "scholarship" and "scholarships" for "fellowship" and "fellowships" and, in Subsection C, substituted "Graduate Scholarship Act" for "Graduate Fellowship Act".

### **21-21G-6. Conditions for continuing eligibility.**

A scholarship may be reawarded to a student who:

- A. has been an award recipient of a New Mexico graduate scholarship the previous year;
- B. remains in good academic standing as determined by the institution;
- C. is enrolled as a full-time graduate student as determined by the institution;
- D. is pursuing the second year of a master's degree or the second or third year of a doctoral degree; and
- E. agrees to serve in an unpaid internship or assistantship at the eligible institution, a government agency or private industry approved by his major department for ten hours per week during the academic year.

**History:** Laws 1988, ch. 111, § 6; 1991, ch. 262, § 12.

#### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, substituted "scholarship" for "fellowship" in the introductory paragraph and in Subsection A.

#### **21-21G-7. Amount of scholarships.**

Scholarship awards shall be for seven thousand two hundred dollars (\$7,200) per year to be disbursed in equal installments over the period of an academic year.

**History:** Laws 1988, ch. 111, § 7; 1991, ch. 262, § 13.

#### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, substituted "scholarships" for "fellowships" in the catchline; substituted "Scholarship" for "Fellowship" at the beginning of the section; and substituted "equal installments over the period of an academic year" for "a six hundred dollar (\$600) per month stipend for a period up to twelve months".

#### **21-21G-8. Duration of scholarship.**

Each scholarship is for a period of one academic year.

**History:** Laws 1988, ch. 111, § 8; 1991, ch. 262, § 14.

#### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, substituted "scholarship" for "fellowship" in the catchline and in the text and inserted "academic".

#### **21-21G-9. Distribution of scholarship funds.**

The commission shall adopt rules, regulations and procedures for the distribution of scholarship funds to the eligible institutions.

**History:** Laws 1988, ch. 111, § 9; 1991, ch. 262, § 15.

#### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, substituted "scholarship" for "fellowship" in the catchline and in the text of the section.

#### **21-21G-10. Termination of scholarships.**

A scholarship is terminated upon the occurrence of:

A. withdrawal from the institution by the award recipient, failure to reenroll for consecutive academic years or failure to be a full-time graduate student; or

B. substantial noncompliance by the award recipient with the Graduate Scholarship Act [this article] or the rules, regulations or procedures promulgated by the commission.

**History:** Laws 1988, ch. 111, § 10; 1991, ch. 262, § 16.

### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, substituted "scholarships" for "fellowships" in the catchline; substituted "scholarship" for "fellowship" in the introductory paragraph; and substituted "Graduate Scholarship Act" for "Graduate Fellowship Act" in Subsection B.

### **21-21G-11. Rules and regulations.**

The commission may adopt rules, regulations and procedures as necessary or appropriate to implement the provisions of the Graduate Scholarship Act [this article]. A financial aid officer may exercise professional judgment when special circumstances exist to adjust the cost of attendance or the expected family contribution or to modify other factors that make the program responsive to a student's special financial circumstances and for which documentation exists in the student's file within the parameters authorized for this program.

**History:** Laws 1988, ch. 111, § 11; 1991, ch. 262, § 17.

### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, substituted "Graduate Scholarship Act" for "Graduate Fellowship Act" in the first sentence; added the second sentence; and made a minor stylistic change.

## **ARTICLE 21H NEW MEXICO SCHOLARS**

### **21-21H-1. Short title.**

This act [21-21H-1 to 21-21H-9 NMSA 1978] may be cited as the "New Mexico Scholars Act".

**History:** Laws 1989, ch. 212, § 1.

## ANNOTATIONS

**Cross-references.** - For Tutor-Scholars Program Act, see ch. 22, art. 2A.

### **21-21H-2. Purpose of act.**

It is the purpose of the New Mexico Scholars Act [21-21H-1 to 21-21H-9 NMSA 1978] to encourage New Mexico students to attend college in New Mexico thereby making it possible for them to pursue their studies and develop their talents at both public school and higher education levels to the greater benefit of the state.

**History:** Laws 1989, ch. 212, § 2.

### **21-21H-3. Definitions.**

As used in the New Mexico Scholars Act [21-21H-1 to 21-21H-9 NMSA 1978]:

- A. "academic year" means any consecutive period of two semesters, three quarters or other comparable units commencing with the fall term each year;
- B. "award recipient" means a student awarded a New Mexico Scholars Act scholarship;
- C. "commission" means the commission on higher education;
- D. "eligible institution" means any degree-granting educational institution in New Mexico accredited by the north central association of colleges and secondary schools;
- E. "satisfactory academic progress" means completion of at least twenty-four credit hours per year and maintenance of a cumulative grade point average of a minimum of 3.0 or higher on a scale of 4.0; and
- F. "scholarship" means a scholarship awarded pursuant to the New Mexico Scholars Act.

**History:** Laws 1989, ch. 212, § 3.

### **21-21H-4. Creation of scholarship.**

There are established "New Mexico Scholars Act scholarships" administered by the commission.

**History:** Laws 1989, ch. 212, § 4.

### **21-21H-5. Conditions for first year eligibility.**

A scholarship may be awarded to a New Mexico high school graduate who:

A. is a resident of New Mexico as determined by the definition of residency for tuition purposes as established by the commission;

B. will graduate or has graduated from a New Mexico high school and who enrolls in an eligible institution by the end of his twenty-first birthday;

C. has met the admission requirements and is accepted for enrollment as a full-time undergraduate student at an eligible institution;

D. has maintained a level of performance in high school reflected by an overall score of at least twenty-five on the American college test or SAT equivalent or a high school class rank in the top five percent of the student's high school graduating class in either the student's junior or senior year;

E. has a total combined family income of no more than thirty thousand dollars (\$30,000) per year in either of the calendar years ending within the student's junior or senior years in high school or in the case of a student whose immediate family has more than one family member enrolled full-time in an eligible institution of post-secondary education, a total combined family income of no more than an amount as determined by the commission to be equivalent to a thirty-thousand dollar (\$30,000) total combined family income;

F. has complied with all the rules and regulations adopted by the commission for award of the scholarship and the provisions regarding the administration of scholarships adopted pursuant to the New Mexico Scholars Act [21-21H-1 to 21-21H-9 NMSA 1978]; and

G. is a citizen of the United States or has a permanent resident visa.

**History:** Laws 1989, ch. 212, § 5; 1991, ch. 262, § 18.

### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, rewrote Subsection B which read "will graduate from a New Mexico high school the year in which the scholarship is awarded"; added "in either the student's junior or senior year" at the end of Subsection D; and added the language beginning "in either of the calendar years" at the end of Subsection E.

### **21-21H-6. Duration of scholarship.**

Each scholarship is for a period of one academic year. The scholarship may be renewed annually until the award recipient has received four annual scholarship awards or until the student graduates from a four-year institution, whichever is earlier. An award

recipient may use the award at a two-year institution until the award recipient receives two annual scholarship awards. In no case shall a student receive more than four annual awards.

**History:** Laws 1989, ch. 212, § 6; 1991, ch. 262, § 19.

### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, deleted the subsection designation "A" at the beginning of the section; deleted "and then may transfer the award to a four-year institution" at the end of the third sentence; and deleted former Subsection B which read "Once use of a scholarship is begun, it must be used for four consecutive academic years at the eligible institution or the scholarship will be terminated. This requirement may be waived at the discretion of the commission for award recipients entering cooperative programs or other special activities".

#### **21-21H-7. Amount of scholarships.**

Scholarship awards shall be in an amount sufficient to pay for tuition, required student fees and books for an academic year. Students choosing to attend a nonstate college in New Mexico shall receive a scholarship amount equal to the highest tuition at a state institution, plus required fees and books.

**History:** Laws 1989, ch. 212, § 7.

#### **21-21H-8. Termination of scholarships.**

A scholarship is terminated upon the substantial noncompliance by the award recipient with the New Mexico Scholars Act [21-21H-1 to 21-21H-9 NMSA 1978] or the rules, regulations or procedures promulgated by the commission pursuant to that act.

**History:** Laws 1989, ch. 212, § 8; 1991, ch. 262, § 20.

### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, deleted "occurrence of one or more of the following" at the end of the introductory paragraph; deleted former Subsection A which read "withdrawal by the award recipient from the institution, failure to remain a full-time student or failure to re-enroll for consecutive academic years"; deleted former Subsection B which read "failure to achieve satisfactory academic progress by the award recipient"; and deleted the subsection designation "C".

#### **21-21H-9. Rules and regulations.**

The commission may adopt such rules, regulations and procedures as necessary or appropriate to implement the provisions of the New Mexico Scholars Act [21-21H-1 to

21-21H-9 NMSA 1978]. A financial aid officer may exercise professional judgment when special circumstances exist to adjust the cost of attendance or the expected family contribution or to modify other factors that make the program responsive to a student's special financial circumstances and for which documentation exists in the student's file within the parameters authorized for this program.

**History:** Laws 1989, ch. 212, § 9; 1991, ch. 262, § 21.

## **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, added the second sentence.

## **ARTICLE 21I**

### **MINORITY DOCTORAL ASSISTANCE**

Section

#### **21-21I-1. Short title.**

Chapter 21, Article 21I NMSA 1978 may be cited as the "Minority Doctoral Assistance Loan for Service Program Act".

**History:** Laws 1990 (1st S.S.), ch. 8, § 1; 1991, ch. 262, § 22; 1994, ch. 79, § 1.

## **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, rewrote this section which read "This act may be cited as the 'Minority Doctoral Assistance Act'".

**The 1994 amendment**, effective May 18, 1994, substituted "Article 21I" for "Article 21I-1" and inserted "Act" following "Program".

#### **21-21I-2. Purpose.**

The purpose of the Minority Doctoral Assistance Loan for Service Program [this article] is to increase the number of ethnic minorities and women available to teach engineering, physical or life sciences, mathematics and other academic disciplines in which ethnic minorities and women are demonstrably underrepresented in New Mexico colleges and universities. Additionally, the purpose of the Minority Doctoral Assistance Loan for Service Program is to create a partnership between the state, higher education institutions and students that will lead to greater participation of ethnic minorities and women in the ranks of college and university faculties, enhancing educational opportunities and quality for all New Mexico citizens.

**History:** Laws 1990 (1st S.S.), ch. 8, § 2; 1991, ch. 262, § 23.

## ANNOTATIONS

**The 1991 amendment**, effective June 14, 1991, substituted "Loan for Service Program" for "Act" in the first sentence and "the Minority Doctoral Assistance Loan for Service Program" for "this act" in the second sentence.

### **21-21I-3. Definitions.**

As used in the Minority Doctoral Assistance Loan for Service Program Act [this article]:

A. "academic committee" means a committee at a sponsoring institution appointed by the president of the institution and composed of two faculty members, two academic administrators and one central administrator;

B. "commission" means the commission on higher education;

C. "eligible institution" means a commission-approved institution of higher education that offers a doctoral degree-granting program in the fields of engineering, physical or life sciences, mathematics or other academic disciplines in which ethnic minorities and women are demonstrably underrepresented;

D. "sponsoring institution" means a four-year public post-secondary institution located in New Mexico; and

E. "student" means an individual who is an ethnic minority or a woman and who has been accepted for enrollment at an eligible institution to undertake a post-baccalaureate course of instruction in the field of engineering, physical or life sciences or mathematics.

**History:** Laws 1990 (1st S.S.), ch. 8, § 3; 1991, ch. 262, § 24; 1994, ch. 79, § 2.

## ANNOTATIONS

**The 1991 amendment**, effective June 14, 1991, substituted "Loan for Service Program" for "Act" in the introductory paragraph.

**The 1994 amendment**, effective May 18, 1994, inserted "Act" following "Program" in the introductory language, deleted "located outside the state of New Mexico" following "higher education" in Subsection C, and made stylistic changes in Subsections D and E.

### **21-21I-4. Conditions for eligibility.**

A minority doctoral assistance grant may be awarded to a student who:

A. has successfully completed all requirements for a baccalaureate degree at a New Mexico four-year public post-secondary institution in engineering, physical or life sciences, mathematics or any other academic discipline in which ethnic minorities and



women are demonstrably underrepresented at a New Mexico four-year public post-secondary institution;

B. has met the admissions requirements and is accepted for enrollment as a full-time doctoral student in an eligible institution;

C. has been interviewed and approved by an academic committee from the sponsoring institution;

D. has complied with all the rules and regulations adopted by the commission pursuant to the Minority Doctoral Assistance Loan for Service Program [this article]; and

E. is a citizen of the United States.

**History:** Laws 1990 (1st S.S.), ch. 8, § 4; 1991, ch. 262, § 25.

### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, substituted "Loan for Service Program" for "Act" at the end of Subsection D.

#### **21-211-5. Minority doctoral assistance contracts and terms.**

A. A minority doctoral assistance grant shall be evidenced by a contract between the student and the sponsoring institution.

B. The contract shall:

(1) provide for the payment to the student by the sponsoring institution of no more than twenty-five thousand dollars (\$25,000) per year for no more than four years;

(2) be conditioned upon the student's earning a doctoral degree in the field of engineering, physical or life sciences, mathematics or any other academic discipline in which ethnic minorities and women are demonstrably underrepresented;

(3) require the student to agree to begin to teach in a faculty position at the sponsoring institution within five years of completion of the doctoral degree; and

(4) require the student to teach in a faculty position at the sponsoring institution for a minimum of one year for each year a minority doctoral assistance grant was awarded.

C. Grants to students who fail to complete the terms of their contract shall be considered loans with an applied annual interest rate equal to the treasury note rate in existence at the time the contract is entered into plus two percent. The loan shall become due in equal parts to the state and the sponsoring institution immediately upon the student's termination of the contractual agreement.

D. The general form of the contract shall be approved by the attorney general and signed by the student and an authorized representative of the sponsoring institution. The sponsoring institution is vested with full and complete authority and power to sue in its own name for any balance due it and the state from any student violating the terms of any such contract.

E. The commission shall approve all minority doctoral assistance contracts entered into between students and sponsoring institutions.

**History:** Laws 1990 (1st S.S.), ch. 8, § 5.

#### **21-211-6. Delegation of contract rights.**

If at the appropriate time the sponsoring institution is unable to place the student into a faculty position, the sponsoring institution shall arrange placement at a mutually agreed upon in-state public post-secondary institution. Arrangements shall be subject to commission approval.

**History:** Laws 1990 (1st S.S.), ch. 8, § 6.

#### **21-211-7. Rules and regulations.**

The commission may adopt such rules, regulations and procedures as necessary or appropriate to implement the provisions of the Minority Doctoral Assistance Loan for Service Program [this article]. A financial aid officer may exercise professional judgment when special circumstances exist to adjust the cost of attendance or the expected family contribution or to modify other factors that make this program responsive to a student's special financial circumstances and for which documentation exists in the student's file within the parameters authorized for this program.

**History:** Laws 1990 (1st S.S.), ch. 8, § 7; 1991, ch. 262, § 26.

### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, substituted "Loan for Service Program" for "Act" at the end of the first sentence and added the second sentence.

#### **21-211-8. Cancellation.**

The contract entered into between the student and the sponsoring institution may be cancelled upon approval of the commission for any reasonable cause deemed sufficient by the commission in accordance with its rules and regulations.

**History:** Laws 1990 (1st S.S.), ch. 8, § 8.

# ARTICLE 22

## MEDICAL STUDENT LOANS

### 21-22-1. Short title.

Chapter 21, Article 22 NMSA 1978 may be cited as the "Medical Student Loan for Service Act".

**History:** 1953 Comp., § 73-38A-1, enacted by Laws 1975, ch. 244, § 1; 1991, ch. 262, § 27.

### ANNOTATIONS

**Cross-references.** - For authorization for program of loans to students of healing arts, see N.M. Const., art. IX, § 14.

For legal disability of minors removed for educational loans, see 58-6-2 NMSA 1978.

**The 1991 amendment**, effective June 14, 1991, rewrote this section which read "This act may be cited as the 'Medical Student Loan Act'."

### 21-22-2. Purpose; committee.

A. The purpose of the Medical Student Loan for Service Act [this article] is to meet the emergency currently existing resulting from the shortage of medical doctors and physician assistants in the less populated areas of the state by increasing the number of practitioners in rural areas through a program of loans for medical and physician assistant students. The program shall require as a condition of each loan that the student declare his intent that after licensure he will commence his practice of medicine within one of the areas of the state designated by "the medical shortage area committee" hereby created.

B. The medical shortage area committee shall be composed of representatives of medical training programs, underserved medical area providers and recruiting organizations, medical service provider state agencies and professional medical associations. The committee members shall be appointed by the commission, pursuant to the policies of the commission.

**History:** 1953 Comp., § 73-38A-2, enacted by Laws 1975, ch. 244, § 2; 1991, ch. 262, § 28.

### ANNOTATIONS

**The 1991 amendment**, effective June 14, 1991, added "Committee" in the catchline and rewrote the section to the extent that a detailed analysis would be impracticable.

### **21-22-3. Definitions.**

As used in the Medical Student Loan for Service Act [this article]:

A. "commission" means the commission on higher education;

B. "loan" means a grant of funds to defray the costs incidental to a medical education under a contract between the commission and a medical student requiring either repayment with interest or repayment in services; and

C. "student" means a resident of New Mexico who is a student enrolled in a school of medicine.

**History:** 1953 Comp., § 73-38A-3, enacted by Laws 1975, ch. 244, § 3; 1982, ch. 34, § 1; 1987, ch. 299, § 11; 1991, ch. 262, § 29.

#### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, substituted "Medical Student Loan for Service Act" for "Medical Student Loan Act" in the introductory paragraph and deleted "board" or" at the beginning of Subsection A.

### **21-22-3.1. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1987, ch. 299, § 12 repeals 21-22-3.1 NMSA 1978, as enacted by Laws 1982, ch. 34, § 5, defining "students for the healing arts", effective June 19, 1987. For provisions of former section, see 1982 Replacement Pamphlet.

### **21-22-4. Medical student loans; commission on higher education authorized; qualifications.**

A. The commission is authorized to grant a loan to defray the expenses of the medical education of a student deemed qualified by the commission to receive the medical education, upon such terms and conditions as may be imposed by regulations of the commission.

B. The commission shall only receive, pass upon and allow or disallow those applications for loans made by those students enrolled or accepted by colleges of medicine who are bona fide citizens and residents of the United States and of New Mexico who declare their intent to practice as physicians within designated areas of the state.

C. The commission shall make a full and careful investigation of the ability, character and qualifications of each applicant and determine his fitness to become a recipient of a student loan. The investigation of each applicant shall include an investigation of the ability of the applicant and his parents or guardians to pay the applicant's expenses for a medical education. The commission shall give preference to qualified applicants who are unable, or whose parents or guardians are unable, to pay the applicant's expenses in obtaining a medical education.

D. The commission shall arrange for loan recipients to receive assistance in locating, planning and implementing the establishment and maintenance of a medical practice in a designated underserved area.

**History:** 1953 Comp., § 73-38A-4, enacted by Laws 1975, ch. 244, § 4; 1982, ch. 34, § 2; 1991, ch. 262, § 30.

### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, substituted "Commission on higher education" for "Board" in the catchline; substituted "commission" for "board" throughout the section; and made a minor stylistic change in Subsection A.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 19 to 22.

14A C.J.S. Colleges and Universities §§ 7, 31, 33.

### **21-22-5. Delegation of duties to other agencies.**

The commission may arrange with other agencies for the performance of services required by the provisions of Section 21-22-4 NMSA 1978.

**History:** 1953 Comp., § 73-38A-5, enacted by Laws 1975, ch. 244, § 5; 1982, ch. 34, § 3; 1991, ch. 262, § 31.

### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, substituted "commission" for "board".

### **21-22-6. Medical student loans; contract terms; repayment.**

A. Each applicant who is approved for a loan by the commission may be granted a loan, in such amounts and for such periods as determined by the commission, with which to defray his expenses incurred in obtaining a medical education at any reputable and accredited medical school in the United States if the applicant files with the commission a declaration of his intent to practice his profession as a licensed physician or physician

assistant in areas of New Mexico designated as not being adequately served by medical practitioners.

B. The loans shall not exceed the necessary expenses incurred while attending a medical school or college and shall bear interest at the rate of:

(1) eighteen percent per year if the student completes his medical education and no portion of the principal and interest is forgiven pursuant to Subsection E of this section; and

(2) seven percent per year in all other cases.

C. The loan shall be evidenced by a contract between the student and the commission acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum covering the costs of a medical education and shall be conditioned upon the repayment of the loan to the state, together with interest, over a period established by the commission in consultation with the student after completion of medical school and any period of internship or residency required to complete the student's education. The contract shall further provide that immediately upon completion or termination of the student's medical education, all interest then accrued shall be capitalized.

D. Loans made to students who fail to complete their medical education shall become due, together with interest, immediately upon termination of their medical education. The commission, in consultation with the student, shall establish terms of repayment, alternate service or cancellation terms.

E. The contract shall provide that the commission shall forgive a portion of the loan principal and interest for each year that a loan recipient practices his profession as a licensed physician or physician assistant in areas approved by the New Mexico medical shortage area committee as not being adequately served by medical practitioners. Loan principal and interest shall be forgiven according to the following formula: for the first year served all interest then accrued plus forty percent of principal; and for the second and third years served, all interest then accrued plus thirty percent of principal. Recipients shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the commission.

F. If a loan recipient completes his professional education and does not serve in a medical shortage area, the commission shall assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the commission finds acceptable extenuating circumstances for why the student cannot serve. If the commission does not find acceptable extenuating circumstances for the student's failure to carry out his declared intent to serve in a medical shortage area in the state, the commission shall require immediate repayment of the unpaid principal amount of the loan plus accrued interest owed the state plus the amount of any penalty assessed pursuant to this subsection.

G. The commission shall adopt regulations to implement the provisions of this section. The regulations may provide for the repayment of medical student loans in annual or other periodic installments.

**History:** 1953 Comp., § 73-38A-6, enacted by Laws 1975, ch. 244, § 6; 1982, ch. 34, § 4; 1991, ch. 262, § 32; 1994, ch. 57, § 1.

#### ANNOTATIONS

**The 1991 amendment**, effective June 14, 1991, substituted "commission" for "board" throughout the section; inserted "or physician assistant" near the end of Subsection A and in the first sentence in Subsection E; in Subsection C, substituted "established by the commission in consultation with the student" for "not to exceed four years, negotiated between the student and the state" in the first sentence and added the final sentence; rewrote the second sentence in Subsection D which read "These students shall negotiate with the state a term of repayment not to exceed four years"; in Subsection E, rewrote the formula in the second sentence which read "forty percent for the first year served, thirty percent for the second year and thirty percent for the third year" and substituted "established by the commission" for "six thousand dollars (\$6,000) in principal plus accrued interest" at the end of the final sentence; and made minor stylistic changes throughout the section.

**The 1994 amendment**, effective July 1, 1994, substituted "if the applicant" for "providing the applicant" in Subsection A and "shall" for "may" in the first two sentences in Subsection E, added present Subsection F, and redesignated former Subsection F as present Subsection G.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Constitutionality of statute authorizing state to loan money or engage in business of a private nature, 14 A.L.R. 1151, 115 A.L.R. 1456.

81A C.J.S. States §§ 155, 208, 225.

#### **21-22-7. Contracts; legal assistance; enforcement.**

The general form of the contract provided for in Section 21-22-6 NMSA 1978 shall be prepared and approved by the attorney general and signed by the student and a designee of the commission on behalf of the state. The commission is vested with full and complete authority and power to sue in its own name for any balance due the state from any student on any such contract.

**History:** 1953 Comp., § 73-38A-7, enacted by Laws 1975, ch. 244, § 7; 1991, ch. 262, § 33.

#### ANNOTATIONS

**The 1991 amendment**, effective June 14, 1991, inserted "provided for in Section 21-22-6 NMSA 1978" and substituted "a designee of the commission" for "the chairman and executive secretary of the board" in the first sentence and "commission" for "board" in the second sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 5.

14A C.J.S. Colleges and Universities § 17.

### **21-22-8. Fund created; method of payment.**

There is created in the state treasury the "medical student loan for service fund". All money appropriated for loans to medical students under the Medical Student Loan for Service Act [this article] shall be credited to the fund. All payments of principal and interest on loans made pursuant to that act received by the commission shall be deposited with the state treasurer to the credit of the fund. All payments of funds for loans shall be made upon vouchers signed by the designated representatives of the commission.

**History:** 1953 Comp., § 73-38A-8, enacted by Laws 1975, ch. 244, § 8; 1989, ch. 324, § 14; 1991, ch. 262, § 34.

### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, inserted "for service" in the first sentence and "for Service" in the second sentence; deleted "on higher education" following "commission" in the third sentence; substituted "the designated representatives" for "the chairman and the executive director" in the final sentence; and made a minor stylistic change.

**General rule is that interest is accretion or increment to principal fund earning it**, and becomes a part of that fund. 1980 Op. Att'y Gen. No. 80-17.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63A Am. Jur. 2d Public Funds § 3.

81A C.J.S. States § 135.

### **21-22-9. Cancellation.**

The commission is authorized to cancel any contract made between it and any student for any reasonable cause deemed sufficient by the commission.

**History:** 1953 Comp., § 73-38A-9, enacted by Laws 1975, ch. 244, § 9; 1991, ch. 262, § 35.



## ANNOTATIONS

**The 1991 amendment**, effective June 14, 1991, substituted "commission" for "board".

### **21-22-10. Reports.**

The commission shall make annual reports to the governor and to the legislature, prior to each regular session, of its activities, the loans granted, the names and addresses of persons to whom loans were granted and the medical schools or colleges attended by those receiving the loans, together with a list of the names and locations of practice of those students who have completed their education and have become licensed physicians or physician assistants in New Mexico as a result of a student loan pursuant to the Medical Student Loan for Service Act [this article].

**History:** 1953 Comp., § 73-38A-10, enacted by Laws 1975, ch. 244, § 10; 1991, ch. 262, § 36.

## ANNOTATIONS

**The 1991 amendment**, effective June 14, 1991, substituted "commission" for "board"; inserted "or physician assistants"; added "pursuant to the Medical Student Loan for Service Act" at the end of the section; and made minor stylistic changes.

## **ARTICLE 22A OSTEOPATHIC MEDICAL STUDENT LOANS**

### **21-22A-1. Short title.**

Chapter 21, Article 22A NMSA 1978 may be cited as the "Osteopathic Medical Student Loan for Service Act".

**History:** 1978 Comp., § 21-22A-1, enacted by Laws 1978, ch. 109, § 1; 1991, ch. 262, § 37.

## ANNOTATIONS

**The 1991 amendment**, effective June 14, 1991, rewrote this section which read "This act may be cited as the 'Osteopathic Medical Student Loan Act'."

### **21-22A-2. Purpose; committee.**

The purpose of the Osteopathic Medical Student Loan for Service Act [this article] is to meet the emergency currently existing resulting from the shortage of osteopathic medical doctors in the less populated areas of the state by increasing the number of practitioners in rural areas through a program of loans for osteopathic medical students.

The program shall require as a condition of each loan that the student declare his intent that after licensure he will commence his practice of osteopathic medicine within one of the areas of the state designated by the medical shortage area committee.

**History:** 1978 Comp., § 21-22A-2, enacted by Laws 1978, ch. 109, § 2; 1991, ch. 262, § 38.

### ANNOTATIONS

**The 1991 amendment**, effective June 14, 1991, added "Committee" in the catchline; inserted "for Service" in the first sentence; substituted "the medical shortage area committee" for "an osteopathic medical advisory committee" at the end of the second sentence; deleted the former third sentence pertaining to the composition and appointment of members of the former osteopathic medical advisory committee; and made minor stylistic changes.

### **21-22A-3. Definitions.**

As used in the Osteopathic Medical Student Loan for Service Act [this article]:

A. "commission" means the commission on higher education;

B. "loan" means a grant of funds to defray the costs incidental to an osteopathic medical education under a contract between the commission and an osteopathic medical student requiring either repayment with interest or repayment in services;

C. "medical shortage area committee" means the committee created in Section 21-22-2 NMSA 1978; and

D. "student" means a resident of New Mexico who is a student enrolled in a school of osteopathic medicine.

**History:** 1978 Comp., § 21-22A-3, enacted by Laws 1978, ch. 109, § 3; 1991, ch. 262, § 39.

### ANNOTATIONS

**The 1991 amendment**, effective June 14, 1991, inserted "for Service" in the introductory paragraph; rewrote Subsection A which read " 'board' means the board of educational finance"; substituted "commission" for "board" in Subsection B; added present Subsection C; designated former Subsection C as Subsection D and made a minor stylistic change therein.

### **21-22A-4. Osteopathic medical student loans; commission on higher education authorized; qualifications.**

A. The commission is authorized to grant a loan to defray the expenses of the osteopathic medical education of a student deemed qualified by the commission to receive the osteopathic medical education, upon such terms and conditions as may be imposed by regulations of the commission.

B. The commission shall only receive, pass upon and allow or disallow those applications for loans made by those students enrolled in or accepted by colleges of osteopathic medicine who are bona fide citizens and residents of New Mexico who declare their intent to practice as osteopathic physicians within designated areas of the state.

C. The commission shall make a full and careful investigation of the ability, character and qualifications of each applicant and determine his fitness to become a recipient of a student loan. The investigation of each applicant shall include an investigation of the ability of the applicant and his parents or guardians to pay the applicant's expenses for an osteopathic medical education. The commission shall give preference to qualified applicants who are unable, or whose parents or guardians are unable, to pay the applicant's expenses in obtaining an osteopathic medical education.

D. The commission shall arrange for loan recipients to receive assistance in locating, planning and implementing the establishment and maintenance of an osteopathic medical practice in designated underserved areas.

**History:** 1978 Comp., § 21-22A-4, enacted by Laws 1978, ch. 109, § 4; 1991, ch. 262, § 40.

#### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, substituted "Commission on higher education" for "Board" in the catchline; substituted "commission" for "board" throughout the section; added Subsection D; and made a minor stylistic change in Subsection A.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 19 to 22.

14A C.J.S. Colleges and Universities §§ 7, 31, 33.

#### **21-22A-5. Delegation of duties to other state agencies.**

The commission may arrange with other agencies for the performance of services required by the provisions of Section 21-22A-4 NMSA 1978.

**History:** 1978 Comp., § 21-22A-5, enacted by Laws 1978, ch. 109, § 5; 1991, ch. 262, § 41.

#### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, substituted "commission" for "board" and substituted "Section 21-22A-4 NMSA 1978" for "Section 4 of the Osteopathic Medical Student Loan Act".

### **21-22A-6. Osteopathic medical student loans; contract terms; repayment.**

A. Each applicant who is approved for a loan by the commission may be granted a loan, in such amounts and for such periods as determined by the commission, with which to defray his expenses incurred in obtaining an osteopathic medical education at any reputable and accredited osteopathic medical school in the United States if the applicant files with the commission a declaration of his intent to practice his profession as a licensed osteopathic physician in areas of New Mexico designated as not being adequately served by osteopathic medical practitioners.

B. The loan shall not exceed the necessary expenses incurred while attending an osteopathic medical school or college and shall bear interest at the rate of:

(1) eighteen percent per year if the student completes his medical education and no portion of the principal and interest is forgiven pursuant to Subsection E of this section; and

(2) seven percent per year in all other cases.

C. The loan shall be evidenced by a contract between the student and the commission acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum covering the costs of an osteopathic medical education and shall be conditioned upon the repayment of the loan to the state, together with interest, over a period established by the commission in consultation with the student after the completion of osteopathic medical school and any period of internship or residency required to complete the student's education. The contract shall further provide that immediately upon completion or termination of the student's medical education, all interest then accrued shall be capitalized.

D. Loans made to students who fail to complete their osteopathic medical education shall become due, together with interest, immediately upon termination of their medical education. The commission, in consultation with the student, shall establish terms of repayment, alternate service or cancellation terms.

E. The contract shall provide that the commission shall forgive a portion of the loan principal and interest for each year that a loan recipient practices his profession as a licensed osteopathic physician in areas approved by the medical shortage area committee as not being adequately served by osteopathic medical practitioners. Loan principal and interest shall be forgiven according to the following formula: for the first year served, all interest then accrued plus forty percent of principal; and for the second and third years served, all interest then accrued plus thirty percent of principal.

Recipients shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the commission.

F. If a loan recipient completes his professional education and does not serve in a medical shortage area, the commission shall assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the commission finds acceptable extenuating circumstances for why the student cannot serve. If the commission does not find acceptable extenuating circumstances for the student's failure to carry out his declared intent to serve in a medical shortage area in the state, the commission shall require immediate repayment of the unpaid principal amount of the loan plus accrued interest owed the state plus the amount of any penalty assessed pursuant to this section.

G. The commission shall adopt regulations to implement the provisions of this section. The regulations may provide for the repayment of osteopathic medical student loans in annual or other periodic installments.

**History:** 1978 Comp., § 21-22A-6, enacted by Laws 1978, ch. 109, § 6; 1981, ch. 292, § 1; 1991, ch. 262, § 42; 1994, ch. 57, § 2.

#### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, substituted "commission" for "board" throughout the section; substituted "eighteen percent per year if the student completes his medical education and no portion of the principal and interest is forgiven pursuant to Subsection E of this section and seven percent per year in all other cases" for "nine percent per year" at the end of Subsection B; in Subsection C, substituted "over a period established by the commission in consultation with the student" for "within five years" in the second sentence and added the third sentence; rewrote Subsection D which read "In the event a loan recipient fails to complete his osteopathic medical education, the board shall establish a period of time, within five years of the date the student leaves school, in which the loan must be repaid with interest"; rewrote Subsection E which read "The contract shall provide that the state may forgive one year of the principal amount of the loan together with interest for each year that a student practices his profession as a licensed osteopathic physician in areas designated by the osteopathic medical advisory committee as not being adequately served by osteopathic medical practitioners. However, in order to qualify for such repayment credit, the student must enter into an agreement with the board to serve in one of these areas for at least two years"; and made minor stylistic changes throughout the section.

**The 1994 amendment**, effective July 1, 1994, substituted "if the applicant" for "providing the applicant" in Subsection A and "shall" for "may" in the first three sentences in Subsection E; divided the formerly undivided language in Subsection B into an introductory paragraph and Paragraphs (1) and (2); added present Subsection F; and redesignated former Subsection F as present Subsection G.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 17 Am. Jur 2d Contracts § 338.

81A C.J.S. States §§ 155, 298, 225.

### **21-22A-7. Contracts; legal assistance; enforcement.**

The general form of the contract provided for in Section 21-22A-6 NMSA 1978 shall be prepared and approved by the attorney general and signed by the student and a designee of the commission on behalf of the state. The commission is vested with full and complete authority and power to sue in its own name for any balance due the state from any student on any such contract.

**History:** 1978 Comp., § 21-22A-7, enacted by Laws 1978, ch. 109, § 7; 1991, ch. 262, § 43.

#### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, substituted "commission" for "board" in two places and, in the first sentence, inserted "provided for in Section 21-22A-6 NMSA 1978" and substituted "a designee" for "the chairman and executive secretary".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 5.

14A C.J.S. Colleges and Universities § 17.

### **21-22A-8. Fund created; method of payment.**

There is created in the state treasury the "osteopathic medical student loan for service fund". All money appropriated for loans to osteopathic medical students under the Osteopathic Medical Student Loan for Service Act [this article] shall be credited to the fund. All payments of principal and interest on loans made pursuant to that act received by the commission shall be deposited with the state treasurer to the credit of the fund or shall be deposited with the commission's administrative agent. All payments of funds for loans shall be made upon vouchers signed by designated representatives of the commission.

**History:** 1978 Comp., § 21-22A-8, enacted by Laws 1978, ch. 109, § 8; 1989, ch. 324, § 15; 1991, ch. 262, § 44.

#### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, inserted "for service" and "for Service" in the first and second sentences; deleted "on higher education" following "commission" and added "or shall be deposited with the commission's administrative agent" at the end

of the third sentence; substituted "designated representatives" for "the chairman and the executive director" in the final sentence; and made a minor stylistic change.

**General rule is that interest is accretion or increment to principal fund earning it, and becomes a part of that fund.** 1980 Op. Att'y Gen. No. 80-17.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63A Am. Jur. 2d Public Funds § 3.

81A C.J.S. States § 135.

### **21-22A-9. Cancellation.**

The commission is authorized to cancel any contract made between it and any student for any reasonable cause deemed sufficient by the commission.

**History:** 1978 Comp., § 21-22A-9, enacted by Laws 1978, ch. 109, § 9; 1991, ch. 262, § 45.

#### **ANNOTATIONS**

**The 1991 amendment,** effective June 14, 1991, substituted "commission" for "board".

### **21-22A-10. Reports.**

The commission shall make annual reports to the governor and to the legislature, prior to each regular session, of its activities, the loans granted, the names and addresses of persons to whom loans were granted and the osteopathic medical schools or colleges attended by those receiving the loans, together with a list of the names and locations of practice of those students who have completed their education and have become licensed osteopathic physicians in New Mexico as a result of a student loan pursuant to the Osteopathic Medical Student Loan for Service Act [this article].

**History:** 1978 Comp., § 21-22A-10, enacted by Laws 1978, ch. 109, § 10; 1991, ch. 262, § 46.

#### **ANNOTATIONS**

**The 1991 amendment,** effective June 14, 1991, substituted "commission" for "board" near the beginning; added "pursuant to the Osteopathic Medical Student Loan for Service Act" at the end of the section; and made minor stylistic changes.

## **ARTICLE 22B NURSING STUDENT LOANS**

### **21-22B-1. Short title.**

Chapter 21, Article 22B NMSA 1978 may be cited as the "Nursing Student Loan for Service Act".

**History:** 1978 Comp., § 21-22B-1, enacted by Laws 1987, ch. 299, § 1; 1991, ch. 262, § 47.

### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, inserted "for Service".

#### **21-22B-2. Purpose.**

The purpose of the Nursing Student Loan for Service Act [this article] is to meet the emergency currently existing resulting from the shortage of nurses in the underserved areas of the state by increasing the number of practitioners in rural areas through a program of loans for nursing students. The program will require as a condition of each loan that the student declare intent prior to the granting of the loan that the nurse will practice nursing within one of the areas of the state designated as an underserved area by the medical shortage area committee.

**History:** 1978 Comp., § 21-22B-2, enacted by Laws 1987, ch. 299, § 2; 1991, ch. 262, § 48.

### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, inserted "for Service" in the first sentence and substituted "the medical shortage area committee" for "a nursing advisory committee established and organized by the commission" at the end of the section.

#### **21-22B-3. Definitions.**

As used in the Nursing Student Loan for Service Act [this article]:

- A. "commission" means the commission on higher education;
- B. "loan" means a grant of funds to defray the costs incidental to a nursing education, under a contract between the commission and a nursing student, requiring repayment with services or repayment with interest;
- C. "medical shortage area committee" means the committee created in Section 21-22-2 NMSA 1978;
- D. "student" means a resident of New Mexico who is a student enrolled in a program of nursing; and



E. "program of nursing" means a nursing education program in a New Mexico institution accredited by a member of the council on post-secondary accreditation or a nursing education program approved by the New Mexico board of nursing.

**History:** 1978 Comp., § 21-22B-3, enacted by Laws 1987, ch. 299, § 3; 1991, ch. 262, § 49.

## ANNOTATIONS

**The 1991 amendment**, effective June 14, 1991, inserted "for Service" in the introductory paragraph; added present Subsection C; designated former Subsections C and D as Subsections D and E; and made a minor stylistic change in Subsection D.

### **21-22B-4. Nursing student loans; commission authorized; qualification.**

A. The commission is authorized to grant a loan to defray the expenses of the nursing education of a student deemed qualified by the commission to receive the same, upon such terms and conditions as may be imposed by regulations of the commission.

B. The commission shall only receive, pass upon and allow or disallow those applications for loans made by those students enrolled or accepted by programs of nursing who are bona fide citizens and residents of the United States and of New Mexico and who declare their intent to practice nursing within designated areas of the state.

C. The commission shall make a full and careful investigation of the ability, character and qualifications of each applicant and determine fitness to become a recipient of a student loan. The investigation of each applicant shall include an investigation of the ability of the applicant and the applicant's parents or guardians to pay the applicant's expenses for a nursing education. The commission shall give preference to qualified applicants who are unable, or whose parents or guardians are unable, to pay the applicant's expenses in obtaining a nursing education.

D. The commission shall arrange for loan recipients to receive assistance in locating appropriate practice positions in designated underserved areas.

**History:** 1978 Comp., § 21-22B-4, enacted by Laws 1987, ch. 299, § 4.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 19 to 22.

14A C.J.S. Colleges and Universities §§ 7, 31, 33.

## **21-22B-5. Delegation of duties to other agencies.**

The commission may arrange with other agencies for the performance of services required by the provisions of Section 21-22B-4 NMSA 1978.

**History:** 1978 Comp., § 21-22B-5, enacted by Laws 1987, ch. 299, § 5.

## **21-22B-6. Nursing student loans; contract terms; repayment.**

A. Each applicant who is approved for a loan by the commission may be granted a loan, in such amounts for such periods as determined by the commission, with which to defray expenses incurred in obtaining a nursing education, providing that the applicant files with the commission a declaration of intent to practice as a licensed nurse in areas of New Mexico designated as underserved.

B. The loans shall not exceed the necessary expenses incurred while attending a program of nursing and shall bear interest at the rate of:

(1) eighteen percent per year if the student completes his nursing education and no portion of the principal and interest is forgiven pursuant to Subsection E of this section; and

(2) seven percent per year in all other cases.

C. The loan shall be evidenced by a contract between the student and the commission acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum covering the costs of a nursing education and shall be conditioned upon the repayment of the loan to the state, together with interest, over a period negotiated between the student and the commission after completion of a nursing program. The contract shall further provide that immediately upon completion or termination of the student's nursing education, all interest then accrued shall be capitalized.

D. Loans made to students who fail to complete their nursing education shall become due, together with interest, immediately upon termination of nursing education. The commission, in consultation with the student shall establish terms of repayment, alternate service or cancellation terms with the commission.

E. The contract shall provide that the commission may forgive a portion of the loan principal and interest for each year that a loan recipient practices nursing in areas approved by the medical shortage area committee established and organized by the commission. Loan principal and interest may be forgiven according to the following formula: for the first year served all interest then accrued plus forty percent of principal; and for the second and third years served all interest then accrued plus thirty percent of principal. Recipients shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the commission.

F. The commission shall adopt regulations to implement the provisions of this section. The regulations may provide for the repayment of nursing student loans in annual or other periodic installments.

**History:** 1978 Comp., § 21-22B-6, enacted by Laws 1987, ch. 299, § 6; 1991, ch. 262, § 50.

### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, substituted "commission" for "state" in Subsections C, D and E; added the final sentence in Subsection C; rewrote the second sentence in Subsection D which read "These students shall negotiate terms of repayment with the state"; in Subsection E, substituted "medical shortage area committee" for "nursing advisory committee" in the first sentence, rewrote the formula which read "(1) forty percent for the first year served (2) thirty percent for the second year served and (3) thirty percent for the third year served" and added the final sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 81A C.J.S. States §§ 155, 208, 225.

### **21-22B-7. Contracts; legal assistance; enforcement.**

The general form of the contract shall be prepared and approved by the attorney general and signed by the student and designated representative of the commission on behalf of the state. The commission is vested with full and complete authority and power to sue in its own name for any balance due the state from any student on any such contract.

**History:** 1978 Comp., § 21-22B-7, enacted by Laws 1987, ch. 299, § 7.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 5.

14A C.J.S. Colleges and Universities § 17.

### **21-22B-8. Fund created; method of payment.**

There is created in the state treasury the "nursing student loan for service fund". All money appropriated for loans to nursing students under the Nursing Student Loan for Service Act [this article] shall be credited to the fund and all payments of principal and interest on loans made pursuant to that act received by the commission shall be deposited with the state treasurer for credit to the fund or shall be deposited with the commission's administrative agent. All payments for loans shall be made upon vouchers signed by the designated representatives of the commission.

**History:** 1978 Comp., § 21-22B-8, enacted by Laws 1987, ch. 299, § 8; 1989, ch. 324, § 16; 1991, ch. 262, § 51.

## **ANNOTATIONS**

**The 1991 amendment,** effective June 14, 1991, inserted "for service" and "for Service" in the first and second sentences; inserted "or shall be deposited with the commission's administrative agent" at the end of the second sentence; and deleted the former final sentence which read "The provisions of this section are effective July 1, 1990".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63A Am. Jur. 2d Public Funds § 3.

81A C.J.S. States § 135.

### **21-22B-9. Cancellation.**

The commission is authorized to cancel any contract made between it and any student for any reasonable cause deemed sufficient by the commission.

**History:** 1978 Comp., § 21-22B-9, enacted by Laws 1987, ch. 299, § 9.

### **21-22B-10. Reports.**

The commission shall make annual reports to the governor and to the legislature, prior to each regular session, of its activities, the loans granted, the names and addresses of persons to whom loans were granted and the nursing program attended by those receiving the loans, together with a list of the names and locations of the practices of those students who have completed their education.

**History:** 1978 Comp., § 21-22B-10, enacted by Laws 1987, ch. 299, § 10.

## **ARTICLE 22C**

## **ALLIED HEALTH STUDENT LOAN FOR SERVICE**

### **21-22C-1. Short title.**

Sections 3 through 12 [21-22C-1 to 21-22C-10 NMSA 1978] of this act may be cited as the "Allied Health Student Loan for Service Act".

**History:** Laws 1994, ch. 57, § 3.

## **ANNOTATIONS**

**Emergency clauses.** - Laws 1994, ch. 57, § 20 makes the Allied Health Student Loan for Service Act effective immediately. Approved March 4, 1994.

## **21-22C-2. Purpose.**

The purpose of the Allied Health Student Loan for Service Act [21-22C-1 to 21-22C-10 NMSA 1978] is to meet the emergency currently existing resulting from the shortage of allied health professionals in underserved areas of the state by increasing the number of practitioners in rural areas through a program of loans for allied health students. Each applicant shall declare his intent to practice his allied health profession within one of the areas of the state designated as an underserved area by the medical shortage area committee.

**History:** Laws 1994, ch. 57, § 4.

### **ANNOTATIONS**

**Emergency clauses.** - Laws 1994, ch. 57, § 20 makes the Allied Health Student Loan for Service Act effective immediately. Approved March 4, 1994.

## **21-22C-3. Definitions.**

As used in the Allied Health Student Loan for Service Act [21-22C-1 to 21-22C-10 NMSA 1978]:

A. "allied health profession" means physical therapy, occupational therapy, speech-language pathology, audiology, pharmacy, nutrition, respiratory care practice, laboratory technology, radiologic technology, mental health services or emergency medical services;

B. "commission" means the commission on higher education;

C. "loan" means a grant of money to defray the costs incidental to an allied health profession education, under a contract between the commission and an allied health profession student, requiring repayment with services or repayment of principal and interest; and

D. "student" means a resident of New Mexico who is enrolled in an accredited program for one of the allied health professions.

**History:** Laws 1994, ch. 57, § 5.

### **ANNOTATIONS**

**Emergency clauses.** - Laws 1994, ch. 57, § 20 makes the Allied Health Student Loan for Service Act effective immediately. Approved March 4, 1994.

## **21-22C-4. Allied health loans; qualifications.**

A. The commission may grant a loan to a student it deems qualified to receive the loan upon terms and conditions it determines pursuant to the provisions of the Allied Health Student Loan for Service Act [21-22C-1 to 21-22C-10 NMSA 1978] and regulations adopted pursuant to that act.

B. The commission shall only receive, pass on and allow or disallow an application for a loan made by a student enrolled or accepted in an allied health profession program who is a bona fide citizen and resident of the United States and of New Mexico and who declares his intent to practice an allied health profession within a designated area of the state.

C. The commission shall make a full and careful investigation of the ability, character and qualifications of each applicant and determine fitness to become a recipient of a student loan. The investigation of each applicant shall include an investigation of the ability of the applicant and the applicant's parent or guardian to pay the applicant's expenses for an allied health profession education. The commission shall give preference to qualified applicants who are unable, or whose parents or guardians are unable, to pay the educational expenses.

D. The commission shall arrange for loan recipients to receive assistance in locating appropriate practice positions in designated underserved areas.

**History:** Laws 1994, ch. 57, § 6.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1994, ch. 57, § 20 makes the Allied Health Student Loan for Service Act effective immediately. Approved March 4, 1994.

#### **21-22C-5. Delegation of duties.**

The commission may arrange with other agencies for the performance of services required by the provisions of the Allied Health Student Loan for Service Act [21-22C-1 to 21-22C-10 NMSA 1978].

**History:** Laws 1994, ch. 57, § 7.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1994, ch. 57, § 20 makes the Allied Health Student Loan for Service Act effective immediately. Approved March 4, 1994.

#### **21-22C-6. Allied health student loans; contract terms; repayment.**

A. Prior to granting a loan, each applicant approved for a loan shall file with the commission a declaration of intent to practice as a licensed allied health professional in areas of New Mexico designated as underserved.

B. The loans shall not exceed the necessary expenses incurred while attending an allied health profession program and shall bear interest at the rate of:

(1) eighteen percent per year if the student completes his allied health profession education and no portion of the principal and interest is forgiven pursuant to Subsection E of this section; and

(2) seven percent per year in all other cases.

C. The loan shall be evidenced by a contract between the student and the commission acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum covering the costs of an allied health profession education and shall be conditioned on the repayment of the loan to the state, together with interest, over a period negotiated between the student and the commission after completion of an allied health education. The contract shall further provide that immediately upon completion or termination of the student's allied health education, all interest then accrued shall be capitalized.

D. Loans made to students who fail to complete their allied health education shall become due, together with interest, immediately upon termination of that education. The commission, in consultation with the student, shall establish repayment terms, alternate service or cancellation terms.

E. The contract shall provide that the commission shall forgive a portion of the loan principal and interest for each year that a loan recipient practices an allied health profession in areas approved by the medical shortage area committee established and organized by the commission. Loan principal and interest shall be forgiven according to the following formula: for the first year served, all interest then accrued plus forty percent of principal; and for the second and third years served, all interest then accrued plus thirty percent of principal. Recipients shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the commission.

F. If a loan recipient completes his professional education and does not serve three years in a medical shortage area, the commission shall assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the commission finds acceptable extenuating circumstances for why the student cannot serve. If the commission does not find acceptable extenuating circumstances for the student's failure to carry out his declared intent to serve in a medical shortage area in the state, the commission shall require immediate repayment of the unpaid principal amount of the loan plus accrued interest owed the state plus the amount of any penalty assessed pursuant to this subsection.

G. The commission shall adopt regulations to implement the provisions of this section. The regulations may provide for the repayment of allied health student loans in annual or other periodic installments.

**History:** Laws 1994, ch. 57, § 8.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1994, ch. 57, § 20 makes the Allied Health Student Loan for Service Act effective immediately. Approved March 4, 1994.

#### **21-22C-7. Contracts; legal assistance; enforcement.**

The general form of the contract shall be prepared and approved by the attorney general and signed by the student and designated representative of the commission on behalf of the state. The commission is vested with full and complete authority and power to sue in its own name for any balance due the state from any student on any such contract.

**History:** Laws 1994, ch. 57, § 9.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1994, ch. 57, § 20 makes the Allied Health Student Loan for Service Act effective immediately. Approved March 4, 1994.

#### **21-22C-8. Fund created; method of payment.**

The "allied health student loan for service fund" is created in the state treasury. All money appropriated for loans to allied health students pursuant to the provisions of the Allied Health Student Loan for Service Act [21-22C-1 to 21-22C-10 NMSA 1978] shall be credited to the fund and all payments of principal and interest on loans made pursuant to that act received by the commission shall be credited to the fund or shall be deposited with the commission's administrative agent. All payments for loans shall be made upon vouchers signed by the designated representative of the commission.

**History:** Laws 1994, ch. 57, § 10.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1994, ch. 57, § 20 makes the Allied Health Student Loan for Service Act effective immediately. Approved March 4, 1994.

**Appropriations.** - Section 4 of Laws 1994, ch. 6, the General Appropriations Act of 1994, effective February 11, 1994, provides that included in the general fund



appropriation to the commission on higher education is \$226,000 for the allied health student loan fund.

### **21-22C-9. Cancellation.**

The commission may cancel any contract made between it and any student for any reasonable cause deemed sufficient by the commission.

**History:** Laws 1994, ch. 57, § 11.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1994, ch. 57, § 20 makes the Allied Health Student Loan for Service Act effective immediately. Approved March 4, 1994.

### **21-22C-10. Reports.**

The commission shall make annual reports to the governor and to the legislature prior to each regular session of its activities; the loans granted; the names and addresses of loan recipients; the allied health program attended by loan recipients; the names and locations of the practices of those allied health professionals who have completed their education and are serving in a medical shortage area of the state; and the name of each loan recipient who has completed his education and is not serving in a medical shortage area, the reason the person is not serving and the amount owed and paid on the loan.

**History:** Laws 1994, ch. 57, § 12.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1994, ch. 57, § 20 makes the Allied Health Student Loan for Service Act effective immediately. Approved March 4, 1994.

## **ARTICLE 23**

# **POST-SECONDARY EDUCATIONAL INSTITUTION ACT**

### **21-23-1. Short title.**

Chapter 21, Article 23 NMSA 1978 may be cited as the "Post-Secondary Educational Institution Act".

**History:** 1953 Comp., § 73-40-1, enacted by Laws 1971, ch. 303, § 1; 1975, ch. 148, § 1; 1994, ch. 108, § 2.

#### **ANNOTATIONS**

**Cross-references.** - For Post-Secondary Educational Planning Act, see 21-2-1 to 21-2-5, 21-2-7 to 21-2-9 NMSA 1978.

**The 1994 amendment,** effective July 1, 1994, substituted "Chapter 21, Article 23 NMSA 1978" for "This act".

### **21-23-2. Purpose of act.**

The purpose of the Post-Secondary Educational Institution Act [this article] is to improve the quality of private post-secondary education, to prevent misrepresentation, fraud and collusion in offering educational programs to persons over the compulsory school attendance age and to protect consumers enrolled in private post-secondary educational institutions when those schools cease operation or fail to meet standards of quality established by the commission.

**History:** 1953 Comp., § 73-40-2, enacted by Laws 1971, ch. 303, § 2; 1975, ch. 148, § 2; 1994, ch. 108, § 3.

### **ANNOTATIONS**

**The 1994 amendment,** effective July 1, 1994, inserted "private" preceding "post-secondary" deleted "and" following "education", and inserted the language following "school attendance age".

### **21-23-3. Definitions.**

As used in the Post-Secondary Educational Institution Act [this article]:

- A. "board" or "commission" means the commission on higher education;
- B. "career school" means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a certificate, diploma, associate degree or comparable confirmation of completion of the curriculum;
- C. "college" or "university" means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a baccalaureate, master's or doctoral degree or comparable confirmation of completion of the curriculum;
- D. "license" means a written acknowledgement by the commission that a career school has met the requirements of the commission for offering a formal educational curriculum within New Mexico;
- E. "post-secondary educational institution" includes an academic, vocational, technical, business, professional or other school, college or university or other organization or

person offering or purporting to offer courses, instruction, training or education, through correspondence or in person, to any person within this state; and

F. "registration" means a written acknowledgement by the commission that a college or university has filed pertinent curriculum and enrollment information as required by the commission.

**History:** 1953 Comp., § 73-40-3, enacted by Laws 1971, ch. 303, § 3; 1975, ch. 148, § 3; 1994, ch. 108, § 4.

## ANNOTATIONS

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**The 1994 amendment,** effective July 1, 1994, rewrote the section to the extent that a detailed comparison is impracticable.

### **21-23-4. Exceptions.**

The Post-Secondary Educational Institution Act [this article] does not apply to or affect:

A. any post-secondary educational institution supported in whole or in part by state or local taxation;

B. any occupational, trade or professional school operating pursuant to any New Mexico occupational licensing law;

C. any course of instruction provided by an employer to its own employees for training purposes;

D. institutions exclusively offering education that is solely avocational or recreational in nature;

E. any course of instruction or study sponsored by a recognized fraternal, trade, business or professional organization or labor union for the instruction of its members;

F. any regionally accredited college or university that is a private institution that provides an academic education comparable to that provided by public colleges or universities;

G. proprietary schools as defined in Section 21-24-2 NMSA 1978;

H. chartered, nonprofit religious institutions whose sole purpose is to train students in religious disciplines to prepare them to assume a vocational objective relating primarily to religion;

I. institutions exclusively offering instruction at any level from pre-school through the twelfth grade; and

J. any institution funded in full or in part by an Indian tribe or pueblo in the state of New Mexico.

An institution, school or program described in this section shall not be entitled to an exemption unless it presents satisfactory evidence to the commission that it qualifies.

**History:** 1953 Comp., § 73-40-4, enacted by Laws 1971, ch. 303, § 4; 1975, ch. 148, § 4; 1994, ch. 108, § 5.

## ANNOTATIONS

**Bracketed material.** - The bracketed material in this section was inserted by the compiler. The office of education of the department of health, education and welfare, referred to in Subsection H, was established by 20 U.S.C. § 1. That section was repealed by Pub. L. 92-318, § 301(b)(2), and is now covered by 20 U.S.C. §§ 1221a and 1221c, which establish an office of education within the department of health, education and welfare. The office of education was transferred to the department of education by Pub. L. 96-88, Title VI, § 601. The bracketed material was not enacted by the legislature and is not part of the law.

**The 1994 amendment,** effective July 1, 1994, substituted "operating pursuant" for "accredited under" in Subsection B; in Subsection F, inserted "regionally accredited college or university that is a" and deleted "or private, accredited colleges or universities" following "colleges or universities"; in Subsection G, deleted "out-of-state" preceding "proprietary" and substituted "21-24-2 NMSA 1978" for "73-41-2 NMSA 1953"; deleted former Subsections H and I, relating to accredited institutions, and renumbered the remaining subsections accordingly; substituted "commission" for "board" in the last paragraph; and made stylistic changes throughout the section.

**Law reviews.** - For note, "Human Rights Commission v. Board of Regents: Should a University Be Considered a Public Accommodation Under the New Mexico Human Rights Act"? see 12 N.M.L. Rev. 541 (1982).

### 21-23-5. Duties of the commission.

A. The commission is charged with oversight of all private post-secondary educational institutions operating within the state.

B. The commission shall provide for the registration of all regionally accredited colleges and universities operating in the state pursuant to the Post-Secondary Educational Institution Act [this article].

C. The commission shall provide for the licensure of all career schools and all non-accredited colleges and universities operating in the state pursuant to the Post-Secondary Educational Institution Act.

**History:** 1978 Comp., § 21-23-5, enacted by Laws 1994, ch. 108, § 6.

### **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1994, ch. 108, § 6 repeals § 21-23-5, as amended by Laws 1975, ch.148, § 5, relating to the requirement of certification, and enacts the above section, effective July 1, 1994. For provisions of former section, see 1992 Replacement Pamphlet.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 6.

14A C.J.S. Colleges and Universities § 3.

### **21-23-6. Registration of colleges and universities; submission of materials.**

A. Every college or university operating in New Mexico that is accredited or seeking accreditation by an accrediting agency approved by the commission shall register with the commission.

B. A college or university registering with the commission pursuant to this section shall provide curriculum and enrollment information, financial information and all publication materials requested by the commission.

**History:** 1978 Comp., § 21-23-6, enacted by Laws 1994, ch. 108, § 7.

### **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1994, ch. 108, § 7 repeals 21-23-6 NMSA 1978, as amended by Laws 1975, ch. 148, § 6 relating to requirements for permits or certificates of approval for post-secondary educational institutions, and enacts the above section, effective July 1, 1994. For provisions of former section, see 1992 Replacement Pamphlet.

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 4, 6, 7, 8, 23, 42.

14A C.J.S. Colleges and Universities §§ 3, 6, 16.

### **21-23-6.1. Licensure of career schools; licensure of certain colleges and universities.**

A. Any career school operating in New Mexico shall be licensed by the commission. It is unlawful to operate a career school without first obtaining a license from the commission.

B. Any college or university operating in New Mexico that is not accredited or seeking accreditation by an accrediting agency approved by the commission shall be licensed by the commission in the manner provided for career schools. It is unlawful to operate a college or university that is not accredited or seeking accreditation by an accrediting agency approved by the commission without first obtaining a license from the commission.

C. No person other than an employee of an institution licensed pursuant to this section shall for a salary or fee solicit attendance at that institution.

**History:** 1978 Comp., § 21-23-6.1, enacted by Laws 1994, ch. 108, § 8.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1994, ch. 108, § 30 makes the act effective July 1, 1994.

### **21-23-6.2. Licensure standards; requirements; fee authorization.**

A. Every career school operating in the state shall annually apply to the commission for licensure. The career school shall apply on forms approved by the commission, shall supply all information requested by the commission and shall pay an annual licensure fee set by the commission.

B. The commission or its designee shall consider information submitted by the career school, information from independent accreditation bodies and information gathered during visits to the career school in determining eligibility for licensure.

C. The commission shall promulgate and file, in accordance with the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978], rules and regulations that:

- (1) require each career school to supply annually information regarding enrollment, program completion by students, employment and other educational placements of students and operating revenue budgets;
- (2) provide standards and methods for the evaluation and appraisal of career schools;
- (3) provide for a tuition refund policy;

- (4) require maintenance of adequate records by each career school and provide reasonable availability of records for inspection;
- (5) regulate the use of deceptive and misleading advertising and determine what information shall be furnished each student prior to enrollment;
- (6) assure that any career school licensed pursuant to the Post-Secondary Educational Institution Act [this article] has entered into a teach-out agreement with at least one other private or public institution operating in the state unless the commission determines that such an agreement is not feasible;
- (7) provide standards for the award of associate, baccalaureate, master's and doctoral degrees;
- (8) encourage all career schools to seek appropriate external accreditation as a means of assuring quality instruction;
- (9) name an advisory committee of education providers and consumers, including owners and operators of career schools;
- (10) provide for the maintenance of records for career schools no longer in operation;
- (11) provide standards for the evaluation of the financial stability and ability to meet the commitments of career schools;
- (12) require each career school to adopt a procedure for the resolution of student complaints; and
- (13) establish other requirements necessary to carry out the provisions of the Post-Secondary Educational Institution Act.

D. The commission may solicit information pertaining to the financial history and stability of a career school and its owners, including information pertaining to actions of bankruptcy filed within the immediately preceding five years. The commission may consider such information in determining eligibility for licensure.

**History:** 1978 Comp., § 21-23-6.2, enacted by Laws 1994, ch. 108, § 9.

### **ANNOTATIONS**

**Effective dates.** - Laws 1994, ch. 108, § 30 makes the act effective July 1, 1994.

### **21-23-6.3. Fee authorization.**

A. The commission is authorized to establish initial application fees for all colleges, universities or career schools seeking to operate in New Mexico. The initial application

fee shall be not less than two hundred dollars (\$200) or more than five thousand dollars (\$5,000). In setting the fee, the commission shall consider the projected revenue of the institution and the projected cost of performing the review.

B. The commission is authorized to establish an annual licensing fee for all career schools or colleges or universities licensed by the commission. The licensing fee shall be proportionate to each school's gross annual tuition revenue; provided, the fee shall be not less than two hundred dollars (\$200) or more than five thousand dollars (\$5,000).

C. All fees imposed and collected by the commission shall be deposited in the post-secondary educational institution fund.

**History:** 1978 Comp., § 21-23-6.3, enacted by Laws 1994, ch. 108, § 10.

### **ANNOTATIONS**

**Effective dates.** - Laws 1994, ch. 108, § 30 makes the act effective July 1, 1994.

#### **21-23-7. Claims; limitations; appeals.**

A. Any person having a claim against a career school licensed by the commission or that career school's agents, instructors or other personnel shall first seek resolution of the claim with the career school; thereafter, a person may file a verified complaint with the commission, setting forth the basis of the claim and the name and address of the career school complained against and any other persons involved or having knowledge of the claim. All claims shall be limited to the amount of tuition actually paid or to any charge or fee received by the career school or its agents or employees.

B. Upon the receipt of a verified complaint, the commission or its authorized employee shall attempt to resolve the claim outlined in the complaint. The commission or its authorized employee may convene a hearing and shall give written notice to the career school and to all persons involved of the hearing and its time, date and place. The notice shall state that the hearing is an informal one for the purpose of determining the facts surrounding the claim and, if the claim is correct, to effect a settlement by persuasion and conciliation.

C. In the event that the party complained against refuses to attend the hearing or effect the settlement of any claim determined by the commission to be correct, the commission shall invoke its powers to take such action as shall be necessary for the indemnification of the claimant.

D. Any person aggrieved by a commission decision rendered subsequent to a claim hearing may appeal to the district court in the judicial district in which the hearing was conducted. The appeal shall be based upon the record established at the claim hearing.



**History:** 1953 Comp., § 73-40-7, enacted by Laws 1971, ch. 303, § 7; 1975, ch. 148, § 7; 1994, ch. 108, § 11.

## ANNOTATIONS

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**The 1994 amendment**, effective July 1, 1994, substituted "Appeals" for "Surety bonds" in the section heading; added the subsection designations; in Subsection A, substituted "career school licensed by the commission or that career school's" for "post-secondary educational institution holding a permit or certificate of approval its," added "first seek resolution of the claim with the career school; thereafter, a person may," substituted "commission" for "board," substituted "career school" for "institution" and substituted "career school or" for "institution"; in Subsection B, substituted "commission" for "board," added "shall attempt to resolve the claim outlined in the complaint. The commission or its authorized employee may convene a hearing and," deleted "ten days" preceding "written notice," and substituted "career school" for "institution"; in Subsection C, substituted "commission" for "board" twice, deleted "to notify the principal on the surety bond and" following "powers," and deleted "on the bond" following "action"; and added Subsection D.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 22.

Absence from, or inability to attend, school or college as affecting liability for, or right to recover payments for tuition or board, 20 A.L.R.4th 303.

14A C.J.S. Colleges and Universities §§ 48, 50.

### **21-23-7.1. Surety bond required; alternative surety.**

A. A career school licensed by the commission shall post with the commission and maintain in effect a surety bond. The bond shall be payable to the commission and shall be sufficient in amount to indemnify any student damaged as a result of fraud or misrepresentation by a licensed career school or as a result of the career school ceasing operation prior to its students having completed the programs for which they have contracted.

B. The commission is authorized to establish the amount of bond required on an individual basis, taking into consideration factors such as the career school's size, number of students and total income and assets of the career school in the state. In no case shall the bond be less than five thousand dollars (\$5,000) nor shall it exceed twenty percent of a career school's gross annual tuition revenue in New Mexico.

C. Surety bonds may be canceled only following delivery of written notice to the commission no less than ninety days prior to the date of cancellation. In case of

cancellation, the career school shall provide the commission with a like surety or acceptable alternative in order to maintain licensure.

D. As an alternative to a surety bond, a career school may elect to and the commission may require that a career school establish and maintain a cash deposit escrow account, irrevocable letter of credit or alternative payable to the commission in an amount set by the commission and subject to regulations promulgated by the commission. In no case shall the deposit or account required exceed twenty percent of the career school's gross tuition annual revenue in New Mexico.

**History:** 1978 Comp., § 21-23-7.1, enacted by Laws 1994, ch. 108, § 12.

### **ANNOTATIONS**

**Effective dates.** - Laws 1994, ch. 108, § 30 makes the act effective July 1, 1994.

### **21-23-8. Fund created.**

There is created in the state treasury the "post-secondary educational institution fund". Money appropriated to this fund or accruing to it through gifts, grants or bequests shall not be transferred to another fund or encumbered or disbursed in any manner except for the administration of the Post-Secondary Educational Institution Act [this article] or the Out-of-State Proprietary School Act [Chapter 21, Article 24 NMSA 1978]. The fund shall not revert at the end of the fiscal year. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the executive director of the commission on higher education.

**History:** 1953 Comp., § 73-40-8, enacted by Laws 1975, ch. 148, § 8; 1977, ch. 247, § 193; 1989, ch. 324, § 17.

### **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1975, ch. 148, § 8, repealed former 73-40-8, 1953 Comp., relating to collection and deposit of fees, and enacted a new 73-40-8, 1953 Comp.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63A Am. Jur. 2d Public Funds § 3.

81A C.J.S. States § 135.

### **21-23-9. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1994, ch. 108, § 29 repeals 21-23-9 NMSA 1978, as enacted by Laws 1975, ch. 148, § 9, relating to transfer of funds, effective July 1, 1994. For provisions of former section, see 1992 Replacement Pamphlet.

## **21-23-10. Civil penalties.**

No person, firm or corporation may:

A. operate a career school within the state until that career school has been licensed by the commission;

B. operate a college or university within the state until that college or university has registered with the commission;

C. deny enrollment to or make any distinction or classification of pupils in the program or practices of any post-secondary educational institution under the jurisdiction of the commission on account of race, color, culture, ancestry, national origin, sex, age, religion or disability; or

D. solicit, directly or through an agent or employee, the enrollment of any person in a post-secondary educational institution within the state by the use of fraud, misrepresentation or collusion.

Whoever violates any provision of this section may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation.

**History:** 1953 Comp., § 73-40-9, enacted by Laws 1971, ch. 303, § 9; 1975, ch. 148, § 10; 1994, ch. 108, § 13.

### **ANNOTATIONS**

**Cross-references.** - For misrepresenting permit or certificate as approval or accreditation, see 21-23-14 NMSA 1978.

**The 1994 amendment,** effective July 1, 1994, added "Civil" to the section heading; rewrote the introductory paragraph, which read: "It is a misdemeanor for any person, firm or corporation to"; and rewrote Subsections A, B, and C and the final undesignated paragraph to the extent that a detailed comparison is impracticable.

**Law reviews.** - For note, "Human Rights Commission v. Board of Regents: Should a University Be Considered a Public Accommodation Under the New Mexico Human Rights Act"? see 12 N.M.L. Rev. 541 (1982).

**Commission on higher education.** - See 21-1-26 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 73 Am. Jur. 2d Statutes § 294.

36A C.J.S. Fines § 4.

### **21-23-10.1. Enforcement.**

The commission or any state or local prosecuting officer may, by request or on his own motion, bring an appropriate action in any court of competent jurisdiction to enforce the provisions of the Post-Secondary Educational Institution Act [this article].

**History:** Laws 1994, ch. 108, § 14.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1994, ch. 108, § 30 makes the act effective July 1, 1994.

### **21-23-11. Existing post-secondary educational institutions.**

All post-secondary educational institutions existing prior to July 1, 1994 shall have ninety days to register or to apply for a license in accordance with the terms of the Post-Secondary Educational Institution Act [this article].

**History:** 1953 Comp., § 73-40-10, enacted by Laws 1971, ch. 303, § 10; 1975, ch. 148, § 11; 1994, ch. 108, § 15.

#### **ANNOTATIONS**

**The 1994 amendment,** effective July 1, 1994, rewrote this section to the extent that a detailed comparison is impracticable.

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 6.

14A C.J.S. Colleges and Universities § 3.

### **21-23-12. Cooperation.**

The commission shall cooperate with federal and other state agencies in administering the provisions of the Post-Secondary Educational Institution Act [this article]. The state corporation commission shall cooperate with the commission by identifying post-secondary educational institutions that apply for corporate charters. The state department of public education shall cooperate with the commission by providing the technical assistance necessary to develop minimum standards that post-secondary educational institutions shall meet and any other assistance that would be of aid in the administration of the Post-Secondary Educational Institution Act.

**History:** 1953 Comp., § 73-40-11, enacted by Laws 1975, ch. 148, § 12; 1994, ch. 108, § 16.

### **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**The 1994 amendment,** effective July 1, 1994, substituted "commission" for "board" in three locations, added "state" preceding "corporation commission," substituted "that" for "which" in three locations, added "public" preceding "education," and substituted "shall" for "must" in the last sentence.

### **21-23-13. Procedure.**

The commission shall follow the procedures set out in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] in administering the provisions of the Post-Secondary Educational Institution Act [this article]. When the Uniform Licensing Act refers to the process of examination, that process means the process of application for the purposes of the administration of the Post-Secondary Educational Institution Act.

**History:** 1953 Comp., § 73-40-12, enacted by Laws 1975, ch. 148, § 13; 1994, ch. 108, § 17.

### **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**The 1994 amendment,** effective July 1, 1994, substituted "commission" for "board" near the beginning of the section and "means" for "shall mean" near the end of the section.

### **21-23-14. Prohibition.**

The issuance of a license by the commission does not constitute accreditation by it for any purpose. Any representation to the contrary is a misrepresentation for the purposes of Section 21-23-10 NMSA 1978 and is prohibited.

**History:** 1953 Comp., § 73-40-13, enacted by Laws 1975, ch. 148, § 14; 1994, ch. 108, § 18.

### **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**The 1994 amendment,** effective July 1, 1994, rewrote the first sentence, which read "The issuance of a permit or certificate of approval by the board shall not constitute

approval or accreditation by it for any purpose"; and substituted "21-23-10 NMSA 1978" for "73-40-9 NMSA 1953" in the second sentence.

## **21-23-15. Post-secondary educational institutions; termination.**

A. No post-secondary educational institution shall terminate its operation within the state until:

(1) the institution has made reasonable efforts with another public or private post-secondary educational institution that provides a comparable education to facilitate and provide for the transfer of the students, with a minimum loss of credit;

(2) the post-secondary educational institution has made contractual arrangements for the perpetual care, maintenance and accessibility of all records, transcripts, reports and evaluations of all students receiving credit from the institution during the period of its existence; and

(3) the post-secondary educational institution has met all regulations of the commission pertaining to the termination of operations by post-secondary educational institutions.

B. Before any post-secondary educational institution terminates its services or sells, transfers or disposes of substantially all of its assets, it shall submit to the commission a summary of all actions taken pursuant to the requirements set forth in Subsection A of this section.

**History:** 1978 Comp., § 21-23-15, enacted by Laws 1979, ch. 355, § 1; 1994, ch. 108, § 19.

### **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**The 1994 amendment,** effective July 1, 1994, deleted "of program" from the end of the section heading, rewrote Subsection A and Paragraph A(1), added Paragraph A(3) and made a related stylistic change, and substituted "commission" for "board of educational finance" in Subsection B.

## **ARTICLE 24 OUT-OF-STATE PROPRIETARY SCHOOLS**

### **21-24-1. Short title.**

Chapter 21, Article 24 NMSA 1978 may be cited as the "Out-of-State Proprietary School Act".

**History:** 1953 Comp., § 73-41-1, enacted by Laws 1971, ch. 304, § 1; 1994, ch. 108, § 20.

## **ANNOTATIONS**

**The 1994 amendment**, effective July 1, 1994, substituted "Chapter 21, Article 24 NMSA 1978" for "This Act" at the beginning of the section.

### **21-24-2. Definitions.**

As used in the Out-of-State Proprietary School Act [this article]:

A. "course" means any course, plan or program of instruction, conducted in person, by mail or by other methods;

B. "student" means any person within this state who is above compulsory school age and eligible for one or more courses of instruction;

C. "agent" means any person who solicits in person and for a fee the enrollment of a student in a course of instruction offered by a proprietary school;

D. "proprietary school" means a nonpublic out-of-state school, academy or similar institution offering within New Mexico a course of instruction or training through correspondence or similar methods or offering within New Mexico a course of instruction or training to be conducted outside New Mexico, but does not include a private out-of-state post-secondary educational institution offering instruction or training within New Mexico, to any student within this state; and

E. "commission" means the commission on higher education.

**History:** 1953 Comp., § 73-41-2, enacted by Laws 1971, ch. 304, § 2; 1994, ch. 108, § 21.

## **ANNOTATIONS**

**The 1994 amendment**, effective July 1, 1994, substituted the language beginning "solicits" for "represents in any manner a course of instruction offered by correspondence or in behalf of a proprietary school" at the end of Subsection C; inserted "within New Mexico", deleted "or courses" following "course", and substituted the language beginning "similar" for "in person" in Subsection D; and added Subsection E and made a related stylistic change.

### **21-24-3. Exceptions.**

The Out-of-State Proprietary School Act [this article] does not apply to:

A. courses recognized by the state board of education for the purpose of complying with the Compulsory School Attendance Law [22-12-1 to 22-12-7 NMSA 1978];

B. courses offered by an employer solely for his employees; and

C. courses offered by a nonprofit religious institution relating primarily to religion.

**History:** 1953 Comp., § 73-41-3, enacted by Laws 1971, ch. 304, § 3; 1994, ch. 108, § 22.

## ANNOTATIONS

**Bracketed material.** - See note under same heading following 21-23-4 NMSA 1978.

**The 1994 amendment,** effective July 1, 1994, substituted "solely for his" for "for in service training of his" in Subsection B, and rewrote Subsection C.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 12, 13.

### **21-24-4. Publicizing of instruction.**

No agent shall:

A. make or cause to be made any statement or representation, oral, written or visual, in connection with the offering or publicizing of a course if the agent knows or reasonably should know the statement or representation to be false, deceptive, substantially inaccurate or misleading;

B. promise or guarantee employment utilizing information, training or skill purported to be provided or otherwise enhanced by a course, unless the promisor or guarantor offers the student or prospective student a bona fide contract of employment agreeing to employ the student or prospective student for a period of not less than ninety days in a business or other enterprise regularly conducted by him in which such information, training or skill is a normal condition of employment; or

C. do any act constituting part of the conduct or administration of a course, or the obtaining of students therefor, if the agent knows or reasonably should know that any phase or incident in the conduct or administration of the course is being carried on by the use of fraud, deception or other form of misrepresentation or by any agent soliciting students without a registration.

**History:** 1953 Comp., § 73-41-4, enacted by Laws 1971, ch. 304, § 4; 1994, ch. 108, § 23.

## ANNOTATIONS



**Cross-references.** - For misrepresenting permit as approval, see 21-24-5J NMSA 1978.

**The 1994 amendment,** effective July 1, 1994, substituted "should know" for "should have known" near the end of Subsection A.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 37 Am. Jur. 2d Fraud and Deceit § 77.

Validity, construction, and application of statutes or ordinances directed against false or fraudulent statements in advertisements, 89 A.L.R. 1004.

37 C.J.S. Fraud § 2.

### **21-24-5. Registration; surety bond.**

A. No agent representing a proprietary school shall sell any course or solicit students in person or by mail, telephone or similar means in New Mexico for a consideration unless the institution has registered with the commission. The commission shall charge an annual registration fee of not less than five hundred dollars (\$500) for each proprietary school and an annual agent fee of not less than one hundred dollars (\$100) for each agent operating in New Mexico.

B. Registration shall be made on forms provided by the commission and accompanied by the annual registration fee.

C. The registration shall include a surety bond acceptable to the commission in an amount not less than ten thousand dollars (\$10,000) or more than twenty-five thousand dollars (\$25,000). The bond may be continuous and shall be conditioned to provide indemnification to any student suffering loss as a result of any fraud or misrepresentation used in procuring his enrollment and shall be supplied by the proprietary school. The surety may cancel the bond upon giving ninety days' notice in writing to the commission and thereafter is relieved of liability for any breach of condition occurring after the effective date of the cancellation.

D. Registration shall not be permitted unless the applying proprietary school agrees to adhere to the commission rules and regulations that provide for a tuition refund policy.

E. Upon ten days' notice, any registration may be suspended by the commission pending a hearing by the commission if the registrant solicits or enrolls students through fraud, deception or misrepresentation.

F. Registration shall be valid for one year, from July 1 through June 30. An application for renewal shall be accompanied by the fee and shall include a surety bond if a continuous bond has not been furnished.

G. The existence of a surety bond shall not be construed as a limitation or impairment of any right of recovery otherwise available, nor shall the amount of the bond be relevant in determining the amount of damages or other relief to which a plaintiff may be entitled.

H. No recovery shall be had by a proprietary school on any contract for or in connection with a course unless the proprietary school had registered at the time that its agent sold or negotiated the contract for the particular course.

I. Registration shall not constitute approval of any course, agent or proprietary school conducting or administering courses. Any representation to the contrary is a misrepresentation within the meaning of Section 21-24-4 NMSA 1978.

J. All fees collected from registration or renewal of registration shall be deposited with the state treasurer's office to the credit of the post-secondary educational institution fund and shall be spent by the commission for the administration of the Out-of-State Proprietary School Act [this article].

**History:** 1953 Comp., § 73-41-5, enacted by Laws 1971, ch. 304, § 5; 1975, ch. 107, § 1; 1994, ch. 108, § 24.

## ANNOTATIONS

**Cross-references.** - For post-secondary institution fund, see 21-23-8 NMSA 1978.

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**The 1994 amendment,** effective July 1, 1994, rewrote this section to such an extent that a detailed comparison would be impracticable.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 4, 6, 7, 8, 22, 23, 42.

14A C.J.S. Colleges and Universities §§ 3, 6, 16.

### **21-24-6. Rules and regulations.**

The commission shall adopt rules and regulations for the administration and enforcement of the Out-of-State Proprietary School Act [this article].

**History:** 1953 Comp., § 73-41-6, enacted by Laws 1971, ch. 304, § 6; 1975, ch. 107, § 2; 1994, ch. 108, § 25.

## ANNOTATIONS

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**The 1994 amendment**, effective July 1, 1994, deleted "advisory committee" from the end of the section heading, substituted "commission" for "board of educational finance" near the beginning of the section, and deleted "and may establish an advisory committee of owners or operators of proprietary schools and other persons with knowledge in the field of proprietary schools to advise it in its administration" following "Act" at the end of the section.

### **21-24-7. Enforcement.**

The commission or any state or local prosecuting officer may, by request or on his own motion, bring an appropriate action in any court of competent jurisdiction to enforce the provisions of the Out-of-State Proprietary School Act [this article].

**History:** 1953 Comp., § 73-41-7, enacted by Laws 1971, ch. 304, § 7; 1975, ch. 107, § 3; 1994, ch. 108, § 26.

### **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**The 1994 amendment**, effective July 1, 1994, substituted "commission" for "board of educational finance" near the beginning of the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 1 Am. Jur. 2d Actions § 24.

16 C.J.S. Constitutional Law § 149.

### **21-24-8. Judicial review.**

Any final determination of the commission respecting the issuance, denial or revocation of a registration may be appealed to the district court.

**History:** 1953 Comp., § 73-41-8, enacted by Laws 1971, ch. 304, § 8; 1975, ch. 107, § 4; 1994, ch. 108, § 27.

### **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**The 1994 amendment**, effective July 1, 1994, substituted "commission" for "board of educational finance" near the middle of the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 73 Am. Jur. 2d Statutes § 51.

### **21-24-9. Penalty.**

Any person who violates any provision of Section 21-24-4 or 21-24-5 NMSA 1978 is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than six months or both.

**History:** 1953 Comp., § 73-41-9, enacted by Laws 1971, ch. 304, § 9; 1975, ch. 107, § 5; 1994, ch. 108, § 28.

#### **ANNOTATIONS**

**The 1994 amendment**, effective July 1, 1994, substituted "Section 21-24-4 or 21-24-5 NMSA 1978" for "Sections 73-41-4 or 73-41-5 NMSA 1953 of the Out-of-State Proprietary School Act" near the middle of the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 73 Am. Jur. 2d Statutes § 294.

36A C.J.S. Fines § 4.

## **ARTICLE 25 NONPROPRIETARY OUT-OF-STATE INSTITUTIONS**

### **21-25-1. Board of educational finance [commission on higher education] approval.**

The board of educational finance [commission on higher education] shall be responsible for the approval of courses offered in New Mexico by nonproprietary out-of-state institutions.

**History:** 1953 Comp., § 73-41A-1, enacted by Laws 1977, ch. 4, § 1.

#### **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

### **21-25-2. Definitions.**

As used in this act [21-25-1 to 21-25-5 NMSA 1978]:

A. "nonproprietary out-of-state institution" means a public, out-of-state institution, school or similar academy offering a course or courses of instruction to any student within this state.

**History:** 1953 Comp., § 73-41A-2, enacted by Laws 1977, ch. 4, § 2.

#### **ANNOTATIONS**

**Compiler's note.** - This section was enacted without a Subsection B.

### **21-25-3. Approval criteria.**

In arriving at its decisions relative to course approval, the board of educational finance [commission on higher education] shall establish criteria in consultation with the academic vice presidents of the institutions enumerated in Article 12, Section 11 of the state constitution. In establishing these criteria, the following factors shall be considered:

- A. acceptability of the course at the main campus of the nonproprietary out-of-state institution;
- B. availability and accessibility of the course at a New Mexico institution;
- C. validity of the course content and length;
- D. availability of library and other teaching resources; and
- E. qualifications of the staff who will offer the course.

**History:** 1953 Comp., § 73-41A-3, enacted by Laws 1977, ch. 4, § 3.

### **ANNOTATIONS**

**Commission on higher education.** - See 21-1-26 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 17.

14A C.J.S. Colleges and Universities § 29.

### **21-25-4. Exceptions.**

A. Provisions of this act [21-25-1 to 21-25-5 NMSA 1978] shall not apply to correspondence courses offered through the mail by nonproprietary out-of-state institutions; and

B. Courses offered on military bases for military personnel.

**History:** 1953 Comp., § 73-41A-4, enacted by Laws 1977, ch. 4, § 4.

### **21-25-5. Certification to state superintendent of public instruction.**

The board of educational finance [commission on higher education] shall certify to the state superintendent of public instruction all courses approved and not approved

according to the provisions of this act [21-25-1 to 21-25-5 NMSA 1978], within thirty days after board of educational finance [commission on higher education] action is taken. Within thirty days of receipt of this certification, the state superintendent of public instruction shall provide a list to each local school superintendent of all courses approved and not approved to be offered in this state by nonproprietary institutions covered in this act.

**History:** 1953 Comp., § 73-41A-5, enacted by Laws 1977, ch. 4, § 5.

## **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities § 6.

14A C.J.S. Colleges and Universities § 3.

## **ARTICLE 26 OSTEOPATHIC INTERNS**

### **21-26-1. Short title.**

This act [21-26-1 to 21-26-4 NMSA 1978] may be cited as the "Osteopathic Intern Act".

**History:** Laws 1983, ch. 195, § 1.

### **21-26-2. Legislative findings and purpose.**

A. The legislature finds that:

(1) there is a need for more licensed osteopathic physicians in New Mexico to serve the medical needs of the citizens of the state;

(2) most physicians continue to practice in the geographic area where they receive their training; and

(3) in order to have licensed osteopathic physicians practice in New Mexico, there needs to be an internship program for interns who graduate as physicians from osteopathic medical schools and who must complete a one-year postdoctoral training program in order to apply for licensure in this state.

B. The purpose of the Osteopathic Intern Act [21-26-1 to 21-26-4 NMSA 1978] is to develop an intern training program for osteopathic interns and to provide training funds to hospitals that offer students in New Mexico a quality postdoctoral training program in

family practice as part of the requirements for licensure as osteopathic physicians in New Mexico.

**History:** Laws 1983, ch. 195, § 2.

### **21-26-3. Definitions.**

As used in the Osteopathic Intern Act [21-26-1 to 21-26-4 NMSA 1978]:

A. "board" ["commission"] means the board of educational finance [commission on higher education];

B. "hospital" means a fully accredited nonprofit osteopathic teaching hospital in New Mexico that accepts newly graduated physicians for internships in family practice; and

C. "osteopathic intern" means a graduate of a college of osteopathic medicine approved by the American Osteopathic Association and who has been accepted by a hospital for postdoctoral training in family practice.

**History:** Laws 1983, ch. 195, § 3.

### **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

### **21-26-4. Intern program; board contract; regulations.**

The board [commission] shall:

A. in cooperation with the hospitals and the board of osteopathic medical examiners, develop an intern training program to provide postdoctoral training for osteopathic interns;

B. contract with hospitals to provide intern training programs; and

C. promulgate regulations to carry out the provisions of the Osteopathic Intern Act [21-26-1 to 21-26-4 NMSA 1978], including program requirements, distribution of training funds, and matching fund and financial accountability requirements of hospitals receiving intern training funds; provided, however, for the purposes of this subsection, "matching funds" may include the provision of in-kind services. Regulations of the board [commission] shall be filed in accordance with the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

**History:** Laws 1983, ch. 195, § 4.

### **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 32 to 34; 63A Am. Jur. 2d Public Funds §§ 56 to 58.

14A C.J.S. Colleges and Universities §§ 7, 31, 33; 81A C.J.S. States §§ 205, 211.

## **ARTICLE 27**

### **MAINTENANCE FOR TWO-YEAR COLLEGES**

#### **21-27-1. Short title.**

Sections 1 through 5 [21-27-1 to 21-27-5 NMSA 1978] may be cited as the "Two-Year College Maintenance Act".

**History:** Laws 1983, ch. 316, § 1.

#### **21-27-2. Purpose of act.**

The purpose of the Two-Year College Maintenance Act [21-27-1 to 21-27-5 NMSA 1978] is to provide funding for the repair and long-term care and preservation of the buildings, grounds and equipment of two-year colleges and institutions.

**History:** Laws 1983, ch. 316, § 2.

#### **21-27-3. Definitions.**

As used in the Two-Year College Maintenance Act [21-27-1 to 21-27-5 NMSA 1978]:

A. "board" ["commission"] means the board of educational finance [commission on higher education] created pursuant to Section 21-1-26 NMSA 1978;

B. "fund" means the two-year college maintenance fund; and

C. "qualifying institution" means a statutorily created branch community college, a junior college or area vocational school or a two-year constitutionally created postsecondary state educational institution.

**History:** Laws 1983, ch. 316, § 3.

### **ANNOTATIONS**

**Cross-references.** - As to the commission on higher education, see 21-1-26 and 21-1-28 NMSA 1978.



**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

#### **21-27-4. Two-year college maintenance fund; created; use of the fund.**

A. The "two-year college maintenance fund" is created in the state treasury. The fund shall consist of such money as the legislature may from time to time appropriate. The fund shall be invested by the state treasurer as other funds are invested. Balances remaining in the fund at the end of each fiscal year shall not revert.

B. The fund shall be used to provide funding to qualifying institutions only for the following purposes:

- (1) major repair to buildings, including such items as roof repair, repair of floor coverings, repair of structural damage and replacement or repair of mechanical equipment;
- (2) remodeling or renovation of existing structures;
- (3) landscaping outside of buildings, including parking lots, to create more attractive, more efficient and safer settings;
- (4) lighting, signs and general design work calculated to make the buildings and grounds safer;
- (5) maintenance contracts on building equipment, mechanical equipment, structural equipment and any other equipment necessary for the operation of the institution;
- (6) purchase, installation and maintenance of equipment calculated to provide energy or water conservation;
- (7) construction of storage buildings and maintenance shop buildings; and
- (8) construction of or repair to access roads to a campus if required.

**History:** Laws 1983, ch. 316, § 4.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 32, 33; 63A Am. Jur. 2d Public Funds §§ 56 to 58.

14A C.J.S. Colleges and Universities §§ 7, 10, 14; 81A C.J.S. States § 205.

### **21-27-5. Distributions from the fund; approval by the board required.**

A. A qualifying institution shall make application to the board for distribution of its allocation, or any part thereof, only for any of the purposes enumerated in Section 4 [21-27-4 NMSA 1978] of the Two-Year College Maintenance Act.

B. No distribution shall be made to any qualifying institution until the board [commission] has approved the distribution of a specific amount. The board [commission] may reduce the amount of any distribution to any qualifying institution. In taking such action, the board [commission] shall set forth its reasons for such action and report its actions and reasons to the responsible governing board of the institution.

**History:** Laws 1983, ch. 316, § 5.

### **ANNOTATIONS**

**Bracketed material.** - See 21-1-26 NMSA 1978 and notes thereto.

## **ARTICLE 28 UNIVERSITY RESEARCH PARK**

### **21-28-1. Short title.**

Sections 1 through 25 [21-28-1 to 21-28-25 NMSA 1978] of this act may be cited as the "University Research Park Act".

**History:** Laws 1989, ch. 264, § 1.

### **21-28-2. Research park; purpose.**

The purpose of the University Research Park Act [21-28-1 to 21-28-25 NMSA 1978] is to promote the public welfare and prosperity of the people of New Mexico and foster economic development within the state by forging links between the state's educational institutions, business and industrial communities and government through the development of research parks on university real property and through other cooperative ventures of innovative technological significance which will advance education, research or economic development within the state.

**History:** Laws 1989, ch. 264, § 2.

### **21-28-3. Definitions.**

As used in the University Research Park Act [21-28-1 to 21-28-25 NMSA 1978]:

A. "bond" or "bonds" means any bond, note or other evidence of indebtedness;

B. "regents" means the board of regents of a university;

C. "research park" means research and development facilities, research institutes, testing laboratories, offices, light manufacturing, related businesses and government installations and similar facilities, together with land, including all necessary appurtenances, rights and franchises acquired, constructed and developed by a university or under its authority which are suitable or necessary to promote the social welfare of the state of New Mexico through the advancement of education, science, research, economic development and related purposes;

D. "research park corporation" means any corporation formed pursuant to the provisions of the University Research Park Act;

E. "technological innovations" means research, development, prototype assembly, manufacture, patenting, licensing, marketing and sale of inventions, ideas, practices, applications, processes, machines, technology and related property rights of all kinds; and

F. "university" means a New Mexico educational institution established pursuant to the provisions of Article 12, Section 11 of the constitution of New Mexico.

**History:** Laws 1989, ch. 264, § 3.

#### **21-28-4. University research corporations; authorization; members; terms; meetings; bylaws.**

A. Any university may form, pursuant to the provisions of the Nonprofit Corporation Act [Article 8 of Chapter 53 NMSA 1978] or the Business Corporation Act [53-11-1 to 53-18-12 NMSA 1978], one or more research park corporations, separate and apart from the state and the university, to promote, develop and administer research parks or technological innovations for scientific, educational and economic development opportunities in accordance with bylaws adopted by the research park corporation.

B. Each research park corporation shall be governed by, and all of its functions, powers and duties shall be exercised by, a board of directors appointed by the regents. Members of the board of directors may include the president of the university, the regents, officers and employees of the university and other persons selected by the regents.

C. The board of directors shall elect a chairman and such other officers as the board of directors deems necessary.

D. The board of directors shall adopt bylaws, in accordance with the provisions of the Nonprofit Corporation Act or the Business Corporation Act, as appropriate, governing

the conduct of the research park corporation in the performance of its duties under the University Research Park Act [21-28-1 to 21-28-25 NMSA 1978].

**History:** Laws 1989, ch. 264, § 4.

### **21-28-5. Powers of university as related to research park.**

The regents of each university shall have the power to implement and further the purposes of the University Research Park Act [21-28-1 to 21-28-25 NMSA 1978], including the power:

A. to establish, acquire, develop, maintain and operate research parks, including all necessary or suitable buildings, facilities and improvements and to acquire, purchase, construct, improve, remodel, add to, extend, maintain, equip and furnish research parks or any building or facility, including research and service facilities and areas intended for the common use of research park tenants;

B. to form research park corporations to aid and assist the university to acquire, construct, finance, operate and manage research parks;

C. to lease, sell, exchange or transfer to research park corporations personal property, money and all or part of the land and facilities included in a research park on terms and conditions established by the regents which are fair, just and reasonable to the university and to enter into any other contract or agreement with the research park corporation for the construction, financing, operation and management of the research park;

D. to lease, either directly or through a research park corporation, to any person, firm, partnership, government entity or any other lawful entity recognized under the laws of the state, any part or all of the land, buildings and facilities of the research park under guidelines established by the regents;

E. to allow a lessee, exchanger or purchaser of university land to acquire or construct necessary or suitable buildings, facilities and improvements upon university land; provided that any improvements acquired or constructed upon university land during the term of any lease of university land will revert to and become the property of the university on termination of the lease or any renewal or extension;

F. to construct buildings, facilities and improvements and to acquire, purchase, construct, improve, remodel, add to, extend, maintain, equip and furnish research parks or any building or facility, including research and service facilities and areas intended for common use of research park occupants;

G. to finance all or part of the costs of the research park including the purchase, construction, reconstruction, improvement, remodeling, addition to, extension, maintenance, equipment and furnishing;

H. to conduct, sponsor, finance and contract in connection with technological innovations of all kinds; and

I. to do anything else which the regents deem appropriate to further the purposes of the University Research Park Act either directly or indirectly.

The specification of powers in this section is not exclusive and shall not be construed to impair or negate any other power or authority enjoyed by the regents under the constitution or laws of this state.

**History:** Laws 1989, ch. 264, § 5.

### **21-28-6. Powers of research park corporation.**

A research park corporation shall have all the powers necessary and convenient to carry out and effectuate the provisions of the University Research Park Act [21-28-1 to 21-28-25 NMSA 1978], including but not limited to, the power:

A. to approve or disapprove research proposals;

B. to sue and be sued in its corporate name;

C. to purchase, take, receive or otherwise acquire, own, hold, use and otherwise deal in and with real property or personal property, including intangible personal property and intellectual property and technological innovations or any interest therein;

D. to sell, convey, pledge, exchange, transfer and otherwise dispose of all or any part of any of its assets and properties for such consideration upon such terms and conditions as the corporation shall determine provided that any sale, conveyance, pledge, exchange, transfer or disposal of any real property interest by a research park corporation shall be made in accordance with the provisions of Section 13-6-2 NMSA 1978.

E. to make contracts, incur liabilities and borrow money at such rates of interest as the research park corporation may determine;

F. to make and execute all contracts, agreements and instruments necessary or convenient in the exercise of the powers and functions of the corporation granted by this act;

G. to receive and administer grants, contracts and private gifts;

H. to invest and reinvest its funds;

I. to conduct its activities, carry on its operations, have offices and exercise the powers granted by the University Research Park Act;

J. to make and alter bylaws, not inconsistent with the University Research Park Act, for the administration and regulation of the affairs of research park corporations, and such bylaws may contain provisions indemnifying any person who is or was a director, officer, employee or agent of the corporation;

K. to employ such officers and employees as it deems necessary, set their compensation and prescribe their duties;

L. to enter into agreements with insurance carriers to insure against any loss in connection with its operations;

M. to authorize retirement programs and other benefits for salaried officers and employees of the research park corporation;

N. to employ fiscal consultants, attorneys and such other consultants and employees as may be required in its judgment and to fix and pay their compensation;

O. to acquire, hold and dispose of intellectual property and technological innovations and enter into license agreements and contracts involving intellectual property and technological innovations such as patents, copyrights, franchises, trademarks and matters related thereto; and

P. to do all things authorized by law not inconsistent with the provisions of the University Research Park Act.

**History:** Laws 1989, ch. 264, § 6.

## **ANNOTATIONS**

**Meaning of "this act".** - The phrase "this act", referred to in Subsection F, means Laws 1989, ch. 264, which amended 10-16-7, 13-1-190, 21-1-17, and 21-1-35 NMSA 1978 and enacted 21-28-1 to 21-28-25 NMSA 1978.

### **21-28-7. Limitations on application of laws.**

Except as provided in this section, a research park corporation shall not be deemed an agency or public body or other political subdivision of the state, including for purposes of applying statutes and laws relating to personnel, procurement of goods and services, meetings of the board of directors, gross receipts tax, disposition or acquisition of real or personal property, capital outlays, per diem and mileage and inspection of records. A research park corporation shall be deemed an agency or other political subdivision of the state for purposes of applying statutes and laws relating to the risk management fund, and a research park corporation, its officers, directors and employees shall be granted immunity from liability for any tort as provided in the Tort Claims Act. A research park corporation may also enter into agreements with insurance carriers to insure

against any loss in connection with its operations even though the loss may be included among losses covered by the risk management fund of the state.

**History:** Laws 1989, ch. 264, § 7; 1991, ch. 220, § 1.

## **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, added "Except as provided in this section" at the beginning and inserted "including" in the first sentence; deleted "the members of the board of directors of a research park corporation officers, directors and employees of the research park corporation" preceding "shall be deemed" and inserted "a research park corporation, its officers, directors and employees" preceding "shall be granted" in the second sentence; and made minor stylistic changes.

### **21-28-8. Issuance of revenue bonds.**

A research park corporation may from time to time issue negotiable revenue bonds or notes or both. The proceeds of the sale of bonds issued pursuant to the University Research Park Act [21-28-1 to 21-28-25 NMSA 1978] shall be used to carry out the provisions of that act and to fund reserves for the research park corporation to pay interest on the bonds and to pay the necessary expenses of issuing the bonds including but not limited to its bond counsel and fiscal advisory fees and other legal, consulting and printing fees and costs. All bonds may be issued in one or more series. The bonds of each issue shall be dated and bear interest as prescribed by the research park corporation. The bonds shall mature serially or otherwise not later than forty years from their date and may be redeemable before maturity at the option of the research park corporation at prices and under terms and conditions fixed by the research park corporation in its resolution or trust agreement providing for issuance of the bonds. The resolution or trust agreement shall also determine the form of the bonds, including the form of any interest coupons to be attached thereto, and shall fix the denominations of the bonds and the place of the payment of the principal and interest thereon. The bonds shall be executed on behalf of the research park corporation as special obligations of the research park corporation payable only from the funds specified in the University Research Park Act and shall not be a debt of this state, any political subdivision of this state or any university and neither this state nor any political subdivision nor university shall be liable for the debts of the research park corporation. The resolution or trust agreement may provide for registration of the bonds as to ownership and for successive conversion and reconversion from registered to bearer bonds and vice versa. The bonds may be registered in the principal office of the research park corporation. After the registration and delivery to the purchasers, the bonds are incontestable and constitute special obligations of the research park corporation, and the bonds and coupons are negotiable instruments under the laws of this state. The bonds may be sold at public or private sale by the research park corporation at prices and in accordance with procedures and terms the research park corporation determines to be advantageous and reasonably obtainable. The research park corporation may provide for replacement of any bond which may be mutilated or destroyed.

**History:** Laws 1989, ch. 264, § 8.

### **21-28-9. Status of bonds.**

Bonds and other obligations issued under the provisions of the University Research Park Act [21-28-1 to 21-28-25 NMSA 1978] shall be deemed issued on behalf of the university but shall not be deemed to constitute a debt, liability, obligation of or a pledge of the faith and credit of this state or any political subdivision thereof or any university, but shall be payable solely from the revenue or assets of the research park corporation pledged for such payment. Each obligation issued on behalf of the research park corporation under the University Research Park Act shall contain on its face a statement to the effect that neither this state, nor any political subdivision, university or research park corporation shall be obligated to pay the same or the interest thereon except from the revenues or assets pledged therefor and that neither the faith and credit nor the taxing power of this state, any political subdivision thereof or any university is pledged to the payment of the principal of or the interest on such obligation.

**History:** Laws 1989, ch. 264, § 9.

### **21-28-10. Refunding bonds.**

The board of directors of the corporation may by resolution provide for the issuance of refunding bonds to refund any outstanding bonds issued under the University Research Park Act [21-28-1 to 21-28-25 NMSA 1978], together with redemption premiums, if any, and interest accrued or to accrue thereon. Provisions governing the issuance and sale of bonds under the University Research Park Act govern the issuance and sale of refunding bonds insofar as applicable. Refunding bonds may be exchanged for the outstanding bonds or may be sold and the proceeds used to retire the outstanding bonds. Pending the application of the proceeds of any such refunding bonds, with any other available funds, to the payment of the principal, interest and any redemption premiums on the bonds being refunded, and if so provided or permitted in the resolution of the research park corporation authorizing the issuance of such refunding bonds, to the payment of any interest on such refunding bonds and any expenses incurred in connection with such refunding, such proceeds may be placed in escrow and invested in securities which are unconditionally guaranteed by the United States and which shall mature or which shall be subject to redemption by the holders thereof, at the option of the holders, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended.

**History:** Laws 1989, ch. 264, § 10.

### **21-28-11. Trust agreements authorized.**

In the discretion of the research park corporation any bonds issued under the provisions of the University Research Park Act [21-28-1 to 21-28-25 NMSA 1978] may be secured by a trust agreement by and between the research park corporation and a corporate



trustee, which may be a bank or trust company having trust powers within or without the state. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign all or any part of the revenues or assets of the research park corporation. Such trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the holders of any such bonds as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the research park corporation in relation to the purposes to which bond proceeds may be applied, the disposition or pledging of the revenues or assets of the research park corporation and the custody, safeguarding and application of all money. It shall be lawful for any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of bond revenues or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the research park corporation. Any such trust agreement or resolution may set forth the rights and remedies of the holders of any bonds and of the trustee and may restrict the individual right of action by any such holders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the research park corporation may deem reasonable and proper for the security of the holders of any bonds. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be paid from the revenues or assets pledged or assigned to the payment of the principal of and the interest on bonds or from any other funds available to the research park corporation.

**History:** Laws 1989, ch. 264, § 11.

### **21-28-12. Pledge of assets or revenues of research park corporation.**

The pledge of any assets or revenues of the research park corporation to the payment of the principal of or the interest on any bonds shall be valid and binding from the time when the pledge is made, and any such assets or revenues shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the research park corporation, irrespective of whether such parties have notice thereof. Nothing in this section shall be construed to prohibit the research park corporation from selling any assets subject to any such pledge except to the extent that any such sale may be restricted by the trust agreement or resolution providing for the issuance of such bonds.

**History:** Laws 1989, ch. 264, § 12.

### **21-28-13. All money received from sale of bonds deemed trust funds.**

All money received by a research park corporation from bonds issued under the provisions of the University Research Park Act [21-28-1 to 21-28-25 NMSA 1978] shall be deemed funds to be held in trust, applied as provided in that act or transferred to

other research park corporations, nonprofit corporations or the university as the research park corporation deems appropriate. The resolution authorizing any obligations or the trust agreement securing the obligations may provide that any of the money covered by this section may be temporarily invested pending its disbursement. The resolution shall provide that any officer with whom, or any bank or trust company with which, the money is deposited shall act as trustee of the money and shall hold and apply the money for the purposes of the University Research Park Act, subject to provisions that regulations under that act and the resolution or trust agreement may specify. Any such money received by a research park corporation may be invested as provided in the University Research Park Act.

**History:** Laws 1989, ch. 264, § 13; 1991, ch. 220, § 2.

### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, inserted "from sale of bonds" in the catchline; inserted "from bonds issued" and substituted "funds to be held in trust" for "to be in trust" preceding "funds to be held" in the first sentence; inserted "covered by this section" in the second sentence; substituted "money received by a" for "money or any other money of the" in the final sentence; and made minor stylistic changes.

### **21-28-14. Limitation of liability.**

The members of the board of directors of a research park corporation, while acting within the scope of their authority, and any person acting in their behalf, while acting within the scope of the person's authority, shall not be personally liable for the corporation's obligations.

**History:** Laws 1989, ch. 264, § 14; 1991, ch. 220, § 3.

### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, substituted "personally liable for the corporation's obligations" for "subject to any personal liability resulting from carrying out the provisions of the University Research Park Act" at the end of the section.

### **21-28-15. Rights of holders of bonds.**

Any holder of bonds issued under the provisions of the University Research Park Act [21-28-1 to 21-28-25 NMSA 1978] or any coupons appertaining thereto, and the trustee under any trust agreement or resolution authorizing the issuance of such bonds, except as the rights given pursuant to that act may be restricted by such trust agreement or resolution, may, either at law or in equity, by suit, mandamus or other proceeding, protect and enforce any and all rights under the laws of this state or granted by that act or under such trust agreement or resolution or under any other contract executed by the research park corporation pursuant to that act, and may enforce and compel the

performance of all duties required by that act or by such trust agreement or resolution to be performed by the research park corporation or by any officer thereof.

**History:** Laws 1989, ch. 264, § 15.

### **21-28-16. Legal investments; tax exemption.**

All bonds issued by a research park corporation under the University Research Park Act [21-28-1 to 21-28-25 NMSA 1978] are legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, fiduciaries, trustees and guardians and for the sinking funds of political subdivisions, departments, institutions and agencies of this state. When accompanied by all unmatured coupons appurtenant to them, the bonds are sufficient security for all deposits of state funds and of all funds of any board in control of public money at the par value of the bonds. The bonds and the income from the bonds are free from taxation within this state, except estate taxes. The research park corporation in its discretion and by such means as it deems appropriate may waive the exemption from federal income taxation of interest on the bonds. The bonds subject to federal income taxation issued by the research park corporation shall be payable as to principal and interest with such frequency as may be required by the research park corporation.

**History:** Laws 1989, ch. 264, § 16; 1991, ch. 220, § 4.

### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, inserted "research park" preceding "corporation" in two places and substituted "estate taxes" for "inheritance and gift taxes" in the third sentence.

### **21-28-17. Annual report and audit.**

A. A research park corporation shall within ninety days following the close of each fiscal year submit an annual report of its activities for the preceding year as required by the Nonprofit Corporation Act [Article 8 of Chapter 53 NMSA 1978] or the Business Corporation Act [53-11-1 to 53-18-12 NMSA 1978] under which the research park is incorporated. The board of directors of the research park corporation shall annually contract with an independent certified public accountant, licensed by the state, to perform an examination and audit of the accounts and books of the research park corporation, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing, and the certified public accountant shall make a determination as to whether the research park corporation has complied with the provisions of the University Research Park Act [21-28-1 to 21-28-25 NMSA 1978]. The person performing the audit shall furnish copies of the audit report to the regents of the university and the state corporation commission where they shall be placed on file and made available for inspection by the general public.

B. Subject to the provisions of any contract with bondholders or noteholders, a research park corporation shall prescribe a system of accounts.

C. The costs of audits and examinations performed pursuant to this section shall be paid by the research park corporation.

**History:** Laws 1989, ch. 264, § 17.

## **21-28-18. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1991, ch. 220, § 6 repeals 21-28-18 NMSA 1978, as enacted by Laws 1989, ch. 264, § 18, relating to investment of funds, effective June 14, 1991. For provisions of former section, see 1990 Cumulative Supplement.

## **21-28-19. Gifts by persons, corporations, institutions and associations.**

A. Any person or domestic corporation or association may make contributions or gifts, grants, bequests, devises or loans to a research park corporation.

B. Any university or nonprofit corporation having funds available for research and development, regardless of the provisions of its charter, certificate of incorporation or other articles of organization including bylaws, may loan the funds to a research park corporation under such terms and conditions as may be mutually agreed upon for the purposes of a research park.

**History:** Laws 1989, ch. 264, § 19.

## **21-28-20. Conflicts of interest.**

A. If any director, officer or employee of the research park corporation shall be interested either directly or indirectly or shall be an officer or employee of or have any ownership interest in any firm or legal entity interested directly or indirectly in any contract with the research park corporation, except for any agency, instrumentality, department or political subdivision of the state, such interest shall be disclosed to and shall be set forth in the minutes of the research park corporation that is a party to the contract. The director, officer or employee having such interest shall not participate on behalf of the research park corporation in the authorization of the contract.

B. No director, officer or employee of the research park corporation or state officer shall accept any gratuities in connection with the issuance of bonds under the University Research Park Act [21-28-1 to 21-28-25 NMSA 1978] nor shall any such individual be

reimbursed for expenses incident to the issuing of bonds except such expenses as are reimbursed as provided under the provisions of rules of the regents.

C. Nothing in this section shall prohibit an officer, director or employee of a financial institution from participating as a member of the board of directors of the research park corporation in setting general policies of the research park corporation, nor shall any provision of this section be construed as prohibiting a financial institution of New Mexico from making loans guaranteed pursuant to the provisions of the University Research Park Act because an officer, director or employee of the financial institution serves as a member of the board of directors of the research park corporation.

D. Any person who violates the provisions of this section is guilty of a misdemeanor and shall be sentenced for a definite term of less than one year, a fine of one thousand dollars (\$1,000), or both.

**History:** Laws 1989, ch. 264, § 20.

### **21-28-21. Dissolution of research park corporation.**

On termination or dissolution of a research park corporation, all rights and properties of the research park corporation shall pass to and be vested in the university which formed the research park corporation, subject to the rights of any bondholders, lienholders, creditors or ownership interests in the research park corporation.

**History:** Laws 1989, ch. 264, § 21; 1991, ch. 220, § 5.

### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, substituted "creditors or ownership interests in the research park corporation" for "and other creditors or any holder of equity interests in a research park corporation" at the end of the section.

### **21-28-22. Agreement with the state.**

The state does hereby pledge to and agree with the holders of any bonds or notes issued under the University Research Park Act [21-28-1 to 21-28-25 NMSA 1978] that the state will not limit or alter the rights hereby vested in the research park corporation by that act to fulfill the terms of any agreement made with the holders thereof or in any way impair the rights and remedies of such holders until such bonds or notes together with the interest thereon, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceedings by or on behalf of such holders are fully met and discharged. The research park corporation is authorized to include this pledge and agreement of the state in any agreement with the holders of such bonds or notes.

**History:** Laws 1989, ch. 264, § 22.

### **21-28-23. Work to conform to federal law when aided by federal appropriations.**

In the event of congress making appropriations for the conduct of work similar to that specified in the University Research Park Act [21-28-1 to 21-28-25 NMSA 1978], the work of the research park shall conform to the requirements imposed as the conditions for such federal appropriations in order that the work of the research park may be aided and extended by means of such federal appropriations for scientific, engineering and industrial research.

**History:** Laws 1989, ch. 264, § 23.

### **21-28-24. Contracts involving officers or employees of educational institutions and state agencies or political subdivisions.**

The research park corporation shall not enter into any contract involving services or property of a value in excess of twenty thousand dollars (\$20,000) with an employee of the university or with a business in which the employee has a controlling interest, except as provided in Section 25 [21-28-25 NMSA 1978] of the University Research Park Act if the employee has a controlling interest unless the president of the university or his designee makes a determination, in writing, that the employee is able to provide services that are not readily available from another person, or is able to provide services which are less expensive or of higher quality than is otherwise available.

**History:** Laws 1989, ch. 264, § 24.

### **21-28-25. Transfer of technology developed by universities; officer or employee interest in private entity.**

A. Notwithstanding any other provision of state law, an officer or employee of a university may, subject to Subsection B of this section, apply to the university which, under policies established by the regents as provided in Subsection E of this section, may grant permission to establish and maintain a substantial interest in a research park corporation or private entity which provides or receives equipment, material, supplies or services in connection with the university or a research park corporation in order to facilitate the transfer of technology developed by the officer or employee of the university from the university to commercial and industrial enterprises for economic development.

B. To receive the permission pursuant to Subsection A of this section, the officer or employee must receive the approval of the president or his designee of the university at which he is employed. The president of the university may grant approval to the officer or employee only if all of the following conditions are met:

(1) the officer or employee provides a detailed description of his interest in the research park corporation or private entity to the president;

(2) the nature of the proposed undertaking is fully described to the president;

(3) the officer or employee demonstrates to the satisfaction of the president that the proposed undertaking may benefit the economy of this state;

(4) the officer or employee demonstrates to the satisfaction of the president that the proposed undertaking will not adversely affect research, public service or instructional activities at the university; and

(5) the officer's or employee's interest in the research park corporation or private entity or benefit from the interest will not adversely affect any substantial state interest.

C. The president of a university may authorize an officer or employee of the university to establish and maintain a substantial interest in a research park corporation or private entity if all of the following conditions are met:

(1) the application to maintain the substantial interest is approved by the president of the university at which the officer or employee is employed;

(2) the application contains a detailed description of the officer's or employee's interest in the research park corporation or private entity;

(3) the application contains a detailed description of the proposed undertaking;

(4) the application demonstrates to the satisfaction of the president of the university that the proposed undertaking will benefit the economy of this state;

(5) the application demonstrates to the satisfaction of the president of the university that the proposed undertaking will not adversely affect research, public service or instructional activities at the university; and

(6) the officer's or employee's interests in the research park corporation or private entity or benefit from the interest will not adversely affect any substantial state interest.

D. On recommendation of the regents, the president of the university at which the officer or employee is employed may require that the university or a research park corporation have a share in any royalties or shares of the research park corporation or other proceeds or equity positions from the proposed undertaking of the private entity.

E. The regents may establish policies for the implementation of this section.

**History:** Laws 1989, ch. 264, § 25.